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TITLE: AGRICULTURE, FOOD, TRADE, AND CONSERVATION ACT OF 1985

SPEAKER: Mr. ABDNOR; Mr. BOSCHWITZ; Mr. BUMPERS; Mr. BYRD; Mr. CRANSTON; Mr. DeCONCINI; Mr. DOLE; Mr. DURENBERGER; Mr. FORD; Mr. GLENN; Mr. GORTON; Mr. GRASSLEY; Mr. HARKIN; Mr. HATCH; Mr. HEFLIN; Mr. HELMS; Mr. LUGAR; Mr. MELCHER; Mr. NICKLES; Mr. NUNN; Mr. PRESSLER; Mr. PRYOR; Mr. SARBANES; Mr. SIMON; Mr. SIMPSON; Mr. THURMOND; Mr. ZORINSKY

TEXT: The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The question recurs on the amendment numbered 1067 offered by Senator Abdnor. The amendment as drawn is not in order.

Mr. HELMS. Mr. President, I am sorry, but there is so much confusion in the Chamber I did not understand the Chair. May we have order?

The PRESIDING OFFICER. The question now recurs on the amendment of Senator Abdnor, amendment No. 1067. This amendment as drawn is not in order.

Mr. MELCHER and Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I do not believe Senator Abdnor heard the Chair.

Mr. ABDNOR. I did not, Mr. President.

Mr. HELMS. Mr. President, I think there is good news and bad news. The Senator's amendment is up but it has been declared out of order.

Mr. ABDNOR. Mr. President, if the Chair will forgive me, I have trouble hearing.

The PRESIDING OFFICER. The Senate will be in order.

Mr. ABDNOR. Mr. President, is he telling me my amendment is out of order?

The PRESIDING OFFICER. The Senator is correct.

Mr. ABDNOR. That is bad news.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HELMS. Mr. President, for the information of Senators, we are going to try to work out a window of perhaps an hour, give or take, during which time we do not anticipate that there will be rollcall votes. Following that, we do anticipate rollcall votes well into the evening. I have discussed this with the majority leader and he wants us to forge ahead as best we can so, if possible, this bill will be completed tomorrow; if not tomorrow, Friday; if not Friday, Saturday. There will be further rollcall votes, I anticipate, but not during the next hour. We are going to try to handle amendments which will not require a rollcall vote.

Mr. PRYOR, Mr. MELCHER, and Mr. ABDNOR addressed the Chair.

Mr. PRYOR. Mr. President, if the Senator will yield, I should like to ask a question of the chairman.

Mr. HELMS. Mr. President, I shall not yield the floor yet. I shall yield for a question.

Mr. PRYOR. I wish to ask a question, Mr. President.

I would like to say to the chairman that we have been here all day long and it is 8 o'clock at night. What is the justification for our doing nothing for an hour, not having any votes, while we are here and, if we are not going to have any votes, why do we not go home?

Mr. HELMS. I shall be glad to answer the Senator's question. I shall answer it this way: I have had the same question in mind because between 5:12 p.m. and 7 p.m. this evening, we were not allowed to conduct business. We were in quorum call for 1 hour and 40 minutes of that time -- 1 hour and 48 minutes. For 1 hour and 40 minutes, we were not allowed to conduct business.

Mr. PRYOR. Why compound the problem by taking another window? I think there are amendments, I heard of some on this side that are ready to be offered. I do not know what they are at this point. Perhaps our distinguished manager on our side can answer that question. I protest this window from 8 to 9. I do not know what I can do about it, but I do not see any sense in the Senate sitting here for another hour doing nothing, waiting for someone to offer an amendment.

Mr. HELMS. The Senator may consider it doing nothing to dispose of amendments without rollcall votes, but this Senator does not.

Mr. PRYOR. This place has become like an airport, Mr. President. All we do is sit and sit and sit.

Mr. HELMS. I agree.

Mr. PRYOR. It is like waiting for a plane to come in the whole day and the whole night. If the plane is coming in,

let us get on it. If it is not, let us go home.

Mr. HELMS. The Senator and I are singing from the same hymn book on that. I have been trying to move this bill since last May. The Senator can see for himself what happens for the rest of the evening. I shall be glad to go to third reading right now. Would the Senator like that?

Mr. PRYOR. I would be glad to go to third reading.

Mr. HELMS. I ask for third reading, Mr. President.

Several Senators. Let us vote.

The PRESIDING OFFICER. The Chair is advised that until the amendment is disposed of, third reading is not in order.

Mr. HELMS. I knew that, Mr. President.

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

Mr. HELMS. The Senator from South Dakota has an amendment pending. I would prefer to transact some business. I shall be glad to do whatever the Senate wants but I want to do as much as I can on this bill tonight and intend to do that.

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

Mr. HELMS. I shall be glad to yield for a question.

Mr. SARBANES. Will the Senator outline for us what he anticipates happening the rest of the evening after this 1-hour period elapses?

Mr. HELMS. We have several controversial amendments. Let me go down the list.

Mr. SARBANES. I do not want to consume that much of the Senator's time. How late does the Senator anticipate being in?

Mr. HELMS. No later than 2 a.m.

Mr. BUMPERS. Would the Senator yield for an additional question? What is the parliamentary situation? On the amendment of the Senator from South Dakota to the Dole substitute with the motion to recommit, can we have a voice vote as the majority leader suggested?

Mr. ABDNOR. Mr. President, I can answer that.

Mr. BUMPERS. I do not care who answers it. We are trying to redraft amendments in my office and we do not know how to redraft them.

Mr. HELMS. I can assure the Senator that is not the fault of the managers of the bill.

Mr. BUMPERS. The Senator from North Carolina will recall that this afternoon, the majority leader suggested we have a voice vote on the motin to recommit, get that bill back here, adopt the committee amendments, consider the whole thing as original text and start amending. I think everybody would be infinitely better off if we could do that and know how to draft our amendments.

Mr. HELMS. I can solve the Senator's problem. Mr. President, I ask unanimous consent that all 4 pending questions

be withdrawn and that the bill be considered as original text with the language contained in amendment No. 939 as a part thereof.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Mr. President, reserving the right to object, could the Senator from North Carolina explain to me what he just asked? Is this the motion to recommit?

Mr. HELMS. That is correct. There has been an objection on the Senator's side, Mr. President. It has been cleared on this side.

Maybe we ought to yield to the distinguished minority leader and let him discuss it.

Mr. BYRD. Mr. President, I think the distinguished Senator from Arkansas has asked a pertinent question. I think it should be answered. May I ask the distinguished manager of the bill if this is not the situation, that except by unanimous consent no amendment may be offered to the bill at the present time but can only be offered as a second-degree amendment to the first-degree amendment of Mr. Dole to the motion to recommit with instruction?

Mr. HELMS. The Senator is correct. Just to confirm that, I will ask the Chair if he is not correct.

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Mr. BYRD. May I ask this further question?

Well, I do not need to ask a further question, but I think all Senators should be informed that the only amendments that would be in order would be amendments in the second degree to the amendment by Mr. Dole in the first degree to the motion to recommit. That is the only spot that is open.

Mr. HELMS. That is correct.

Mr. BYRD. So Senators would want to be sure, if they have amendments, that those amendments are properly keyed as second-degree amendments to the pending first-degree amendment.

Mr. HELMS. Mr. President, was there an objection to my unanimous-consent request?

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HARKIN. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. HELMS. May I ask who objected? Did the Senator object?

Mr. BYRD. I did not, but I will be glad to.

Mr. HELMS. Somebody did.

The PRESIDING OFFICER. The Senator from Iowa objected, Senator Harkin.

Mr. HELMS. Senator Harkin. All right.

AMENDMENT NO. 1067, AS MODIFIED

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. Mr. President, I wish to modify my amendment No. 1067 and I send it to the desk.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from South Dakota.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. Abdnor] proposes an amendment numbered 1067, as modified.

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

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

The modification is as follows:

At the end of the amendment No. 939 (as amended) add the following:

On page 459, between lines 18 and 19, insert the following new section:

STUDY OF UNLEADED FUEL IN AGRICULTURAL MACHINERY

Sec. -- -- . (a)(1) The Administrator of the Environmental Protection Agency and the Secretary of Agriculture shall jointly conduct a study of the use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are --

(A) used in agricultural machinery; and

(B) designed to combust fuel containing such additives.

As modified.

(2) The study shall analyze the potential for mechanical problems (including but not limited to valve recession) that may be associated with the use of other fuels in such engines.

(b)(1) For purposes of the study required under this section, the Administrator of the Environmental Protection Agency and the Secretary of Agriculture are authorized to enter into such contracts and other arrangements as may be appropriate to obtain the necessary technical information.

(2) The Secretary of Agriculture shall specify the types and items of agricultural machinery to be included in the study required under this section. Such types and items shall be representative of the types and items of agricultural machinery used on farms in the United States.

(3) All testing of engines carried out for purposes of such study shall reflect actual agricultural conditions to the extent practicable, including revolutions per minute and payloads.

(c) Not later than than January 1, 1987 --

(1) the Administrator of the Environmental Protection Agency and the Secretary of Agriculture shall publish the results of the study required under this section; and

(2) the Administrator shall publish in the Federal Register notice of the publication of such study and a summary thereof.

(d)(1) After notice and opportunity for hearing, but not later than 6 months after publication of the study, the Administrator shall --

(A) make findings and recommendations on the need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of the regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes; and

(B) submit to the President and Congress a report containing --

(i) the study;

(ii) a summary of the comments received during the public hearing (including the comments of the Secretary); and

(iii) the findings and recommendations of the Administrator made in accordance with clause (1).

(2) The report shall be transmitted to --

(A) the Committee on Energy and Commerce of the House of Representatives;

(B) the Committee on Environment and Public Works of the Senate;

(C) the Committee on Agriculture of the House of Representatives; and

(D) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e)(1) Between January 1, 1986, and December 31, 1987, the Administrator shall monitor the actual lead content of leaded gasoline sold in the United States.

(2) The Administrator shall determine the aveage lead content of such gasoline for each 3-month period between January 1, 1986, and December 31, 1987.

(3) If the actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, the Administrator shall --

(A) report to Congresss; and

(B) publish a notice thereof in the Federal Register.

(f) Until January 1, 1988, no regulation of the Administrator issued under section 211 of the Clean Air Act (42 U.S.C. 7545) regarding the control or prohibition of lead additives in gasoline may require an average lead content per gallon that is less than 0.1 of a gram per gallon.

(f) To carry out this section, there is authorized to be appropriated $1,000,000, to be available without fiscal year limitation.

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order.

The Senator from South Dakota.

Mr. ABDNOR. I thank the Chair. Mr. President, I am pleased that I am finally getting a chance to present this very much needed amendment which directs the U.S. Department of Agriculture [USDA] and the Environmental Protection Agency [EPA] to conduct a study examining the effects of a leaded fuel phase-down on the farm economy. Until this study is completed and recommendations can be reasonably made. The lead content in fuel will not fall below 0.1 grams per gallon. I introduce this measure on behalf of myself, the Senators from Oklahoma [Mr. Nickles and Mr. Boren], the

Senator from Iowa [Mr. Grassley], and the Senator from Minnesota [Mr. Durenberger].

Simply stated, Mr. President, my amendment directs the EPA to conduct a study in cooperation with the USDA to gauge the effects of a lead ban upon the agricultural community. My amendment requires that the results of this study be published in the Federal Register no later than January 1, 1987, and that full recommendations be submitted to Congress no later than June 1, 1988. With an opportunity for hearings. Finally, my amendment states that no ban on leaded gasoline can be implemented until January 1, 1988.

I firmly believe that a study is necessary before the lead content in gasoline is phased down below 0.1 grams per gallon. Blind decisions cannot be made, and that is exactly what would happen if EPA does not even look at the consequences of their policies before implementation.

Farm work, in all forms, automatically promotes additional wear. Farm machinery is in a class by itself, and decisions which ultimately affect this equipment must be made carefully, with every consideration given as to the performance of farming equipment.

We know that the farmers are facing difficult times and cannot afford any additional costs or burdens. EPA's ban would create an unnecessary burden on our farmers. When the price difference between leaded and unleaded would cost farmers $4 to $8 million annually and the equipment replacement would cost individual farmers $90,000 to $100,000, I find this proposal costly and cumbersome.

EPA's current action would unjustly hurt the agricultural economy, and I can tell you here today -- farmers cannot afford these increased costs. Grain and livestock prices have not increased, yet equipment prices have risen yearly. The environment surrounding most farm communities is completely different from other areas.

We must look closely at the effects of our decisions, and in this case, those effects have not been properly reviewed.

My amendment ensures that a rational decision is made. I am not totally opposed to a lead phase-down, because I know there are health considerations. I am confident that a substitute for lead will be developed. What I am concerned about is the making of uninformed decisions and how these decisions will affect the farmers in South Dakota and every other rural State.

Mr. President, I ask unanimous consent that a letter I have received from the EPA which also recognizes the need for a study be printed in the Record.

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

U.S. Environmental

Protection Agency,
Washington, DC, October 25, 1985.

Hon. James Abdnor,
U.S. Senate,
Washington, DC.

Dear Senator Abdnor: Because I know of your keen interest in EPA's lead phasedown program and your concern with the potential effects on agricultural machinery, I am writing to let you know of recent developments. As a result of the issues raised by you and farm community representatives, I have made a commitment to conduct a study of the effects of low lead and unleaded gasoline on farm equipment. The Agency will design a test program in consultation with the Department of Agriculture and interested farm groups to ensure that the study responds to the concerns of the

farm community. The study will involve testing a representative sample of engines used in agricultural machinery with different lead levels, and with additives which could serve as substitutes for leaded gasoline. We anticipate completing the study by January 1987. I am enclosing a letter to the American Farm Bureau Federation which describes our study plan and discusses other aspects of our lead phasedown regulations in more detail.

I appreciate your activity on behalf of the farm community. I hope that we will have an opportunity in the future to work together on issues of mutual interest.

Sincerely,
Lee M. Thomas. q04

Mr. ABDNOR. Mr. President, it is clear that we need a complete and thorough study of the potential negative effects a ban on lead used as a fuel additive would have on the farm sector. The possible problems and economic hardships caused by such a ban should be carefully researched and determined. I urge my colleagues to support this amendment requiring EPA and USDA to conduct this desparately needed study.

Additionally, Mr. President, I thank my Senate colleagues, Mr. Nickles, Mr. Grassley, and Mr. Durenberger, along with Congressman Tauke, for meeting and reaching this compromise.

Mr. NICKLES. Mr. President, it is my pleasure to join my colleague from South Dakota, Senator Abdnor, in offering this farm bill amendment which offers needed protection to the agricultural community from the Environmental Protection Agency's proposal to ban leaded gasoline by 1988. Proper study and consideration must be given to determine if such a move would have an adverse impact on the agriculture community.

Farmers and ranchers are tired of being battered about by poorly conceived Government actions. They have had more than their fill of grain embargoes, OSHA regulations, cargo preference restrictions, and IRS intrusions. In these instances, as all too often, the branches of big government have been a disservice to rural America.

A recent survey of over 3,000 farmers and ranchers found an average of 10 lead gas burning engines per farm, ranging from chainsaws and grain augers to combines. A ban on leaded gasoline could cost individual farmers $100,000 if their equipment had to be replaced. The fact is, EPA doesn't really know if this farm machinery would be permanently damaged by fueling with unleaded gasoline. We need to know and this amendment would let us find out under actual working conditions.

The amendment we are offering today would require the Secretary of Agriculture and the EPA Administrator to jointly analyze any mechanical problems which may stem from the use of nonleaded fuels in engines of agricultural machinery. Mr. President, most farmers could not afford to buy new machinery of they wanted to. They are having a hard enough time trying to service the equipment they have.

An amendment aimed at addressing agriculture's concerns on this issue was adopted during House consideration of the farm bill. Congressman Tauke, sponsor of the House language, and Congressmen Dingell, Madigan, and de la Garza, have stated their intention to urge the House farm bill conferees to accept our amendment during conference. In a recent letter they stated, "Our discussions with petroleum refiners and representatives of the farm community over the last few weeks have convinced us that the approach embodied in your amendment is the best resolution to our concerns at this time."

I urge my colleagues to support the amendment.

Mr. GRASSLEY. Mr. President, I am pleased to join Senator Abdnor and my other colleagues in cosponsoring this amendment on leaded gasoline.

The purpose of this amendment is to ensure that adequate supplies of gasoline containing 0.1 grams per gallon of

lead additives to protect and maintain farm machinery will be available in all States for farming purposes. Recent tests conducted by a major fuel refiner indicates that a substantial number of farm engines, primarily older farm engines, will suffer extensive damage and require expensive repairs if run on unleaded gasoline. Yet, we find in studies conducted by the Environmental Protection Agency which indicate that even those engines without hardened valve seats, which are the most likely candidates for damage, do not experience valve recession in gasoline containing a level of 0.1 grams of lead per gallon. Currently, we are phasing out leaded gasoline, and this amendment requires us to look at this issue before it becomes a problem. In requiring the Department of Agriculture and the Environmental Protection Agency to jointly conduct these tests on the use of fuels containing lead additives, we will be assured that the tests are designed in a way that will be credible to those who own and use farm equipment so that it does answer the concerns of the farm community.

According to this amendment, the level of lead in leaded gasoline will remain at 0.1 grams per gallon for farmers while the study is conducted. The results of the study must be printed in the Federal Register no later than January 1, 1987, and shall be submitted to Congress within 90 days after such publication. Four months after the report is submitted to Congress, the lead level in gasoline used for farming purposes may change to an appropriate level as determined by the Department of Agriculture and the Environmental Protection Agency.

Mr. President, this is a straightforward amendment which is designed to prevent an impending crisis in the farm community. With this amendment I believe that we can resolve the issues associated with the lead phaseout in gasoline.

Mr. HELMS. Mr. President, I believe this amendment has been cleared. Certainly I am willing to accept the amendment.

Mr. ZORINSKY. This amendment has been cleared on this side of the aisle likewise and we have no objection to it.

The PRESIDING OFFICER. Is there further debate on this amendment?

Mr. DURENBERGER. Mr. President, I rise to congratulate the Senator from South Dakota on his amendment and to urge its adoption by the Senate. Although it has been little noticed by the public, there has in the last few weeks been an intense debate in the Congress on the future of the lead phase-down program being implemented by the Environmental Protection Agency.

The amendment now offered by the Senator from South Dakota [Mr. Abdnor] resolves that debate and resolves it in a way that is satisfactory to all Members that have expressed a concern, both here in the Senate and in the House, as well.

In March of this year, the Environmental Protection Agency promulgated new regulations that will reduce the lead content of leaded -- what is usually called regular -- gasoline by over 90 percent. The allowable amount of lead in gasoline which was 1.1 grams per gallon will drop to 0.1 gram per gallon effective on January 1, 1986, under the new EPA regulations.

Although most of the automobile fleet of this country has been designed to run on unleaded gasoline, the elimination of lead has caused concern among farmers, motorboat owners, and those who have antique automobiles. The principal purpose of lead as a gasoline additive was to increase octane. But lead also played a secondary role as a valve lubricant. Some fear that the elimination of lead will cause excessive engine wear and in particular a mechanical problem called valve recession for older engines or engines designed to carry heavy payloads such as found in farm machinery.

These concerns have been expressed to the Environmental Protection Agency in public hearings and private communications. Groups representing the owners of heavy duty or specialty engines requested EPA to do a study of the valve recession problem before the Agency went to a complete ban on lead. EPA declined to do the study because of insufficient resources. The groups then came to Congress and sought relief from the new regulations.

When the House considered its version of the 1985 farm bill, Congressman Tauke offered and the House adopted an amendment that would give farmers an exemption from the EPA phase-down regulations. The amendment would guarantee that those purchasing motor fuels for use on the farm and for farming purposes could purchase a blend of gasoline with 0.5 gram per gallon lead until such time as EPA did a study of the valve recession problem and reported to the Congress.

Although I am equally sympathetic to the concern expressed by the farmers and other groups, I did not believe that the Tauke amendment would be a workable solution to that concern. The demand for gasoline as a motor fuel on the farm is only a very small percentage of the national gasoline market. Motor fuel purchases for farming purposes are less than 3 percent of the national total sales. Gasoline is no longer even the principal fuel on the farm as most new machinery uses diesel fuel.

It is very unlikely that the national motor fuels retail market would be able to provide a special blend of gasoline just for farmers and provide it at a reasonable price. The extra storage and transportation facilities needed for a special blend would assure that it would also be very expensive. Thus, to guarantee that farmers would be able to purchase 0.5 gram per gallon leaded gasoline, EPA would most likely be required to modify its regulations and allow 0.5 gram per gallon for the entire market or substantial portions of the market in agricultural States. Such a step would reverse the direction of EPA's lead phase-down program and in my estimation be a public health tragedy for the children of this Nation.

When the Senate considered the HUD-independent agencies appropriations bill, I offered an amendment prohibiting EPA from using any appropriated funds to modify the regulations which become effective on January 1, 1986 to reduce the allowable amount of lead in gasoline to 0.1 gram per gallon. That amendment also appropriated $1 million to the Agency to fund a study of the valve recession problem in farm machinery.

Mr. President, after my HUD appropriations amendment was adopted intensive discussions began on steps to resolve the differences between the Senate and House positions. Those discussions quite naturally focused on the legislation that had been introduced by Senator Abdnor. The Abdnor bill authorized funds for EPA to do a study of the effects of using unleaded fuels in farm machinery. It also prohibited EPA from completely banning the sale of leaded gasoline until the results of the study had been transmitted to the Congress. The discussions over the last few weeks have led to minor modifications in the original Abdnor bill which I would like to review for a moment.

First, the study is also to examine the effects of gasoline that contains lubricating additives other than lead. The choice is not really between regular and unleaded. Many of us who have been watching this issue closely fully expect that some alternative lubricating additive will soon be on the market and that the alternative will do every bit as good a job as lead but without the negative environmental consequences. So the EPA study that is authorized is to also look at those alternatives.

Second, the amendment provides that the Secretary of Agriculture shall specify the types of farm machinery that are to be included in this study. Mr. President, there are several things that need to be said about this provision. One, EPA is not prohibited from looking at engines other than engines in farm machinery. Two, the Secretary of Agriculture cannot hold up the study by refusing to make his selection. There would be no advantage in doing so since the other dates in this amendment are quite firm. Three, there are only limited resources availability for this study. The Congress does not expect the Agency to spend any more than approximately $1 million and the Secretary needs to keep those resource constraints in mind when selecting engines. Fourth, and finally, the engines selected by the Secretary are to be representative of the types of engines that are used on the farm and run on gasoline. We are not studying those engines most likely to have a problem, but rather are looking for a representative sample of all farm equipment whether it is likely or expected to have a problem or not.

Third, the Administrator of the Environmental Protection Agency will make findings on the need for modifying the lead phase-down program after the study has been completed. These are to be the findings of the Administrator. They

shall be made according to the Administrator's authority and responsibility under the Clean Air Act which provides for the regulation of additives to motor fuels. There is not another member of the executive branch who bears any similar responsibility nor who could make an adequate determination weighing all of the relevant factors. Of course, the proposed findings of the Administrator are open to review by all parties in the executive branch, the Congress, and the public.

Fourth, the Administrator is to collect data on the so-called lead banking regulations which it has issued to determine the impact of these regulations on the gasoline market. Under the provisions of those regulations, refiners are today banking lead rights which can be used after January 1, 1986, to increase the lead content of gasoline above the allowable 0.1 gram per gallon through the end of 1987. Because of the economic value of lead as an octane enhancer, substantial lead rights are currently being banked and it is expected that the actual lead content of gasoline will average more than 0.2 gram per gallon for the next 2 years. If the average content should fall below 0.2 gram for any 3-month period, the Administrator will inform the Congress of such a result.

Finally, the Administrator is prohibited from completely banning lead in gasoline so long as this study is underway. EPA had no intention of reducing lead to less than 0.1 gram per gallon before January 1, 1988, in any event and nothing in this amendment would prohibit the Administrator from issuing a regulation to ban the sale of leaded gasoline after January 1, 1988.

Mr. President, this is a good amendment carefully crafted by Members in both the House and the Senate to reflect the concerns of EPA and representatives of the farm community. After we reached this language as a compromise position, it was no longer necessary to push the prohibition that I had offered as an amendment to the HUD appropriations bill. Senator Stafford and I wrote a letter to the chairman and ranking member of the HUD appropriations subcommittee to indicate that an agreement has been reached. I ask unanimous consent that a copy of that letter be included at this point in the Record.

Mr. President, I again commend Senator Abdnor for his efforts on this issue. He can rightly be pleased with the amendment he offers the Senate today. I would also like to thank Senator Grassley for his efforts and close scrutiny of this issue and the staff assistance that his office provided in reaching an agreement. Members of the House, particularly Congressman Tauke who sponsored the original House amendment, have been most responsible in dealing with this issue and it has been a great privilege to be able to work with Congressman Tauke directly on this issue. Finally, I would like to thank Senator Stafford for the support he has given to working out this language. As always, the Senator from Vermont was generous with his personal attention when it was most needed to get a successful resolution to this issue.

Mr. President, I ask unanimous consent that a letter from me to the Senator from Utah [Mr. Garn] and the Senator from Vermont [Mr. Leahy], the chairman and ranking member of the Subcommittee on HUD, Independent Agencies of the Committee on Appropriations, which relates to this subject and relates to an amendment which I proposed and was adopted on the HUD, Independent Agencies bill, be printed in the Record.

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

U.S. Senate,

Committee on Environment

and Public Works,
Washington, DC, November 6, 1985.

Hon. Jake Garn,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington,

DC.

Hon. Patrick Leahy,
Ranking Member, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

Dear Jake and Pat: As you prepare for the conference on the HUD-Independent Agencies appropriations bill for fiscal year 1986, we want to bring to your attention recent developments concerning the lead phasedown program at the Environmental Protection Agency. Senator Durenberger offered a floor amendment on this subject, when the bill was pending before the Senate. Subsequent discussions with House and Senate members have now made portions of the Durenberger amendment unnecessary.

The Durenberger amendment was prompted by an amendment to the 1985 farm bill offered in the House by Congressman Tauke. The House language would have provided farmers with an exemption from the EPA lead phasedown program, until such time as EPA conducted a study on the impact of unleaded fuel on farm machinery. In our view the farm exemption was unworkable. Guaranteeing gasoline with 0.5 gram of lead per gallon for farmers would have required that such a special blend of fuel be available to a much larger segment of the marketplace.

The amendment offered by Senator Durenberger to the HUD-Independent Agencies appropriations bill specifically prohibited any use of appropriated funds for the purpose of modifying the regulations to provide farmers or any other segment of the marketplace an exemption. The amendment also earmarked $1 million for a study of the impact of alternative fuels and lubricant additives on the engines used in farm machinery.

Subsequent to the adoption of the Durenberger amendment, there have been intensive negotiations among members of the House and Senate to achieve a workable resolution of the understandable concerns of the farm community without needless delay or complication of the EPA lead phasedown program. Those negotiations have led to a compromise proposal that will authorize EPA to do a study on the use of various fuels in farm equipment. While that study is in progress and the results are under consideration in the Congress, EPA will not be authorized to reduce the allowable lead content on gasoline below 0.1 gram per gallon. The prohibition on a complete ban is lifted January 1, 1988. This provision will be incorporated in an amendment to the Senate farm bill to be offered by Senator Abdnor. There will no longer be a need for that portion of the Durenberger amendment which prohibits EPA from modifying the regulations.

The study authorized by this language is a joint study by EPA and USDA. Both Members of the House and representatives of the Environmental Protection Agency have expressed a strong desire to see the money for this study actually appropriated, and not just earmarked as was provided in the earlier amendment. To accomplish this purpose, we have attached suggested language.

It is our firm belief that the lead phase-down program which has been underway in this country for several years, is one of the most important health and environment issues of recent times. We are also convinced that the American fleet of automobiles and engines will survive and perform well without lead in gasoline. It is most important that funds are available to keep the program on schedule and produce the evidence that will satisfy concerns that have been expressed. The appropriation of $1 million for this purpose is more than warranted.

We wish to thank you for all of the assistance that you have provided in this matter. A successful resolution of a difficult policy problem has been accomplished with your help.

Sincerely,
Robert Stafford,
U.S. Senate.
Dave Durenberger,

U.S. Senate.

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AMENDMENT TO H.R. 3038 -- HUD/INDEPENDENT AGENCIES APPROPRIATION

"PROVIDED, That $1,000,000 of funds, in addition to funds otherwise available under this heading, shall be available for a study of the use of fuel containing lead additives, or alternative lubricating additives, in gasoline engines which are used for agricultural machinery".

Mr. ABDNOR. Will the Senator yield?

Mr. DURENBERGER. I will be glad to yield.

Mr. ABDNOR. Mr. President, I just want to say to the Senator from Minnesota I thank him for all his work on this amendment and also thank him for bringing together all the individuals who were so much involved. We took several days bringing it all together, not only working it out with our colleagues, other Senators, but with other farm groups and petroleum people. I think we ended up with a proposal that has been well received by one and all. I certainly appreciate the work of all those who made it possible.

Mr. DURENBERGER. I am indebted to my colleague from South Dakota as we always all are. Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I, too, want to congratulate the Senator from South Dakota. This is a much needed amendment. It is one on which many of my farmers have contacted me, and I am glad to see that it is going to have strong support. However, Mr. President, I think that we would be remiss by adopting this amendment in this manner. What we have to do is send a loud and strong signal to the EPA that we want this adopted. We do not want them fooling around any longer.

I think we need a good recorded vote on this. I am certain that all Senators would vote for it, and that would send a strong signal to the EPA.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from South Dakota. On this question the yeas and nays have been ordered, and the clerk will call the roll.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HELMS. Mr. President, in view of the fact that a good faith announcement was made that there would be no rollcall votes for approximately 1 hour, and since the Senator from Iowa has asked for the yeas and nays and got them on the Abdnor amendment, I ask unanimous consent that this vote and any succeeding rollcall vote that is ordered between now and 9:15 be stacked.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, if the distinguished Senator from North Carolina will allow me, I have no objection to putting this vote over until 9 o'clock. Mr. Dole cannot be here at the moment, and he many times has accommodated me in situations like this so that there could be a little window, and I think we should accommodate Mr. Dole in turn. But I do not want to agree to what I believe the distinguished Senator referred to, that any votes that are ordered be stacked.

Mr. HELMS. What the Senator is saying is that he wants to do it one by one?

Mr. BYRD. Yes.

Mr. HELMS. Very well. That is a reasonable suggestion.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request as amended by the Senator from North Carolina? The Chair hears none, and it is so ordered.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 1068

Mr. MELCHER. Mr. President, for 2 or 3 weeks I have been talking about an amendment to be offered to the bill to bring it under the budget. The amendment has been drafted and has been added to as time went by, picking up savings here and there in the bill where we could, without jeopardizing the functions of the commodity programs.

Part of those savings were incorporated in the amendment we adopted earlier this afternoon. I guess the best reference to it is the Dole II amendment. However, some were not. There is about $3.1 billion over the 3-year budget cycle that were not adopted, and I would like to offer them now on behalf of myself and the Senator from Florida [Mr. Chiles].

I send the amendment to the desk. This is an amendment that has been around and circulated for a couple of weeks and is well known, and I will describe briefly what points in this amendment are in addition to those that were adopted by the action on the Dole amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. Melcher], for himself and Mr. Chiles, proposes an amendment numbered 1068.

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

Mr. HELMS. I object, Mr. President. I want to hear it read or I want a copy of it. Will the Senator furnish a copy of it?

Mr. MELCHER. I believe the Senator has a copy of it.

Mr. HELMS. I do not have a copy.

Mr. MELCHER. I will give the Senator another one.

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

The amendment is as follows:

At the end of the pending amendment, add the following:

In the engrossment of S. 1714, the enrolling clerk is directed to make the following changes in the bill:

On page 13, line 24, after the subsection (a) designation, insert "(1)".

On page 14 --

(1) line 1, renumber paragraph (1) as subparagraph (A);

(2) line 6, renumber paragraph (2) as subparagraph (B);

(3) after line 10, insert a new paragraph as follows:

"(2) In addition to the funds or commodities of the Commodity Credit Corporation used by the Secretary under paragraph (1), at least (A) 300 million bushels of wheat, (B) 250 million bushels of corn, (C) 10 million hundredweight of rice, and (D) 75,000 bales of cotton owned or controlled by the Commodity Credit Corporation shall be used by the Secretary for such export activities to regain for the United States export markets for these commodities that have been lost because of practices described in subsection (b) or because of adverse economic conditions in the importing country that have resulted in decreased purchases of agriculture products from the United States. In using commodities under this paragraph, the Secretary shall give priority to friendly developing countries that because of economic conditions (A) have reduced their purchases of such commodities from the United States, (B) would have difficulty in meeting their needs for such commodities without price reductions or other assistance provided by the Secretary, or (C) both."; and

(4) line 11, strike out "The", and insert in lieu thereof "Except as provided in paragraph (2) of subsection (a), the".

(5) line 18, after the period, insert a new sentence as follows: "The funds and commodities specified in this section shall be in addition to, and not in place of, any minimum amounts of funds and commodities required for export assistance by any other provision of law.".

(6) line 19, strike out "The", and insert in lieu thereof "Except as provided in paragraph (2) of subsection (a), the".

On page 15, line 4, after "Corporation", insert the following ", of which not less than 100,000 metric tons shall be butter and not less than 25,000 metric tons shall be cheese".

On page 85, after line 23, strike out everything through line 23, page 86, and insert in lieu thereof the following:

"(D) If the producers on a farm actually plant wheat or a nonprogram crop for harvest on at least 50 percent of the permitted wheat acreage of the farm (determined in accordance with subsection (g)) -- ".

On page 86, line 24, strike out "(I)", and insert in lieu thereof "(i)".

On page 87 --

(1) line 3, strike out "(II)", and insert in lieu thereof "(ii)";

(2) line 6, strike out "(III)", and insert in lieu thereof "(iii)"; and

(3) strike out lines 9 through 25.

On page 92, strike out everything after line 2 through line 10, page 94.

On page 94, line 11, strike out "(B)", and insert in lieu thereof "(d)".

On page 94, after the period at the end of line 16, insert a new sentence as follows: "For any crop of wheat for which marketing quotas are not in effect, the individual farm program acreage shall be the acreage planted on the farm to wheat for harvest within the permitted wheat acreage for the farm as established under subsection (f).".

On page 95, after line 20, strike out everything through line 6, page 97, and insert in lieu thereof the following:

"(f)(1) Notwithstanding any other provision of this section, the Secretary shall provide for any crop of wheat for which marketing quotas are not in effect an acreage limitation program described in paragraph (2) and an acreage diversion program described in paragraph (3). Except as provided for in subsection (g), the producers on a farm, as a condition of eligibility for loans, purchases, and payments for any crop of wheat, must comply with the terms and conditions of such programs. The Secretary shall announceany such program not later than July 1 prior to the calendar year in which the crop is harvested, except that in the case of the 1986 crop, the Secretary shall announce such program as soon as practicable after the date of enactment of the Agriculture, Food, Trade, and Conservation Act of 1985.

"(2)(A) Under an acreage limitation program provided for in paragraph (1), the limitation on the acreage planted to wheat shall be achieved by applying a uniform reduction of 23.5 percent to the acreage base for each wheat-producing farm.".

On page 97, line 7, strike out "(C)", and insert in lieu thereof "(B)".

On page 98, line 4, strike out "(D)", and insert in lieu thereof "(C)".

On page 98, after line 16, strike out everything through line 4, page 100, and insert in lieu thereof the following:

"(3) Under an acreage diversion program provided for in paragraph (1), the Secretary shall make crop retirement and conservation payments to any producer of any crop of wheat whose acreage planted to wheat for harvest on the farm for each such crop is reduced so that it does not exceed the wheat acreage base for the farm less an amount equivalent to 7.5 percent of the wheat acreage base in addition to the reduction required under paragraph (2), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat acreage base under this paragraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the acreage diverted under this paragraph. The diversion payment rate for the 1986 through 1989 crops of wheat shall be established by the Secretary at not less than $2.70 per bushel.".

On page 104, line 12, after "under", insert "paragraphs (2) and (3) of".

On page 112, after line 2, strike out everything through line 6, page 113, and insert in lieu thereof the following:

"(C) If the producers on a farm actually plant feed grains or a nonprogram crop for harvest on at least 50 percent of permitted feed grain acreage of the farm (determined in accordance with subsection (f)) -- ".

On page 113 --

(1) line 7, strike out "(I)", and insert in lieu thereof "(i)";

(2) line 11, strike out "(II)", and insert in lieu thereof "(ii)";

(3) line 14, strike out "(III)", and insert in lieu thereof "(iii)";

(4) after line 17, strike out everything through line 11, page 114.

On page 118, after line 3, strike out everything through line 12, page 120, and insert in lieu thereof the following:

"(d) The individual farm program acreage shall be the acreage planted on the farm to feed grains for harvest within the permitted feed grain acreage for the farm as established under subsection (f).".

On page 121, after line 15, strike out everything through line 21, page 122, and insert in lieu thereof the following:

"(f)(1) Nowithstanding any other provision of this section, the Secretary shall provide for each crop of feed grains an acreage limitation program described in paragraph (2) and an acreage diversion program described in paragraph (3). Except as provided for in subsection (g), the producers on a farm, as a condition of eligibility for loans, purchases, and payments on any of the 1986 through 1989 crops of feed grains, must comply with the terms and conditions of such programs. The Secretary shall announce any such program no later than November 15 prior to the calendar year in which the crop is harvested, except that in the case of the 1986 crop, the Secretary shall announce such program as soon as practicable after the date of enactment of the Agriculture, Food, Trade, and Conservation Act of 1985.

"(2)(A) Under an acreage limitation program provided for in paragraph (1), the limitation on the acreage planted to feed grains shall be achieved by applying a uniform reduction of 17.5 percent to the acreage base for each feed grain-producing farm.".

On page 122, line 22, strike out "(C)", and insert in lieu thereof "(B)".

On page 123, line 4, strike out "(D)", and insert in lieu thereof "(C)".

On page 124, after line 13, strike out everything through line 25, page 125, and insert in lieu thereof the following:

"(3) Under an acreage diversion program provided for in paragraph (1), the Secretary shall make crop retirement and conservation payments to any producer of any crop of feedgrains whose acreage planted to feed grains for harvest on the farm for each such crop is reduced so that it does not exceed the feed grain acreage base for the farm less an amount equivalent to 7.5 percent of the feed grain acreage base in addition to the reduction required under paragraph (2), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the feed grain acreage base under this paragraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the acreage diverted under this paragraph. The diversion payment rate for the 1986 through 1989 crops of feed grains shall be established by the Secretary at not less than $1.50 per bushel.".

On page 129, line 13, after "under", insert "paragraphs (2) and (3) of".

On page 219 --

(1) line 7, strike out everything beginning with "(a)" through the period at the end of line 19;

(2) line 20, redesignate subsection (b) as subsection (a); and

(3) line 22, redesignate subsection (c) as subsection (b).

On page 220, line 15, redesignate section (d) as subsection (c).

Mr. MELCHER. Mr. President, the first item that provides a little saving is to reinstate the farmer-owned grain reserve. We canceled that out in the farm bill, and there have been a lot of requests that we reinstate it. It is in this particular amendment because by reinstating it, there is a $200 million saving. That is why this feature is included in the amendment.

Second, on the acreage reduction program there is some benefit by setting a mandatory requirement on wheat, a mandatory requirement on feed grains, and those are set in the amendment at 23.5 percent for wheat and 17.5 percent for feed grains -- those are mandatory requirements -- and an additional 7.5 percent would be paid diversion in each case.

It actually does save $2.3 billion as computed by the Congressional Budget Office.

While there are numerous ways of computing what the savings are on the acreage reduction program, most of those are based on what is discretionary with the Secretary. I do want to point out in order to make sure that we have that saving that this is mandatory.

We do that for the very purpose of reducing the amount in the bill by $2.3 billion.

It might puzzle you as it did me at first as to why you could have something on paid diversion and you actually make a saving and it is explained by both the Department of Agriculture and CBO, although the expert on that particular point is the Department of Agriculture. They say that by actually being sure that you reduce the amount of the acreage that is held out of production, even though you pay for it, you create the situation where you bring down the production sufficiently enough to make the saving.

The next item is an item dealing with export sales. It expands section 104 in the bill on targeted exports, setting a mandatory level. It is thought to be a reasonable level and the savings on that is $200 million over 3 years.

Finally, on the substance of the amendment, is a mandatory dairy sales, assuming specified product levels. I can briefly explain that by saying that we do have that section in the bill. What we are doing by this amendment is saying that part of those mandatory sales which are sold for cash incorporate cheese and butter, not just dried powdered milk, and by doing that we have additional savings of $200 million.

There is with this package a net interest savings with just these items. Net interest savings would be an additional $200 million and brings the package up to a total of $3.1 billion. It is $3.1 billion over the 3-year budgetary period.

I think it is worthwhile. We want to get as much savings as possible into the bill so we draw close to the point where we satisfy those of us who are concerned with reducing the costs and also meeting the concerns of the administration.

I hope the amendment can be accepted.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SIMON. Mr. President, I rise in support of the Melcher amendment. I frankly have not had a chance to look at all of it. But it contains one provision that I think is an extremely important one and that is it brings back the farmer-held reserve, the farmer-owned reserves.

Why is that important? It is important, I think, for three reasons and I shall be very brief, and if this amendment should be defeated later on I will offer this farmer-owned reserves as a separate amendment entirely.

First of all, by keeping this in reserves we help prices and by helping prices we help farmers, we help the farm credit situation.

I do not think I need to go into detail in this body about the problems farmers face.

Incidentally, one of my staff members the other day in my office is Springfield, IL, got a phone call from a farmer who said, "I was just visiting next door. Just came from my neighbor's home. I wanted to talk to someone. I left my neighbor in the driveway. He just had his farm machinery taken away. He was there in tears. I have never seen him cry in all the years we have been neighbors."

That kind of tragedy is happening all over.

So helping prices is extremely important, not only to farmers but to everyone.

But let me just add as another example of how this thing permeates everything: We have had up to now 100 banks in this Nation closed, the largest number since 1933. There are going to be more yet this year. I had the chief executive officer of International Harvester in my office some weeks ago. I said to him, "How many people were you employing 4 years ago?" He said, "Ninety-seven thousand."

I said, "How many people are you employing today?" He said, "Fifteen thousand."

That is just not farmers who are being affected.

The second thing that the farmer-held reserve does is it helps in case of an emergency. We do not know when that emergency is going to occur. It could occur in this country. It could occur in some other country. It could occur in an area where they will desperately need the kind of reserves that we might have.

I see my colleague from Minnesota on the floor, Senator Boschwitz. Senator Boschwitz earlier this evening pointed out to me the cyclical nature of corn production and how every 3 years there is a substantial dip. He is the expert, the resident expert, on the cyclical nature of corn production in this country.

We do not know when famine is going to occur but let us have some reserves there in case that famine occurs.

Finally, Mr. President, I favor this provision for a very simple reason that I know that the chairman of the Agriculture Committee is very much concerned about, I know that my colleague, the ranking minority member, Senator Zorinsky, is concerned about, and that is this particular provision is going to save money.

The Congressional Budget Office estimates that in the 5-year period, it will save $460 million, almost a half billion dollars.

So this particular provision of this amendment I think is extremely important. From what I have heard about other provisions, they also merit support. But on this one in particular, I hope that this body will take a look at it and if the Melcher amendment should lose, I will offer this as a separate amendment.

Mr. HELMS. Mr. President, most of the savings claimed by this amendment through the increased acreage limitation and paid diversion have already been achieved by the discretionary 5 percent ARP language in the

amendment offered by the majority leader and approved by the Senate.

It cannot be counted twice; further, it conflicts with what has already been adopted.

The amendment also reinstates the farmer-owned grain reserve which only holds down farm prices.

Doing away with the reserve will not result in more stocks on the market. The stocks will simply be taken over by the CCL.

The largest farm organization in the country, the American Farm Bureau, has long opposed the reserve because it hurts farmers.

The amendment also indiscriminately dumps surplus Government-owned commodities on the world market as export subsidies.

The subsidies are not targeted against unfair trading practices as are the committee-approved subsidies.

As a practical matter, they are across-the-board subsidies.

The amendment also specifies that CCC-owned butter and cheese products be sold on the world market as part of the mandated dairy sales contained in the committee bill.

The amendment also includes changes in the determination of national and individual program acreages.

There are also changes in the 50-percent planting rule adopted by the committee.

So, as one can see, this is not a simple amendment -- it has some new language that we have not had time to study -- or ask farmers about.

The author claims savings but I have not seen any C.B.O. cost estimates as to what the savings are now that we have adopted the Dole amendment.

Under these circumstances, I hope the Senate will not approve this hastily-conceived amendment of which, only a few moments ago, I received a copy.

Mr. PRESSLER. Mr. President, may I inquire if I could get permission to lay down and give a 5-minute speech on an amendment that I have ready?

Mr. HELMS. If the Senator will forbear, does the Senator wish to get the yeas and nays on his amendment, the Senator from Montana?

Mr. MELCHER. I just want to dispose of the amendment.

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Montana. Is there further debate on that amendment? If not, the question is on the amendment of the Senator from Montana.

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

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order of the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Gramm). Without objection, it is so ordered.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that, as was the case with the previous amendment, this amendment be stacked and that it follow the Abdnor amendment in the rollcall sequence.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and I will not object.

Mr. President, I have no objection.

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

AMENDMENT NO. 1069

(Purpose: To amend the Clayton Act to allow certain sellers of agricultural products to bring antitrust actions.)

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

The PRESIDING OFFICER. The clerk will report the amendment. The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. Pressler] proposes an amendment numbered 1069 to amendment numbered 939.

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

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

The amendment is as follows:

At the appropriate place in the pending amendment (#939) add the following:

SUBTITLE C -- AGRICULTURE ANTITRUST

Section 1. The Clayton Act (15 U.S.C. 12 ET SEQ.) is amended by inserting after Section 4H the following new section:

Sec. 4I. (a) An action under Sections 4, 4A or 4C for damages resulting from any underpayment received on the sale of agricultural products shall not be barred because the person seeking such damages is not a direct seller to the defendant; provided, however, the person seeking such damages must have possessed the agricultural product for feeding or growing purposes for at least 25 days prior to sale.

(b) In any action under Sections 4, 4A or 4C for damages resulting from any underpayment received on the sale of agricultural products or the sale of products processed therefrom, the person seeking such damages shall not recover for any amount of an underpayment that has been passed on the other persons, who themselves are entitled to recover damages for such underpayment under Sections 4, 4A or 4C.

Sec. 2. The amendments made by this Act shall become effective upon the date of the enactment of this Act.

Mr. PRESSLER. Mr. President, the amendment I am offering to the 1985 farm bill would allow agricultural producers to file antitrust suits against food manufacturers, processors, wholesalers, and retailers for price fixing or market manipulation. Currently, indirect sellers or purchasers of any product are prohibited from filing antitrust suits for damages. This amendment would only provide agricultural producers with an exemption.

There are several reasons why the Senate should adopt this legislation:

First, the farmer is the only person in the United States who operates in a truly free enterprise system. The farmer or rancher purchases products to plant their crop for the price the supplier establishes. He then produces a product and sells it for whatever the market will bear. Farmers are selling into a continually more consolidated marketplace. It seems that every day there is another merger of a major food processor or manufacturer in the works. Already, less than 100 corporations hold 75 percent of the total assets in the food manufacturing sectors. These corporations in many instances are vertically integrated.

This means the corporation that produces the product, also processes it and markets it. In many cases they contract with farmers to raise the products. The farmer can no longer produce the product at a profit, but the huge corporation can because they have the capital to cross-subsidize and write off losses against other profits. For example, I recently read an article on the pork industry. A hog farmer was losing money on his hogs so he signed a contract with a major corporation to feed hogs for a guaranteed profit of $9 per hog. The farmer would be happy to produce that hog for less than that margin of profit, but under current marketing conditions he is losing money rather than making $9 in profit. This is a growing trend. An estimated 6 to 8 percent of all hogs in the United States are now produced under contract. Nine companies account for nearly 3 percent of the total hogs produced in the United States. Cattle feeding has become even more dominated by corporate or nonfarm interests. Over one-half of the feed cattle in the United States are fed by less than 250-cattle feeding operations. Once these corporate interests have gained a large enough share of total production they will no longer accept the price which the market will demand. My amendment would allow agricultural producers to have equal standing under antitrust law.

The farmer receives only 27 percent of the consumer food dollar. This percentage has continually declined from 51 percent in 1946 to 27 percent in 1984. In the case of beef, the farm-retail price spread is at record levels. USDA statistics established the farmer's share of the average $2.30-per-pound of beef to be $1.13 while the wholesalers and retailers receive $1.17-per-pound.

This continual increase in processor and retailers share has occurred even though in many cases workers have been forced to take pay cuts. A recent Washington Post article stated that a large food chain negotiated a new contract with workers under which a salary reduction was included. After the pay cut went into effect there was no corresponding decline in retail food prices. Labor is the retailer's major expense, but a decline in labor costs did not result in lower prices. The decline in the farmer's share of the food dollar, along with other factors, has led to great financial problems for many farmers.

There is strong evidence that food manufacturers and retailers have the power to control prices and manipulate markets for their benefit. The 100 largest food manufacturing and retail corporations control 75 percent of the total assets of the food manufacturing industry.

In the food retail sector four or fewer food chains control a majority of the food retail market in 47 of the 50 largest metropolitan areas in the United States over 48 percent illustrates the American population lives in these 50 metropolitan areas. I think that this fact alone, Mr. President, illustrates control that a few food chains and food operations have. A Joint Economic Committee study found that in metropolitan areas where four or fewer retailers control a majority of the market, retail food prices averaged 9 percent higher than in areas with greater competition. Researchers estimate that the market power of these corporations enables them to increase their profit margins between $10 and $15 billion annually.

The food manufacturing industry's profits were 25 percent higher than other manufacturing industries during the 1980-1983 period. During the same time period, national farm income has continued to decline -- largely because of low commodity prices. However, when the farm price goes down, the consumer very seldom sees that reduction reflected in the price of food in the supermarket. This point was made in a statement made in a recent editorial by Julian Handler in the Grocers' Spotlight. Handler made the observation:

The service's recent quarterly study of food processors notes that their industy "is benefiting from the financial hardship experienced by hundreds of thousands of farmers."

The unique nature of the food marketing system and the farmers' position in that chain makes it important that farmers have legal standing in antitrust cases. In antitrust cases, we place a greatdeal of enforcement responsibility on the private sector. In most industries each element in the marketing chain has an interest in maintaining competition. Generally, if a seller is fixing prices then the direct buyer is adversely impacted. However, agriculture is unique in that the farmer is the only party in the marketing chain that would be affected adversely by a price fix.

For example, if a retailer fixed wholesale meat price 5 cents lower per pound, the packer would have to pass that lower price on to the farmer or rancher. As a result, for a 1,000-pound animal, the packer would have a lower cost of $50 for purchasing the animal. The packer would then sell the 600-pound carcass or boxed beef to the retailer for $30 less.

The result is a loss of $50 to the farmer, but a gain of $20 for the packer and $30 for the retailer. Since both the packer and retailer gain there is no incentive for either to file an antitrust suit against the other. As a result the enforcement of antitrust laws in the food marketing chain does not work unless the farmer has legal access at all levels.

Farmers and ranchers are also unique in that they have little or no control over their inventories. When the farmer's cattle are ready to go to market, he must sell them or after he plants his crop, he cannot change his crop. As a result, the farmer is at the mercy of the purchaser of his product.

The issue of manipulation of agricultural markets is not new. In the late 1800's, antitrust laws were passed to protect agricultural markets from anticompetitive acctivities. Since that time, there has been a long history of cases in which food retail industries have been found to be manipulating the market. These cases cover various commodities such as a bakers case in the pacific Northwest and meatpacker and retailer case. Prior to 1977 agricultural producers were allowed to file antitrust suits against food processors or retailers.

During the several decades that this legal action was available to farmers very few cases were filed but it allowed farmers to have their day in court if they did have a case. If this amendment is passed there would not be a flood of lawsuits against retailers or processors. Farmers do not have the financial resources to finance such legal actions. Farmers and ranchers are also not looking for huge damage settlements. Farmers and ranchers want to reform the marketing system to assure that they are treated fairly in the marketing of their products.

Also the antitrust laws provide mechanisms to prevent unjustified cases from being tried. I also want to make it clear that small businesses or small retailers would not be affected by this. Some of the opponents of this amendment have implied that if my amendment passed farmers would race to their lawyers office and file suit against the local grocery store or small agricultural processors.

This is the farthest from the turth. That is a very untrue thing to say about this amendment. These small businesses do not have the economic power to manipulate the market. These small businesses are basically at the mercy of the huge food chains and food processors. In some cases these small businesses may be helped by this amendment.

I also want to point out that extensive hearings have been held on this issue in the Judiciary Committee. Just last September, a hearing was held on this very issue. Many hearings have been held. It is time for a vote. Legislation to allow all indirect sellers or purchasers to file antitrust suits was reported by the Senate Judiciary Committee in 1979. I

am not advocating a complete repeal of this Supreme Court decision, but only an exemption for agricultural producers. There is a long history of agriculture receiving special treatment under antitrust law due to its unique nature. As I said earlier, agriculture is the only truly free enterprise system we have and they are dealing with an increasingly consolidated market. To assure farmers and ranchers of fair treatment in the marketplace we need to pass this amendment.

Mr. President, I am aware that this issue is a Judiciary Committee issue but I want to point out that it is also an agricultural issue. Experts in the food marketing area have estimated that if this amendment were adopted and if the beef processing and retail industry would adopt an electronic marketing system, the live cattle prices would increase substantially without any increase in consumer prices. Studies of electronic marketing systems have deomonstrated that they increase competition, reduce marketing costs, reduce transportation costs and both the farmers and consumers benefit from the increased efficiencies.

Unfortunately, currently there is no incentives for the meat industry to make changes in their marketing system. Such an increase would put millions of dollars in the hands of livestock producers and help them pay off some of their loans and other debts we are all concerned about. Adoption of this amendment could benefit farmers by increasing their income without any Government action. It would not cost anything. History shows that farmers spend the money they make on products which helps the entire economy. It is clear that this is an agricultural issue and it should be addressed now.

The concept of my amendment is supported by many groups besides farmers. Consumer groups, labor organizations, government associations, and many business groups support changes in the standing of indirect sellers in antitrust cases. This is not only a farm issue.

Finally, I want to say that passage of this legislation would not lead to thousands of antitrust suits by farmers. Farmers do not have the money to file such suits individually. The goal of farmers and farm organizations is not to collect huge damage settlements, but to reform the current marketing system and thus assure themselves of fair treatment in marketing their products. I urge my colleagues to join me in supporting this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I sympathize with the problems faced by agricultural producers in selling their products for unfair, low prices. However, this amendment concerns the application and interpretation of the antitrust laws. As I understand it, the amendment would create a limited exception to the Supreme Court's 1977 decision in Illinois Brick Co. versus Illinois that indirect purchasers or sellers may not recover antitrust damages from the original seller or purchaser of the overpriced goods. The antitrust rule, which this amendment would change, provides that only the direct purchaser or seller may recover damages resulting from the overcharging. The amendment, as it has been explained, would exempt agricultural producers from the limitation placed on indirect sellers.

Clearly, Mr. President, the amendment attempts to address an antitrust problem, not a farm problem. The Judiciary Committee has jurisdiction and particular expertise over antitrust matters, and should be permitted an opportunity to consider the complex antitrust questions which the amendment raises. Those questions redound far beyond the farm community. In my view, the amendment is not pertinent to the farm bill and should be considered at some other time.

Mr. President, I note the distinguished chairman of the Judiciary Committee is on the floor, the President pro tempore of the Senate. I imagine he would have some comments about this matter.

Mr. THURMOND. Mr. President, I thank the distinguished chairman for yielding.

Mr. President, although I have great sympathy for the plight of the American farmer, as chairman of the Judiciary Committee, with responsibility for the administration of the antitrust laws, I oppose the amendment to overturn the Illinois Brick decision. This is the wrong time and wrong place to debate the issues the amendment addresses. With this amendment, a number of very complex questions affecting the workability of antitrust litigation and the rights of defendants to defend themselves are presented for immediate resolution. While these issues are important and should be addressed at an appropriate time, their hasty consideration now, in the midst of debate over equally important but unrelated matters, could do far more harm than good. This amendment would upset a delicate and sensible balance struck by the Supreme Court 8 years ago, and any proposal to alter that balance should be given through and deliberate consideration on its own.

If we must deal with the merits of this proposal, I am oppsed to the amendment because it repeals two locigal and consistent decisions of the Supreme Court; that repeal would bring chaos to the enforcement of antitrust law. This amendment would create much more mischief than it would eliminate, as I will explain, and it will not provide any real benefit to farmers.

Although various versions of this amendment have, over the past few Congresses, been referred to as Illinois Brick bills, they could just as properly be called Hanover Shoe bills because of the effect they would have on the Supreme Court's decision in that important antitrust case. In Hanover Shoe versus United Shoe Machinery Corp., the Court held that an antitrust defendant could not ecscape liability for overcharging its purchasers by arguing that the plaintiff purchaser had passed on the overcharges to his own customers who were indirect purchasers of the overpriced products. Specifically, in the Hanover Shoe case, the defendant was charged with antitrust violations in connection with supplying shoemaking machinery to the plaintiff; the defendant argued that the plaintiff suffered no injury from the illegal activity bacause it had passed on the overcharges to its customers in the form of higher prices for shoes. The Supreme Court rejected this pass-on defense for some very convincing reasons.

First, the Court concluded that any attempts to prove how much of the damages the plaintiff had passed on to others would involve enormous difficulties of measuring, tracing and apportioning damages. The Court was unwilling to increase the complexity ofantitrust litigation and the burden on judicial resources by introducing more long and complicated proceedings involving massive evidence. Second, the Court reasoned that unless direct purchasers were allowed to collect for the entire amount of overcharges, without reductions due to pass-on arguments, their incentive to sue to enforce the antitrust laws would be reduced significantly. Moreover, indirect purchasers down the distribution chain would have such a small stake in the potential suit that they would have little incentive to seek a remedy. Accordingly, to permit defendants to invoke the pass-on defense would have the practical effect of terribly complicating antitrust trials and allowing antitrust violators to retain their ill gotten gains.

The principle basis for the decision in Hanover Shoe was the increased cost to the judicial system and to the efficient enforcement of the antitrust laws caused by attempts to trace the complex economic adjustments to a change in the price of a particular item in a production or distribution chain. This concern prevails whether the tracing involves indirect purchasers or indirect sellers.

With this background explanation, we come now to the Illinois Brick decision. Having denied the use of the pass-on concept as a defense in the Hanover Shoe case, the Court decided the corollary to Hanover Shoe in Illinois Brick 9 years later. In Illinois Brick, the Court faced the question of whether to allow the pass-on concept to be used by plaintiffs, on an offensive basis. The State of Illinois and several local government agencies were indirect purchasers of concrete block from an alleged antitrust violator, the block manufacturer. The State and local governments tried to sue the violator on the theory that the overcharges paid by the direct purchasers of concrete block from the defendant had been passed on through two levels of distributors to the Government purchasers. The Court's decision that the indirect government purchasers lacked standing to recover from the defendant was entirely consistent with the Hanover Shoe decision. The Court concluded that permitting recovery for passed-on overcharges or underpricing would lead to duplicative recovery and add immeasurably to the complexity of antitrust suits involving many levels of distribution of products. The Court decided that allowing indirect purchasers to sue for antitrust injury passed on to them would create

a serious risk of multiple recovery for defendants. This would be so because the direct purchaser would be able to recover the full overcharge and other indirect purchasers would be able to recover as well, unless the defendant could prevent this by reversing the Hanover Shoe rule. Even though the indirect purchaser had recovered part or all of the overcharge passed on to it, the direct purchaser would still recover the full amount of the overcharge, including that which the indirect purchaser had recovered.

These problems of duplicative recovery, complication of proof of injury, and mulitiplication of parties would result from any reversal of Illinois Brick, whether the reversal permitted suits by indirect sellers or indirect purchasers. The Hanover Shoe and Illinois Brick decisions struck a very careful balance that should not be disturbed.

The result of this amendment will be a many-fold increase in the complexity of antitrust litigation. In suits brought after the enactment of this amendment, indirect purchasers will attempt to show how much of the damages attributable to illegal conduct far up the distribution chain filtered down to them to their own disadvantage. This presumes that would be antituust plaintiffs would even bother to undertake such a gargantuan task of proof and tracing of profits.

We might ask what benefits will be achieved by creating this antitrust enforcement tangle? We must ask whether this amendment would provide any benefit to the farmers it is supposed to help. Even if the proposed change were to provide some theoretical assistance to the farmers, we must ask at what cost to antitrust law enforcement and judicial efficiency that assistance will be extended. It might be argued that the indirect purchasers or sellers have more incentive to sue antitrust violators than direct purchasers who wish to maintain good relations with their suppliers. But the evidence does not bear this out, and the Supreme Court specifically found in Illinois Brick that private enforcement of the antitrust laws was better encouraged by adhering to the Hanover Shoe rule. It is also argued by the supporters of this amendment that indirect purchasers often are the ones who suffer the damage from antitrust violations so they should be allowed to recover directly from the wrongdoers. While this is an admirable goal, and one considered by the Court in Illinois Brick, it is still responsible and proper to ask at what expense that goal would be achieved. The answer is that the price will include the discouragement of meritorious suits, a lessening of deterrence of antitrust violators -- because the certainty of liability will be reduced -- and the imposition of intolerable evidentiary hearing burdens on our judicial system. That is an enormous price to pay for what may be nothing more than frustration and illusory opportunities for farmers who, in an antitrust trial, would have to prove the injury they suffered from alleged underpayments by purchasers several levels removed from them.

The evidentiary complexity of proving how much of the damage the indirect purchaser or seller actually sustained can be seen in the facts of the Illinois Brick case. The State agencies attempted to recover injury caused by price fixing at the block manufacturing level, which may have filtered down through the masonry contractors, the general contractors, and, ultimately, the purchasers of the buildings constructed with concrete block. As antitrust lawyers have testified before our committee in the past, it is fanciful to think that lawyers, economists, judges, and jurors can trace the ripples of an alleged overcharge or underpayment through a whole succession of distribution levels and come up with any kind of damage allocation which even remotely meets established judicial standards. Allowing indirect purchasers or sellers to recover using pass-on theories would transform treble-damage actions into massive multiparty litigation involving many levels of distribution. Furthermore, the defendants would attempt to prove, through tracing, that the plaintiffs were not injured by the full amount of the overcharge because they had passed on portions of the overcharge to their own customers. Even the parties in Illinois Brick agreed that the rule should apply equally to plaintiffs and defendants -- that an indirect purchaser should not be allowed to sue on a pass-on theory to recover damages from a defendant unless the defendant would be allowed to use a pass-on defense. Once this process begins, the litigation surely will get out of hand as the courts attempt to sort out the relative damages and liabilities -- a task which many scholars believe can never be completed with any satisfactory precision. In this process, antitrust litigation will become impossibly mired down.

While I am sympathetic with the plight of our farmers, I do not believe that we should rush to a decision on this amendment without careful consideration and thorough hearings. We need to consider specifically what effect an amendment of this limited applicability would have on antitrust law enforcement.

Let me stress that my opposition to this bill does not reflect any insensitivity to the plight of those indirect sellers of farm products who may be damaged by the actions of an antitrust violator. The public interest would not be served, however, by giving those sellers the right to sue the violator at the expense of greatly complicating antitrust litigation and allowing the guilty violators to delay or escape punishment for their actions altogether. In all likelihood, the interests of indirect purchasers will be better served if would be antitrust violators know that retribution will be swift and sure. The greater deterrence resulting from such knowledge will ensure against a rash of antitrust violations by defendants who otherwise would be secure in the belief that they could complicate and delay the enforcement mechanism indefinitely. Further frustration of the antitrust law enforcement mechanism will certainly not help the American farmers.

If the farmers have been the victims of price fixing by the meat packers who purchase from them, or if the meat packers have been injured by price-fixing grocery chains who purchase from them, then the injured parties can sue those violators with whom they have dealt directly. Those who have dealt directly with, and been injured by, antitrust violators have a strong incentive to sue for recovery. Beyond this, however, the Supreme Court has been unwilling to go, and for compelling reasons the Court would not carry the compensation principle to an extreme by attempting to trace and allocate damages among all those within a defendant's chain of distribution or production. I stress again that the balance of plaintiffs' and defendants' rights created by the Supreme Court should not be upset by piecemeal changes in the Illinois Brick rule. The Illinois Brick issues are very complex, and the rule should not be altered without thorough consideration of the judicial havoc and law enforcement frustration such alterations may yield.

I urge my colleagues to join me in voting against this amendment.

Mr. President, this amendment is apparently being offered to assist one small group of beef producers, who do not represent the majority of similarly situated beef producers, but who have been trying unsuccessfully for about 10 years to prove that their particular theory is the explanation for America's complex farm problems. The attempt to assist this group is being made with insufficient regard for the enormous costs that will be inflicted if the amendment is adopted.

Mr. President, I want to call this to the attention of the Senate. I wish to point out that the National Cattlemen's Association, which represents the cattle producers and feeders throughout the United States at all levels from the calf to the packer, does not support this effort to change the rule of Illinois Brick. That organization is opposed to this amendment, and I have a letter from them saying so, stating the position of the cattlemen's association.

This letter is addressed to me as chairman of the Committee on the Judiciary. It is dated November 7, 1985.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Chairman Thurmond: As you are aware, an amendment has been proposed to the farm bill to reverse the Illinois Brick ruling. I am writing to you on behalf of the National Cattlemen's Association, which represents cattle producers and feeders from throughout the United States. We have serious reservations over incorporating this amendment into the farm bill without holding full hearings first in the Committee on the Judiciary.

In our view, the issue is extremely complex and the merits of reversing Illinois Brick are sufficiently open to question that caution should control action on the amendment. We believe that a review of the amendment by the Committee on the Judiciary is advisable before any other action is considered.

Sincerely,
JoAnn Smith,
President, National Cattlemen's Association.

Mr. President, clearly, the group of unsuccessful plaintiffs being aided by this amendment do not represent the majority view of agricultural producers.

Mr. SIMPSON. Mr. President, in 1968, the Supreme Court held in its Hanover Shoe opinion that defendant sellers in antitrust cases could not raise the defense that plaintiff purchasers had passed on to their own customers in the chain of distribution. Consistent with Hanover Shoe, the Court held in Illinois Brick in 1977, that plaintiff purchasers could not offensively assert damage claims under the antitrust laws against any sellers in their chain of supply other than their actual immediate supplier.

Both of these decisions were based on the public policy determinations that by allowing indirect purchaser suits and the use of the pass-on defense would only serve to overcomplicate antitrust litigation, seriously overburden our Federal court system, and inhibit the effectiveness of private antitrust enforcement in securing antitrust compliance. The holding of Illinois Brick applies equally whether the plaintiff is an indirect purchaser seeking damages from a remote vendor or an indirect seller seeking damages from a remote purchaser.

PRESSLER AMENDMENT

Senator Pressler's proposed amendment would selectively repeal the rule of Illinois Brick supposedly to allow sellers of agricultural products who believe that they have received less than fair payment for their products to sue for damages under the antitrust laws any purchaser in the chain of distribution to the ultimate consumer.

This amendment is being promoted as a measure to help farmers receive their fair share of the consumer food dollar. In fact, this amendment will not materially help our farmers at all. In addition, this amendment will expose all food processors, wholesalers and retailers, to the risk of expensive and time-consuming litigation, and add just one more unnecessary cost factor to retail food prices.

This amendment is premised on the belief that the large food processors and retailers increase food prices and their profits at the expense of farmers. That may be so but turning to Illinois Brick won't solve it.

Farm prices and retail food prices are determined in two totally separate and distinct markets. Moreover, to translate retail prices directly to farm prices is not comparable. For example, a 10-percent decrease from a $60 per hundredweight farm price equals a 6 cents per pound price drop. A 10-percent decrease from a $2.40 per pound retail price equals 24 cents, or four times the drop in the farm price. It is unrealistic to expect a fourfold 24-cent increase or decrease in retail prices from a 6-cent increase or decrease in farm prices. Farm prices and retail prices can only be compared fairly through the use of an appropriate formula such as the conversion factor used by the Department of Agriculture in its price reporting for beef that 2.4 pounds live weight equals 1 pound at retail. The fact is that most responsible studies using appropriate formulas or conversion factors show that, in general, retail and farm prices seem to fairly reflect one another.

This complicated subject needs more attention. If this issue is reopened, it should be done in a manner that will permit it to have the study and deliberation in proper hearings which an item of such magnitude and complication deserves -- and not by attaching it to an unrelated bill. It should be revisited and we should have hearings on the situation regarding bizarre differences between the price of dressed beef and the price at the retail counter. All commodities should be examined too; but Illinois Brick isn't the way to do it.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, stated briefly and in the simplest possible fashion, the Illinois Brick decision of the U.S. Supreme Court almost a decade ago held that if there were a proven price-fixing conspiracy involving certain manufacturers which added to the price of the goods which they sold to wholesalers, which in turn added to the price paid for those commodities by their ultimate consumers, those ultimate consumers were deprived of the right to recover for their losses, because they were indirect purchasers from the parties guilty of the price-fixing conspiracy. At the time I was attorney general of my State and in my view that decision was bad on the law and worse on policy. It is both

anticompetitive and anticonsumer. If, however, it has any minor pro-consumer impact, it results from the fact that it is balanced because it also prohibits lawsuits by indirect sellers as well as indirect purchasers. The Senator from South Dakota seeks to reverse the Illinois Brick decision as far as indirect sellers are concerned, the net result of which would be, if it had any effect at all, to add to the price of certain goods sold to their ultimate consumers. He does not seek to reverse the central point of the Illinois Brick decision, its prohibition against antitrust lawsuits by indirect purchasers.

While I disagree with the distinguished chairman of the Judiciary Committee as to the desirability of a change in the Illinois Brick decision, I fully agree with him that it is not an appropriate subject for an amendment to the farm bill. It is a highly controversial issue. It is an issue on which the Judiciary Committee has had a number of hearings. It should be dealt with as a single issue on its own and not in connection with the farm bill at all. I believe that standing alone or even as a part of an overall Illinois Brick reversal, the policy embodied in this amendment is anticonsumer and effectively anticompetitive, and so I will certainly join in the support of the imminent motion to table this amendment.

I feel so strongly about this subject and about the desirability of a thorough debate on the Illinois Brick decision, however, that I simply wish to notify the Senator from South Dakota and everyone else who is interested in the farm bill that if this amendment is not tabled the discussion of Illinois Brick will be extended and we will get an opportunity to determine whether or not we want to reverse the entire Illinois Brick decision. I do not wish to do that.

Personally, I think that the debate on the farm bill has already been too greatly extended and that it should relate specifically to agricultural issues. But this is a very bad amendment. It is not primarily a farm issue. It is primarily an antitrust issue. The chairman of the Judiciary Committee is correct, it should be considered -- --

The PRESIDING OFFICER. I will interrupt the Senator from Washington. The time of 9:15 has arrived. Under the previous order -- --

Mr. HELMS addressed the Chair.

Mr. GORTON. I ask unanimous consent for 30 seconds to complete my remarks.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Will the Senator yield?

Mr. President, I think it is worthwhile to let the debate continue on this amendment rather than have it separated, and I ask unanimous consent that that be granted.

The PRESIDING OFFICER. Is there objection?

Mr. BOSCHWITZ. Mr. President, how long does the Senator intend to allow the debate to continue?

Mr. HELMS. A reasonable length, unless the Senator has some suggestion as to how much time.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. If the Chair will withhold.

Mr. THURMOND. I reserve the right to object.

Mr. HEFLIN. Mr. President, I also want to be heard on this amendment.

Mr. HELMS. Would the Senator indicate how much time he desires? There is going to be a motion to table, I say to the Senator.

Mr. HEFLIN. About 10 or 15 minutes.

Mr. HELMS. All right.

Mr. HATCH. I would like to make it clear I only intend to take 10 minutes but if this amendment is not tabled it will be an awful lot longer than that.

Mr. HELMS. I understand. I know a number of Senators feel that way.

Mr. GORTON. Mr. President, this Senator needs only 1 minute.

The PRESIDING OFFICER. Is there objection?

The request of the Senator from Washington is that he be allowed to speak for 1 minute.

Mr. HELMS. Let the Senator from Washington proceed for an additional 2 minutes.

The PRESIDING OFFICER. The Senator from Washington may proceed.

Mr. GORTON. I thank the chairman of the Agriculture Committee. I can summarize simply by saying, Mr. President, that this amendment proposes bad policy, is ill-advised, is inappropriate for discussion on this bill, is a part of a much larger subject and should appropriately be tabled as promptly as possible. I am authorized to say by my close friend and colleague from New Hampshire, who is also a former attorney general of his State, that he agrees with the remarks that I have made and with the statement that I have made that the discussion on this amendment will be extensive if it is not tabled.

Mr. HELMS. Mr. President, regular order.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I believe there was unanimous consent to begin voting at 9:15?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. And that means automatically that this amendment will be set aside for votes, does it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair. The question is now on the Abdnor amendment.

Mr. PRESSLER. Mr. President, does this mean that we will resume consideration of this matter immediately after the vote?

The PRESIDING OFFICER. After the second vote. There is another vote scheduled after this vote.

Mr. PRESSLER. Then we will resume with this amendment; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. As soon as the distinguished Senator from Alabama speaks, I am going to make a motion to

table.

Mr. PRESSLER. Mr. President, the yeas and nays have been agreed to. Mr. President, the yeas and nays have been agreed to.

VOTE ON AMENDMENT NO. 1067

The PRESIDING OFFICER. The question is now on the Abdnor amendment No. 1067. The yeas and nays have been ordered. The clerk will call the roll.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HELMS. Mr. President, will the Chair state the pending business?

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the Abdnor amendment numbered 1067. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. HELMS. So all Senators understand that we are voting on the Abdnor amendment, to be followed by the Melcher amendment.

The PRESIDING OFFICER. It will be followed by the Melcher amendment numbered 1068.

Mr. HELMS. But there may be intervening debate between the two amendments.

The PRESIDING OFFICER. The Senator from North Carolina is incorrect. The votes are back to back.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. Domenici] the Senator from North Carolina [Mr. East] and the Senator from Vermont [Mr. Stafford] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. Inouye] is absent on official business.

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

The result was announced -- yeas 95, nays 1, as follows:

(See Roll call Vote No. 322 Leg. in the ROLL segment.)

So the amendment (No. 1067), as modified, was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Will the Senate please be in order?

The majority leader.

Mr. DOLE. Mr. President, as I understand it, the next vote comes on an amendment by the distinguished Senator from Montana, Senator Melcher, to be followed by a vote on an amendment by the distinguished Senator from South Dakota, Senator Pressler.

I inquire of the managers at this point whether it is the intention of the managers to have further rollcalls, or whether it would be their desire to maybe only take amendments that do not require rollcalls, or whether it would be their desire to go home and come back early in the morning.

The PRESIDING OFFICER. The Senate is not in order.

Mr. HELMS. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. HELMS. Mr. President, I anticipate we will have two rollcall votes following the disposition of the Pressler amendment. I do not think the debate will be long on either one of them. That is up to the Senators. But we do have two Senators who have been biding their time waiting to call up amendments on which there will be rollcall votes tonight.

Mr. DOLE. They are not going to be acceptable?

Mr. HELMS. No.

Mr. DOLE. That is an indication that we probably will not leave here much before 11.

I would indicate, as I said earlier -- and I know there are a lot of poeple who have very strong feelings on both sides of this issue -- that tomorrow night we have a problem because the President is going to address a joint session, so we cannot have a late evening. If there is some way -- maybe there is not any way -- we can complete action on this bill by 6 or 6:30 tomorrow evening, then on Friday we would take up some unanimous-consent measures that I believe staff on both sides are working on that we have to do before we adjourn. Otherwise, I believe it is fair to alert my colleagues on both sides that we will be on the farm bill Friday, and it is fair to alert them that this is, in my view, so important to Members on both sides that we get this bill completed so that next week staff can work on the conference documents, that we may be here on Saturday, so we could go back into conference on this bill on December 2 or 3.

I hope that does not happen. We did not plan it to happen. I do not suggest anybody wants that to happen on either side. But I want to alert Members now that I do not know of any alternative.

I will also indicate, while I have the floor, as I understand it a motion to table the amendment is not in order, is that correct?

The PRESIDING OFFICER. The majority leader is correct.

Mr. DOLE. I do not have any other comments, except I hope we can defeat the Melcher amendment. Much of this is repetitious. It just starts to unravel what we did earlier this afternoon. Those who have an interest in trying to preserve what I believe is the beginning of a good farm bill I hope will vote no.

VOTE ON AMENDMENT NO. 1068

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana [Mr. Melcher]. The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. Domenici], the Senator from North Carolina [Mr. East], and the Senator from Vermont [Mr. Stafford] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. Inouye] is absent on official business.

The PRESIDING OFFICER (Mr. Trible). Are there any other Senators in the Chamber wishing to vote?

The result was announced -- yeas 46, nays 50, as follows:

(See Rollcall Vote No. 323 Leg. in the ROLL segment.)

So the amendment (No. 1068) was rejected.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1069

The PRESIDING OFFICER. The question recurs on amendment No. 1069 offered by the Senator from South Dakota [Mr. Pressler].

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I yield to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise to join with the distinguished chairman of the Judiciary Committee, Senator Strom Thurmond, in opposition to the Pressler amendment to the farm bill.

We have spent months and months debating the particular measures within the farm bill and I could not agree more with my colleague from South Carolina -- this is not the time to bring up issues which should more properly be addressed by the Senate Judiciary Committee.

Our focus should be squarely on the problems faced by the American farmer. If we become ensnarled in a debate on the proper enforcement of our antitrust laws, we may jeopardize our ability to do the job that so desperately needs to be done.

The amendment offered by my colleague from South Dakota would selectively repeal both the Supreme Count's 1968 decision in HANOVER SHOE, INC. v. UNITED SHOE MACHINERY CORP. (392 U.S. 481) and the Court's companion 1977 ILLINOIS BRICK CO. v. ILLINOIS (413 U.S. 720), decision, to allow sellers of agricultural products to file a suit for damages under the antitrust laws against any processor, wholesaler, retailer or other middleman handling their product if they believe they have received less than fair payment for their products.

This amendment is intended to help the agricultural producer. I do not doubt the motive, but I question the result. I believe this amendment will only add further burden and expense to our court system by inviting incredibly complicated litigation, which will seriously erode the effectiveness of private damage suits as a deterrent to antitrust violators, and will contribute to increasing retail food prices.

In 1968, the Supreme Court held in Hanover Shoe that a defendant seller in a private antitrust damage action could not assert as a defense that a plaintiff purchaser had not been damaged by the defendant's unlawful purchaser had not been damaged by the defendant's unlawful price because the plaintiff had "passed on" the overcharge to its own customers. The Court rejected this defense, recognizing that direct purchasers had the largest stake and were more likely to pursue damage claims against a seller charging illegal prices. This would provide the most effective deterrent to antitrust violations. In Hanover Shoe, the Court rejected the defensive use of passing on.

In Illinois Brick, the Court held that plaintiff purchasers could not "offensively" use pass on to assert damage claims against sellers in their chain of supply, unless they dealt directly with the seller.

Hanover Shoe and Illinois Brick established the "first purchaser rule." These decisions are based on sound public policy decisions.

The Supreme Court felt that allowing the "offensive use" of the pass-on theory by indirect purchasers or sellers but denying the defensive use of the theory would expose defendants to multiple liability for the same violation. On the other hand, allowing both indirect purchaser/seller suits and the pass on defense in private antitrust damage suits would simultaneously increase the costs and diminish the benefits of bringing such actions. Such a result, the Court believed, would seriously impair the effectiveness of treble damage actions as one of the principal deterrents to antitrust violations and would adversely affect the administration of justice, by utilizing a tremendous amount of judicial resources in resolving the complicated evidentiary questions presented.

These decisions came from the Hanover case, which I would point out was decided by the Supreme Court in 1968, and then in the Illinois case in 1977, as then the Supreme Courts were constituted.

Every Congress since Illinois Brick, has considered proposals to legislatively repeal the Supreme Court decision. Yet, Congress has not seen fit to modify or repeal Illinois Brick, and there is no reason to do so now.

In fact, in anything, the passing years have seen the consensus in the legal and business communities in support of Illinois Brick grow and get stronger. The various proposals for legislative repeal have been uniformly opposed by the American Bar Association, representatives of the Plaintiffs Antitrust Bar, the Business Roundtable, the National Association of Manufacturers, the U.S. Chamber of Commerce, the Food Marketing Institute, the Small Manufacturers Council, the American Retail Federation, and many individual businessmen, as well as law professors, economists, and other academicians.

Senator Pressler's amendment will create the judicial nightmare that the Supreme Court sought to avoid, transforming treble damage actions into massive efforts attempting to trace an alleged underpayment back through the chain of distribution in an attempt to determine the amount of underpayment suffered by a particular plaintiff.

The amendment is almost identical to a bill introduced in the 98th Congress as S. 2835, that only covered sellers of "cattle, hogs, sheep, grains or soybeans." The only substantive difference is that this amendment more broadly authorizes damage suits by sellers of any "agricultural products."

The Senate Judiciary Committee held hearings on S. 2835 in September 1984, but did not report the bill.

When S. 2835 was introduced, it was primarily considered to be an attempt to legislatively reverse the court decisions dismissing IN RE BEEF INDUSTRY ANTITRUST LITIGATION, 710 F.2d 216 (5th Cir. 1983) cert denied, 104 S.Ct. 1326 (February 21, 1984). In the Beef Litigation cases, cattlemen and feeders alleged that several retail stores

had engaged in a conspiracy to set wholesale beef prices at artifically depressed levels. The cattlemen did not sell directly to the retail stores, but sold to packers, who slaughtered the beef and then sold the beef to the retail stores.

The basis of this amendment is a belief that market manipulation by large food processors and retailers has decreased the share of the consumer food dollar received by feed lot operators and cattlemen. But adoption of this amendment would only serve to punish size and efficiency of operation and act as a strong disincentive to retailers to minimize their product costs at the expense of consumers.

Under this amendment, anytime a farmer, rancher, or feed lot operator feels that the prices received for their products are lower than they should have been, their natural tendency will be to assume that there has been some manipulation of the marketplace and a class action will be filed seeking damages.

Even when successfully defended, the costs of such litigation are staggering even to the largest companies, and perhaps ruinous to smaller companies. For example, in the beef litigation, it was estimated that from the time the defendants filed their first motion to dismiss until the complaint was finally dismissed by the courts, more than $20 million had been spent in defense costs. Overhead costs of this magnitude simply cannot be absorbed by retailers and will invariably be reflected in retail prices on grocers' shelves.

Of equal importance, overhead costs of the magnitude that will be generated by this amendment can only be carried by the largest of companies, thus forcing smaller processors and retailers named as defendants to settle a claim regardless of its merits.

There is nothing in this amendment, nor could there be, which would limit by size the class of defendants against whom damage suits could be brought. All retailers and processors and every other kind and description of middleman, whether large or small, will be subject to suit under this amendment. The natural tendency of any plaintiff will be to sue every company in the chain of distribution and then sit back and let the defendants prove who is liable and who is responsible for the damages.

Moreover, even if not named as a defendant, every company in the chain of distribution will be inexorably drawn into the litigation spawned by this amendment as all of the parties, through depositions and subpoenas for documents, seek to prove their respective contentions and disprove those of their opponents. As the executive vice president of the Small Manufacturers Council so aptly put it in hearings on another proposal to repeal Illinois Brick, the nonparty middlemen will become:

The battleground over whose body the parties will wage a prolonged and costly fight attempting to prove and disprove ... the effects of the (claimed) violation on prices, sales, costs and profits through the chain of distribution.

Mr. President, this amendment will not help the farmers and will severely penalize consumers and the business community, while at the same time imposing unnecessary burdens on our court system and seriously eroding the effectiveness of treble damage actions as a deterrent to antitrust violations.

This body should not casually disregard the thoughtful and impartial analysis by the Supreme Court in Illinois Brick.

Mr. President, I wish to point out that we have had testimony in the Judiciary Committee -- for example, in regard to each transaction that would have to be considered by the courts -- that there was a chemical that was used in making of nylon, from nylon, you then make socks, and that there were 157 different transactions that took place before the chemical that you started out with went into making the nylon that ended up in the socks. If a suit were brought, then there would be the issue in each of those 157 different transactions for the courts to determine whether or not there was a pass-on or if there was any price fixing or any manipulation relative to this. Justice White, in his decision, went into great detail and said that the courts cannot stand this and that this will mean that you cannot have an effective use of suits brought in the civil cases or against price fixers if you go into this. It will become so mired down in each and every

transaction that you would have so much proof that had to be made and it would be so confusing.

Justice White, in his decision in the Illinois Brick case and also in the Hanover case, clearly points out the dangers that can occur to the court system if this rule were to be changed. So I ask my colleagues at this time to do as has been suggested by the chairman of the Judiciary Committee: Let the Judiciary Committee look further into this problem dealing with antitrust and the issue pertaining to lawsuits, that this is not the proper place at this time to bring up this issue. Therefore, I think we should oppose this amendment and I urge my colleagues to defeat it or to support a motion to table.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM Mr. President, for five straight Congresses, I have consponsored legislation to overturn Illinois Brick. My view is that victims of price fixings should be able to recover their losses whether or not they dealt directly with the conspirators, so I do not think there is any Member of this body who feels more strongly about the Illinois Brick decision than do I.

But I believe that any legislation on this subject should be comprehensive. It should apply to buyers and sellers and consumer-purchasers. I think that attempting to put it on the farm bill at this point is not the appropriate procedure. I hope that we shall have an opportunity to work closely with the distinguished Senator from South Dakota and to work with the distinguished Senator from Washington and with others who support the concept of undoing the harm done by the Illinois Brick decision, but the farm bill is not the place for this proposal. Antitrust reform should not be piecemeal. Therefore, I shall either support a motion to table or vote against the amendment in an up-or-down vote.

In my view, we ought to deal with Illinois Brick, we ought to deal with it as promptly as possible, but not tonight and not in piecemeal fashion.

Mr. HATCH. Mr. President, I would like to join Senator Thurmond, Senator Heflin, and several other of my colleagues on the Judiciary Committee in opposing this amendment which would overturn the Illinois Brick decision.

My basis for opposition is twofold. First, from a procedural standpoint this is the wrong time and the wrong place to give initial debate and consideration to such a complex and substantial issue. This amendment should go through the regular committee process to allow for a thorough and reasoned analysis of its terms and provisions. This is a difficult issue. To take it up here on the Senate floor in haste and without the benefit of distilled consideration would do a disservice to this institution and to the bill itself. The amendment seeks to set aside a long-standing policy which our courts ratified only after enormous effort and study. There is no reason whatsoever for our acting in haste at this point in time. We have no committee report, no hearing record, and no credible evidence of any kind before us. This bill deserves no special treatment. We should give it the diligent study it does deserve in committee before addressing it here on the Senate floor.

Second, I am opposed to the amendment because, based on my study of earlier proposals to overturn Illinois Brick such a notion would be bad law. This amendment would modify antitrust law by creating an agricultural producer exception to the rules settled in Illinois Brick, and Hanover Shoe. In those cases the U.S. Supreme Court held that only direct purchasers or sellers of products to antitrust violators may sue to recover damages resulting from the anticompetitive activity. For a variety of reasons that is good law which reflects perfectly the interest of Congress in its passage of the antitrust laws. There is no credible case made here in this amendment for creating a special interest exception to those cases.

In Hanover Shoe, decided in 1968, the Supreme Court stated that it would be unmanageable for the courts to resolve the enormously complex legal and factual issues involved in a determination of the extent to which a plaintiff may have avoided damage by passing on his losses to other parties. In the Court's words, "the task would normally

prove insurmountable." Therefore, it was decided that antitrust defendants were not allowed to assert as a defense an allegation that the plaintiff had passed on his losses to purchasers further down the line. Then, in 1977, in Illinois Brick, the Court applied the same reasoning to the other side of the issue in holding that an antitrust plaintiff could not sue to recover damages when the plaintiff had not been a direct purchaser of the goods from the antitrust violator. Again, the Court, after painstaking analysis of the objections and purposes of the antitrust laws, determined that the difficulty of apportioning damages required such a result except in narrowly defined circumstances where it is clear that the whole overcharge has been passed onto an indirect purchaser.

The Court has wisely recognized that allowing the use of a pass-on theory, either defensively or offensively, would result in an overly complicated and unmanageable litigation system which would do much more harm than good. The overall objective of the antitrust laws would not be served. Antitrust actions would become vastly overburdened with procedural and factual complexities to the detriment of the courts, litigants, and the enforcement of the antitrust laws themselves.

In a single swoop of our legislative pen, Senator Pressler seeks to overturn these landmark cases to allow for both offensive and defensive use of the pass-on theory for the special-interest benefit of agricultural producers. According to information recently received by my office, there is simply no merit to the suggestion that agricultural producers are better equipped to more effectively and efficiently wield the pass-on theories than any other producer or are otherwise deserving of special treatment under our laws. Nor is there any apparent merit to the suggestion that agricultural producers have been the victims of continual antitrust violations by indirect purchasers of their goods, and have had no way of recouping their losses.

This is not the first time a special interest effort has been made to overturn Illinois Brick, and I rather suspect it may not be the last. But the fact remains Illinois Brick reflects common sense and a logical effort to keep our antitrust laws sensibly contained within the framework of original legislative intent and a workable court system. Illinois Brick strikes an appropriate balance which allows the fullest possible protection of our antitrust laws while keeping deterrence in place and disallowing the evisceration of the heart of the antitrust laws by endless and senseless litigation. All producers, including agricultural producers, are now protected as far as legally and practically possible. Giving agricultural producers special status would do them no favor and would weaken the system for everyone.

I urge my colleagues to join me in opposing this amendment.

Mr. DeCONCINI. Mr. President, I join with the distinguished chairman of the Judiciary Committee and the distinguished chairman of the subcommittee and my other colleagues in opposing this legislation. We have had our rounds with Illinois Brick and probably will have them again, but they have been in the right ring and that is in the Judiciary Committee where we have had extensive hearings and extensive markups and we have cast our votes. To bring forth Illinois Brick and attempt to change it on the basis that only applies as I understand the amendment -- and I stand corrected if it is different that that -- in the agricultural area would be folly. I would hope that we defeat this amendment.

Mr. PRESSLER. Mr. President, I would like to respond to several of the comments made concerning my amendment. The Senate Judiciary Committee has had numerous hearings on the issue. Since the Illinois Brick decision, the Senate Judiciary Committee has held hearings on the issue on three separate occasions. In 1979, the committee reported to the full Senate legislation to overturn the entire Illinois Brick decision. As recently as last fall, the Judiciary Committee held hearings on legislation dealing specifically with allowing agricultural producers to file antitrust suits against food processors or retailers. This issue has been considered by the committee.

During consideration of the farm bill we will consider many other amendments dealing with issues that fall under the jurisdiction of many different Senate committees. The Commerce Committee has jurisdiction over cargo preference, the Finance Committee has jurisdiction over trade issues. If we can consider these other amendments then we should consider this amendment which is so important to farmers and ranchers.

Passage of my amendment would not generate a great number of lawsuits or disrupt the court system. Prior to 1977 farmers could file antitrust suits. At that time we did not have a large number of cases. Farmers do not have the financial resources to bring these lawsuits nor do they have the desire. Their desire and the intent of this amendment is to assure that farmers and ranchers are treated fairly in the marketplace. Currently, a large number of farmers do not feel they are being treated fairly but they have no means of action to fight the system. This amendment would provide them with a means to fight for fair treatment.

Farmers and the supporters of this amendment will tell you they do not want large damage payments. They just want fair treatment in the marketplace so they receive a fair price for their product. They want to make their income from the sale of their products but the current system is not providing them with that opportunity. Their goal is a reform of the marketing system.

Farmers would also have to have a viable suit before they could take action. If the food processing and marketing industry are not violating any antitrust laws then farmers and ranchers would not have any viable cases. So it you say hundreds of suits would be filed and the courts would be tied up, that would indicate that the food processing and marketing industry must be violating some antitrust laws. If they are violating antitrust laws, then farmers and ranchers should have some recourse.

Finally, this amendment would not be a bonanza for lawyers. Lawyers do not take cases they do not think they will win or unless they have a strong case. Again, if the industry is not violating any antitrust laws then the lawyers will not have any cases. Also prior to the 1977 Supreme Court ruling lawyers were not persuading farmers to file antitrust suits.

Under the current law, the farmer could only file a suit against the party they sell their product to directly. In most cases this is a local elevator or salebarn. The direct purchasers do not have the economic power to establish prices. They just pass on the price established by the food processor or retailers. The direct purchaser of the farm product is afraid to take any action against the buyer of the product because he will then lose the market for his product. In order words he would be out of business.

Agriculture is unique in respect to the antitrust issue. Farmers and ranchers are the only participants in the marketing chain who have an incentive to file an antitrust suit. This results because basically the middleman just pass on any cost additions to the farmer. For example, if you assume a retailer manipulates beef prices to reduce his cost by 5 cents per pound. In the case of a 1,000 pound steer, an average of 600 pounds is sold as a carcass. By reducing the purchase price 5 cents per pound the retailer reduces his cost by $30, thus increasing his profit by $30. The packer receives 5 cents less for their product so they reduce the price of beef to the farmer by 5 cents per pound. The packer pays $50 less for the live steer from the farmer and sells the carcass for $30 less. As a result the packer increases his profits by $20 per animal. The farmer loses $50 per head. It is clear that the farmer is the only participant in this chain with an incentive to take action against the price fix.

Agriculture is different from any other industry because the farmer takes what the market will pay him. Other industries have enough control over their inventories that they can establish the price they sell their product. This makes it much more difficult to manipulate prices.

Mr. President, I urge the Senate to adopt my amendment.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I move to table the amendment.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from South Dakota. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from New Mexico [Mr. Domenici], the Senator from North Carolina, [Mr. East], and the Senator from Vermont [Mr. Stafford] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. Inouye] is absent on official business.

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

The result was announced -- yeas 92, nays 4, as follows:

(See Rollcall Vote No. 324 Leg. in the ROLL segment.)

So the motion to lay on the table the amendment (No. 1069) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1074

(Purpose: To make ineligible for certain agricultural program benefits persons who are convicted under Federal or State law of planting, cultivation, growing, or harvesting of controlled substances)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows;

The Senator from Arizona [Mr. DeConcini] for himself and Mr. Burdick, Mr. Hawkins, Mr. Abdnor, Mr. Exon, Mr. Grassley, Mr. Hollings, Mr. Andrews, Mr. Armstrong, Mr. Helms, Mr. Trible, Mr. Mattingly, and Mr. Heflin proposes an amendment numbered 1074.

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

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

The amendment is as follows:

At the appropriate place in the pending amendment, add the following:

"On page 459, between lines 18 and 19, insert the following new section:

CONTROLLED SUBSTANCES PRODUCTION CONTROL

Sec. . (a) As used in this section:

(1) The term "controlled substance" has the same meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)).

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b) Notwithstanding any other provision of law, following the date of enactment of this Act, any person who is convicted under Federal or State law of planting, cultivation, growing, or harvesting of a controlled substance in any crop year shall be ineligible for --

(1) as to any commodity produced during that crop year, and the four succeeding crop years, by such person --

(A) any price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C.); 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(E) a loan made, insured or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmer Home Administration; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is --

(A) produced during that crop year, or any of the four succeeding crop years, by such person; and

(B) acquired by the Commodity Credit Corporation.

(c) Not later than 180 days after the date of enactment of this Act, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out this section, including regulations that --

(1) define the term "person";

(2) govern the determination of persons who shall be ineligible for program benefits under this section; and

(3) protect the interests of tenants and sharecroppers."

Mr. DeCONCINI. Mr. President, this amendment is offered in behalf of Senators Burdick, Hawkins, Abdnor, Exon, Grassley, Hollings, Andrews, Armstrong, Trible, Mattingly, Heflin, and the distinguished chairman of the committee, Mr. Helms.

Mr. President, I was recently shocked to learn that individuals who have been convicted of growing marijuana or other illegal drug-producing plants do not automatically lose their access to agricultural program benefits. In fact, while the law makes ineligible for program benefits individuals convicted of harvesting such plants, it fails to speak to the issue of conviction for planting, cultivating or growing of controlled substances. Futhermore, present law simply prohibits agricultural program benefits in the single year of conviction. My amendment will remedy this situation.

My amendment would specifically prohibit the participation in agricultural program benefits to any person convicted of planting, cultivating, growing or harvesting of a controlled substance for the year of conviction and the ensuing 4 years. This would apply to cannabis as well as other illegal drug-producing plants.

None of us intended to subsidize the growth of illegal drugs in this country. Yet because of this loophole that is exactly what we are doing. In 1983, the U.S. Department of Agriculture estimated that between $16 to $18 million worth of program benefits were going to just these criminals. In fact, the USDA sent a proposed bill to Congress earlier this year that addressed this very problem. Their proposal differed from mine in that it only sought a 1-year exclusion, but I believe that we need to create a greater disincentive for growing drugs.

The overwhelming majority of farmers in this country are honest, hard-working people. We are all well aware of the crisis facing farmers as we attempt to meet the competing demands of cutting the budget and insuring that this country continues to provide food not only for herself but for the starving nations of the world as well. It is unfair that honest farmers must share dwindling program benefits with common criminals. I urge the Senate to support my amendment.

I thank the distinguished chairman of the Agriculture Committee, Mr. Helms, for not only cosponsoring but working with myself and staff to put this amendment together.

Mr. HELMS. Mr. President, I thank the distinguished Senator from Arizona for the amendment and we are prepared to accept it on this side.

Mr. President, I commend the distinguished Senator from Arizona for his amendment and, as a cosponsor of this amendment, to offer my support for it.

Farmers who choose to operate outside the law with regards to the crops that they plant, should not be entitled to the benefits that other law-abiding farmers receive. Also, with the massive budget deficit that we have, and the tremendous excess in spending in farm programs, we simply cannot afford to compensate farmers who take advantage of the system.

The amendment is straightforward. It is fair. And it is based upon conviction not suspicion. I think that it is the least we can do to ensure that farmers are not able to profit from the Federal Government while at the same time breaking the law of the land by growing illegal crops.

Mr. ZORINSKY. Mr. President, the amendment adds to S. 1714 the provisions of S. 1624, a bill introduced by the Senator from Arizona (Mr. DeConcini) on September 11. The amendment corrects a deficiency in current law that only makes ineligible for agricultural program benefits persons who are convicted of harvesting controlled substances. Moreover, current law prohibits receipt of agricultural program benefits for the year of conviction.

Under the provisions of the amendment, any person convicted of planting, cultivating, growing or harvesting a controlled substance would be specifically prohibited from participation in agricultural program benefits for the year of the conviction and for the ensuing 4 years.

Mr. President, we cleared the amendment through this side of the aisle. We have no objection to accepting the amendment and think it is a good amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 1074) was agreed to.

Mr. HELMS. Mr President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1075

(Purpose: To establish a program for the research and development of new uses for farm and forest products)

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. Glenn] for himself, Mr. Lugar, Mr. Bingaman, Mr. Heflin, Mr. Boschwitz, Mr. Nunn, Mr. Zorinsky, Mr. Ford, Mr. Melcher, Mr. Helms, and Mr. Abdnor proposes an amendment numbered 1075.

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

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

The amendment is as follows:

At the appropriate place in the pending amendment, add the following:

On page 301, line 2, after the words "Agricultural Products In", insert the words "Domestic and".

On page 301, line 3, insert "(a)" after the section designation.

On page 301, line 7, after the words "products thereof in", insert the words "domestic and".

On page 301, between lines 11 and 12, insert the following new subsection:

"(b)(1) The Secretary of Agriculture shall conduct a research and development program to formulate new uses for farm and forest products. Such program shall include, but not be limited to, research and development of industrial, new, and value-added products.

"(2) The the extent practicable, the Secretary of Agriculture shall carry out the program authorized in this subsection with colleges and universities, private industry, and Federal and State entities through a combination of grants, cooperative agreements, contracts, and interagency agreements.

"(3)(A) There are authorized to be appropriated such sums as are necessary to carry out the program under this subsection.

"(B) In addition, the Secretary may use funds appropriated or made available to the Secretary under provisions of law other than paragraph (A) to carry out the program under this subsection.

"(C) The total amount of funds used by the Secretary to carry out the program under this subsection may not be less than $10,000,000 for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

"(4) Funds appropriated under paragraph (3)(A) or made available under paragraph (3)(B) may be transferred among appropriation accounts to carry out the purposes of the program authorized under this subsection.

"(5) Notwithstanding any other provision of law, the Federal share of the cost of each research or development

project funded under this subsection may not exceed 50 percent of the cost of such project.".

Mr. GLENN. Mr. President, today I rise to offer an amendment along with my good friend and distinguished colleague, Senator Lugar of Indiana. This amendment will create a new program to develop new uses for farm and forest products. I believe this is a commonsense approach to the bin busting surpluses facing Americans in the 1980's.

The program created by this amendment will earmark at least $10 million a year for developing new uses for farm and forest products. Because of fiscal constraints, this program will not require the authorization of new funds, but will be carried out through a combination of grants, cooperative agreements, contracts, and interagency agreements with universities, private industry, and Federal and State entities. Furthermore, to encourage a partnership between the Federal Government and the other institutions involved in this program, the amendment provides that the Federal share of each grant, cooperative agreement, contract or interagency agreement shall not exceed 50 percent of the cost of the research or development project.

Senator Lugar and I represent major agricultural States and are familiar with the economic problems confronting agriculture. The 1985 farm bill must somehow reach the roots of these problems and return prosperity to agriculture. If it does not, it runs the risk of being an expensive short term band-aid.

History tells us that farm prosperity occurs when demand for agricultural, commodities is in balance with supply. Beginning in the mid 1950's, an expanding export market absorbed the increasing supply of commodities produced by U.S. farmers. While not every year was profitable for every farmer, on balance the period between 1955 and 1980 was one of acceptable income for the farm sector as a whole.

Since 1981 farm exports have declined from $43 billion to an estimated $32 billion in 1985. During this same period domestic demand for food has increased, but only at the relatively slow rate of population growth. Extension of these trends yields a sobering conclusion -- traditional demand outlets show little promise to utilize the current surpluses and restore prosperity to American farm families.

Even the possibility this prediction may be accurate should challenge us to develop bold, new programs which look to the future while embracing the lesson from history that farm prosperity is led be demand. This amendment meets the challenge.

The program created by this amendment will encourage application of basic research in biology, chemistry, and physics to develop new uses for farm and forest products. Although some limited research is being conducted by USDA, land grant colleges, and private industry, the amount spend is minimal. For example, in fiscal year 1984 only $5 million out of a total Agricultural Research Service budget of $474 milllion was spent on developing new uses for food and feed grains. The lack of new uses research is one reason U.S. agriculture's productive capacity has outstripped demand for its products.

New uses for farm and forest products are not far off fantasies that will take years to develop. Right now, cornstarch is used not just in producing alcohol but also in manufacturing paper products, building materials, textiles, and adhesives. Three to five billion pounds of U.S. produced fats and oils are used to produce nonfood products. Fifteen percent of the plastic additives and 100 percent of the glycerin are produced from fats and oils.

And, in my judgment, we have just begun to scratch the surface. Many petrochemicals can be made from carbohydrates contained in food and feed grains. However, more efficient manufacturing processes need to be developed. Even greater potential lies in developing new chemicals and other products that utilize the desirable properties of starch and cellulose. Then, there is the star wars of new uses research -- molecular farming. This type of farming will eventually use genetic engineering to program crops or livestock to produce useful chemicals and other molecular substances.

The availability of naturally derived products not only will increase the demand for farm and forest products. They

also offer the potential for environmentally safer chemicals and the opportunity to reduce imports of some strategic materials, particularly oil.

At an agricultural forum I held in Ohio in July, I called for a new partnership between the Federal Government and the agricultural community to solve the problems facing U.S. agriculture. I am pleased to join with Senator Lugar in proposing what I believe is a new partnership -- a partnership to develop new uses for agricultural products.

The 1985 farm bill is one of the most important legislative activities of the 99th Congress. Much of our attention will focus on the important issues surrounding the current financial problems of America's largest industry. But, we also have the opportunity to alter the future -- to prepare the ground for long term prosperity in American agriculture. New uses research tills new fields from which we will all reap benefits. I urge my colleagues to join Senator Lugar and me in creating new opportunities for U.S. agriculture.

Mr. President, agricultural production research in this Nation of ours has been one of the most successful areas of research of any nation in history and we have wound up with bountiful harvests beyond belief. Our family farmers are the envy of the world.

We have developed new hybrids. We have new ways of improving soil fertility. We have developed conservation methods. Literally, our cup runneth over. This is a great tribute to our land grant universities and the U.S. Department of Agriculture.

However, I think we should start putting some money into end uses research. In 1984 only $5 million, out of a total Agricultural Research Service budget of $474 million, was spent on developing new uses for feed and food grains.

New uses are not far-off fantasies. Right now, starch, mostly from corn, is turned into alcohol, which can be turned into gasohol. Starch from carbohydrates is used in manufacturing paper products, building materials, textiles, and adhesives. The current use of corn for this purpose is 127 million bushels; 3 to 5 billion pounds of fats and oils produced in the United States are used in nonfood products. Fats and oils produce 15 percent of the plastic additives and 100 percent of the glycerin.

And we have just begun. Many petrochemicals can be made from carbohydrates. For instance, before 1950 most acetone and n-butanol were made from carbohydrates. The increase since 1970 in oil prices have made carbohydrates more competitive, but we need research to develop more efficient production processes.

Research has shown that polymers of starch and cellulose have unique properties, including biodegradability and semipermeability. The challenge is to develop new chemicals that exploit these properties. Right now, a biodegradable plastic mulch is being tested.

The potential for new uses is unlimited. Who knows what we can do? Could we make plastic wallboard from corn?

On the horizon looms the star wars of new uses research -- molecular farming. This type of farming would use genetic engineering to program specific crops or livestock to produce useful chemicals or other molecular substances.

This new research program is a matching program. The amount of money will be doubled as colleges, universities, and research institutes take us up on this challenge to get involved in new uses research.

I believe this amendment will mark a new beginning in agriculture research. Emphasis on end uses research offers a valuable opportunity to use the huge surpluses we now have.

We have discussed this amendment with the managers of the bill. I believe they are in favor of the bill that Senator Lugar joins me in introducing, and I turn to him for any comments.

Mr. FORD. Mr. President, let me compliment my distinguished friend from Ohio for this amendment. I am one of

the original cosponsors of the amendment and am very proud to do so.

Let me say that tobacco has become a controversial product and no one needs to tell this body that it is not. There are some ways I believe that this product, which takes very little land area, produces a great deal. There should be additional research in the end use of that product.

We know that tobacco has a great deal of protein in it. We know it can be extracted from that plant and can be used.

Therefore, I hope that somewhere in this research arena there would be given some thought among the warehouses, tractors, et cetera, and uses in relation to this crop could be I think an opportunity for us to find new uses.

So, Mr. President, not only am I encouraged with this amendment, I hope it has some desirable end results.

Mr. LUGAR. Mr. President, I am pleased to join the distinguished Senator from Ohio in offering an amendment to encourage the development of new uses of our surplus agricultural products.

The Secretary of Agriculture would be required to use at least $10 million of the funds appropriated to the Agricultural Research Service, the Cooperative State Research Service, and the Competitive and Special Grants Program for research and development on new uses of farm and forest products. In addition, the Secretary could utilize carryover funds from other agencies within the U.S. Department of Agriculture for this research program.

U.S. farmers have shown a tremendous ability to produce an abundance of food despite governmental farm policy aimed at reducing production. The Secretary of Agriculture has continually implemented acreage set-aside programs for corn, wheat, cotton, and rice, and yet, we have a bumper supply of each of these crops. Market prices are averaging some 50 percent below Government support rates.

A report earlier this year by the Office of Technology Assessment suggests that our capacity to produce will not level off in the next decade. To the contrary, new technologies such as the hybrid wheat and growth hormones in dairy cattle will likely add even greater pressure to ur surplus problems. The OTA study estimates that average per acre wheat yields will increase another 20 to 25 percent in the next decade. In the next 15 years, milk output per cow is estimated to increase by 50 percent. Similar outcomes are expected for virtually all major crops and livestock products.

Given these factors, we simply must begin to develop new technologies that encourage consumption in order to counter the emerging technologies that will likely result in higher yields and more output per animal. The development of these alternative markets is essential in order to balance U.S. agriculture's reliance upon growth in foreign markets with a program that promises some market expansion here at home.

This amendment does not add to the cost of this bill. It simply directs the Secretary of Agriculture to use the research funds that have already been appropriated for this very high priority research program. I encourage my colleagues to support this amendment.

Mr. HELMS. Mr. President, I am prepared to accept the amendment offered by the distinguished Senators from Ohio and Indiana. I wholeheartedly support efforts to give greater priority toward research programs to develop new uses for agricultural commodities.

Each Senator is well aware of our seemingly uncontrollable farm surpluses. The U.S. Department of Agriculture projects at least a 50-percent carryover for wheat, cotton, and rice and a 30-percent carryover for feed grains by the end of this crop year. We are harvesting record crops despite the fact that Government farm programs paid farmers to idle a significant portion of our crop acreage.

I believe a targeted Agricultural Research Program to develop new uses for our surplus farm products will help keep more farmers on the land and give a better opportunity for profitable prices in the Congress.

I am prepared to accept this amendment in behalf of this side of the aisle.

Mr. ZORINSKY. Mr. President, the amendment establishes a program to formulate new uses for farm and forest products. The program will be carried out, to the extent practicable, through universities, private industry, and Federal and State entities. The program will be funded through a combination of grants, cooperative agreements, contracts, and interagency agreements. The total funds available to the Secretary of Agriculture to carry out the program may not be less than $10 million in each of fiscal years 1986 through 1989.

The amendment can help to stimulate future demand for agricultural products by supporting research that will uncover nonfood uses for such products. If new uses are identified, the amount of resources and investment committed to agriculture can continue at the current level and eventually grow.

I urge my colleagues to support the amendment.

Mr. GLENN. Mr. President, before we have a vote on this amendment, I would like to add that I see it as a toe in the door, just a start for what is really needed. As I said, in 1984 we only put $5 million out of $474 million of the Agricultural Research Service's research budget into nonfood uses. I probably will propose legislation after the first of the year that will ask for additional increases in funding. But this amendment establishes a new direction.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 1075) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I have two amendments that I hope will take a very short time. I have talked to the managers on both sides about the amendments. I am getting the exact language now. Perhaps I could explain the first amendment, then I will send the amendment to the desk.

AMENDMENT NO. 1076

Mr. GLENN. Mr. President, this first amendment would authorize the Farmers Home Administration to grant to the Irwin County, GA, Board of Education the reversionary rights held by FmHA in one-third acre of land and the building thereon located in Irwinville, GA. This property was originally granted to the Irwin County Board of Education in 1946 by the Farm Security Administration for educational and other related community purposes. The building is no longer useful for that purpose.

This amendment would allow the Irwin County Board of Education to sell the land and structure in question and apply the proceeds to the construction of a new elementary school. This would be entirely appropriate and within the intent of the original grant.

There is past precedent for this amendment. Public Law 91-110 approved by the 91st Congress authorized and directed USDA to quitclaim its rights in a similar tract of land to the Lee County, SC, Board of Education. This prior legislation has been cited by the Farmers Home Administration as an appropriate manner for solving the request of the Irwin County Board of Education.

Mr. President, FmHA has no objection to my amendment, and I hope that it is cleared on both sides of the aisle.

Mr. President, in just a moment I will send the amendment to the desk. It seems we are having a little drafting problem here.

AMENDMENT NO. 1077

Mr. NUNN. Mr. President, if the manager will permit me, I will explain the second amendment.

The second amendment is related to the National Tree Seed Laboratory. This would allow an administrative change at the National Tree Seed Laboratory at Dry Branch, GA.

This laboratory is a national project funded by Federal appropriations and reimbursed receipts. It is operated by the U.S. Forest Service at the Georgia Forestry Center. The laboratory is operated with a three-part mission: Seed testing, seed bank, and technical assistance.

The seed testing service provides service tests for viability evaluation on tree and shrub seed for State, Federal, forest industry and individuals throughout the United States in support of improved regeneration practices. This is a self-supported service. The laboratory currently is funded by Federal appropriations and reimbursed receipts.

The reimbursed receipts are from Federal, State, private industry and individual customers. The State and Federal receipts can be retained under existing law. However, there is currently no authority to allow the National Tree Seed Laboratory to retain testing receipts from private sources. These receipts amount to approximately $40,000 each year and, under current law, they must be refunded to the U.S. Treasury, and that increases the amount of the appropriation for that purpose. So it is a paper transaction.

The National Tree Seed Laboratory has requested this amendment to authorize it to retain the fees it collects from private sources for tree seed testing. This amendment would eliminate the paperwork shuffle of remitting these receipts to the Treasury and then receiving appropriated funds back from the Treasury. The administrative change authorized by this amendment would allow the laboratory to be more self-supporting and would make it possible for the Federal appropriations it receives to be reduced accordingly.

The Southeastern Regional Forester has sought this amendment and the U.S. Forest Service has expressed its support, citing the administrative efficiencies which would be achieved from the amendment. Mr. President, I have cleared this amendment with the chairman and ranking member of the Agriculture Committee.

Mr. President, this amendment also, I am hopeful, has been cleared with the chairman and ranking member of the Agriculture Committee.

Mr. President, if either the ranking member or the chairman have any observations on this or questions, I will be delighted to answer them.

AMENDMENT NO. 1076

I send the first amendment, which is the amendment relating to a quitclaim deed to the Board of Education of Irwin county, I send that amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment,

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. Nunn] proposes an amendment numbered 1076.

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

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

The amendment is as follows:

At the end of the pending amendment at the appropriate place insert the following:

Sec.. The Secretary of Agriculture is authorized and directed to execute and deliver to the Board of Education of Irwin County, Georgia, its successors and assigns, a quitclaim deed conveying and releasing unto the said Board of Education of Irwin County, Georgia, its successors and assigns, all right, title, and interest of the United States of America in and to a tract of land, situate in said Irwin County, Georgia, containing 0.303 acres together with improvements in Land Lot Number 39 in the 3rd Land District of Irwin County, Georgia, being more particularly described in a deed dated July 13, 1946, from the United States conveying said land to Irwin County Board of Education, recorded in the land records of the office of the Clerk of Court for Irwin County, Georgia, in deed book 20, page 117.

Mr. NUNN. Mr. President, there is an error in the amendment. It says 'South Carolina." It is supposed to be "Georgia."

I ask unanimous consent that it be changed so the Senators from South Carolina will not believe that we are tinkering with any part of his sovereign territory.

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

Mr. HELMS. Mr. President, have both amendments been stated?

The PRESIDING OFFICER. Only one amendment so far has been submitted to the clerk.

Mr. NUNN. Mr. President, I explained both amendments. But only one has been submitted.

Mr. HELMS. Mr. President, we are prepared to accept the amendment.

Mr. President, as I understand it, the amendment of the Senator from Georgia would authorize the Farmers Home Administration to release its reversionary rights to approximately one-third acre and the structure on this property in Irwin County, GA, to the Irwin County Board of Education.

I further understand that the Department of Agriculture has no objection to the release of this real estate.

Therefore, Mr. President, I have no problem with the amendment offered by the Senator from Georgia and would support its adoption.

Mr. ZORINSKY. Mr. President, we have examined the amendment offered by the distinguished Senator from Georgia, and we find it acceptable. We urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 1076) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1077

Mr. NUNN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. This is the one I have already explained relating to the National Tree Laboratory, and the funding thereof.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. Nunn] proposes an amendment numbered 1077. At the appropriate place insert the following:

Notwithstanding any other provision of law, fees received by the National Tree Seed Laboratory, administered by the Forest Service, United States Department of Agriculture, for the provision of a tree seed testing service, shall be retained and deposited as a reimbursement to current appropriations used to cover the costs of providing such service.

Mr. HELMS. Mr. President, I support the amendment of the Senator from Georgia.

His amendment is almost technical in nature. It would permit the National Tree Seed Laboratory to retain receipts from testing that they do for private entities. For fiscal year 1984 these receipts totaled less than $24,000.

This amendment would extend the current authority of the Laboratory to retain receipts from other governmental agencies. In fiscal year 1984, receipts from other governmental agencies totaled $46,724.

Mr. President, I know of no objection to this amendment.

Mr. ZORINSKY. Mr. President, we have examined the second amendment offered by the distinguished Senator from Georgia, and also find it acceptable. We urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 1077) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I thank the chairman, the distinguished Senator from North Carolina, and the ranking member.

Mr. HELMS. Mr. President, Senator Zorinsky and I have been conferring. We see many people around this Chamber. If there is no objection, we will jointly announce that there will be no more rollcall votes tonight. However, we do want to lay down an amendment on which there will be a rollcall vote.

AMENDMENT NO. 1078

(Purpose: To modify the pork promotion program.)

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. Grassley] proposes an amendment numbered 1078.

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

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

The amendment is as follows:

At the appropriate place in the pending amendment add the following:

On page 380, strike out lines 15 to 17.

On page 380, line 18, strike out "(5)" and insert in lieu thereof "(4)".

On page 380, line 21, strike out "(6)" and insert in lieu thereof "(5)".

On page 380, line 24, strike out "(7)" and insert in lieu thereof "(6)".

On page 381, line 1, strike out "(8)" and insert in lieu thereof "(7)".

On page 381, line 4, strike out "(9)" and insert in lieu thereof "(8)".

On page 381, line 9, strike out "(10)" and insert in lieu thereof "(9)".

On page 381, line 11, strike out "(11)" and insert in lieu thereof "(10)".

On page 381, line 13, strike out "(12)" and insert in lieu thereof "(11)".

On page 381, line 16, strike out "(13)" and insert in lieu thereof "(12)".

On page 381, line 22, strike out "(14)" and insert in lieu thereof "(13)".

On page 382, line 5, strike out "(15)" and insert in lieu thereof "(14)".

On page 382, line 7, strike out "(16)" and insert in lieu thereof "(15)".

On page 382, line 9, strike out "(17)" and insert in lieu thereof "(16)".

On page 382, line 23, strike out "(18)" and insert in lieu thereof "(17)".

On page 383 line 1, strike out "(19)" and insert in lieu thereof "(18)".

On page 383, lines 16 and 17, strike out "Directors, the Board," and insert in lieu thereof "Board".

On page 384, strike out "submitted" on line 17 and all that follows through "Secretary" on line 22 and insert in lieu thereof "elected in accordance with section 1807".

On page 386, line 2, before the period, insert the following: ", except that the term of a member of the Delegate Body shall continue until the successor of such member, if any, is appointed in accordance with subsection (b)(1)".

On page 388, line 14, strike out "17" and insert in lieu thereof "23".

On page 388, lines 15 and 16, strike out ", from among the members of the Directors,".

On page 388, line 19, strike out ", from among the Directors,".

On page 389, between lines 2 and 3, insert the following new subsection:

(h) The Delegate Body shall --

(1) recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 1809(b); and

(2) determine the percentage of the aggregate amount of assessments collected in a State that each State association shall receive under section 1809(c)(1).

Beginning on page 389, strike out line 3 and all that follows through line 24 on page 390 and insert in lieu thereof the following new section:

ELECTION OF NOMINEES FOR THE DELEGATE BODY

Sec. 1807. (a)(1) Not later than 30 days after the effective date of the order, the Secretary shall call for the nomination within each State of candidates for appointment as producer members of the initial Delegate Body.

(2) Each State association may nominate producers who are residents of such State to serve as such candidates.

(3)(A) Additional producers who are residents of a State may be nominated as candidates of such State by written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less.

(B) The Secretary shall establish and publicize the procedures governing the time and place for filing petitions.

(b)(1) After the Secretary has received the nominations required under subsection (a) and not later than 60 days after the effective date of the order, the Secretary shall call for an election within each State of persons for appointment as producer members of the initial Delegate Body.

(2) To be eligible to vote in an election held in a State, a person must be a producer who is a resident of such State.

(3)(A) Notice of each such election shall be given by theSecretary --

(i) by publication in a newspaper or newspapers of general circulation in each State, and in pork production and agriculture trade publications, at least 1 week prior to the election; and

(ii) in any other reasonable manner determined by the Secretary.

(B) The notice shall set forth the period of time and places for voting and such other information as the Secretary considers necessary.

(4) Each State shall nominate to the Delegate Body the number of producer members required under section 1806(b)(2)(B).

(5) The producers who receive the highest number of votes in each State shall be nominated for appointment as

members of the Delegate Body from such State.

(c)(1) Except as provided in paragraph (3), after the election of the producer members of the initial Delegate Body, the Board shall administer all subsequent nominations and elections of the producer members to be nominated for appointment as members of the Delegate Body, with the assistance of the Secretary and in accordance with subsections (a)(3) and (b).

(2) The Board shall determine the timing of an election referred to in paragraph (1).

(3) To be eligible to vote in such an election in a State, a person must be a person must --

(A) be a producer who is a resident of such State;

(B) have paid all assessments due under section 1809; and

(C) not demanded a refund of an assessment under section 1813.

(d)(1) Prior to the expiration of the term of any producer member of the Delegate Body, the Board shall appoint a nominating committee of producers who are residents of the State represented by such member.

(2) Such committee shall nominate producers of such State as candidates to fill the position for which an election is to be held.

(3) Additional producers who are residents of a State may be nominated to full such positions in accordance with subsection (a)(3).

On page 391, line 3, strike out "an 11" and insert in lieu thereof "a 15".

On page 391, line 4, insert "representing at least 12 States" after "Board".

On page 391, line 5, strike out "persons" and insert in lieu thereof "producers or importers".

On page 391, line 12, before the period, insert the following: ", except that the term of a member of the Board shall continue until the successor of such member, if any, is appointed in accordance with paragraph (2)".

Beginning on page 392, strike out line 23 and all that follows through line 2 on page 393 and insert in lieu thereof the following:

(B) the budgets, plans, or projects for which State associations are to receive funds pursuant to section 1809(c)(1).

On page 394, lines 7 and 8, strike out "Board is established and appointed pursuant to section 1808" and insert in lieu thereof "effective date of the order under section 1805(c) or at such time as the initial Board is appointed pursuant to section 1808, whichever occurs later".

On page 394, line 12, strike out "1802(9)" and insert in lieu thereof "1802(8)".

On page 394, line 15, strike out "1802(9)(B)" and insert in lieu thereof "1802(8)(B)".

On page 395, line 7, strike out "1802(9)" and insert in lieu thereof "1802(8)".

On page 395, line 15, strike out "Board" and insert in lieu thereof "Delegate Body".

On page 395, line 18, strike out "Board" and insert in lieu thereof "Delegate Body".

On page 395, line 22, strike out "Board" and insert in lieu thereof "Delegate Body".

On page 396, lines 14 and 15, strike out "collected" and insert in lieu thereof "attributable to porcine animals produced".

On page 396, line 17, strike out "Board" and insert in lieu thereof "Delegate Body".

On page 397, strike out lines 1 through 16.

On page 397, line 17, strike out "(3)" and insert "(2)".

On page 397, line 19, strike out "paragraphs (1) and (2)" and insert in lieu thereof "paragraph (1)".

On page 398, line 12, before the period, insert "and any expenses incurred for the conduct of elections under section 1807".

On page 399, line 3, insert "or a State association, as the case may be" after "Board".

Mr. GRASSLEY. Mr. President, the amendment I am introducing will eliminate the concerns of many Senators and farmers regarding the pork check-offs. This amendment is the result of many hours of discussions with other Senators and the national pork producers. The purpose of this amendment is to make the whole check-off process a little more accessible to the average pork producer. Under the Agriculture Committee bill, many producers would be excluded from the nomination process and would be deprived of the opportunity to decide how their check-off money is spent. This amendment will solve these problems.

This amendment serves three basic purposes. First, it opens up the nomination process to every pork producer who has paid an assessment. All a pork producer has to do, if he has paid an assessment and wishes to be a member of the delegate body, is fill out nominating papers and run for office. He then would be on the ballot with everyone else. Any producer who has paid an assessment would then be eligible to vote for any of the nominees on the ballot. Anyone who has paid an assessment should have a right to vote for or be a member of the delegate body. Under the committee bill that right does not exist.

The second thing this amendment does is establish a separate body for the purpose of handling the funds collected from the pork check-off. No existing organization should have exclusive control over the funds collected by this check-off. Many new pork producers will be brought into this check-off process as a result of this legislation, we should protect against making these producers defacto members of any association that they may not wish to be involved with.

The third purpose this amendment accomplishes, is giving more authority to the delegate body. This would give the members of the delegate body the power to recommend the initial rate of assessment and all increases as well as to determine the rate of return of assessed funds to the staff associations. We in Congress should ensure that these important decisions are left to producers who represent the grass roots and are the most responsive to the needs of their fellow farmers.

Mr. President, this amendment is essential to restoring many of the basic rights to individual producers who will be paying for this promotion program. No State has more of an interest, or an investment, in seeing that this promotion program is implemented effectively than my State. Iowa produces more pork than any other State in the country. We sold more than $2.5 billion in pork in 1984, which was 27 percent of our total farm receipts in Iowa. It is clear that a very large part of the funding for this program will come from Iowa because we produce 25 to 29 percent of the hogs in this country.

The pork industry has a 20-year history in pork promotion and voluntary check-offs. No other agricultural organization to my knowledge has proven itself more worthy of such a national program. In addition, the pork industry

has been the victim of years of misinformation which has hurt demand and brought many farmers to the brink of bankruptcy. We in Congress need to give the pork industry the tools to fight back and regain lost markets. This check-off is an important first step in clearing up all this misinformation and in increasing the demand for pork and pork products.

This national pork check-off is important but only under the right conditions. A check-off without the proper checks and balances could cause a division within the pork industry and hurt the long-term chances for the national pork check-off when it reaches a referendum. The amendment I am introducing will correct many of the problems which presently exist in this bill. By opening up the nominating process, giving more authority to the delegate body, and creating a new body to handle the funds collected by the check-off, we will be eliminating many of the areas for potential conflict.

I strongly encourage my colleagues to support this amendment as a way of perfecting this bill and satisfying many of the concerns that now exist.

It is my understanding that this amendment is suitable to both sides of the aisle.

I yield the floor.

Mr. HELMS. Mr. President, the Senator is correct. We support the amendment of the Senator from Iowa.

The Senator from South Carolina will have a separate amendment addressing the same subject.

We find the amendment acceptable.

Mr. President, the amendment would change the committee approved pork promotion and research provisions.

It would delete reference to the producer lobbying organization known as the National Pork Producers Council.

I support this change because I do not believe that it is good policy to "Federalize" an independent, private group of citizens and support such a group with pork producer assessments. The amendment also grants greater authority to the so-called "delegate body" concerning the amount of assessments which may be collected from pork producers and the amount which each State association may receive.

The amendment increases the opportunity for pork producers who are not members of the State or national pork associations to be nominated to the governing delegate body.

This provision is a constructive change from the current committee bill which is restrictive regarding who may be a member of the bodies, which govern and administer the Pork Promotion Program.

Mr. President, this is a good amendment. It does not go quite as far as I would like, but I will support the Senator from Iowa's efforts.

Mr. ZORINSKY. Mr. President, we have examined the amendment offered by the distinguished Senator from Iowa, and are prepared to accept it. I sponsored the Promotion Program in the committee-reported bill, and I am determined that the committee of conference adopt the Pork Research and Promotion Program that will be workable, and in the best interest of pork producers and consumers of this Nation.

We accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 1078) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ZORINSKY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1079

(Purpose: To encourage administrative action against unfair subsidization of rice by the Government of Thailand)

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. Bumpers] proposes an amendment numbered 1079.

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

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

The amendment is as follows:

At the end of the pending amendment, add the following new language:

UNFAIR SUBSIDIZATION OF THAI RICE

Sec. (a) Congress finds that:

(1) Rice ranks 9th among major domestic field crops in value of production;

(2) Rice accounts for about 5 percent of the value of major field crops produced in the United States;

(3) The value of domestic rice production annually is over $1.5 billion;

(4) Ending stocks for rice have sharply increased since 1980;

(5) The projected 1985-1986 carryover of rice as a percentage of annual use is 62 percent;

(6) Between 1980 and 1983, rice stocks rose and prices fell, pushing rice program costs from less than one-tenth to over nine-tenths of the value of U.S. rice production;

(7) Over the last several years, the percentage of world rice exports from the United States has fallen from a high of 25 percent to 18 percent in 1985;

(8) In the last several years, Thailand has become the largest rice exporter in the world, accounting for 30 percent of the world market primarily through their use of export subsidies;

(9) Thai rice imports into the U.S. have displaced normal sales of U.S. rice and have increased government costs;

(10) In 1983, the U.S. imported 33.2 million pounds of rice from Thailand, in 1984 the U.S. imported 51.3 million pounds of rice (an increase of 53 percent), and in the first six months of 1985, rice imports from Thailand to the U.S. have already reached 58.3 million pounds; and

(11) The Rice Miller's Association has filed a petition with the Department of Commerce asking that countervailing duties be imposed upon imports of Thai rice into the U.S.

(b) Based upon these findings, it is the sense of the Senate that:

(1) Our domestic rice industry is of vital importance and must be protected from unfair foreign competition;

(2) The government of Thailand is unfairly subsidizing the export of rice, and this is adversely affecting the U.S. domestic rice industry; and

(3) The Secretary of Commerce should give immediate and favorable consideration to the countervailing duty petition filed by the Rice Miller's Association, and should impose appropriate countervailing duties on imports of rice from Thailand.

Mr. BUMPERS. Mr. President, if I could have the attention of the distinguished managers of the bill, this is a sense-of-the-Senate resolution asking the Secretary of Commerce to determine whether or not the Government of Thailand is unfairly subsidizing the export of rice.

I think the Members of this body will be interested in knowing that Thailand does indeed subsidize the exportation of rice to this country.

As a matter of fact, this very year we have already imported 58 million pounds of rice from Thailand. There are about 10 different things that they do to unfairly compete in international markets, including exporting rice to this country where we have a 33-percent crop carryover right now.

We used to have 28 percent of all the rice that traveled in international commerce from the United States. Today that figure is down to about 15 percent.

One of the reasons is countries, even as poor as Thailand, are heavily subsidizing their rice.

This is a sense-of-the-Senate resolution. It simply asks for the Secretary of Commerce to check on this, report back to the Congress, and asks him if they are in fact subsidizing rice to impose countervailing duties against the imports of rice from Thailand.

I hope this will be acceptable to the managers.

The PRESIDING OFFICER. Is there further debate on the amendment?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, I withdraw the amendment that I just offered.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. BUMPERS. Mr. President, I reserve my right to reoffer the amendment at a later date.

The PRESIDING OFFICER. The Senator has that right.

Mr. HELMS. Mr. President, my understanding is that the distinguished Senator from South Carolina is willing to lay down an amendment on which there will no doubt be a rollcall vote tomorrow morning. That remains to be seen, however.

I suggest the Senator send it to the desk and that it be made the pending business when we resume consideration of the farm bill tomorrow.

AMENDMENT NO. 1080

(Purpose: To require the approval of a majority of producers voting in a referendum as a prerequisite to the issuance of an order to establish a port promotion program and to permit States to continue to operate existing port promotion programs)

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. Thurmond] proposes an amendment numbered 1080.

Mr. THURMOND. Mr. President, I suggest that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the pending amendment, add the following:

On page 383, line 25, insert, "such order has been approved by a majority of persons voting in the referendum required under section 1811(a)(1)(A) and" after "if".

Beginning on page 401, strike out line 22 and all that follows through line 2 on page 402 and insert in lieu thereof the following:

Sec. 1811. (a)(1)(A) For the purpose of determining whether an order shall be issued, the Secretary shall conduct a referendum among persons who have been producers or importers during a representative period, as determined by the Secretary.

(B) For the purpose of determining whether an order shall be continued, during the period beginning not earlier than 1 year after the issuance of the order and ending not later than 2 years after the issuance of the order, the Secretary shall conduct a referendum among persons who have been producers or importers during a representative period, as determined by the Secretary.

On page 402, line 3, insert "issued or" after "be".

On page 410, line 11, strike out "This" and insert in lieu thereof "Except as provided in subsection (c), this".

On page 410, line 16, strike out "The" and insert in lieu thereof "Except as provided in subsection (c), the".

On page 410, between lines 20 and 21, insert the following new subsection:

(c)(1) Notwithstanding any other provision of this subtitle, if a State established, before the date of enactment of this Act and under the laws of such State, apork and pork products promotion, research, and consumer information program that is funded through pork producer contributions or assessments and operated by an organization recognized by such State as the organization responsible for carrying out such program under the supervision of the State --

(A) such State may elect to continue to operate such State program in lieu of participation in the national pork and pork products promotion, research, and consumer information program established by this subtitle; and

(B) this subtitle shall not be construed to preempt the laws of such State establishing such State program.

(2) Notwithstanding any other provision of this subtitle, if a State elects to continue to operate a State program referred to in paragraph (1), the Board shall --

(A) encourage such State to participate in the national pork and pork products promotion, research, and consumer information program established by this subtitle, on such terms as are mutually agreeable to such State and the Board;

(B) provide such State with any information obtained by the Board concerning any porcine animal produced in such State that is sold or slaughtered for sale in or outside such State; and

(C) remit to such State any assessments collected under section 1809 for each porcine animal produced in such State that is sold or slaughtered for sale in or outside such State.

On page 410, line 21, strike out "(C)" and insert in lieu thereof "(d)".

Mr. HEFLIN. Mr. President, does the Senator from South Carolina want me to present my remarks at this time?

Mr. THURMOND. Mr. President, it might be better in the morning, if we are not going to vote tonight.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. THURMOND. Mr. President, I ask unanimous consent that my amendment be laid aside until after the amendment of the distinguished Senator form North Carolina [Mr. Helms] has been disposed of.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, would the distinguished Senator repeat his request?

The PRESIDING OFFICER. The Senator will suspend. The Senate is not in order. We want the Senators to hear

what the Senator from South Carolina has to say. Those staff members carrying on conversations please take them out of the Chamber.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, since the Judiciary Committee meets at 9:30 tomorrow, I ask unanimous consent that my amendment be laid aside until 11 o'clock, following the amendment by the distinguished Senator from North Carolina [Mr. Helms].

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. HELMS. Reserving the right to object, the Senator is not specifying a time, he is just saying following the disposition of the amendment of the Senator from North Carolina; is that correct?

Mr. THURMOND. That is all right. It may be 11 o'clock before I can get here.

The PRESIDING OFFICER. Is there objection?

Mr. HEFLIN. Reserving the right to object, Mr. President, as I understand it, the distinguished Senator from South Carolina would like this to come up as expeditiously as possible. If there is some intervening thing between the amendment of the distinguished Senator from North Carolina, if the Senator from South Carolina decides to put his aside -- in other words, what the Senator from South Carolina is trying to do is to give way for one more amendment. That amendment is now labeled Senator Helms' food stamp amendment.Then, when that is disposed of, he wants to come back. If something else comes in between, he would still want his to come up in the morning?

Mr. THURMOND. That is all right. If I get here around 11 o'clock, I think the chairman -- the distinguished Senator from Alabama is on the Judiciary Committee. I am sure he wants to be there. We do have some important matters to come up. If that would come up I think about 10:30 or 11 -- --

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. MELCHER. Mr. President, do I understand this? Do we have an amendment laid down? Is the Senator asking to withdraw his amendment?

The PRESIDING OFFICER. The distinguished Senator from South Carolina asked to set it aside.

Mr. HELMS. Mr. President, there is no unanimous-consent request pending, is that correct?

The PRESIDING OFFICER. A unanimous-consent request has been put to the Chair.

Mr. MELCHER. Has it been agreed to, Mr. President?

The PRESIDING OFFICER. Yes.

AMENDMENT NO. 1081

(Purpose: To authorize the Secretary of Agriculture to make a grant, upon the request of a State, to fund a low income nutrition assistance program operated by that State in lieu of the Federal Food Stamp Program.)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. Helms] proposes an amendment numbered 1081.

At the appropriate place in the pending amendment add the following:

On page 278, after line 26, insert the following new section:

"OPTIONAL NUTRITION ASSISTANCE GRANT PROGRAM

"Sec. 1444. (a) The Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) is amended by adding at the end thereof the following new section:

"OPTIONAL NUTRITION ASSISTANCE GRANTS

"Sec. 21. (a) As used in this section, unless the context otherwise requires:

"(1) The term 'Attorney General' means the Attorney General of the United States.

"(2) The term 'Comptroller General' means the Comptroller General of the United States.

"(3) The term 'State' means fifty States, the District of Columbia Guam, and Virgin Islands of the United States.

"(b) A State may, subject to the provisions of this section, elect to operate a low income nutrition assistance program in lieu of the food stamp program established under this Act. Any State that elects to operate a low income nutrition assistance program under this section or that elects to resume operation of the food stamp program shall give preliminary notice of such election to the Secretary by April 1 of the fiscal year preceding the fiscal year in which the State wishes such election to take effect, or at such later time as the Secretary deems feasible.

"(c)(1) Except as provided in paragraph (3), the amount of the grant each State shall be eligible to receive under this section in any fiscal year shall be equal to the sum of --

(A) the total dollar value of all benefits issued by the State under this Act and section 8 of the Act of December 31, 1973 (Public Law 93-233; 42 U.S.C. 1382e note) during the fiscal year preceding the fiscal year for which the grant is made, adjusted --

"(i) no less than annually, to reflect changes in the Consumer Price Index for all urban consumers for food at home published by the Bureau of Labor Statistics and unemployment data for the State; and

"(ii) at intervals the Secretary determines appropriate, to reflect the number of individuals in the State living below the poverty line, according to the most recent information available to the Secretary, and such other factors as the Secretary deems appropriate; and

"(B) the funds for administrative costs authorized to be paid to the State agency under section 16(a) (exclusive of amounts the Secretary may permit the State agency to retain) and section 16(g) for that fiscal year.

"(2) The Secretary shall pay to each eligible State, at such times and in such manner as the Secretary may determine, the amount of the grant for which the State is eligible under paragraph (1).

"(3) For the first fiscal year in which a State elects to participate in the low income nutrition assistance program, the Secretary may establish a grant that is less than the amount the State would be eligible to receive for a full fiscal year.

"(4) (A) If, with respect to any State, the Secretary --

"(i) receives a request from the governing body of an Indian tribe or tribal organization within the State that assistance under this section be made directly to the tribe or organization; and

"(ii) determines that the members of the tribe or tribal organization would be better served if grants to provide benefits under this section were made directly to such tribe or organization,

the Secretary shall reserve, from amounts that would otherwise be paid to the State under this section for the fiscal year, the amount determined under subparagraph (b).

"(B) The Secretary shall reserve for the purpose of subparagraph (A) from sums that would otherwise be paid to the State an amount which bears the same ratio to the payment that would otherwise be made to the State for the fiscal year involved as the population of all eligible Indians for whom a determination has been made under this paragraph bears to the population of all individuals eligible for assistance under this section in the State.

"(C) The sums reserved by the Secretary under this paragraph shall be granted to Indian tribes and tribalorganizations on the basis of the relative number of individuals contained in the Indian tribes and tribal organizations for whom a determination has been made under this paragraph.

"(D) To be eligible for a grant under this paragraph in any fiscal year, an Indian tribe or tribal organization must submit to the Secretary a plan for the fiscal year that meets such criteria as the Secretary may prescribe by regulation.

"(d)(1) To be eligible to receive a grant under this section for a fiscal year, each State must submit an application to the Secretary. Each application shall be submitted at such time and in such form as prescribed by the Secretary and shall set forth the plan of the State to provide nutritional assistance to low income households. Each State's plan shall be approved by the Secretary upon the Secretary's determination that the activities described in the plan assist low income households in meeting their food assistance needs.

"(2) As part of the application required by paragraph (1), the chief executive officer of the State shall certify in writing that the State will --

"(A) assess on a regular basis the most appropriate and cost-effective means for meeting the food and nutrition needs of needy persons residing in the State;

"(B) use the funds made available to the State under this section for the purpose of meeting the food and nutrition needs of needy persons residing in the State;

"(C) designate a single State agency that shall be responsible for the administration of the low income nutrition assistance program;

"(D) describe how the program of the State will operate to carry out this section; including --

"(i) a description of the assistance to be provided;

"(ii) a description of the persons who will be eligible under the program; and

"(iii) special assurances that the unique needs and expenses of low income elderly persons will be met through the eligibility criteria developed by the State;

"(E) provide that, in the operation of the nutrition assistance program, there shall be no discrimination on the basis of race, sex, religious creed, national origin, or political belief; and

"(F) provide that fiscal control and fund accounting procedures will be established to ensure the proper disbursal of and accounting for Federal funds paid to the State under this section, including procedures for monitoring the program

carried out by the State with the grant funds provided under this section;

"(G) provide for an audit, not less than biennially, of the expenditures by the State of grant funds received under this section; and

"(H) comply with all the requirements of this section.

"(3) The Secretary may not prescribe the manner in which the States comply with paragraph (2). Each State may prescribe, and the Secretary may not limit, standards of or requirements for eligibility for benefits under this section. Such standards or requirements may include a requirement for work or household contribution, or both, as a condition of eligibility for benefits under this section.

"(4) A grant made under this section may not be used by the State, or by any person with whom the State makes arrangements to carry out this section, for the purchase or improvement of land, or the purchase, construction, or permenent improvement of a building or other facility.

"(5) (A) The chief executive officer of each State shall prepare and furnish to the Secretary a plan that describes how the State will implement the assurances specified in paragraph (2). The chief executive officer of each State may revise a plan prepared under this subparagraph and shall furnish a copy of the revised plan to the Secretary before it is implemented.

"(6) The Secretary may, on the request of a State, provide technical assistance with respect to programs for the provision of low income nutrition assistance under this section, including technical assistance for the purpose of determining the feasibility of specific plans under consideration by any State.

"(7) The Secretary shall, on the request of a State, make available to the State coupons having a value equal to the nutrition assistance grant for the State as established under subsection (b) or a portion of that grant, as determined by the State. Coupons furnished under this paragraph shall be such as those used in the food stamp program pursuant to section 7(a). When such coupons are used in a low income nutrition assistance program of a State, the Secretary shall establish procedures for the use and redemption of such coupons that are consistent with other sections of this Act.

"(e) Payments made to the States under this section shall be expended to carry out a low income nutrition assistance program only in the fiscal year in which the funds are distributed to the State or the following fiscal year.

"(f) States shall make all records concerning a program operated pursuant to this section available to the Secretary and the Comptroller General for examination and copying, on or off the premises where such records are maintained or stored.

"(g) If the Secretary finds that there is substantial failure by a State to comply with the requirements of this section, regulations issued pursuant to this section, or the plan approved under subsection (d)(1), the Secretary may take the one or more of the following actions:

"(1) terminate payments until the Secretary is satisfied that there is no longer a substantial failure to comply;

"(2) withhold payments until the Secretary is satisfied that there is no longer a substantial failure to comply, at which time the withheld payments may be paid;

"(3) refer the matter to the Attorney General with a request that injunctive relief be sought; and

"(4) refer the matter to the Attorney General with a request that any other appropriate action be commenced.

"(h)(1) States receiving payments under this section shall provide for an audit, not less than biennially, conducted in accordance with the standards of the Comptroller General, of expenditures for the provision of assistance under this

section and, within 120 days after the end of each fiscal year in which an audit is conducted, report to the Secretary the findings of such audit. States shall make the audit report available for public inspection.

"(2) Within 120 days after the end of each fiscal year, States shall prepare an activities report comparing actual expenditures with the plan submitted in accordance with subsection (d)(1) of this section. States shall make the activities report available for public inspection.

"(i) Whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property provided or financed under this Section shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both, but if the value of the funds, assets, or property involved is not over $200, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both.".

(b) Section 2 of such Act (7 U.S.C. 2011) is amended by striking out in the last sentence "a food stamp program is" and inserting in lieu thereof "nutrition assistance programs are".

(c) Section 3(n) of such Act (7 U.S.C. 2021(n)) is amended by adding before the period at the end thereof ", or an optional nutrition assistance program under section 21 of this Act."

Mr. HELMS. Mr. President, this is an amendment laid down for consideration first in the morning. There will be a rollcall vote on it. I say to the distinguished majority leader -- I have to speak very loudly because he is not in the Chamber -- that completes our consideration of the farm bill for this day. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ROLL:

[Roll call Vote No. 322 Leg.]

YEAS -- 95

Abdnor	Andrews	Armstrong
Baucus	Bentsen	Biden
Bingaman	Boren	Boschwitz
Bradley	Bumpers	Burdick
Byrd	Chafee	Chiles
Cochran	Cohen	Cranston
D'Amato	Danforth	DeConcini
Denton	Dixon	Dodd
Dole	Durenberger	Eagleton
Evans	Exon	Ford
Garn	Glenn	Goldwater
Gore	Gorton	Gramm

Grassley	Harkin	Hart
Hatch	Hatfield	Hawkins
Hecht	Heflin	Heinz
Helms	Hollings	Humphrey
Johnston	Kassebaum	Kasten
Kennedy	Kerry	Lautenberg
Laxalt	Leahy	Levin
Long	Lugar	Mathias
Matsunaga	Mattingly	McClure
McConnell	Melcher	Metzenbaum
Mitchell	Moynihan	Murkowski
Nickles	Nunn	Packwood
Pressler	Proxmire	Pryor
Quayle	Riegle	Rockefeller
Roth	Rudman	Sarbanes
Sasser	Simon	Simpson
Specter	Stennis	Stevens
Symms	Thurmond	Trible
Wallop	Warner	Weicker
Wilson	Zorinsky	

NAYS -- 1

Pell

NOT VOTING -- 4

Domenici	East	Inouye
Stafford		

[Rollcall Vote No. 323 Leg.]

YEAS -- 46

Andrews	Baucus	Bentsen
Biden	Bingaman	Boren
Bumpers	Burdick	Byrd
Chiles	Cranston	DeConcini
Dixon	Dodd	Eagleton

Exon	Ford	Glenn
Gore	Harkin	Hart
Heflin	Hollings	Johnston
Kennedy	Kerry	Lautenberg
Leahy	Levin	Long
Matsunaga	Melcher	Metzenbaum
Mitchell	Moynihan	Nunn
Pell	Proxmire	Pryor
Riegle	Rockefeller	Sarbanes
Sasser	Simon	Stennis
Zorinsky		

NAYS -- 50

Abdnor	Armstrong	Boschwitz
Bradley	Chafee	Cochran
Cohen	D'Amato	Danforth
Denton	Dole	Durenberger
Evans	Garn	Goldwater
Gorton	Gramm	Grassley
Hatch	Hatfield	Hawkins
Hecht	Heinz	Helms
Humphrey	Kassebaum	Kasten
Laxalt	Lugar	Mathias
Mattingly	McClure	McConnell
Murkowski	Nickles	Packwood
Pressler	Quayle	Roth
Rudman	Simpson	Specter
Stevens	Symms	Thurmond
Trible	Wallop	Warner
Weicker	Wilson	

NOT VOTING -- 4

Domenici	East	Inouye
Stafford		

[Rollcall Vote No. 324 Leg.]

YEAS -- 92

Abdnor	Andrews	Armstrong
Bentsen	Biden	Bingaman
Boren	Boschwitz	Bradley
Bumpers	Burdick	Byrd
Chafee	Chiles	Cochran
Cohen	Cranston	D'Amato
Danforth	DeConcini	Denton
Dixon	Dodd	Dole
Durenberger	Eagleton	Evans
Exon	Ford	Garn
Glenn	Goldwater	Gore
Gorton	Gramm	Hart
Hatch	Hatfield	Hawkins
Hecht	Heflin	Heinz
Helms	Hollings	Humphrey
Johnston	Kassebaum	Kasten
Kennedy	Kerry	Lautenberg
Laxalt	Leahy	Levin
Long	Lugar	Mathias
Matsunaga	Mattingly	McClure
McConnell	Melcher	Metzenbaum
Mitchell	Moynihan	Murkowski
Nickles	Nunn	Packwood
Pell	Proxmire	Pryor
Quayle	Riegle	Rockefeller
Roth	Rudman	Sarbanes
Sasser	Simon	Simpson
Specter	Stennis	Stevens
Symms	Thurmond	Trible
Wallop	Warner	Weicker
Wilson	Zorinsky	

NAYS -- 4

Baucus	Grassley	Harkin
Pressler		

NOT VOTING -- 4

Domenici	East	Inouye
Stafford		

SUBJECT: LEGISLATIVE BODIES (90%); ENVIRONMENTAL DEPARTMENTS (90%); LEAD (89%); ENVIRONMENTAL LAW (79%); AGRICULTURE DEPARTMENTS (79%); GASOLINE (59%); FOOD SAFETY REGULATION (59%); FARMERS & RANCHERS (59%); AGRICULTURE (59%); AGRICULTURAL EQUIPMENT (59%); AGRICULTURAL COMMODITY REGULATION (59%); APPROPRIATIONS (59%); US FEDERAL GOVERNMENT (59%);