The budget cutting efforts we are experiencing are aimed at reducing the deficit.

The deficit is being driven by rising health care costs.

When we put money into WIC, we save money in Medicaid.

The equation is simple.

Those who have a genuine interest in deficit reduction can help achieve that goal by investing in WIC.

The WIC Program embraces the unborn; provides nurturing and care; is devoted to maternal health; helps ensure life at birth; and promotes the growth and development of millions of our children.

And, it saves us money.

WIC works. Let us keep it working.

INTRODUCTION OF THE CHECK CASHING ACT

(Mr. FIELDS of Louisiana asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. FIELDS of Louisiana. Mr. Speaker, today, I rise with great concern for our consumers. Today, I rise to introduce the Check Cashing Act of 1995.

The check cashing industry is growing by leaps and bounds, charging excessive rates in some instances, with no one to watch out for consumers. Mr. Speaker, this industry has more than doubled to a multibillion-dollar business in the past 8 years. In 1993 it was estimated that more than 150 million checks were cashed by check cashing outlets with a face value totaling more than $45 billion.

My bill only asks that States develop a system to license or register check cashing outlets and that financial institutions cash Government checks. Today, too many of our constituents are paying up to 20 percent of the face value of a check to get their money. This is absurd and uncalled for.

Mr. Speaker, we must work to give our communities every opportunity to improve themselves. With many banks denying consumers check cashing capability and check cashing outlets preying on them our Nation's financial services opportunities are bleak for many low- to moderate-income Americans.

Mr. Speaker, today a head of a household that earns a $300 pay check is subject to spending up to 20 percent, $60 of that check, just to gain access to the hard earned dollars. This $60 is taking away from food for children, rent for a roof over a families head, and transportation to and from work. This is unacceptable and must be stopped.

I hope my colleagues will join me in supporting this legislation and my efforts to provide equal opportunities to all communities.

ANNUAL REPORT OF DEPARTMENT OF ENERGY FOR 1992 AND 1993—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore (Mr. BURTON of Indiana} laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Commerce.

To the Congress of the United States:

In accordance with the requirements of section 657 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7267), I transmit herewith the 13th Annual Report of the Department of Energy, which covers the years 1992 and 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

REPORT ON NATIONAL SECURITY STRATEGY OF THE UNITED STATES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on National Security.

To the Congress of the United States:

As required by section 603 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, I am transmitting a report on the National Security Strategy of the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 28, 1995.*

ANNUAL REPORT OF DEPARTMENT OF TRANSPORTATION FOR FISCAL YEAR 1993—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Transportation and Infrastructure.

To the Congress of the United States:

In accordance with section 308 of Public Law 97–449 (49 U.S.C. 308(a)), I transmit herewith the Twenty-seventh Annual Report of the Department of Transportation, which covers fiscal year 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

REGULATORY REFORM AND RELIEF ACT

The SPEAKER pro tempore. Pursuant to House Resolution 100 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 926.

□ 1055

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes, with Mr. BARRETT of Nebraska in the chair.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 30 minutes, the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes, the gentlewoman from Kansas [Mrs. MEYERS] will be recognized for 15 minutes, and the gentleman from New York [Mr. LAFALCE] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have good news for our country here today, because we are going to be considering a bill that will go a long way when enacted to bring about job creation and wage enhancement.

Mr. Chairman, for too long, burdensome and complex rules coming out of Washington have strangled small business, have been a drag on free enterprise, have been a drag on job creation, have been a drag on wage creation, have been a drag on the economy. Today what we are about here today is a first step to slay that dragon, to bring about sanity in the rulemaking process of the national bureaucracy, of the Federal bureaucracy.

How do we go about accomplishing that? Well, a bold attempt was made in 1980 during the administration of President Jimmy Carter when there was passed a Regulatory Flexibility Act. That did bring about at least a sense of more involvement by the small business community in the rulemaking process that so adversely had affected it previously.

We are here to say today that even that bold attempt that started in 1980 has not fulfilled the promise that it was expected by the small business community to lift the burden of regulations from their shoulders so that they can venture out into new enterprises and create more jobs. Rather, the reverse took place. There was even more of a vivid flurry of regulations and burdens that came down on their shoulders.

Mr. Chairman, we here today in title I of this particular bill will deal directly with small business. We are targeting small business. We are going to be embracing small business to give them more input into what transpires in the rulemaking process. That in itself would be worth the whole effort of what we do here today, but we go farther. We do something that is so exquisite for the small businessperson, that we have a great, good feeling about it.

We are for the first time providing by law, if this bill is enacted, judicial review. That means that where the previous act, the one I just alluded to from the Jimmy Carter era, prohibited judicial review, we go the other way and overtly provide for judicial review.

What does this mean? It means that for the first time in a whole host of rulemaking processes across the Federal bureaucracy, when a rule is promulgated and it disaffects or adversely impacts against a small business entity or groups of entities, then there will be the possibility of challenging that rule and what it does to the small business community in court.

That is a major step. It is just an afterthought on the part of this Member? No. It is just a whim on the part of the small business community? No. It is an absolute necessity. It has been confirmed and reconfirmed in people who are advocating some kind of reform in this arena for a long period of time. Even Vice President GORE has come out in his interpretation of the reforms that are necessary for judicial review. That by itself again would justify passage of this bill and enactment of it into the law of the land.

□ 1100

But we go further. We also provide in title I, this is extremely important for the small business community, that the Small Business Administration advocate and chief counsel must receive notice of a proposed rule. What does that do? That allows him or her acting for the small business community, within this Small Business Administration, which is the key administrative bureau of small business, to have advanced notice of a rule and then bring into play all of the concerns and the worries that the small business community might have in the face of such a rule. That is an excellent advance that we are making by what is included in title I.

Then we go to title II. Title II would require for the first time for all business, not just small business, but for all business, a regulatory impact analysis that would accompany these very strident rules that have for too long been plaguing the business community.

What am I talking about here? Well, a rule has an impact, and when what we want to call a major rule has an adverse impact on the economy worth more than $50 million, then on that basis our bill calls for the issuance of a regulatory impact analysis to give advance notice to the business community, the very people who are going to have to be guided by this rule or are adversely impacted by this rule, an opportunity to come back and be able to challenge the findings of this analysis and thus have a full participation in the deliberations that take place in the promulgation of a rule, rather than to sit back and just take what is coming to them and then be helpless, possibly, in combating the rule that will have so blatantly impacted them adversely. So title II will afford the business community this extra forum that would be required.

But how did we accomplish this? What we did was not dream up criteria by which we ought to be defining this analysis that the rulemaking agency must apply, but rather we incorporated by new language, but nevertheless incorporated into our bill, in title II, seven strong criteria that have to be included in this analysis drawn from the Executive order that President Reagan during his time issued on this very same subject. So we are combining the history of the Jimmy Carter administration and regulatory flexibility with the Executive order of Ronald Reagan in the regulatory impact analysis area, and combining them to make a strong bill that would bring back a sense of accomplishment on the part of the small business community as they seek to open new markets and to expand their ability to create jobs and to lift wages as they become more successful.

These criteria will be discussed, I know, in different ways as we proceed with the debate, but I can safely tell my colleagues that it will be a great stride forward when we complete the business of the day.

Title III, which the gentleman from Rhode Island [Mr. REED], the ranking member on the minority, and I jointly responded to the concerns that were expressed during the hearings, that has taken on a different configuration from that which we first felt was necessary, but I am sure at the end of the day that the Members of the House will be satisfied with how we have approached title III and the segments of Executive responsibility that are contained therein.

In short, it is a good day for small business here today. Let us get on with helping them avoid the burden of undue and cumbersome regulations.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to begin by commending both the subcommittee chairman, the gentleman from Pennsylvania [Mr. GEKAS] and the ranking member, the gentleman from Rhode Island [Mr REED], for their diligence in improving legislation that started off in a pretty sorry state and has now reached the nearly acceptable level but still needs a little bit more work, and I would like to explain this for just a few minutes in beginning the general debate.

The language in the bill providing for a so-called regulatory Bill of Rights could have had a devastating impact on the Federal Government's ability to enforce the laws fairly and efficiently, and now we have revised language that I praise my colleagues on the Judiciary Committee for improving, which is included in title III, seeking employee guidelines which are more responsive to the needs of private parties, and represents a vast improvement. So I am here to praise them as well as to point out some areas in which we hope there will be improvements.

Similarly, I recognize that the gentleman from Pennsylvania has worked with us in a bipartisan fashion to improve and narrow the scope of title I of the bill relating to regulatory flexibility analysis, and I am not surprised at his cooperative spirit. We have worked for many many years together on the Judiciary and other committees. Unfortunately, title II of the legislation requiring agencies to complete complex new regulatory impact analyses continues to be problematic. We have got trouble in this area in title II, and I am hoping that it may be repaired on the floor here today.

As a result of a number of recent changes made by statute and Executive order, agency rulemakers must now consider nine separate analyses when issuing rules. That is a few too many, and while each of these additional required analyses is well intentioned and in isolation may be beneficial, collectively they have contributed to making the rulemaking process far more lengthy and complex.

In an effort to make the regulatory system responsive to the needs of businesses, title II of the bill would impose even further and more complex requirements on the regulatory process. And that is not what we are here to do. That is not the great day that all America and small business in particular have been waiting for.

I am concerned about title II's defining a major rule as a rule likely to result in an annual effect on the economy of $50 million or more. Every President since Gerald Ford has used the $100 million level for defining major rules, thereby preventing costly and needless analysis for rules such as the Interior Department's opening of hunting season or the Department of Veterans Affairs recognizing the gulf war syndrome.

I also believe that the judicial review under title II should be limited to challenges of a final rule or the agency's failure to perform the required analysis. The unrestricted judicial review in title II would result in endless litigation, as every element of an impact analysis could be challenged by literally countless numbers of people.

And finally, I believe that the legislation is deficient in failing to provide for greater sunshine in the regulatory process.

Later today I will offer an amendment which would require that communications between an agency and OMB and Government officials and private parties be recorded and made available to the public. This change would help provide for greater accountability and avoid the perception of secret, behind-the-scene dealings, which has plagued us in earlier years.

I am hopeful that the bill's language can continue to be refined along these lines in a cooperative fashion. If amendments along these lines are approved, we will make for a much better bill in H.R. 926 while making the regulatory process more responsive and more streamlined.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. BARTLETT].

Mr. BARTLETT of Maryland. Mr. Chairman, I rise in strong support of this legislation and the poster here is just one reason for that. These are the taxes and regulations that our restaurant people have to live with. Whenever we see a tragedy we frequently ask for a moment of silence. I think when Members see the tragedy of what this does to our small business people we need a long, long moment of silence.

This speaks for itself. I will not go over any of the details of this. Let me just note one instance of the inanity that occurs here. One of our restaurant people told us that OSHA came in and threatened them with fines because their workers were not using a protective glove when slicing carrots. The health people came in and threatened them with a fine if the workers did use the protective glove for slicing carrots because the protective glove could not be adequately sanitized in their view.

Clearly when we look at this long, long list of taxes and regulations, this represents a burden on our restaurant people that they just cannot bear.

I strongly support this bill. It starts us in the although modest application, it really halts our march in the wrong direction and starts us back in the right direction.

I advise, recommend, strong, strong support of this bill for this and many many other reasons.

Mr. REED. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to first thank the gentleman from Pennsylvania, Chairman GEKAS. We were able to work together in a cooperative and bipartisan process and although we have some principal disagreements, I believe the legislation has been made better because we were able to work together constructively and cooperatively, and at the end of today regardless of the outcome I think we can be very proud of this bipartisan process.

Both of us agree that steps need to be taken to make the regulatory process more sensitive to the needs of small businesses. Small businesses lack the staff and resources to track the daily comings and goings of the Federal Register. They are less likely to have their interest represented by trade associations and lobbyists and may have a more difficult time meeting the costs imposed by regulators. Costs that seem minuscule to General Motors are insurmountable to some small businesses throughout the United States.

Title I addresses this concern by strengthening the Regulatory Flexibility Act which direct agencies to consider the impact of their regulations on small entities and, where possible, make special considerations for small businesses.

I want to thank my colleagues, the gentleman from Missouri, IKE SKELTON, and the gentleman from Illinois, TOM EWING, for working so hard on this issue and for sharing their expertise with us when they testified before the subcommittee.

The core of title I is based on their bill, H.R. 830 from the last Congress.

Mr. SKELTON, as chairman of the Small Business Subcommittee on Exports Tourism and Special Problems, found that those agencies that complied with the Regulatory Impact Act had done so successfully. They established procedures that saved time, money, and litigation headaches.

Unfortunately, other agencies have been able to escape compliance and they have been able to do that because regulatory flexibility analysis did not include judicial review.

We are remedying that situation today and I join the gentleman from Missouri [Mr. SKELTON] and the gentleman from Illinois [Mr. EWING] in support of this section of the bill.

The regulatory flexibility analysis in an important weapon in our efforts to reduce the regulatory burden on small businesses and we need to ensure that it is implemented governmentwide.

I also support title III of the bill. This title would create a code of conduct for regulators in their dealings with the American people and it emanated from a proposal made originally by the gentleman from Texas [Mr. DELAY]. It has been thoroughly reviewed and we have reached I think a very sensible position in the bill in title III's provisions which I support with enthusiasm.

However, I do have serious concerns about title II, especially now that we have completed action on H.R. 1022. Initially, both H.R. 1022 and H.R. 926 were part of the same contract bill, H.R. 9. Unfortunately, their provisions overlap and conflict. I think it is a mistake to pass both bills in the hopes that the Senate will sort out these conflicts and inconsistencies, a step that undermines the ability of Members of this House to act on these issues sensibly with some type of overall cohesive purpose.

□ 1115

The rulemaking process has been criticized as overly prescriptive, expensive and overburdened with useless paperwork. Title II exacerbates these problems by creating a costly, time consuming process that does nothing to streamline Government or roll back redtape. The New York Times just published a diagram of the rulemaking steps required by this bill, entitled ''A Rule Making Maze.'' It resembled a Rube Goldberg contraption in its inticracy and complexity.

My colleague from Florida, JOHN MICA, just sent around a ''Dear Colleague'' containing an excerpt from Philip Howard's book, ''The Death of Common Sense.'' I wanted to quote from it, because I think it makes my point:

> Important, often urgent projects get held up by procedural concerns. Potentially important breakthroughs in medicine wait for years at the Food and Drug Administration. Even obviously necessary safety projects can't break through the thick wall of process. (Here he cites New York's difficulty in extending a runway at La Guardia airport that is too short for safe landings) . . . The irony he points out of our obsession with process is that it has not prevented sharp operators from exploiting the governments contracting system, as the weapons procurement scandals of the 1980's showed us. Its dense procedural thicket is a perfect hiding place for those who want to cheat * * *''.

Title II is exactly what he is talking about. It extends the time line for regulations by about 2 years by establishing a series of procedural hurdles, sweeps administrative rules, such as the regulations that open duck hunting season, into costly regulatory impact analysis, and enables sharp business owners to stall regulatory changes that benefit themselves by letter writing campaigns and filing multiple lawsuits. All of these procedures will apply to deregulation, as well as regulation. They will apply to new regulations that aim to help small business become more competitive. I do not believe that 2 years from now Members will want to read in their local paper that we forced the Department of the Interior to spend several hundred thousand dollars to perform a regulatory impact analysis, followed by the costs of defending lawsuits by animal rights activists, when they are simply trying to open duck hunting season, or to replay this scenario when we try to prevent fisheries from being overfished, or to compensate veterans for gulf war syndrome.

We will have amendments today that address some of the flaws in title II, and I hope Members from both sides of the aisle will listen to the arguments and vote to improve this legislation.

I think we can make progress to create, I hope, a bill that we can all support. But we have principal disagreements which we will debate vigorously on the floor today.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. EWING].

Mr. EWING. Mr. Chairman, my thanks to Chairman GEKAS for the time he has given us and my thanks to the chairman and to Chairman JAN MEYERS of the Small Business Committee for all of the support and help they have given us in developing this legislation, to Congressman IKE SKELTON and Congressman REED on the other side of the aisle for their support.

I think probably most of us understand what the problem is, but I think these figures are very meaningful. Federal statutes and rules now run to 100 million words. If we were to read all of these it would take 8 years. Of course, no one is going to do that.

Regulatory costs in our economy are now at $600 billion and climbing; that is $6,000 per household.

Small business and small units of government have been at the mercy of

the Federal regulators for many years. And probably the most often voiced complaint that I receive when I talk to my constituents is about this overregulation.

In 1980 this Congress passed a bill, the Regulatory Flexibility Act, in an effort to rein in the bureaucracy and the regulations. But it had no teeth in it. It specifically prevented judicial review. There has been strong and persistent bureaucratic opposition to meaningful reform of the Regulatory Flexibility Act. Yet three Presidents of both parties have ordered the bureaucracy to follow the Regulatory Flexibility Act but to no avail.

Last Congress, in the 103d Congress, the gentleman from Missouri [Mr. SKELTON] and I put together a coalition of small business groups that support legislation to improve the Regulatory Flexibility Act, to add judicial review. This was backed by 254 Members of that Congress on both sides of the aisle. But unfortunately the leadership of that Congress, not the Members, refused to call that bill, and it became, because it died at the end of that Congress, a part of our Contract With America. I believe that turning a deaf ear to the demands of responsible, reasonable citizens in this country to revise our overly bureaucratic, overblown, excessive, intrusive, and destructive regulatory system was a major factor not only in the result of the November 8 election but to the dissatisfaction which the American people have expressed with their Federal Government.

I strongly support the legislation before us, and particularly title I which does contain the improvements in the Regulatory Flexibility Act to grant judicial review. In addition, agencies must circulate proposed rules to the chief counsel for the advocacy of Small Business Administration, giving that agency 30 days to comment on how these would affect small entities.

And finally, the bill includes a sense of Congress that the chief counsel for advocacy of SBA should be able to file amicus briefs in actions in the Federal court.

Mr. Chairman, I strongly support this legislation and am glad to have the opportunity to speak in its favor today.

Mr. REED. Mr. Chairman, I yield 5½ minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman from Rhode Island [Mr. REED] for yielding time to me.

I want to start by congratulating the gentleman from Rhode Island [Mr. REED] for taking what was a terrible bill and working with the other side to improve it into what is now a bad bill, and I would be the first to concede that it is an improved bill, but it is still bad.

Let me express a series of concerns that I have about this bill. First of all, yesterday we passed a bill which requires a cost-benefit assessment of any new regulations that the Federal Government puts in place. So I am wondering what is the purpose of this new process that we are putting here, first of all?

Second, this bill goes several steps beyond that by giving small businesses an implied veto over rules and regulations and standing in court to contest such regulations if the small business is adversely affected, whatever that means.

Third, this bill gives the Small Business Administration Chief Counsel for Advocacy, that is probably somebody the American people have never heard of, the obligation to review and comment and get involved in litigation with respect to rules and regulations. It takes nobody out of the process. Understand, now, we have the department, the agency of government, we have the CBO, we have the Justice Department, now we have the SBA involved in the process. We keep adding on to the bureaucracy, and nobody is taken out of the process.

Now, let me talk to you about the problems that I have with the bill. No. 1, it assumes that all rules that are promulgated by government are bad. You start with that assumption. Take this retaurant example that the previous speaker talked about. When I go into a restaurant and I look up and I see an A grade rating, my friends, that gives me a great deal of comfort as a member of the public. Under this rule, if we require some A grade rating, B grade rating, whatever it is, although I think that is done at the State level, if under this bill we did it at the Federal level, we would then adversely affect some restaurants. They would then end up in litigation in the courts, tying up the court system.

No. 2, this bill gives small businesses unprecedented standing. The people in this country have had standing in the court. Now are are giving small businesses some kind of standing out here where they can come in, create more litigation, and I submit to the American people that that sends a terrible message that business now has some standing that even ordinary people cannot even get to. This is another step away from empowerment of the people and creates another bureaucracy which is, in effect, welfare for businesses, do away with welfare for the people, give welfare to the businesses.

Third, this bill creates an entirely new level of bureaucracy in the process.

Fourth, this bill will result in protracted and extended and unprecdented litigation. At the same time we are moving toward tort reform which takes away rights from the people to have access to the courts, we are moving in this direction all of a sudden to give more access to the courts, more standing to businesses.

Fifth, this bill will not allow us to get to who is actually having influence in the process. We offered an amendment, the gentleman from Michigan [Mr. CONYERS] did, in the committee which would have required agencies to tell who is commenting on these regulations, who is actually getting involved, who is exerting influence on the regulators to draw these regulations. You would think that my colleagues, if they are concerned about protracted regulation, would have been anxious to know who is involved in the process, but no such luck.

Let me just say that the final concern I have about this bill is that nobody knows what it is going to cost. We passed a bill yesterday to deal with regulations that was estimated to cost $250 million. Who has any idea what this monstrosity is going to cost the American people? And here we are, my colleagues, saying we are trying to cut back on government, and we are cutting back on government by increasing, not reducing, bureaucracy and costs.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. FRANKS].

Mr. FRANKS of New Jersey. Mr. Chairman, I first want to congratulate Chairman GEKAS for doing an extraordinary job with this bill. What he is going to be doing is providing meaningful and long overdue relief, particularly to small businesses throughout America who are being crushed by the weight of regulation.

We are suffocating job growth. We are diminishing economic opportunity oftentimes through well-meaning but badly constructed rules and regulations.

Mr. Chairman, a lot of the suggestions embodied in title II of this bill do not come from any think tank in Washington, DC, or any so-called experts. They came as a result of the efforts of the manufacturing task force of this House formed under the auspices of the Northeast-Midwest Congressional Coalition 2 years ago and cochaired by the gentleman from Massachusetts [Mr. MEEHAN] and myself. We met with literally scores of small manufacturers throughout our 18-State region and they made recommendations to us in terms of specific items that they wanted regulators to consider before finally issuing their regulation.

□ 1130

Mr. Chairman, because of his extraordinary efforts on behalf of this bill, I would like to yield the remainder of my time to the cochairman of the congressional manufacturing task force, the gentleman from Massachusetts [Mr. MEEHAN].

Mr. MEEHAN. I thank the gentleman for yielding. Mr. Chairman, I rise today in support of the regulatory impact analysis provisions in H.R. 926. In 1993, Representative BOB FRANKS and I established the first ever congressional manufacturing task force. We traveled around the country to hold hearings

and spoke to small and mid-sized companies to find out what they needed to maintain competitiveness.

Each time we held a hearing, each time we met with small businesses, we heard the same thing. Overlapping, burdensome regulations are killing manufacturers ability to stay competitive and have created the perception of Government hostile to business.

Last year, the Federal Register issued over 69,000 pages of new regulations—the third highest total ever. Congress must act to change this. By requiring regulators to assess the impact of new regulations, we will streamline—not eliminate—regulations so they are more effective. The goal is to cause regulators and regulated parties to have full knowledge of the likely impact of a regulatory action before it is made final.

Mr. REED. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. I thank the gentleman for yielding this time to me.

You know, as a member of the committee, I enjoyed going through this bill, and I think many of the goals are worthy ones.

One concern I have, however, is that I believe we have failed to account for the immutable law of unintended consequences. I believe it is our job to make sure that, when we act legislatively, we know what the outcome will be and we do not get blind-sided by an outcome that we did not intend or expect.

One of the issues I intend to raise by way of an amendment later today has to do with allowing for emergency action and defining what that might be.

This was an amendment offered in the committee, withdrawn with the pledge that we would work through and try to deal with the issue. Unfortunately, given the press of time and our agenda, that has not yet occurred.

I am concerned we do not want to preclude, for example, the release of useful drugs, a cure for cancer, because of the regulatory scheme provided in this bill.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from South Carolina [Mr. INGLIS], a member of the subcommittee.

Mr. INGLIS of South Carolina. I thank the chairman of the subcommittee, the gentleman from Pennsylvania [Mr. GEKAS], for yielding this time to me.

Mr. Chairman, I rise in strong support of this bill. I believe what this is all about is making it more difficult for Washington to regulate the activities out there in America. And that is a good thing, because what has built up in this country is a mindset based on taxation, regulation, and litigation. We are going to deal with the litigation portion next week, with legal reform items; we are going to deal with the taxation part of that trilogy a little after that. This week we are dealing with the regulatory part of that terrible trilogy so weighing down this country.

I believe this is a good step toward reining in some of those regulators, to making them have some justification for their additional regulations. That certainly will make sense out there in America where businesses, particularly small businesses, are collapsing under the weight of this tremendous pressure from the regulators. So I am very excited to support this bill. I commend the chairman of our subcommittee for doing an excellent job in bringing the bill to us.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. FLANAGAN], a member of the subcommittee, who has played an active part in the development of this legislation.

Mr. FLANAGAN. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of H.R. 926, the Regulatory Reform and Relief Act, sponsored by the gentleman from Pennsylvania [Mr. GEKAS].

H.R. 926, which is the product of hard work and consensus by Mr. GEKAS and members of the Judiciary Committee, is in my opinion one of the most important features of the Republicans' Contract With America. It tackles head-on many of the problems that have been caused by the Congress and the Federal bureaucracy during the past 30–40 years, and I urge all my colleagues to vote in favor of this legislation.

Mr. Chairman, American taxpayers, small business owners, farmers, ranchers, and regional government officials are suffering under the weight of high taxes and excessive and intrusive government regulations. H.R. 926 is a step towards reversing this trend by rolling back the tide of ill-conceived regulations, and making bureaucrats more accountable for the burdens they impose on both the wage payer and the wage earner.

Under H.R. 926, Federal agencies will be required to perform regulatory impact analyses whenever a major rule—that is, a rule which has an effect on the economy of $50 million or more—is promulgated. This language will go far in reducing the burdens placed on all entrepreneurs, especially small business owners whose companies employ two-thirds of the American work force and fuel the Nation's economy. Furthermore, with the enactment of this bill, business people and their employees will be a step closer in having a Government that acts more like their friend, and not as their worst enemy.

Mr. Chairman, before I yield back my time, I would like to take a moment to express my sincere appreciation to Mr. GEKAS and his staff. Since the start of the 104th Congress, Mr. GEKAS has bent over backward to accommodate those Members who have had reasonable suggestions for perfecting this bill. Whether Republican or Democrat, committee chairman or lowly freshman Member, Mr. GEKAS and his staff worked in a congenial and bipartisan fashion unequal to anything else I have seen so far in this body.

Again, Mr. Chairman, I urge all my colleagues to vote in favor of H.R. 926.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. I thank the gentleman from Rhode Island for yielding this time to me.

Mr. Chairman, I would like to elaborate a little bit on some of the things that the gentleman from North Carolina [Mr. WATT] has alluded to in his remarks.

You know, when we take the bill that we just passed last night and add to it to the bill that we have today, we have a total cost to the taxpayers of $400 million. This means, to me, according to CBO estimates, that you are going to have to add that many more work hours in the Federal bureaucracy in order to do the risk assessment, the regulatory impact analysis, plus the other few things that are thrown in.

Where do all these bureaucrats come from? They do not come from the sky, they do not grow on trees, they are hard-working American taxpayers, folks. They work hard just like everybody else out there, whether you are a truck driver, a lawyer, a doctor, or anybody else. They are trying to do their job.

But what is really going to happen? Do you really believe, is there anybody in this House, anyone from the Speaker on down, from the gentleman from Pennsylvania [Mr. GEKAS] or the gentleman from Illinois [Mr. FLANAGAN], or anybody, who can tell me that this Congress is going to appropriate the additional funds necessary to the Small Business Administration, to EPA, to the other of our Federal agencies, the Food and Drug Administration and all the rest of them, in order to perform the tasks they are going to be required to fulfill under this bill and the bill we passed just yesterday? No. It is not going to happen.

The money is not going to be there. The additional bureaucrats are not going to be added. As a result, they are not going to be able to do the work that is imposed on them. Then what will the other party say? The other party will say they are not doing their job, ''We passed the legislation, and they are not doing their job.''

Well, folks, they cannot do their job, they cannot do it unless you give them the money. And you are not going to give them the money because you are already taking away from the kids, the veterans, the elderly. All those programs are being cut in a rescission bill in order to give it to the wealthy in income tax cuts. That is where you are giving the money. You are not going to help them be able to fulfill this legislation.

You tell me in what bill when you are going to appropriate the additional money that is required under the CBO

estimate in this bill. You are not going to do it.

I would like to have the gentleman from Louisiana [Mr. LIVINGSTON], the chairman of the Committee on Appropriations, come up here and tell us they are going to provide the additional funds, because I do not think it is going to be done.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Chairman, I thank the gentleman from Rhode Island for yielding this time to me.

Mr. Chairman, this is the culmination of a great deal of effort that I have been personally working on for more than a decade.

At the outset, let me thank and compliment my colleague, the gentleman from Illinois, Mr. EWING, for his efforts, for together we have cosponsored legislation regarding the original Regulatory Flexibility Act for some time. I also thank the gentleman from Pennsylvania, Mr. GEKAS, the ranking subcommittee member, the gentleman from Rhode Island, Mr. REED, the gentlewoman from Kansas, Chairman MEYERS, and the ranking member, the gentleman from New York, Mr. LAFALCE.

I applaud their efforts and again thank TOM EWING for the opportunity of getting this hearing.

The Regulatory Reform and Relief Act, which had my support and on which I worked, was signed into law back in 1980.

Later I was chairman of the House Small Business Subcommittee, and I held hearings on this in the mid-1980's concerning how the Regulatory Flexibility Act was working. We got mixed reviews. As chairman of that, I found that most agencies were making an honest, diligent effort to comply with the law. Others came before us and testified and said, ''It does not apply to us,'' or they were giving it, as we say back home, a lick and a promise.

We put out a report that found that those complying with the law found that they were actually writing better regulations when they considered the impact on small businesses.

Also, they found and concluded that it saves these agencies time, saves them money when good regulations are written from the beginning rather than waiting to have them questioned by small businesses.

We need to make adjustments in the law, to improve it, to give it teeth. That is why the portion that Mr. EWING and I have been working on throughout the last few years deals with judicial review and primarily states that the agencies should understand that they can actually be challenged if they write regulations that are more than cursory—take more than cursory consideration of the impact on small businesses.

It is unlikely that many cases would ever come to court because the threat, the sword of Damocles that would be hanging over them. I think it would be a very, very important step, and that is why I fully support the efforts for judicial review and a change in the law as set forth in this proposal.

Mr. GEKAS. Mr. Chairman, before I recognize our next speaker, I want to personally commend the gentleman from Missouri [Mr. SKELTON] for his decade of interest in this vital issue and to point out to the Members that his testimony and his involvement has played an important role in bringing this matter to the full House today.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. BARR] who has also played a significant role in the development of the issues that have now been brought to the floor.

Mr. BARR. I thank the gentleman for yielding this time to me.

I thank the gentleman from Pennsylvania [Mr. GEKAS] for the fine work that he has provided, not only to those who have the honor of serving on his subcommittee and addressing the issues of regulatory reform but also to the people of this country who labor in our small businesses all across this great land who have been crying out for this relief for so long but who for so long have been denied the relief they need to manage their businesses in a way that meets the needs of their consumers, responsibly meets the needs of their consumers, meets the needs of their shareholders, meets the needs of citizens all across this land who benefit from the products and services that our businesses provide.

□ 1145

Those consumers and those citizens have for too long labored and have seen higher prices for products, products not being able to get on the market, and higher prices for the provision of necessary Government services, all of which can be directly traced to burdensome, many times unnecessary, and frequently ill-thought-out Federal regulations.

Under the leadership of the chairman of the Subcommittee on Commercial and Administrative Law, the gentleman from Pennsylvania [Mr. GEKAS], we have taken one step, only one step, but an important step, toward regulatory reform and regulatory flexibility.

It has been a very responsible first step, Mr. Chairman. We listened very carefully to the evidence and the testimony that was presented to us in subcommittee hearings. In some instances we took the material that was received and incorporated that into amendments to the bill that we now have before us. In other instances, based on information presented by some folks from the administration, we have deferred action, recommended deferring action in some important areas.

But I think this administration and the American people and those on the other side of the aisle who continue to defend the status quo must know that even as important as H.R. 926 is that we will be considering today, there is further work that must be done to ensure that our Federal regulators respect the rights of citizens and businesses, and that they extend them relief, and that they be stopped from running roughshod over our businesses and our citizens.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

(Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Chairman, I am one Democrat who believes regulations have gone too far. They kill American jobs. It has gotten to the point that it is so bad that if a dog urinates on a side lot, it may be declared a wetlands.

I recommended for years that Congress should ship the EPA to Japan, Taiwan, Korea, and China, and then we would not have a trade problem because the EPA would screw them up too.

But in any event, I think the Democrats should have done this in the past. I am going to support the bill. I have two amendments, and people are saying they may not necessarily apply to in fact the Administrative Procedures Act. But in my research I have found that there are no safeguards in the event that situation should develop.

My two amendments would do two things, and I would like the majority party here to pay attention to this.

This bill would exempt certain emergencies, certain deadlines imposed by statute, and certain monetary activities that are listed in the bill. The Traficant amendment just say two things: For any future action or any ambiguous action for a trade program in America that is less than aggressive, who might at some point creatively try to find a loophole to continue not to in fact enforce and provide sanctions where necessary, the Traficant amendment would first say that no rule or regulation that is in existence that can be used for trade sanctions to combat illegal trade, that we would exempt that and put it in the exemption part of the bill. The other one deals with the possibility in the future of the collection of taxes from foreign subsidiaries, people who take our money out of or country and run, and there could be absolutely no possibility by any stretch of the imagination where creative minds could be used to apply this bill at some point down the line. And it would exempt from that the IRS collection actions on these foreign subsidiaries who many times come and take our jobs, take the profits, and run away with them.

Let me say this, Mr. Chairman: These are safeguard amendments. They are the types of amendments we should be doing. We should be preventing the opportunity for abuse, and that is one of the reasons why we are in fact eliminating regulations.

I recommend this to the handlers of this bill. This makes the bill a better bill, and I ask for the support of Members on these amendments.

Let me say one other thing: The trade representative's office which is concerned about this does agree that sanctions are not the result of rulemaking. But one thing we can be sure of, there is no reason the Congress of the United States should allow any loophole where illegal trade sanctions can at some point have their backs turned by our trade people. We have seen too much of that.

With that, Mr. Chairman, I thank the gentleman for the time, and I would appreciate having my amendments be approved and accepted without prejudice.

I would be glad to talk to the majority staff further about these issues.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. CHABOT], who is a member of the subcommittee and who participated in the hearings and the entire development of this legislation.

Mr. CHABOT. Mr. Chairman, I rise in strong support of this bill.

I find it incredible that some on the other side of the aisle are so adamant in defending and preserving the massive Federal bureaucracy that has grown over the years. Maybe it is understandable that they defend this huge bureaucracy since they created it. The challenge now is to reduce and simplify a government that has grown completely out of control.

H.R. 926 aims to curb the ruinous practices of Federal agencies that unduly restrain the creative energies of small business. Small business is the backbone of America's economy. America's small businesses have had enough. They desperately need, in fact they are demanding immediately, that we relieve the overbearing regulatory agencies that have grown up.

Opponents of H.R. 926 incorrectly assume that hardworking Americans and small businesses should bear the destructive brunt of the cost of this regulatory process. Nobody I know of in Cincinnati, especially small business owners, shares that opinion.

If we want the regulatory process to be a burden, let us not make it a burden on small business; let us make it a burden on the Federal Government. Let us strengthen regulatory flexibility by giving aggrieved small businesses the ability to seek judicial review. Let us enlarge the public's role in the rulemaking process. Let us force regulatory agencies to conduct regulatory impact analyses. Let us protect Americans who report abusive practices of regulatory agencies from catastrophic reprisals.

What does all this mean to the average American citizen? It means that when they go to the store, products will not be so expensive; they will be more in the reach of average Americans. It means jobs for American citizens, because so many of the jobs that are created in this country are created by small business. And most importantly, it means a better standard of living for the American people.

Mr. REED. Mr. Chairman, may I inquire as to how much time I have remaining?

The CHAIRMAN. The gentleman from Rhode Island [Mr. REED] has 3½ minutes remaining.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I thank my colleague for yielding this time to me.

Mr. Chairman, I rise in support of this legislation and would like to briefly address title I of the bill that deals with the Regulatory Flexibility Act. I and a number of other Members on both sides of the aisle were troubled with the original language in the Contract With America with respect to the Regulatory Flexibility Act.

That original language would have applied the provisions of the Regulatory Flexibility Act to big business as well as the country's small businesses. We felt that the Regulatory Flexibility Act was supposed to respond to the kinds of problems the majority has been talking about. A lot of our small businesses do go through bureaucratic water torture when they run up against some of these regulations, and the Regulatory Flexibility Act is supposed to be a fast-track process for adjusting regulation to the needs of small entrepreneurs. But the Contract With America would have changed all that. We want what amounts to an HOV lane for entrepreneurs so that the Federal Government responds to their concerns.

So fortunately, on a bipartisan basis, working with the chairman of the committee, the gentlewoman from Kansas [Mrs. MEYERS], the gentleman from New York [Mr. LAFALCE], the gentleman from Virginia [Mr. SISISKY], the gentleman from Missouri [Mr. SKELTON], and the gentleman from Illinois [Mr. POSHARD], there has now been a bipartisan agreement worked out with all the relevant committees that regulatory flexibility provisions will apply just to small business. In my view, this is the way to ensure that the Federal bureaucracy is sensitive to America's entrepreneurs. That is what is in the public interest.

Mr. GEKAS. Mr. Chairman, may I ask again, at the risk of boring the Chair, how much time we have left?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] has 6 minutes remaining.

Mr. GEKAS. Mr. Chairman, that gives me ample time to bring to the floor the giant legislator, the gentleman from Illinois [Mr. HYDE]. I yield 5 minutes to the gentleman from Illinois, who is the chairman of the full committee and the leader of the effort to bring this legislation to the floor.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, the fundamental goal of the Regulatory Reform and Relief Act (H.R. 926) is to reduce the inevitable growth of costly regulations imposed upon our society. The bill achieves this by ensuring enforcement of current law to protect small business, the Regulatory Flexibility Act—and by encouraging greater public participation in our rulemaking process through the imposition of impact analysis on agency rulemaking. It is our hope that through the achievement of this goal, a less inhibited atmosphere will exist, which will allow U.S. commerce to thrive.

The amendments before us to the Regulatory Flexibility Act are important because they would provide small businesses with a means to effectively enforce the goals/purposes of that law.

The Regulatory Flexibility Act was first enacted in 1980. Under its terms, Federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, et cetera—whenever they engage in a rulemaking subject to the Administrative Procedure Act.

Under the law, each time an agency publishes a proposed rule in the Federal Register, it must prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not ''have a significant economic impact on a substantial number of small entities.''

From the beginning, the problem with this statute has been the lack of availability of judicial review as a mechanism to enforce the purposes of the law.

Right now, if agencies do not do a regulatory flexibility analysis or fail to follow the other procedures set down in the act, there is no sanction.

For years, small business groups have sought judicial review in the Regulatory Flexibility Act as a means of ''keeping the regulatory agencies honest.'' Our colleague and friend from Illinois, TOM EWING, has been a leader in this effort.

H.R. 926 would amend the Regulatory Flexibility Act, specifically providing for judicial review. In instances where an agency should have undertaken a regulatory flexibility analysis and did not, or where the agency needs to take corrective action with respect to a flexibility analysis that was prepared, small entities are authorized to seek judicial review within 180 days after promulgation. A court can then give an agency 90 days to take corrective action. If the agency fails to take the necessary corrective action within 90 days, the court is given the authority to stay the rule and grant such other relief as it deems appropriate.

H.R. 926 is aimed at humanizing the Federal regulatory process. This is an

important aspect of the Contract With America—to provide affected parties—such as small businesses, small local governments, farmers and others—with a mechanism to ensure that the impersonal Washington bureaucracy takes into consideration the impact that a new rule or regulation can have on their businesses and their everyday lives.

Title Z of H.R. 926 deals with regulatory impact analyses. This language would require Federal agencies to complete a regulatory impact analysis when drafting a major rule.

Major rule is defined under the legislation as a rule likely to result in an annual effect on the economy of $50 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse impacts on competition, employment, investment, productivity, or the ability of U.S.-based enterprises to compete domestically or internationally.

The bill lists a number of specific criteria which Federal agencies have to consider as a part of their regulatory impact analysis. These include a requirement that the agency describe the necessity and legal authority for the rule; a description of the potential costs of the rule; an analysis of alternative approaches, that could substantially achieve the same regulatory goal; a statement that the rule does not conflict with any other rule or regulation; a statement as to whether or not the rule would require onsight inspections—or whether or not the rule would require the maintenance of any records subject to inspection—and an estimate of the costs to the agency for the implementation and enforcement of the rule.

The bill encourages public hearings on important regulations.

The bill makes it clear that the Director of the Office of Management and Budget will oversee the Federal regulatory process in an effort to ensure consistency and broad based fairness.

It is important to note that the provisions of this section would not apply to major rules if it would conflict in any way with deadlines imposed by statute or by court order.

The bill also requires that the Director of OMB submit a report to Congress no later than 24 months after the date of enactment of this act containing an analysis of Federal rulemaking procedures and an analysis of the impact of the regulatory process on the American public.

Mr. Chairman, regulatory flexibility was a good idea when it was enacted in 1980. Unfortunately, we haven't seen its potential because our courts could not enforce it. Regulatory impact analysis by Federal agencies was a good idea in 1981 when President Reagan required it through Executive order. Unfortunately, Executive orders are not permanent and those impact analyses are no longer enforced. This legislation will ensure enforcement of both of these tools. This legislation is long overdue.

□ 1200

Mr. REED. Mr. Chairman, I yield myself the balance of my time.

This has been the process of working together cooperatively over the last several weeks to develop legislation that will meet the needs of small businesses throughout the United States and meet the needs of taxpayers throughout the United States, to develop a regulatory system which is streamlined, efficient and provides for the protection of the public good. And we have reached, I think, major accommodations in terms of language.

Today I hope we can reach additional accommodations in terms of providing a system that will protect the public good and save money.

I am encouraged by the process. I hope in the next few hours we can make changes that will make this legislation even better for the benefit of all of our citizens.

Again, I thank and commend the gentleman from Pennsylvania for his help and effort during this process.

Mr. GEKAS. Mr. Chairman, I yield myself the balance of my time.

I thank the gentleman from Rhode Island for all his cooperative efforts in the past. I just wanted to end our portion of general debate by pointing out to the Members on the other side that as they consider their amendments and as they consider their opposition to certain portions of the bill as it now is drafted, to think of the people in their district, the working people.

They, by most chances, work for a small business. They are the people who are going to be helped most by this piece of legislation. We are not against rules. We are not against regulation. We simply want to make sure that the small business which does the hiring of your constituents, which keeps wage earners on the payroll, that those small businesses will not have to go out of business or fire people or lay off people because of the burdensome regulations that sweep down on them from Washington.

That is the purpose of this bill. Think of your working people, your constituents, and then you will think twice about trying to defend against this bill or offering amendments which will weaken it.

We want to make our working people work for a small business that will have the greatest opportunity to expand, to hire more people, to enhance wages, to increase prosperity for the community in which they operate. That is the purpose of this bill.

When you start attacking business, you are attacking the opportunity for your working people, your constituents to keep on trucking with their jobs.

The CHAIRMAN. All time for the Committee on the Judiciary has expired.

The gentlewoman from Kansas [Mrs. MEYERS], the chairman of the Committee on Small Business, is recognized for 15 minutes.

Mrs. MEYERS of Kansas. Mr. Chairman, I rise today in support of H.R. 926.

Mr. Chairman, I yield 1 minute to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Mr. Chairman, when President Jimmy Carter signed the original Regulatory Flexibility Act back in 1980, it was applauded as a new, strategic weapon in the war against excessive regulation.

American businesses soon discovered that Reg Flex was less a strategic weapon and more a water pistol. Sure, you could aim it at excessive regulations and pull the trigger, but nothing much happened.

Reg Flex lacked the striking power to challenge the bureaucrats. It failed even to drown out their laughter as they ignored the law.

As a weapon for curbing regulatory abuses, Reg Flex was a dud.

Today, we are giving punch to Reg Flex. By allowing America's businesses to challenge abusive regulations in the courts, we are finally forcing Federal bureaucrats to comply with the law. If they want to issue a new major rule, they first have to account for its impact on American business.

Mr. Chairman, the Regulatory Reform and Relief Act is a major step forward in the battle for control of America's businesses. It's the strategic weapon we've been promising America's busineses all along, and I look forward to its passage.

The CHAIRMAN. The gentleman from New York [Mr. LAFALCE] is recognized for 15 minutes.

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the legislation before us, H.R. 926, the Regulatory Reform and Relief Act, includes in title I amendments to the Regulatory Flexibility Act, legislation of longstanding and great importance to the small business community, and an issue which has had broad bipartisan support in this and previous Congresses.

Since 1980, when it was signed into law, the Reg Flex Act, as it is know, has been a key tool in reducing the regulatory burden on small businesses. The Reg Flex Act requires that Federal agencies perform a good faith analysis of the compliance requirements new regulations may impose on small enterprise and to minimize the impact. The theory behind the Reg Flex Act is that the burden of Federal regulatory requirements fall disproportionately heavy on small entities, which have less opportunity to spread the costs of regulatory compliance.

As the former chairman of the Committee on Small Business and now its ranking minority member, I know that some of the changes to the Reg Flex Act that we will be voting on have been sought by small business advocates, both in and out of Congress, for some

time. Indeed, Committee on Small Business chairman, the gentlewoman from Kansas, JAN MEYERS, and I were leading supporters and cosponsors of legislative efforts in the last Congress to strengthen the original act.

The most frequently cited Reg Flex revision sought by small businesses is before us today in H.R. 926; namely to allow small business owners to pursue a course of judicial review to force Federal agencies to comply with the Regulatory Flexibility Act and, thereby, put real enforcement teeth into the act.

H.R. 926 also contains two other provisions amending the Reg Flex Act, both involving the chief counsel for advocacy of the Small Business Administration, the individual charged with monitoring compliance with the act and reporting his or her findings to the president and the Congress annually.

The first provision requires that proposed rules be sent to the chief counsel for advocacy at least 30 days before the publication of a general notice of proposed rulemaking in order to give the chief counsel time to advice the rule-writing agency on the effect of the proposed rule on small agencies.

I caution that given the limited resources of the chief's counsel's office, this admirable provision will prove quite difficult to implement both intelligently and effectively.

The other section concerning the chief counsel for advocacy is language noting that it is the sense of the Congress that the chief counsel should be permitted to as amicus curiae in any action or case brought in court for the purpose of reviewing a rule. This is a restatement of the Congress' intent that the chief counsel has and should feel free to exercise the right to intervene in those instances where it might be deemed appropriate in the rulemaking process in behalf of small businesses.

I am agreeable to the Reg Flex provisions in H.R. 926. Generally, they are balanced and constructive and should make for a stronger and more effective act.

Mr. Chairman, I reserve the balance of my time.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in support of H.R. 926, the Regulatory Reform and Relief Act and would like to focus my remarks on title I which provides and clarifies procedures for judicial review of agency compliance with the Reg Flex Act.

The Regulatory Flexibility Act became law in 1980. It was the result of efforts of many small businesses throughout this country. I might say, Mr. Chairman, that this has been a really bipartisan effort throughout. In fact, when this issue was before the House last year, it passed by 380 to 36. It had been amended in the Senate and it was before the House on a motion to instruct, and it passed by an enormous count.

The issues of regulatory relief and regulatory flexibility for small entities were a dominant theme in many hearings before the House Committee on Small Business and other committees in the late 1970's. However, moreover, the issue of more flexible regulations for small business was a top priority at the 1980 White House Conference on Small Business and at the State conferences which led up to that national conference.

Enactment of the original Reg Flex Act was soundly based on two premises: That Federal agencies often do not recognize the impact that their rules have on small businesses and, the second one, that small businesses are disproportionately disadvantaged by Federal regulations.

This is because they do not have the economy of scale and because large businesses may have an office manager or an accountant of an attorney right on their staff, whereas the work of understanding the regulations and filling out the paperwork are done by the small businessman or woman himself or herself.

The Reg Flex Act was enacted to obtain Federal agency recognition of these effects and consequently to reduce them.

The intention of the act was to have agencies approach the entities they regulate with an eye to their size and take this into account in drafting rules, rather than approaching rulemaking with a one size fits all attitude.

When the Reg Flex Act is properly complied with, the primary goals of the Administrative Procedures Act should also be satisfied, because the use of regulatory flexibility should cause agencies to write better rules. Unfortunately, that is the problem. Many agencies have failed to comply with the letter and the spirit of the Reg Flex Act.

At numerous hearings before the House Committee on Small Business, the issue of lackluster compliance with the Reg Flex Act by many agencies has been brought up time and again because there was no enforcement mechanism. Because the original Regulatory Flexibility Act contained a built-in prohibition against judicial review of agency compliance with the act, many agencies viewed compliance as strictly voluntary. This situation of agency compliance needs to be addressed and is correctly addressed by the amendments to the Reg Flex Act contained in title I of H.R. 926.

In addition to providing for judicial review, title I provides Federal agencies to work more closely with the Office of Advocacy of the Small Business Administration during the drafting of new rules.

Finally, the bill contains a sense of Congress provision that the SBA chief counsel for advocacy be allowed to appear as amicus curiae for the purpose of reviewing a Federal rule. The right of the SBA chief counsel for advocacy to file amicus briefs was contained in the original Reg Flex Act. However, the Department of Justice has historically resisted the implementation of this right.

The sense of Congress provision contained in this bill reiterates the intention of Congress on this important issue.

□ 1215

After over 14 years of mediocre compliance with this important small business provision, it is time to stand up and be counted in favor of making needed improvements to the Regulatory Flexibility Act, and I urge my colleagues to vote ''yes'' on H.R. 926.

Mr. Chairman, I reserve the balance of my time.

Mr. LAFALCE. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BENTSEN].

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the bill and the provisions making changes to the Regulatory Flexibility Act. I believe that a primary means to accomplish mandatory compliance of reg flex would be to provide small business owners the opportunity to challenge Federal agencies' rulings in court. This bill adds this provision to reg flex. This step will assure that agencies will consider and adequately address the impact of their regulations on smaller entities.

I am also encouraged with the bill's provision to strengthen the SBA counsel of advocacy. This bill requires that agencies provide the SBA chief counsel with an advance copy of the rule 30 days before publishing a general notice of proposed rulemaking in the Federal Register. The bill further strengthens the SBA Office of Advocacy by giving the SBA chief counsel the authority to file amicus briefs in litigation involving Federal rules. This will give the chief counsel the opportunity to express his office's views with respect to the effect of rules on small businesses.

As a member of the Small Business Committee, I was delighted to see the involvement of small businesses in efforts to improve and strengthen the Regulatory Flexibility Act. It was clearly apparent that the small business community's diligent efforts in working with chairwoman MEYERS and Congressman LAFALCE was instrumental in addressing and eliminating the shortfalls contained in title VI of House Resolution 9, and thus creating the bill we have before us.

Interaction between the Small Business Committee an small business owners is imperative. It should be continued so that Congress does not enact future laws that negatively affect our Nation's small businesses.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. MANZULLO].

Mr. MANZULLO. Mr. Chairman, I rise in strong support of the provisions contained in title I of H.R. 926 dealing with the Regulatory Flexibility Act.

The title I provisions would put real teeth into the Regulatory Flexibility Act by allowing judicial review of regulations. This will permit small businesses to challenge agencies when they propose regulations that will stymie economic growth. I strongly support this legislation and would like to recognize my friend, the gentleman from Illinois, TOM EWING, for all the hard work he has done on this issue.

The goal of blocking unnecessary Federal regulation of the economy is a worthy one. Many in Congress naively believe that no matter what costs they impose on business, these companies can merely absorb them. I do not share their view.

I understand that each new mandate or regulation means higher costs, more failed enterprises, and fewer jobs for ordinary Americans.

The bipartisan support of this measure speaks volumes about its merit. Both the SBA and Vice President AL GORE support its passage and legislation introduced in the last Congress dealing with this issue garnered 255 cosponsors.

Mr. Chairman, I strongly urge my colleagues to support this measure and inject some measure of fairness into the regulatory process.

Mr. LAFALCE. Mr. Chairman, I reserve the balance of my time.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. WAMP].

(Mr. WAMP asked and was given permission to revise and extend his remarks.)

Mr. WAMP. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I would like to offer my strong support for provisions in H.R. 926 to add judicial review to the Regulatory Flexibility Act.

Enacted in 1980 with strong bipartisan support, the Regulatory Flexibility Act was intended to force agencies to consider the impact of regulations on the Nation's small businesses, and consequently reduce them. The problem with the original bill, Mr. Chairman, is it has never been enforced. Agencies are essentially allowed to ignore the intent of the Reg Flex Act.

Small businesses are the backbone of this country, employing more than 53 percent of the work force, and contributing to much of our country's economic growth. Between 1989 and 1993, small business job growth more than offset net job loss in big businesses.

The Government should be doing everything in its power to promote small business growth. Instead, it imposes the same regulations on the smaller entities that it does on big businesses. This is yet another example of the Government's one-size-fits-all approach that does not work.

To reinforce the bipartisan nature of this provision, I would like to point out that Vice President GORE's first recommendation for reinventing the role of Government in small business is to establish judicial review for the Regulatory Flexibility Act. I could not agree more with the Vice President on this issue.

We held a number of hearings and a markup of this legislation in the Small Business Committee, and I am proud to be a part of this bill as reported.

Mr. Chairman, as a third generation small businessperson, I appeal to this body to do the right thing for the working people in America and give small business people a fighting chance.

It is my hope, Mr. Chairman, that by allowing judicial review, the threat of enforcement along will force agencies to not only consider the impact of their regulations on small businesses, but to significantly reduce them.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. PORTMAN].

(Mr. PORTMAN asked and was given permission to revise and extend his remarks.)

Mr. PORTMAN. Mr. Chairman, I thank the gentlewoman from Kansas [Mrs. MEYERS] for yielding time to me. I also thank the chairman of the committee for all her good work on this legislation, and particularly on the Regulatory Flexibility Act.

Mr. Chairman, I rise in strong support of H.R. 926, the underlying legislation, especially title I, because I think it significantly improves the Regulatory Flexibility Act. At town meetings and letters, meetings in the district, telephone calls, and so on, and during my work last year with the gentlewoman from Kansas [Mrs. MEYERS] in the Committee on Small Business, I have heard again and again from small business constituents about them being overburdened with Federal paperwork, regulations, and compliance procedures.

The Reg Flex Act was enacted in 1980 to get at this problem, but there is ample evidence that it has not worked. The bill before us today makes necessary changes in the act, so it will work as intended. Let me be specific. I think none of these changes is more important than judicial review.

Currently there is a blanket prohibition, as I think has been discussed previously on the floor, for any kind of judicial review of agency compliance with the requirements of the law. This is an exception, it is a very rare exception, that is made in this legislation. As a result, frankly, agencies are not forced to follow the procedures in the act. Compliance has become essentially voluntary.

As a result, during this 15-year period that the act has been in effect, its requirements have all too often been ignored. H.R. 926 corrects this serious flaw by allowing judicial review. It gives teeth to the legislation. The result of noncompliance with the Reg Flex Act has cost our small businesses in my State and yours billions of dollars over the last 15 years.

At the same time, let me make it very clear that by adding judicial review, it will not be the lawyers' haven that many on this floor will say. I have looked at the case law, and it clearly shows that courts are deferential to agencies. The courts do not, the courts do not get behind the agency analysis. Once the analysis has been done as required, the courts do not go behind that analysis to determine whether it is correct or not.

Mr. Chairman, furthermore, judicial review is unlikely to slow down the regulating process, since judicial stays and injunctions are very rare. Judicial review will not stop all regulations, will not tie up the system. What it will do is it will send agencies a very strong signal, that they are, yes, to meet the reasonable requirements that Congress has said are relevant in the rulemaking process. I urge my colleagues to support 926.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. EWING], who has done such good work on this judicial review.

Mr. EWING. Mr. Chairman, I would say to the gentlewoman from Kansas [Mrs. MEYERS], the chairman of the Committee on Small Business, without her strong support and that of her ranking member, the gentleman from New York [Mr. LAFALCE], we would not be here today.

I certainly appreciate that, and want that to be clearly stated, that the gentlewoman has been one of the strongest supporters of the improvement to the Regulatory Flexibility Act. I certainly appreciate it. I am pleased to be here today and take part in the gentlewoman's part of this debate.

Mr. Chairman, it has been mentioned earlier that the Vice President had as the No. 1 item on his reinventing government putting judicial review in the Regulatory Flexibility Act. Mr. Chairman, I do believe, and while this is my opinion, that the Vice President came out with that recommendation in all good faith, it appeared to have less emphasis as the bureaucrats expressed their opinion and began to try and stifle this movement.

I cannot emphasize too strongly that it is time for this Congress to take control of this issue and not leave it to the bureaucrats, who certainly do not want judicial review, or to be required to meet the provisions of the Regulatory Flexibility Act.

Mr. Chairman, on the issue of excessive litigation coming out of judicial review, first of all, small business does not have the money to consistently go to court and to cause the major Government agencies any great problem. They can only do it when it really matters.

In fact, Mr. Chairman, the Vice President's own report on this matter said:

> Judicial review is not expected to lead to a large number of lawsuits. No basis for suits would exist if agencies conducted an appropriate regulatory review. As a practical matter, most regulations to which small entities have significant objections are already in litigation.

Mrs. MEYERS of Kansas. Mr. Chairman, may I inquire how much time remains on our side?

The CHAIRMAN. The gentlewoman from Kansas [Mrs. MEYERS] has 2 minutes remaining.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. TALENT].

Mr. TALENT. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I would just like to join the other Members who have expressed support for this improvement of the Regulatory Flexibility Act, really making it effective. This is an act Congress passed in 1980, again with the intention of saying to the bureaucracy, ''Look, if you feel you have some overriding goal in terms of the environment or worker safety that you need to accomplish, look and see the impact on small business which produces the jobs and the flow of goods and services the country depends on, and do it in a way that has the least negative impact on costs and on job growth in the country.''

It is a very commonsense bill. It did not work because we did not place a check in the system that was effective in making them do it. I just want to make one broader observation here. When people build the businesses, the small businesses of the United States, they are building part of the backbone of the private society of this country. They are exercising, really, an unalienable right.

It is one thing if we feel that some overriding policy requires that we intrude on what they are trying to do for themselves and their employees in America. It is another thing when we let agencies act arbitrarily and capriciously, in a manner that unnecessarily undermines the efforts they are engaged in.

This bill is an attempt to stop that. I support it. I thank the gentlewoman for yielding time to me.

Mr. LAFALCE. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. SISISKY].

(Mr. SISISKY asked and was given permission to revise and extend his remarks.)

Mr. SISISKY. Mr. Chairman, I thank the gentleman from New York for yielding time to me.

Mr. Chairman, today we have a chance to strike another blow for small business in America. Today we have a chance to put aside partisan politics and really change the way Government does business.

The rest of our statement is going to be repetitive, what everybody says, so I am going to be kind to the House today and simply say I rise in support of H.R. 926.

Mr. Chairman, today we have a chance to strike another blow for small business in America.

Today we have a chance to put aside partisan politics and really change the way Government does business.

And in the process, we will help small business do what they do best—create more new jobs.

If we really want to reinvent Government, we have to constantly think of ways for Government to perform its necessary functions without imposing a crushing burden on small businesses.

If you ask small businesses what they think about reinventing Government, I Think most would say that easing the burden of Government regulations and paperwork is a good place to start.

We have already made some headway in this direction. Last week, this House passed H.R. 830, the paperwork reduction bill, by unanimous vote.

The bill before us today, H.R. 926, deserves the same kind of overwhelming bipartisan support.

The original Regulatory Flexibility Act recognized that the burden of Federal regulations is heaviest for small business. That's why the Reg Flex Act forced Federal agencies to analyze the impact of proposed regulations on small business. Under reg flex, the agencies then have to find ways to lessen that impact as much as possible.

Unfortunately, Reg Flex Act has not been the tool for small business that some of us hoped it would be. Agencies have too often paid lip service to these requirements or ignored them completely. The attitude of too many agencies have been that compliance with reg flex is voluntary.

It is no mystery why reg flex has not been as successful as it should be. It has no enforcement mechanism.

And the solution is no mystery either. Small businesses need to be able to sue and make noncomplying agencies take these requirements seriously. H.R. 926 put teeth into the Reg Flex Act by providing for judicial review, and it states that Office of Small Business Advocacy should be allowed to submit legal briefs in any court challenges to final agency rules.

Since small businesses are responsible for creating most of the new jobs in today's economy, it only makes sense to do what we can to promote small business job creation. Minimizing the burden of Government regulations on small businesses does just that. It is a reform that both Democrats and Republicans can enthusiastically support.

We can be proud that this reg flex bill, along with the Paperwork Reduction Act reauthorization, have been genuinely bipartisan efforts. Congressman EWING's bill in the last Congress boasted a bipartisan roster of 260 cosponsors.

I strongly urge my Democratic and Republican colleagues to give their wholehearted support to H.R. 926.

□ 1230

Mr. Chairman, 85 percent of all new jobs in America are created by small businesses. The economic impact of regulation in our country ranges as high as $500 billion. With these facts in mind, it is crucial that we not overregulate small businesses. Reg flex makes this a law, and title I of H.R. 926 ensures that this law is observed. I urge my colleagues to vote ''yes'' on H.R. 926.

Mr. LAFALCE. Mr. Chairman, I yield the balance of my time to the gentlewoman from Kansas [Mrs. MEYERS] so that she might close debate.

Mrs. MEYERS of Kansas. Mr. Chairman, I would just like to say in closing that this is a bill of tremendous importance to small business. I would like to thank the gentleman from Illinois [Mr. EWING] for his work on judicial review and thank everyone for the bipartisan spirit that has carried this bill this far. The gentleman from Missouri [Mr. SKELTON] the gentleman from Virginia [Mr. SISISKY] and the gentleman from New York [Mr. LAFALCE] on the minority side have worked for many years on judicial review, and I strongly support it and urge my colleagues to vote for H.R. 926.

Mr. RICHARDSON. Mr. Chairman, small business owners in New Mexico have made it clear to me that redtape and regulatory burdens are cumbersome. Whether or not we should provide help for these businesses, the driving force in today's economy, is not the question.

The question before us today is how to best enforce the laws that we have enacted in the past.

Before I read this legislation, I envisioned a battle of ideas that would propel government into the 21st century: lower bureaucracy, greater efficiency.

Instead we get legislation that creates more jobs for lawyers in Washington. Busy work for bureaucrats: the height of cynicism, establishing new rules to prevent the implementation of new rules.

Forget partisan gain and the Contract With America, this legislation is a copout. A missed opportunity to work with the executive branch.

The Clinton administration, and the Vice President's National Performance Review in particular, has made significant strides in downsizing and streamlining the way government operates.

Already the re-inventing Government initiative has yielded practical benefits and fiscal discipline which benefits all Americans.

Furthermore, the President has already ordered each Federal agency to examine their respective rules and regulations and subject them to scrutinization.

Consider that this legislation exempts the Federal Reserve in an effort to protect monetary stability. Are we to assume that the Federal role in banking conduct is without fault and free from perfecting legislation?

We all understand that rules and regulations, by their very nature, constrain free-market business ventures. But congress has a responsibility to lead and craft policy that promotes the long-term interests of the Nation.

Can we honestly say that this is the best way to enforce policy?

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the Committee amendment in the nature of a substitute printed in the bill shall be considered by titles as an original bill for the purpose of amendment, and each title is considered having been read.

During consideration of the bill for amendment, the Chairman of the Committee of The Whole may accord priority in recognition to a member who has caused an amendment to be printed in the designated place in the Congressional RECORD. Those amendments will be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulatory Reform and Relief Act''.

The CHAIRMAN. Are there any amendments to section 1?

The clerk will designate title I.

The text of title I is as follows:

TITLE I—STRENGTHENING REGULATORY FLEXIBILITY

SEC. 101. JUDICIAL REVIEW.

(a) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) Except as provided in paragraph (2), not later than 180 days after the effective date of a final rule with respect to which an agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

''(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis.

''(2)(A) Except as provided in subparagraph (B), in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 180 day period provided in paragraph (1), such lesser period shall apply to a petition for the judicial review under this subsection.

''(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than—

''(i) 180 days; or

''(ii) in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 180-day period provided in paragraph (1), the number of days specified in such provision of law,

after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

''(4) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

''(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without observance of procedure required by section 604.

''(6) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5) (or such longer period as the court may provide), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with the requirements of section 604,

the court may stay the rule or grant such other relief as it deems appropriate.

''(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

''(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

''(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to final agency rules issued after the date of enactment of this Act.

SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

''(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

''(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

''(A) a copy of the proposed rule; and

''(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

''(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

''(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

''(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

''(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored housing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection.''.

''(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting ''in accordance with section 612(d)'' before the period at the end of the last sentence.

SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

The CHAIRMAN. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. EWING

Mr. EWING. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. EWING: Page 2, line 11, strike ''180 days'' and insert ''one year notwithstanding any other provision of law'', in line 24, strike ''(2)(A)'' and all that follows through ''(B)'' in line 4 on page 3, and beginning in line 7 strike the dash and all that follows through line 13 and insert ''one year notwithstanding any other provision of law''.

Mr. EWING. Mr. Chairman, the amendment which I offer would very simply amend the bill to change the statute of limitations for filing an action under the Regulatory Flexibility Act from 6 months to 1 year. H.R. 926 has only a 6-month statute of limitations. Because many small businesses are not aware that they have a problem with the regulation in that short a period of time, I believe it is very important that we extend this for a 1-year period.

The Senate version of this reform legislation also has the 1-year limitation in it. My amendment also guarantees that the 1-year statute of limitations will be there notwithstanding any other legislative provisions which might govern.

Small business needs to have this type of protection. They do not have a number of lawyers, accountants, and staff people to be reviewing all of the regulatory mandates and regulatory provisions that are put out by the bureaucracy. Business needs to know and needs to have the time to review these regulations, and this amendment will allow for the proper time. A 1-year statute of limitations is very reasonable. The NFIB feels this is a very important vote and they have keyed this vote. It is supported by most small business groups in the country.

I ask for the approval of this amendment.

Mr. VOLKMER. Mr. Chairman, I rise basically in opposition to the amendment because I do not understand the reasoning why and I do not think the

gentleman from Illinois has fully explained other than NFIB is for it and some small businesses are for it and, therefore, that is the way we should do it.

I would like to question basically this whole provision under judicial review, where it puts an agency. Let's look at it for a minute from the other side instead of just looking at it from one side. Let's try looking at it from both sides.

I have an agency here that has just finalized a regulation and has promulgated it in the Federal Register. It is sitting out there and some businesses are going ahead and they are following it and they are going to abide by it because they think the agency has done the right thing. Then they are proceeding on that line, they have made these changes, whatever changes are required in their business operations, et cetera.

Then under this amendment, and the way I read the rest of the bill all the way down, section 611 under judicial review, and I do not know if the gentleman from Illinois or the gentlewoman from Kansas has entertained this thought, that during this time, while all these other businesses are doing what they should be, I have got about 10 or 11 of them out there that, ''No, this isn't quite right. I don't like it. They didn't do it right as far as I'm concerned.''

So I decide, and the rest of them decide that they are going to request——

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. Let me finish up what is going to happen as I see what is happening from both sides. That there is going to be a judicial review, and the judicial review is going to occur where?

Well, let us say it is an agency that the law says that judicial review under a regulation shall occur in any court of appeals. Well, I happen to live in Missouri and my court of appeals is in the fifth circuit, and I file mine in St. Louis. We have another business in the State of California, or the State of Oregon that wants to have a review because they do not like it, so they file in San Francisco. We have another one that does not like it in Florida and they file for judicial review in Miami, and on and on it goes.

I have got about 7, 8, 10 cases pending at the same time on the same regulation, and it is all over whether or not the certification or analysis was done in accordance with the terms of this subsection. It has nothing to do with the basic substance of the regulation itself.

What happens when the court of appeals in Missouri says, ''We're going to stay that, and we're going to have a full hearing on it.'' All these other businesses that have already complied and abide, they do not know what is going to happen now because all of a sudden the regulation is put in abeyance. All the changes that they have made in their operations are no longer or may be necessary for the future.

Then the court of appeals in California, they decide they are going to make a decision on this first and they find that everything was proper and the certification was proper, the analysis called for in the bill was fully done by the agency and everything was proper. But 2 days later, the court of appeals in Chicago, or wherever, says, ''No, it wasn't done properly.'' Then the one in Miami says, ''Yes, it was.'' Then the one in San Francisco again says, ''No, it wasn't.'' Maybe the one in New York will say, ''Yes, it was,'' or maybe they will say, ''No, it wasn't.''

You tell me where small business is right now when all this is going on.

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Illinois.

Mr. EWING. I thank the gentleman for yielding. I know how effectively you do represent small businesses in your district as most Members of this body do.

Let me say two things: What you have described is the legal system in America. But this law does not require a court to order a stay on the implementation of the rule.

Mr. VOLKMER. I did not say it did. It permits.

Mr. EWING. It permits.

Mr. VOLKMER. It permits.

Mr. EWING. And so does the law permits that in most cases. But the courts do not do it unless there is considerable evidence of the reasonableness of having that stay.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 5 additional minutes.)

Mr. EWING. If the gentleman will continue to yield, let me say that the important part of having the longer statute of limitations is that many of the small businesses you represent so well will never know there is a problem until the regulator shows up on their doorstep with a fine or a citation. They will not know that they needed to make an appeal of this ruling. That is why we give them time, because they do not have a battery of lawyers and accountants and executives to be watching this all the time. We are talking about little businesses.

Mr. VOLKMER. I thought NFIB represented those people. They have a good work force right here in Washington, DC. You mean they cannot follow what is going on and let their members know? They let them know everything else that is going on.

Mr. EWING. I am sure that they will let them know.

Mr. VOLKMER. They do everything they can to influence the Members up here how to vote on every piece of legislation that they can think about that may affect small business and how it will. Sometimes they do not think through, of course, and maybe they will not think through this example.

Mr. EWING. If the gentleman will yield again, I will respond to that, because not every small business belongs to the National Federation of Independent Business.

Mr. VOLKMER. Correct.

Mr. EWING. I am as interested in them certainly as I am those that belong to the organization. Yes, there is no requirement that businesses have to join any organization.

We need to be concerned in this country about the really little people who are out there doing their work, creating jobs, helping keep our economy going, and they have no idea about this Federal bureaucracy. They do not have anybody looking after it for them. We need to do that. You do it and I do it. We need to have a law that is friendly to them.

Mr. VOLKMER. You really believe that by giving them a year, that for sure every small businessperson out here is going to be visited by a person from that regulatory agency to talk about this regulation within the year?

Mr. EWING. If the gentleman will yield further, no, I do not believe that. I think it is a reasonable time, though. Maybe 2 years would have been more reasonable.

Mr. VOLKMER. Why not make it 5 years?

Mr. EWING. I would not oppose that. But, you see, we are trying to be reasonable here with something that is acceptable, to all parties. I do not think a year is an excessive length of time. That regulator probably is not going to come out there with helpful hints. They are going to come out there with a fine or they are going to come out there with a citation.

Mr. VOLKMER. As long as we are discussing this, what is the gentleman going to do about the small businesses that did know about it, that do keep up with regulations, and they have gone ahead and implemented the changes that are required in it, in their operations, what are you going to do about them?

Mr. EWING. Well, that is the way our system works. You may do things, if you are in business, as I have in my business and found out later that the law was changed or even that it was overturned in some court action.

Mr. VOLKMER. I mean, would you not get a little upset, though, if you for 6 months had done something that you thought the law required you to do and in good faith you had made those changes and then you found out that later on a court of appeals somewhere that you did not know ever had anything to do with it said, ''No, you don't have to follow that regulation anymore''?

Mr. EWING. If the gentleman would yield further, if I know what my rights are and I have the right to have judicial review of that regulation and I choose not to do it, I have made that

decision as an independent businessman.

□ 1245

If a fellow independent business person chooses to use judicial review, then I would say, ''God bless you.''

Mr. VOLKMER. What is the gentleman's answer to having more than one judicial reviewing going on simultaneously?

Mr. EWING. I think that the courts have the ability to consolidate those. I really do not believe that we are going to see judicial review. The gentleman was all over the country in his comment. I really do not see we are going to see judicial review filed in every appellate court around the Nation. Small business does not have the money.

Mr. VOLKMER. Now wait a minute. How big is a small business? What is the top you can have and be a small business? I mean we are not talking about little bitty people. I know little bitty people belong to small business, but we also have small businesses that are not so little. They have their own staff of lawyers. Oh yes, they are small business.

Mr. EWING. But there are many small businesses that do not have a staff.

Mr. VOLKMER. And that.

Mr. EWING. But are you not interested in those people? I know you are.

Mr. VOLKMER. I am interested in all of them, all of them, not just little ones.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 1 additional minute.)

Mr. VOLKMER. Mr. Chairman, the gentleman just said that the small business out here is not going to be familiar with the regulations. And I daresay that that same small business is not going to know a court suit has been filed, whether it is in Miami or San Francisco or wherever, if it is in Chicago, and therefore they are going to file their own, are they not? They are not just going to wait around and look around all over the country to see if anybody else files a lawsuit.

Mr. EWING. I think the gentleman probably understands how the system works, and as a lawyer I know if I had had a client like that, one of the first things I would check is whether any other suits had been filed anywhere in the country. And that information is certainly available in our current computer age.

Mr. VOLKMER. So now the gentleman is going to say that the attorney is going to do it, and he is not going to say, ''Well those judges out in the Court of Appeals out in the circuit, they are too dang liberal. I do not want them; I want mine, I have more conservative judges,'' et cetera? Come now, the gentleman has been in law practice, I have been in law practice. Now the people shop around for the best deal they can get. The gentleman is telling me I am wrong?

Mr. GEKAS. Mr. Chairman, will the gentleman yield a moment?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I do not see any difference on the gentleman's argument on what is being proposed by the Ewing amendment than what actually is prevailing under current law. Under the current law there is granted 60 days, for instance under one statute for judicial review, which has to by that statute itself take place in Washington, DC, in the circuit court of this area, or in Oregon, or wherever.

Now, just following the gentleman's argument, should we not change that law as it is now to accommodate this inability to be uniform around the country that the gentleman is saying that this amendment will create?

Mr. VOLKMER. It is not just this amendment, it is how it affects everything else in the bill. This amendment does not actually affect where the venue is, but the venue is everywhere. This amendment affects judicial review. Judicial review of what? Would the gentleman from Pennsylvania tell me what under this provision under 611 is going to be reviewed?

Mr. GEKAS. Whether or not the regulatory agency complied with the mechanism for the review of the regulations and its flexibility. The regulatory flexibility analysis.

Mr. VOLKMER. Not the substance of the rule.

Mr. GEKAS. And the substance.

Mr. VOLKMER. No, no.

Mr. GEKAS. The substance does not change.

Mr. VOLKMER. Wait a minute, is the gentleman telling me the way he reads this bill, if I ask for judicial review that I have to have a judicial review of both?

Mr. GEKAS. No.

Mr. VOLKMER. No, no.

Mr. GEKAS. No.

Mr. VOLKMER. No.

Mr. GEKAS. I said that.

Mr. VOLKMER. So we have a little bitty thing here, we can ask for judicial review? No substance? Procedure, procedure.

Mr. EWING. Mr. Chairman will the gentleman yield?

Mr. VOLKMER. Yes, I yield to the gentleman from Illinois.

Mr. EWING. The judicial review we are talking about here is for the requirements on the regulating agencies contained in the Regulatory Flexibility Act. That is not upon the merits of the regulation, it is whether they followed the provisions of this act.

I believe that the courts of this country are wise enough if there are two appeals, to combine them. The courts are not trying to proliferate these types of cases. And they are not going to look with any great favor on somebody who comes in on a substantive issue and then comes back 6 months later and tries to raise it in the same court on a procedural issue under the Regulatory Flexibility Act.

Mr. VOLKMER. They can.

Mr. EWING. They can, but the courts were not born yesterday. They are pretty bright people.

Mr. VOLKMER. You are not, you do not tell the courts they have a right to refuse to review the matter on appeal because the plaintiffs have before appealed on a substantive matter. The gentleman does not say anything about that. So someone could do just what the gentleman is saying.

Mr. EWING. The courts have discretion. One of the problems I think we face around here sometimes is we try and take all discretion away from the courts. We appoint bright men and women to be our Federal judges. They can make these decisions, and they can see when someone is taking advantage of the situation.

Mr. VOLKMER. I have one other question before I yield back the balance of my time. I asked it during general debate and I have not received an answer to this date from anybody. Now I will ask the gentlewoman from Kansas, chairman of the Small Business Committee, and I am afraid the gentleman from Illinois who is chairman of Judiciary is not here.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has again expired.

(By unanimous consent, the gentleman from Missouri, Mr. VOLKMER, was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. There is a statement in the CBO estimate, CBO estimates that enactment of this bill would add at least $150 million annually to the cost of issuing regulations? Can the gentleman tell me whether or not the majority plans to appropriate the amount of money, additional money to each individual agency required in order to implement the provisions of this bill for this year?

Mrs. MEYERS of Kansas. Mr. Chairman, if the gentleman will yield, I think that is title II of the bill. Our hearing was on title I. I will defer to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, if the gentleman will yield.

Mr. VOLKMER. Yes, I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I simply want to state to the gentleman we are going to debate, thankfully, and we are going to have a full exposition on costs or noncosts of implementing this legislation, but as the gentlewoman says, this is in title II that the gentleman is really visiting. Right now we are on the Ewing amendment.

Mr. VOLKMER. I am on title II. I am into the total cost of the bill. Does the gentleman mean to tell me that if there are appeals out there by small business on every agency rule under this bill that it is not going to cost agencies any more money? They are going to defend those without any costs, without any lawyers?

Mr. GEKAS. We believe that the cost is negligible. We are able to demonstrate that and will in good time. We are not asking the bureaucracy to do any more than they are supposed to do now. We are asking them to help the small businessmen by doing their job in providing analysis for these rules that are choking our small businessmen. That is all we are doing.

We think that the manpower is there, the expertise is there, if only they are willing to do so. And the gentleman and I have been struggling for a long time for small business people to make the agencies do their job. The cost will be negligible, their duty will be enhanced and they will be able to do a better job in the present circumstances.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 1 additional minute.)

Mr. VOLKMER. Mr. Chairman, what I just heard is the gentleman disagrees with the CBO estimate.

Mr. GEKAS. No.

Mr. VOLKMER. The gentleman does not disagree with it?

Mr. GEKAS. Not necessarily.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman yielding. The estimate done by the CBO was collected from the agencies, agencies that do not want this legislation, agencies that probably have overinflated the costs as they estimate them to be.

I will answer the gentleman's question; yes, the majority will appropriate the right amount of moneys to the agencies to do their job, which as we will show the gentleman tomorrow, in our ability to take fiscal responsibility we will make the agencies live within their budgets and probably small budgets.

Mr. VOLKMER. Basically what the gentleman is telling me is that he is going to impose on the agencies additional work of yesterday's bill, the risk analysis, OK, and this bill, and yet not give them any manpower to do it with.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me just finish that conversation a little bit. Yes, we are trying to impose on the agencies to do their job, as the Congress outlines it to be done and try to not impose these kinds of costs on small business people in America. That is what this regulatory reform is all about, is to take the burden off of the small businesses, off the American families, and put it on these regulatory agencies, and make them do their jobs and do them with a little common sense and with good science.

Mr. Chairman, the Regulatory Flexibility Act is law. It was passed in 1980, so that the Federal agencies would review the potential impact of new regulations on small businesses and consider that impact as regulations are promulgated. The problem is that the Regulatory Flexibility Act has no teeth in it, has not been used, and there is no way to enforce compliance with the Regulatory Flexibility Act.

H.R. 926 puts teeth into the act by allowing judicial review of agency compliance with it. Unfortunately, this bill only gives small businesses this 6 months to file these suits under the RFA.

I am a small businessman, although I just sold my company a couple of months ago. I am intimately familiar with the regulatory burdens that are placed on our Nation's entrepreneurs. From the very day I opened up my business, and even before that day, I had to deal with regulators knocking on my door and piling on the paperwork. By experience as a small business owner I also know that 6 months is not long enough to adequately judge the impact of a regulation on a small business.

Let me describe a small business to Members, as some of the lawyers on the other side of the aisle cannot seem to understand what a small business is. I will describe my small business to Members. As owner of that business when I was actively involved in that business, I was the janitor, the accountant, the lawyer, the person that practices before regulatory bodies. I was the counselor, I was the health care expert, I was the service technician, I was the trouble shooter and yes, I was a member of the NFIB, by the way, I was a member of the NFIB. But because I was having to work 12 to 18 hours a day, 6 to 7 days a week to build a business, create jobs and realize my American dream, I did not get to read the NFIB bulletins every time they came into my office.

What did get my attention was when the regulators came into my office, or when I read something in the paper of what new regulation the Federal Government is piling on top of me; then I would have loved to have had the opportunity to cause that agency to review the potential impact of a new regulation on me and my business. But I can guarantee Members it takes longer than 6 months, it takes longer than a year sometimes for small businesses to realize that these regulations are going to have an impact on them.

But I think a year is a reasonable time, because maybe I only have a convention of the pest control industry once a year; maybe when this regulation is promulgated and I only have 6 months to go, I have not been to my convention and go to a seminar to tell me that there was this regulation imposed upon me, but within a year, I will have the opportunity or I should take the responsibility to read the NFIB bulletins, to go to the seminars held by my industry, to go to the conventions held by my industry, or maybe go to the local Pest Control Association's dinner that is held monthly and find out that this regulation is happening to me.

Therefore, within that year I will have an opportunity to take advantage of this bill.

In fact, many small businesses do not even know that a new regulation exists 6 months after it is in effect, much less know how it impacts their business. For the Regulatory Flexibility Act to function as it was intended back in 1980, I believe small businesses should have 1 year to challenge regulation flexibility analysis, notwithstanding shorter deadlines currently under other laws. Only with an adequate time period to determine the effect of the new regulation and how it compares to an agency's review under the Regulatory Flexibility act will the purpose of the act be achieved: much needed flexibility and considerations for the impact regulations have on struggling small businesses.

☐ 1300

Do not render meaningless the Reg Flex Act. Vote ''yes'' on the Ewing amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I wanted to go back to the issue of the cost of what we are doing here, and I understand the gentleman, as the majority whip, is familiar with the pay-as-you-go rules and the budgetary rules under which we operate here.

There is a provision, language, on page 21 of the analysis of the CBO which says, ''Enactment of title I,'' and we are talking about title I now, not title II, ''of H.R. 926 could result in additional lawsuits against the Federal Government requesting judicial review of Federal agency compliance with the requirements of the Regulatory Flexibility Act. To the extent the additional lawsuits were successful and the plaintiffs were awarded attorneys' fees, enactment of H.R. 926 could result in additional direct spending because these fees are paid from the claims, judgment, and relief acts account.''

Now, the question I want to pose to you, I heard the gentleman say that we get into the cost considerations of this bill under title II. It seems to me that that puts us into the cost considerations, and the pay-as-you-go rules, as I understand them, not under title II, but under title I.

Has that issue been addressed? Was there a waiver of the rules to bring that issue, this bill, to the floor in light of that provision?

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has again expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. DELAY. I appreciate it, and I will yield to the chairman.

I just want to know, I know the gentleman wants to protect the Federal Government from being sued by American citizens.

Mr. WATT of North Carolina. I mean, this is not disingenuous.

Mr. DELAY. Mr. Chairman, I will respond to the gentleman's statement.

I know the gentleman wants to protect the Federal Government from being sued by small businesses and American citizens. I do not. I want the American citizens to have the opportunity to sue the Federal Government when they are imposing regulations.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I want to complete the statement that the gentleman from North Carolina began by reading the remainder of the paragraph which he omitted: ''CBO cannot estimate either the likelihood or the magnitude of the direct spending, because there is no basis for predicting either the outcome of possible litigation or the amount of potential compensation,'' meaning that when I said that the bulk of the argument that we are yet to engage will be in title II with respect to cost, this as to title I is a negligible item.

Further, we are not certain as we stand here that even what they claim, that is, that the attorneys' fees would be payable, may not be payable at all when one sues the Federal Government. What statutes provide for the payment of attorneys' fees is not made clear here and does not cover all of the situations, and it still ends with saying there is no way to estimate it.

But here is the real thing, this is what the gentleman from Texas said, if they do their job in the first place and they comply with the requirements of our analysis and they do the things that are necessary, the lawsuits will start to shrink. They will shrink from the number that exist today, because we will have predictability in the marketplace. The small businessman will know ahead of time if they do their job right, the agencies, what they may or may not do. So in time even these initial costs will be minimized.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

I was planning to wait for a while to get into this debate, but the question has come up how do we know whether there is going to be litigation, how do we know there is going to be fees, because there are statutory provisions in our laws that say that Equal Access to Justice Act provides for that. We cannot sidestep that issue simply by saying we do not know whether there is going to be any litigation, and we do not know whether there is going to be any award of attorney's fees.

In response to the majority whip, let me make it clear that my purpose is not in cutting off litigation against the Federal Government. My purpose is the same one that everybody else here has avowedly said they believe in which is getting to a balanced budget, and if we have pay-as-you-go rules and if we continuously bring bills to the floor which violate those pay-as-you-go rules and continue to mount additional responsibilities and burdens on the Government, then we are going to either get further and further away from a balanced budget or we are going to find some other ingenious way such as taking away school lunches or some other program to fund the balancing of the budget.

I talked about the budget implications of this. It is clear to me that my Republican colleagues have no interest in complying with the pay-as-you-go rules, nor in balancing the budget, and so that is an issue that I am putting behind me. I want to go back to the amendment itself.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Missouri.

Mr. VOLKMER. On the budget issue now, especially with the words that the gentleman from Texas has said before, I know that the gentleman from North Carolina, I know him well, I know he represents his constituents better than anybody else in this House, of representing their constituents, you are one of the top ones representing your constituents, your small business people. There is no question about that.

You have no trepidation at all about your citizens or any citizen of the United States filing suit against the Federal Government, do you?

Mr. WATT of North Carolina. That is right.

Mr. VOLKMER. None whatsoever? In fact, if they have been wronged, they should file suit against the Federal Government? Correct?

Mr. WATT of North Carolina. That is correct.

Mr. VOLKMER. The only thing you are concerned about, and let me follow this up if I may before the gentleman interrupts again, I would appreciate it if the gentleman would let me finish this train of thought, when they do file suit and they win, they get their attorney's fees in most instances?

Mr. WATT of North Carolina. I certainly hope so.

Mr. VOLKMER. Those attorney's fees come out of the Federal budget? Correct?

Mr. WATT of North Carolina. That is correct.

Mr. VOLKMER. All you are saying to everybody in this House is we should not really legislate in a vacuum, because that is what is going on? They are legislating like this bill is the only thing that is before us and ignoring the implications of this bill on all other laws of the United States and how it works with those other laws?

Mr. WATT of North Carolina. Reclaiming my time, because we spent a lot of time talking about the budgetary impact of this. That is really not what is on the floor at this point. I got dragged into this budget debate kind of from the back side.

Let me go back to the underlying amendment and debate the underlying amendment which is to extend the time from 180 days to 1 year for this litigation to take place which I would submit to the House relates in part to the litigation issue and the cost issue, because the longer people have to file lawsuits, the more likely they are likely to file lawsuits, and the more costly it can be.

But that is not the point I want to make. The point I want to make is that I thought the purpose of this bill was to get our agencies to make more humane regulations and rules and to be more sensitive about what they are doing.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. I would submit to you that where we are going with this is that you are making it impossible for agencies to promulgate any rules by extending this period of time that can have any degree of finality to them, and the objective that we are trying to get to is to get to a point where if a rule is promulgated, it can be determined what impact it has on a small business quickly. If the rule has an adverse impact on the small business, the small business ought to raise it quickly, and the Government ought to try to correct it quickly.

If we stretch this process out for an entire year and allow businesses to wait 364½ days before they raise the issue, then we will never be able to get to any final rules that make sense or even in the context of the bill that you are talking about.

So I think this expansion of the 180 days to 365 days, as opposed to contracting it to a shorter period of time, really points out to me the clear purpose that the underlying bill has, which is to do away with any kind of regulations and feeds this assumption that I started off making in the general debate that the assumption seems to be by the other side that every rule that a Federal agency makes is bad.

I would remind my colleagues that every rule that a Federal Government agency makes is pursuant to a bill that the Congress of the United States has passed.

Mr. LAHOOD. Mr. Chairman, I move to strike the requisite number of words.

(Mr. LAHOOD asked and was given permission to revise and extend his remarks.)

Mr. LAHOOD. Mr. Chairman, I rise in strong support of the Ewing amendment to H.R. 926.

For too long, more than 15 years, regulations have been thumbing their noses at small business when it comes to issuing regulations. Many agencies have ignored the Regulatory Flexibility Act, because they knew they could not be challenged in court for not considering small business and not complying with the act.

The original intent of the Reg Flex Act was to help ease the regressive one-size-fits-all regulatory process. Regulators are supposed to analyze the impact of the regulations they produce on small business and take steps to modify these regulations by taking into account small business' limited resources. But, as I have stated, the regulators find a loophole, and regulations go out, regardless of the impact they may have on small business.

The bill, H.R. 926, will do away with this never-mind attitude of Federal regulators by allowing judicial review and judicial enforcement. More importantly, the Ewing amendment will strengthen the judicial review component and recognize small business' special needs in addressing regulations.

Furthermore, the Ewing amendment will give small business 1 year, notwithstanding any other law, to appeal a regulation if the Reg Flex Act was ignored. Some current rules and regulations, like OSHA and clean air, have as little as 30 to 60 days for appeal. To me, these time periods totally disregard small business' limited resources.

I can't imagine any small business in my district being able to identify how a regulation impacts them in 30 days. In fact, I believe many small businesses would be hard pressed to know that a regulation has been put into effect in 30 to 60 days, let alone to even read the Federal Register.

Mr. Chairman, past Congresses have totally ignored small business concerns with regulations. But this new Congress will stand up and listen to the job generators of this country.

In my district, and many other districts across this Nation, small businesses are the consistent job creators.

Simply put, small business is not equipped to deal with excessive regulations. Walk into any small business on main street and look for the accounting department or the legal department or the human resources division. You will not find them. Hence, the need for regulatory flexibility.

This is why I support the Ewing amendment. It upholds the original intent of the Reg Flex Act—allowing small business flexibility in confronting regulations.

I urge my colleagues to vote ''yes'' on the Ewing amendment.

□ 1315

I also want to make note of the fact that there are letters from the chief of staff of the White House, Leon Panetta, dated October 7, 1994, upholding the kind of legislation that we are trying to pass, a letter dated October 8, 1994, from the President of the United States upholding the type of legislation we are trying to pass here; a letter from the administrator-designee dated October 8, 1994, upholding the type of legislation we are trying to pass, and a letter to Congressman EWING from the Vice President of the United States which suggests strongly that he believes we are headed in the right direction in this legislation.

EXPRESSING APPRECIATION TO THE MAJORITY AND MINORITY LEADERSHIP

(By unanimous consent, Mr. FOGLIETTA was allowed to proceed out of order for 1 minute.)

Mr. FOGLIETTA. Mr. Chairman, I rise to thank the leadership, specifically the Speaker and the majority leader, for adhering to a request I made on behalf of those of us who attend Mass at noon on today, Ash Wednesday, for suggesting to the Chair and debaters that no votes be called between 12 and 1 o'clock. I was able to get to Mass without missing the vote.

I thank the chairman, the leadership, and the people who are involved in this debate.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. FOGLIETTA. I yield to the gentleman.

Mr. VOLKMER. I would like to tell the gentleman that I appreciate his being able to attend Mass and get his ashes. I was here and was unable to perform that function which I would like to have performed.

Mr. FOGLIETTA. I will tell the gentleman that there is another Mass at 6:30 p.m., this evening.

Mr. VOLKMER. 6:30? I think we might still be here. That is the problem. We will have to wait and see. I appreciate the gentleman informing me of that.

Mr. LAHOOD. Mr. Chairman, I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Chairman, I would like to ask the gentleman from Illinois [Mr. LAHOOD] in the letters that the gentleman read, is there any one of those that said that there should be 1 year in which to exercise judicial review of these functions, the certification and performing the regulatory flexibility requirements?

Mr. LAHOOD. I would be happy to read the letters for the gentleman.

Mr. VOLKMER. Do those letters say that one thing?

Mr. LAHOOD. Reclaiming my time, the first letter, from the Chief of Staff of the White House, Mr. Panetta, in a paragraph, he says that, ''The nominee for Administrator of the Small Business Administration has been a principal champion of judicial review of 'reg flex'.''

Now, I have not read the entire letter, obviously. That is the letter from the Chief of Staff of the White House.

From the President we have a letter dated October 8, 1994.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. LAHOOD] has expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. LAHOOD was allowed to proceed for 5 additional minutes.)

Mr. LAHOOD. This letter I referred to is obviously last year's: ''Toward that end, my Administration will continue to work with Congress and the small business community next year for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute.'' That is from the President of the United States, addressed to Senator Wallop, by the way.

This is a letter, as I indicated, from the administrator-designee with similar language, which I would be happy to share.

Another important letter is from the Vice President of the United States to Congressman EWING in which he says, ''We remain committed to securing this important reform during the next Congress and will work with Congress for the enactment of strong judicial review for small businesses.''

I have to assume by these letters that they know the Congress has good sense, with good legislators, and will adopt good amendments that, like that which Mr. EWING has put forth here today, that will provide enough time for small business people of our districts to review these and have an opportunity to challenge them.

I know we all appreciate the support from the administration and their designees.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. LAHOOD. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman.

Mr. Chairman, I too agree with the thrust or the purpose of the legislation, just like those letters do. But I have a serious doubt as to whether or not you should extend the review period for this one purpose to 1 year and what effect that will have on small businesses as a result of that.

The gentleman in his statement talked about the small businesses getting this impact on them by certain regulation, whatever that regulation may be, and then wanting to be able to review it. Well, gentlemen, most regulation, substantive regulation, is reviewable for most of them for a period of 90 days, that is all.

Mr. LAHOOD. Reclaiming my time, as I said in my statement, there are some agencies that are as little as 30, and sometimes 60, days. The gentleman from Missouri knows as well as I do because we represent similar districts.

The small business people are basically people who employ 5, 10, 15 people. They work hard. They work long hours. They provide the jobs. They do not have time or the legal expertise to go through and figure out what kind of mandates or imprimaturs, or however you want to characterize the laws that we are passing on them. They need time.

I am sure the gentleman from Missouri, having represented the same kind of district as the gentleman from Illinois [Mr. EWING] and myself, across Illinois and across Missouri, knows these small business people simply do not have the time. They are providing the jobs, they are working hard, they are working long hours to make a living.

Mr. VOLKMER. The gentleman is correct.

Mr. LAHOOD. We heap all of these regulations on them, and they need the time. That is why the Ewing amendment is so important to them, to give them the time to do it.

Mr. VOLKMER. I would like to point out to the gentleman and somehow I cannot seem to get across to the gentleman, and maybe not to anybody on the other side, that all you are giving to that small business on this extra time is a review of the provisions of this bill. That is all, not the substantive regulation.

Mr. LAHOOD. That is all, that is right. That is right. That is why the gentleman should be voting for it.

Mr. VOLKMER. No, no. You are fooling the small business people.

Mr. LAHOOD. I submit, all of the people of our districts, the small business people, would love for you to give them additional time to review these lousy regulations.

Mr. VOLKMER. The gentleman is not doing that. That is my point to you. You are not giving them additional time to review the substance of the regulation. You stand there and act like it does.

Mr. LAHOOD. I guess what it comes down to, then, I say to the gentleman from Missouri [Mr. VOLKMER], when it comes to the vote, he and I disagree on this, but the small business people, if we pass it, which I think we will, I believe that we will pass it, will then have the additional time they need.

The letters referred to follow:

THE WHITE HOUSE,
Washington, October 7, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: Your particular question about the Administration's position on judicial review of actions taken under the Regulatory Flexibility Act has come to my attention.

As you have discussed with Senator Bumpers, the Administration supports such judicial review of ''Reg Flex.''

The Administration supports a strong judicial review provision that will permit small businesses to challenge agencies and receive meaningful redress when they choose to ignore the protections afforded by this important statute.

In fact, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Ironically, Phil Lader, our nominee for Administrator of the Small Business Administration (whose nomination was voted favorably today by a 22–0 vote of the Senate Small Business Committee) has been a principal champion of judicial review of ''Reg Flex.'' In his capacity as Chairman of the Policy Committee on the National Performance Review, Phil vigorously advocated this position. I know that, if confirmed, as SBA Administrator, he would join us in continued efforts to win Congressional support for such judicial review.

Sincerely,

LEON E. PANETTA,
Chief of Staff.

THE WHITE HOUSE,
Washington, October 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: My Administration strongly supports judicial review of agency determinations under the Regulatory Flexibility Act, and I appreciate your leadership over the past years in fighting for this reform on behalf of small business owners.

Although legislation establishing such review was not enacted during the 103rd Congress, my Administration remains committed to securing this very important reform. Toward that end, my Administration will continue to work with the Congress and the small business community next year for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute.

As you know, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Again, thank you for your continued leadership in this area.

Sincerely,

BILL CLINTON.

OCTOBER 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: The Administration supports strong judicial review of agency determinations under the Regulatory Flexibility Act that will permit small businesses to challenge agencies and receive strong remedies when agencies do not comply with the protections afforded by this important statute.

In fact, the National Performance Review publicly endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small businesses, states, and other entities are reduced.

As Chairman of the Policy Committee of the National Performance Review, under Vice President Gore's leadership I vigorously advocated this position. I have continued to champion this policy within the Administration.

If confirmed as Administrator of the U.S. Small Business Administration, I will join the Congress and the small business community in continued efforts to pass legislation for such judicial review.

Thank you for your leadership on this important issue to small business.

Sincerely,

PHILIP LADER,
Administrator-Designate,
U.S. Small Business Administration.

THE VICE PRESIDENT,
Washington, November 1, 1994.

Hon. THOMAS W. EWING,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE EWING: Thank you for contacting me regarding the Regulatory Flexibility Act.

As the President and I have made clear, we strongly support judicial review of agency determinations rendered under the Regulatory Flexibility Act. We remain committed to securing this important reform during the next Congress and will work with Congress for the enactment of strong judicial review for small businesses.

We also understand that it will be important to continue our work with small businesses to ensure that such an amendment provides a sensible, reasonable, and rational approach to judicial review, as recommended by the National Performance Review. As you know, the National Performance Review recommended that which was (and continues to be) sought by the small business community—i.e., an amendment that furthers the intent of the Act and reduces the paperwork burdens on small businesses.

The President and I look forward to working with Congress on this matter and appreciate your leadership in this area.

Sincerely,

AL GORE.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, all of us on both sides, at least the vast majority, believes judicial review is very, very important. That is a concept that has been embraced by both the majority and the minority and that forms the core of title I.

But I think it is important to understand specifically what title I does and why this amendment, I do not think, aids in adequate judicial review. In fact, it might create a situation where the system can be exploited to get 1, 2, 3, bites of the apple rather than an efficient system which allows everyone—small business people, ordinary American citizens—to go ahead and make sure regulations are sensible.

Judicial review is part of title I. It is triggered by a claim that procedurally the agency did not effectively institute a regulatory flexibility analysis. An agency director, when trying to promulgate regulations, must consider the impact on small business under the regulatory flexibility analysis or decide there is no significant impact and certify such a fact.

At that point, when that decision is made under the present statute, an affected entity has 180 days to appeal. The remedy is a determination by the court whether or not the agency performed its procedural duty, i.e., it did confront the regulatory flexibility analysis or no such analysis was required.

The problem with extending this time period for one year is the problem that was alluded to by my colleague

from Missouri [Mr. VOLKMER] that the substantive challenge to regulations, the actual regulations, those rules and regulations that the small business owners object to, when someone comes into their shop or business facility, those substantive regulations have to be challenged in a much shorter time period. Specific statutes allow 30, 60, 90 days.

What this amendment would do is create the anomalous situation where a substantive challenge has already been made, it may have failed, yet still there is a procedural challenge simply on whether or not the agency performed the regulatory flexibility analysis.

I would also like to point out to my colleagues that the specific language of the bill includes consideration of this regulatory flexibility analysis when regulations are challenged substantively in a court of law.

On page 5, and I will quote, ''In an action for the judicial review of a rule,'' i.e., this rule is bad, it does not meet the substance, it fails the substance, it imposes undue costs on small business, we can do it a better way. In such a review on the merits, any regulatory flexibility analysis in such rule, including an analysis, pursuant to subsection A(5), ''shall constitute part of the whole record of agency action in connection with such review.''

Therefore, a judge considering an appeal of a regulation, not just the procedure but, ''Are these regulations good or bad,'' as my colleague from Illinois pointed out, that is what small business people are alarmed with. They do not care about the procedure. They are listening to this debate and they are saying, ''What are we debating about? If regulation hurts me, I don't just want to go back and do a flexibility analysis and say let us do something along the way. I want to fix the regulation.''

Well, this legislation, as it stands today, not only allows but makes part of the record of review the record of the flexibility analysis.

So what I would suggest is that the 180-day limit here provides an adequate time to review that one procedural preliminary step. Failing that, there is ample opportunity throughout the process to decide whether or not the agency has conducted an adequate review and it published, more importantly, a rule.

I just hasten to add, the bottom-line test for our constituents is not that we followed scrupulously and minutely all these turns in the regulatory process, the bottom line is do these regulations make sense in the context of the business?

The point the gentleman from Missouri [Mr. VOLKMER] tried to make is if they do not make sense, simply having this option out there for a year is not going to provide a remedy.

The other point I would like to make about this process is that there is a real value to finality, there is a real value to having small business, medium business, large business, individuals, say at a date certain these are the regulations that are in effect.

I am not going to invest in a $200,000 septic system or water purification system and find out 30 or 60 days later that the regulations have been challenged and clouded because they failed to take a reg-flex step a month ago.

The CHAIRMAN. The time of the gentleman from Rhode Island [Mr. REED] has expired.

(By unanimous consent, Mr. REED was allowed to proceed for 2 additional minutes.)

Mr. REED. I yield to the gentleman from Illinois [Mr. EWING].

Mr. EWING. I thank the gentleman for yielding.

I would say to the gentleman that he has made an excellent point. He has laid out the argument beautifully, I think, and I appreciate his strong support for the bill even though we may disagree on the amendment.

The point is that the statute of limitations in different statutes vary all over the place. So the 180 days does not match most of any of those. So you are still going to have the dual period.

So the gentleman's argument there really does not hold water unless we are going to take it back and reduce the statute to whatever the underlying statute is.

Mr. REED. Reclaiming my time, as the statute is drafted, as it exists today, it is 180 days or the lesser period allowed under substantive review statute. What we tried to do is to combine these judicial protests, reviews, appeals, into one or two at the moment, and not have an endless string of procedural delays.

The other thing I would suggest also, and I think this is very important, is that we are very conscious of, and I know I think I speak for myself and the majority, we are conscious of the different time limits with respect to the statute. That is why we specifically include at page 5 making the regulator flexibility part of the record on final review.

□ 1330

Therefore, when someone comes in and challenges that rule, and the gentleman from Texas [Mr. DELAY] has indicated he wants the Americans to be able to challenge rules, so do we, but we want to be able to do it efficiently in one forum so we can go ahead and get all the bang for the buck.

So I think we have addressed the variable lengths of review in this language. I am every comfortable with it as written. I applaud the gentleman for trying to push it further. But as I indicated in my remarks, I think that will simply cost more money and be really an opportunity for exploiting the system, slowing things down, and I know the duty of what we have been sent here to do, get good regulations for people.

The CHAIRMAN. The time of the gentleman from Rhode Island [Mr. REED] has expired.

(By unanimous consent, Mr. REED was allowed to proceed for 1 additional minute.)

Mr. REED. Mr. Chairman, I yield to the gentleman from Illinois [Mr. EWING].

Mr. EWING. Mr. Chairman, I think my response to those two points, and they are good points, is that we are still concerned about the small business who does not have notice. In the 90 days, the 180 days, the 60 days, it is too short a notice. I would make it all 1 year. I would move it out so that we are friendly to our constituents and our taxpayers and our small business people. That is really where we ought to be headed, not drawing it back.

What we have had is years of everything on the side of the regulator. Now it is time that the regulated have rights, and that is what we are trying to do here.

Mr. REED. Reclaiming my time, I appreciate the sentiments of the gentleman. I believe the 180 days is a very reasonable, responsible balance between the view the gentleman proposed, whether is it multiple appeals for substantive challenges to the legislation or the procedural rule. And I believe if we stick to that we will be in good shape.

AMENDMENT OFFERED BY MR. VOLKMER TO THE AMENDMENT OFFERED BY MR. EWING

Mr. VOLKMER. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER to the amendment of Mr. EWING: Strike the words ''one year'' wherever they appear in the amendment and insert in lieu thereof ''90 days''.

Mr. VOLKMER. Mr. Chairman, the purpose of this amendment is to continue the dialog and try to point out to the members of the committee that what we are trying to do here is not take anything away from small business people, but to try to provide some total consistency in our whole legislation, in the laws that we have on the books.

Now, it will not do completely that, because some of the substantive regulations must be appealed within less than 90 days. But this would mean that for those that provide substantive appeal within 90 days, you would have appeal on this question of procedure within the same 90 days. That is basically what it is meaning to do.

Now, I have heard here, it is almost like we are legislating this bill, and this bill does not have any impact on any of the law that we have on the books, nor do any of the laws that we have on the books have any impact on this bill if it becomes law.

We cannot legislate in a vacuum. As a result, we must look to see what the other laws are that also apply to the process.

The gentleman from Rhode Island [Mr. REED] has done a lot better that I

have. It was interesting to listen to the gentleman from Illinois in the well, the gentleman from Peoria, talk about the small businessman. He wants to get these regulators off his back because they are passing these regulations that are putting him out of business.

The appeal provided in this bill does not do that. It does not have anything to do with that, not one solitary thing. And I do not understand people up here thinking that if you put a No. 1 on a blackboard, that really that is a No. 10. No. 1 is a No. 1. It is not a No. 10.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I am just wondering what effect the gentleman's amendment would have on the current law that under the Sawtooth National Recreational Area statute, there are 180 days to appeal to the district court of Idaho. Just think about that for a minute. Then Panama Canal tolls, six years apply.

Mr. VOLKMER. What does your 1 year do to the 6 years?

Mr. GEKAS. We have to work on that. But immediately on the question of the small businessman, because there are very few businessmen that are involved in the Panama Canal tolls I am told, at any rate, the other one that we have here has 120 days, for instance. The 180 days that we have in the bill are commensurate with this, and the Ewing amendment has none of the ones that are already part of the law. Yours does. In shrinking to 90 days the Sawtooth capacity to appeal a rate flex, you are giving them only 90 days, where they now have 180 days on the substantive part.

So you did not think it through.

Mr. VOLKMER. Sawtooth Recreational Area, where is that? Sawtooth in Idaho. I feel sorry, but I will talk to the gentlewoman from Idaho and the gentleman from Idaho and maybe we can make a exclusion for them.

Mr. GEKAS. I will tell them to vote against your amendment. The point is we want to oppose your amendment because it is mixing it up and confuses the issue more, even more than when you consider the Ewing one, which expands and allows the small businessman to have ample time to appeal something that impacts it.

Are you for judicial review? You are?

Mr. VOLKMER. Sure.

Mr. GEKAS. We are all for judicial review. No matter what time we set, there is going to be this elongated period, even the gentleman will have to agree, to elongate the period within which the small businessman who is disaffected can seek redress. That is all we are trying to do.

Mr. VOLKMER. Sure.

Mr. GEKAS. We are all for judicial review. No matter what time we set, there is going to be this elongated period, even the gentleman will have to agree, to elongate the period within which the small businessman who is disaffected can seek redress. That is all we are trying to do.

Mr. VOLKMER. What redress though?

Mr. GEKAS. On a reflex portion of the procedural part. But why do you trivialize that? That annoys me, that you trivialize it.

Mr. VOLKMER. I am not trivializing it.

Mr. GEKAS. In my judgment you do, and that is what the debate is all about.

Mr. VOLKMER. Reclaiming my time, the gentleman acts like I am trivializing it. I am not, because what I keep repeating is because I have heard it here during the debate, I have heard it here during the debate on this amendment, and I keep hearing that what we are going to do is we are going to stop these regulators by this bill of passing substantive regulation that impacts on small businesses.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. BURTON of Indiana. Mr. Chairman, reserving the right to object, I would just like to ask the gentleman under my reservation, how much more time do you guys anticipate spending on this amendment?

Mr. VOLKMER. I really do not know. I mean, it is just not up to me. I am only one person. I would like to take the rest of my time. I may not take the full 5 minutes. I just asked for 5 minutes so I do not get cut off. I would like to make my speech.

Mr. BURTON of Indiana. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Missouri is recognized for 5 minutes.

Mr. VOLKMER. Mr. Chairman, what I started to say is I continuously hear that with this legislation the small business people are not going to have to worry about regulators regulating their business any more, because they are going to have a year in which to appeal those regulations. That is a lot of hogwash. It is not true. Everybody admits it is not true. So why do we keep saying it?

Well, sometimes we keep saying things to make small business people think they are going to get more than they are going to get out of this bill. They do not get any substantive review out of this bill. Let us admit it.

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Illinois.

Mr. EWING. I do not think you have heard one person get up and say that this affected substantive review. You are the one that is saying it. You are the one that is confusing the issue, sir, not us. You are the one. This only deals with appeal of the Regulatory Flexibility Act and its provisions, and no one on this side has said that it has anything to do with substantive.

Mr. VOLKMER. Mr. Chairman, recognizing that, it will go back to the other things that I talked about before, about substantive review, and most of that is within the 90 days, and that is the purpose of this amendment, to try and get some uniformity, rather than have the courts having cases. And I have said it before when we first discussed the gentleman from Illinois' amendment, that under this bill, and I am sure the Committee on Small Business never even considered, never even considered, any of these provisions. I have been told that the Committee on the Judiciary did not even talk about venue at all when they were discussing this legislation. It was not even discussed.

Yet it now appears that you could have a multiplicity of lawsuits over just this one item, not over substantive review, and it can take place, if the gentleman from Illinois' amendment is passed, it can take place up to a year after the regulation has gone into effect.

Now, stop and think about that for a minute. Does the gentleman, as the gentleman from Rhode Island has pointed out, you have had a case, XYZ company has appealed the regulation from EPA. It has been reviewed by XYZ company on the seventh circuit, fifth circuit, any circuit. It has been reviewed.

They review this provision. They find that the regulators followed all procedures not only under this act, but under the law for which the regulation was proposed. That has been done. That takes place and the court of appeals handles that and hands down its decision within 9 months.

But that is not the end. That is no finality. Under the gentleman from Illinois' amendment, another private business, or 10 private businesses throughout this country, in different circuit courts, can file suit under this to say that it did not happen, that they did not follow this act, the Regulatory Flexibility Act, and they could get a stay. Under this bill they can get a stay of the total regulation, even though another circuit court had said that everything was fine.

That is what you have, the total under the bill. You cannot legislate in a vacuum, and that is what is occurring here.

We are also, like I said before, as far as the budgetary matters, I have not heard anyone yet say how you are going to pay for all this, but I have heard that maybe we are going to make sure that the regulators live within the money we are going to give them, which basically means that you are going to do the job whether we give you the money or not. And that is not the way it works, folks. I think you

better stop and realize if you are going to impose a whole bunch of additional duties and responsibilities on people, you have to expect to give them a little bit to help them out.

Mr. Chairman, I yield back the balance of my time.

Mr. MCINTOSH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first let me commend the Committee on the Judiciary for the work on this bill. It is a very important and vital piece of legislation. I also want to commend the gentleman from Illinois [Mr. EWING] for bringing this amendment to the floor.

I have some personal experience with the Regulatory Flexibility Act and how it operates in the agencies from the time I worked with Vice President Quayle at the Competitiveness Council. Often times the impact statements were a pro forma matter. The agency would use boiler plate and never really consider the impact on the small businessmen.

In fact, regulations almost always have a disproportionate burden for small businesses because they do not have the capital, the resources in terms of personnel, to be able to comply with all of the different requirements of those regulations. So this act is very important to protect them, and we cannot allow the agencies to ignore its provisions, which they have for years now.

I also think it is vitally important that small businesses be given adequate time to seek their remedies in court, because unlike large corporations, they do not have large in-house corporate counsel staff who can monitor these regulations.

□ 1345

They have to wait until they are finally enacted and promulgated and start to apply to them. They may get lucky if someone brings it to their attention that there is a problem with one of these regulations during the time of the year when they are trying very hard to keep their small business operating, employing new individuals and producing a product without the benefit of a huge corporate legal staff.

I think it is very important that we have this amendment. The National Federation of Independent Businesses has keynoted this amendment and believes it is critical for small businesses everywhere. I commend the gentleman from Illinois [Mr. EWING], for offering it. I would urge that it be kept at the full year in order to give small businesses adequate time to be able to respond to these situations.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to withdraw my amendment to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. TALENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the indulgence of the House. I will try not to speak very long. The distinguished gentlewoman who chairs the Committee on Small Business is not here, and I cannot say I speak for her or I speak for the committee, but I would just like to make a couple of comments that I think might summarize the views of the committee which, again, unanimously supported this legislation.

First of all, we have been talking here about procedure and substance. And I guess when you get into a bill like this which lawyers have worked on, you talk about things like that. Of course, the bill is procedural in the sense that it is part of administrative procedure. But it has a very important substantive, real impact on real small business people in the real world. Let us not argue over whether it is substantive or procedural. The point is, this change in the Regulatory Flexibility Act is of very great importance in helping real small business people produce goods and services and produce the jobs on which the economy depends.

What it basically says is it represents the verdict of the Congress in the last 14 years in which we have recognized that what we tried to do in 1980 has not worked because the agencies have basically ignored it. What we said in 1980 was, look, when you are passing a regulation, do it in the way that is the least burdensome and the least intrusive on small business. And they have not done that, Mr. Chairman.

They have not done that because there has been no procedure in the review. What the bill does is say, basically say, courts may review the agency decision as to whether it needed a regulatory flexibility analysis and, second, if it issued one, whether the agency was what the lawyers call arbitrary and capricious in deciding that its regulation could not have been done in a way that was less burden on small business. That is a real standard of review.

It has real teeth. It means that agencies out there are going to be doing things in ways that cost fewer jobs, that create more opportunity for more small business people and, therefore, for more Americans.

The point I want to make is whether it is procedural or substantive, and I respect the gentleman here for arguing that point from the standpoint of this amendment, it is very important to people. I wanted to reaffirm that.

As to the amendment of the gentleman from Illinois, I read what he is saying as basically saying this. If for some reason or other a small business person, either because they inadvertently or they sleep on their rights or they, for good reason or bad reason, they do not challenge the rule in a way that other statutes allow them to challenge the rule within 180 days, they still have another 180 days to raise these appeals under the Regulatory Flexibility Act. It gives them a little extra leeway under this particular provision.

I think the gentleman is doing it because this probably alone among all the protections in the Administrative Procedures Act applies only to small business people. Small business people maybe are less able than larger businesses to recognize when their rights may be at stake and to file suit. I think is a reasonable change.

Personally, I am going to support it. The point I wanted to make is whether you call this bill procedural or substantive, it is an important bill that creates real extra opportunity in jobs, in growth for real people out there and harmonizes our regulatory statutes to some degree with the spirit of enterprise and the spirit of America.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Ewing amendment. I think for years we have been in the face of small business. I think it is time that we lighten up a little bit. I think it makes good common sense, and we should support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. EWING].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. EWING. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Does the gentleman withdraw his point of order?

Does the gentleman withdraw his request for a recorded vote?

Mr. EWING. I do, Mr. Chairman.

The CHAIRMAN. The request for a recorded vote is withdrawn.

Mr. EWING. Mr. Chairman, it was my understanding that the Chair questioned whether I had withdrawn my point of order on a quorum call. No, unless the Chair is going to grant me a vote. I demand a recorded vote.

The CHAIRMAN. The Chair asked if the gentleman wanted to withdraw his request.

Mr. EWING. I though the Chair was going to grant the vote on the amendment, the recorded vote.

The CHAIRMAN. The gentleman is renewing his request for a recorded vote.

Mr. EWING. I am, Mr. Chairman.

The CHAIRMAN. Does the gentleman withdraw his point of no quorum?

Mr. EWING. Yes, Mr. Chairman.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 5, not voting 9, as follows:

[Roll No. 184]

AYES—420

Abercrombie	Doggett	Johnson, E.B.
Ackerman	Dooley	Johnson, Sam
Allard	Doolittle	Jones
Archer	Dornan	Kanjorski
Armey	Doyle	Kaptur
Bachus	Dreier	Kasich
Baesler	Duncan	Kelly
Baker (CA)	Dunn	Kennedy (MA)
Baker (LA)	Durbin	Kennedy (RI)
Baldacci	Edwards	Kennelly
Ballenger	Ehlers	Kildee
Barcia	Ehrlich	Kim
Barr	Emerson	King
Barrett (NE)	Engel	Kingston
Barrett (WI)	English	Kleczka
Bartlett	Ensign	Klink
Barton	Eshoo	Klug
Bass	Evans	Knollenberg
Bateman	Everett	Kolbe
Becerra	Ewing	LaFalce
Beilenson	Farr	LaHood
Bentsen	Fattah	Lantos
Bereuter	Fawell	Largent
Berman	Fazio	Latham
Bevill	Fields (LA)	LaTourette
Bilbray	Fields (TX)	Laughlin
Bilirakis	Filner	Lazio
Bishop	Flake	Leach
Bliley	Flanagan	Levin
Blute	Foglietta	Lewis (CA)
Boehlert	Foley	Lewis (GA)
Boehner	Forbes	Lewis (KY)
Bonilla	Fowler	Lightfoot
Bonior	Fox	Lincoln
Bono	Frank (MA)	Linder
Borski	Franks (CT)	Lipinski
Boucher	Franks (NJ)	Livingston
Brewster	Frelinghuysen	LoBiondo
Browder	Frisa	Lofgren
Brown (FL)	Frost	Longley
Brown (OH)	Funderburk	Lowey
Brownback	Furse	Lucas
Bryant (TN)	Gallegly	Luther
Bryant (TX)	Ganske	Maloney
Bunn	Gejdenson	Manton
Bunning	Gekas	Manzullo
Burr	Gephardt	Markey
Buyer	Geren	Martinez
Callahan	Gibbons	Martini
Calvert	Gilchrest	Mascara
Camp	Gillmor	Matsui
Canady	Gilman	McCarthy
Cardin	Goodlatte	McCollum
Castle	Goodling	McCrery
Chabot	Gordon	McDade
Chambliss	Goss	McDermott
Chapman	Graham	McHale
Chenoweth	Green	McHugh
Christensen	Greenwood	McInnis
Chrysler	Gunderson	McIntosh
Clay	Gutierrez	McKeon
Clayton	Gutknecht	McNulty
Clement	Hall (OH)	Meehan
Clinger	Hall (TX)	Meek
Clyburn	Hamilton	Menendez
Coble	Hancock	Metcalf
Coburn	Hansen	Meyers
Coleman	Harman	Mfume
Collins (GA)	Hastert	Mica
Collins (MI)	Hastings (FL)	Miller (CA)
Combest	Hastings (WA)	Miller (FL)
Condit	Hayes	Mineta
Conyers	Hayworth	Minge
Cooley	Hefley	Mink
Costello	Hefner	Molinari
Cox	Heineman	Mollohan
Coyne	Herger	Montgomery
Cramer	Hilleary	Moorhead
Crane	Hilliard	Moran
Crapo	Hinchey	Morella
Cremeans	Hobson	Murtha
Cubin	Hoekstra	Myers
Cunningham	Hoke	Myrick
Danner	Holden	Neal
Davis	Horn	Nethercutt
de la Garza	Hostettler	Neumann
Deal	Houghton	Ney
DeFazio	Hoyer	Norwood
DeLauro	Hutchinson	Nussle
DeLay	Hyde	Oberstar
Dellums	Inglis	Obey
Deutsch	Istook	Olver
Diaz-Balart	Jackson-Lee	Ortiz
Dickey	Jacobs	Orton
Dicks	Jefferson	Owens
Dingell	Johnson (CT)	Oxley
Dixon	Johnson (SD)	Packard
Pallone	Sawyer	Thomas
Parker	Saxton	Thompson
Pastor	Scarborough	Thornberry
Paxon	Schaefer	Thornton
Payne (NJ)	Schiff	Thurman
Payne (VA)	Schroeder	Tiahrt
Pelosi	Schumer	Torkildsen
Peterson (FL)	Scott	Torres
Peterson (MN)	Seastrand	Torricelli
Petri	Sensenbrenner	Towns
Pickett	Serrano	Traficant
Pombo	Shadegg	Tucker
Pomeroy	Shaw	Upton
Porter	Shays	Velazquez
Portman	Shuster	Vento
Poshard	Sisisky	Visclosky
Pryce	Skaggs	Volkmer
Quillen	Skeen	Vucanovich
Quinn	Skelton	Waldholtz
Radanovich	Slaughter	Walker
Rahall	Smith (MI)	Walsh
Ramstad	Smith (NJ)	Wamp
Rangel	Smith (TX)	Ward
Reed	Smith (WA)	Watts (OK)
Regula	Solomon	Waxman
Reynolds	Souder	Weldon (FL)
Richardson	Spence	Weldon (PA)
Riggs	Spratt	Weller
Rivers	Stark	White
Roberts	Stearns	Whitfield
Roemer	Stenholm	Wicker
Rogers	Stockman	Williams
Rohrabacher	Stokes	Wilson
Ros-Lehtinen	Studds	Wise
Rose	Stump	Wolf
Roth	Stupak	Woolsey
Roukema	Talent	Wyden
Roybal-Allard	Tanner	Wynn
Royce	Tate	Yates
Sabo	Tauzin	Young (AK)
Salmon	Taylor (MS)	Young (FL)
Sanders	Taylor (NC)	Zeliff
Sanford	Tejeda	Zimmer

NOES—5

Andrews	McKinney	Watt (NC)
Ford	Nadler	

NOT VOTING—9

Brown (CA)	Gonzalez	Moakley
Burton	Hunter	Rush
Collins (IL)	Johnston	Waters

□ 1410

Messrs. LUCAS, CLEMENT, and OWENS changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there additional amendments to title I?

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 2, line 23, after the word ''analysis.'' insert the following: ''The United States District Court for the District of Columbia shall have exclusive jurisdiction over any such action.''

Mr. WATT of North Carolina. Mr. Chairman, first of all, I want to thank the gentleman from Illinois [Mr. EWING] and the gentleman from Missouri [Mr. VOLKMER] for laying the factual backdrop for this debate on this amendment.

I believe the result of the earlier debate on the amendment that was just voted on will substantially shorten the period that will be necessary for people to understand this amendment.

Mr. Chairman, in that earlier debate, it was very obvious that there are two kinds of court litigations that can take place dealing with rules and regulations that have been promulgated by a Federal agency. One has to do with the substance of the regulation itself, in which case that litigation can take place in whatever timeframe it needs to take place, and can deal with whether a regulation is a good regulation or a bad regulation, or has some substantive impact on the small business.

□ 1415

The second kind of litigation would be the kind of litigation that is contemplated under this bill, and that is, in effect, a procedural kind of litigation.

Under title I of the bill, and you have got to listen and review the words carefully, the agency is required to certify that any rule that it promulgates would not have a significant economic impact on a substantial number of small entities or that they have prepared a final regulatory flexibility analysis pursuant to section 604 of the law.

If the agency so certifies, or if they do not prepare this final regulatory flexibility analysis, then a small business is given the right to go into court and ask the court to force them to do one of those two things.

This has nothing to do with the substance of the regulation. What it has to do with is whether the agency has certified that the rule that they have promulgated would not have a significant economic impact on a substantial number of small entities, or whether the agency has prepared a final regulatory flexibility analysis.

The effect of my amendment would be to make that determination on the procedural issue, whether the agency has complied with those two requirements, a question that would be determined in the U.S. District Court in the District of Columbia.

This is not—I repeat, this is not, please listen, Members—this is not on the substance of regulations. This is on the procedural question of whether the agency has made a certification that is contemplated under this bill.

Why do I offer this amendment? If we do not have this amendment, what we could conceivably have is litigation throughout the United States, in the District courts of North Carolina, California, New York, Idaho, Hawaii, Puerto Rico. All over our Nation we could have this single question being litigated by different businesspeople.

One court in North Carolina might say, ''Oh, yes, the agency has complied with this procedural requirement.''

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 3 additional minutes.)

Mr. WATT of North Carolina. The court in California might issue a different ruling that says, ''Oh, no, the agency has not complied.'' We might have 50 different, 100 different, 1,000 different pieces of litigation going on on

the same issue, the agency required to defend in all of these different locations, use its resources to defend litigation all over the country on the same single issue, and the court system will not even have a way to determine whether they are entering inconsistent determinations.

On the question of the procedure itself, not on the substance of whether it is a good or bad regulation, that issue ought to be litigated in one particular court. It will do away with the proliferation of litigation. It will provide for a consistent determination on this one issue by one court, and then the agency can either move on, go back and revise or do what it is supposed to do under this bill, and there will not be this proliferation of litigation.

I think this amendment makes patently good sense. I will not browbeat this issue to death. But I would ask my colleagues to agree.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Rhode Island.

Mr. REED. The gentleman from North Carolina has raised a very excellent point and I think it goes to making the system more efficient, more predictable, and more comprehensible. If there are opportunities to challenge regulations, and we are just talking about the procedure for doing a regulatory flexibility analysis throughout the country, you would have various conclusions and also, frankly, you would be requiring to send agency lawyers from Washington all around the country, which the taxpayers are paying, when in fact they could simply take their own vehicle or a cab or a subway to the district court here in Washington and litigate this issue.

Again, we have to recognize what we are talking about here is not the substance of any of these rules. We are talking about a determination of whether the agency acted arbitrarily or capriciously in not doing a regulatory flexibility analysis or in doing one that was so insufficient that it demonstrated such arbitrary and capricious behavior. I think this amendment is a wise one. I would hope that the gentleman from Pennsylvania might accept it.

Mr. WATT of North Carolina. Mr. Chairman, I would just say, it will not be only the agency's attorneys that will be all over the country. The Justice Department will get involved in this under section 102. The SBA's counsel will be involved in it, is entitled to be involved in it.

We could be creating a substantial nightmare all across the country on a single simple procedural issue. I hope they will agree.

Mr. GEKAS. Mr. Chairman, not only will I not agree to the amendment, I, as forcefully as I can, urge the Members to oppose this amendment.

What I have heard last to come out of the arguments both from the gentleman from Rhode Island [Mr. REED] and the gentleman from North Carolina [Mr. WATT] is we have got to convenience the Justice Department and agency lawyers so they can walk to the District Court to defend these suits while at the same time the corollary being that the small hardware store owner from Boise, ID, has to come to D.C. to make his rights heard. Or the restaurant owner from Sacramento has to come to Washington, DC, to seek justice and access to the court, or his lawyers would have to.

Again, we see a pattern here, and this is very important, of again looking at the rights of the agencies on whom we are imposing these duties while at the same time not conveniencing or looking to the rights of the small businessman who is affected.

As to the substance of Mr. WATT's referral to the different results or different postures that these cases might take in different parts of the national scene, well, that is the law now in so many different respects. Some of the underlying statutes in which judicial review is accorded substantively simply states that the place for, just to give an example, the place for appeal for bank holding company act regulations is the court of appeals. Another one to the district court.

If under the gentleman's proposal we were consistent, as he wants us to be, on how we are going to do these kinds of appeals, we would have everything in D.C., and all the agencies would have to do is walk across the street, and there would be nothing for the district courts anyplace or the circuit courts or the courts of appeals to do anyplace else. It is a bad idea.

In my judgment, the gentleman from North Carolina [Mr. WATT] either affirmatively or by inadvertence is committing legicide; he is killing the bill, because what happens is that the small businessman will become even more remote from his day in court. The small businessman under this will have nothing to do with the possibility of carrying his complaint to the seat of Government in Washington while esconced in triple redtape in New Mexico, or in Oregon.

I really urge the Members to reject this amendment out of hand. Let's get a vote.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. The gentleman makes a point, a suggestion that our interest is to protect in some way the bureaucrats. That is not the point at all. I think the gentleman realizes that those small businesspeople out in Iowa and throughout this country pay the taxes that support this Government and that will be called upon to send these individuals around the country to argue these disputes.

The other point I would raise, because the gentleman brought up the Bank Holding Company Act, there is an example where a small businessman, perhaps, might want to challenge a regulation, any type of regulation, and yet he would have to go, or she would have to go to the location of the Federal court of appeals, which we only have seven circuits. They are not in every community.

What the gentleman from North Carolina [Mr. WATT] is suggesting to do, I think, is a cost-efficient, sensible approach to make sure that we can save taxpayers' dollars; we can get one resolution.

Again, I remind all of the Members that we are talking about now a check on whether this flexibility analysis is done. I thank the gentleman for yielding.

Mrs. CLAYTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would say that this particular overall bill comes out of the Committee on Small Business and as a Member of the Committee on Small Business, I see an advantage to this, particularly as we were looking at providing judicial review.

It seems like what the gentleman from North Carolina [Mr. WATT] has proposed is to perfect the bill. A careful reading of your bill would suggest that without his amendment, you would not achieve the very thing you want to achieve. That is, efficiency for small business.

Usually small businesses are not all the time represented by the individual entity themselves but represented by associations of that. There is an economy of savings, if people knew for certain where they were to make the procedure that not only imparts for the Government but also those who bring it, the plaintiff, who are charging the administrative rule.

I would like the gentleman from North Carolina [Mr. WATT] just to explain what his intent of savings was for those who are bringing the complaint in the first place.

Mr. WATT of North Carolina. Mr. Chairman, will the gentlewoman yield?

Mrs. CLAYTON. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I appreciate the gentlewoman yielding.

Let me just respond to the implication that this is somehow designed to disadvantage small businesses.

I cannot think of anything that would disadvantage small businesses more than for 1,000 individual small businesses to be around the United States litigating the same procedural issue that could be decided in one location in 1 day. I mean, either the agency has done what it is supposed to do under this bill, which is certify it, make the certification, or prepared the regulatory flexibility statement, or it has not.

We do not need 1,000 different small businesses using their resources in different courts throughout the United States to make that kind of determination.

The suggestion that I am trying to disadvantage small businesses just does

not compute with me. Either the gentleman does not understand the impact of my amendment or he does not understand the impact of his own bill.

The bill has nothing to do with the underlying regulation itself. It has to do with whether an agency has certified two things, and that is what the litigation would be about.

I want to make sure that the gentleman understands and that we put this in perspective. What would the gentleman suggest that we do, that an agency do if one court in California said, ''You have not done what you are supposed to do under this statute'' and another court in New York says, ''You have done what you're supposed to do under the statute''? Then what would the agency do under those circumstances?

Mr. GEKAS. Would the gentlewoman yield so I can respond to that question?

Mrs. CLAYTON. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentlewoman for yielding.

It would occur just as it now occurs under the law of the courts, in which in many circumstances when four district courts simultaneously are handling an issue, sometimes the one who gets it first and is acting on it first will act as an estoppel for the rest until that decision is made.

□ 1430

That is one recourse that is now available.

Second, it is possible in certain different kinds of issues with the same being involved in different areas of the country that they can join the case. That happens day after day and the gentleman knows it. There is no different aspect to this.

Mr. WATT of North Carolina. If the gentlewoman would yield, why would we want to put small businesses to that expense when one small business could litigate the issue of whether this kind of certification has been made or whether final regulatory flexibility analysis has been issued by the agency, why would we want to put 2,000 small businesses to that expense of trying to consolidate cases, and pull this together when one determination by a court would be adequate?

Mr. GEKAS. Mr. Chairman, will the gentlewoman yield?

Mrs. CLAYTON. Yes, I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I repeat, a cluster of small businessmen in Idaho or all over the country under our bill have to go to the court that is mentioned in the underlying judicial review statute on substantive issues, even for reflection accord, and they would have the same.

The CHAIRMAN. The time of the gentlewoman from North Carolina [Mrs. CLAYTON] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mrs. CLAYTON was allowed to proceed for 3 additional minutes.)

Mrs. CLAYTON. Mr. Chairman, I thank the gentleman and I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, they would have the same aspect of jointure of the appeals or the estoppel that would apply if one court wanted to wrangle with the issues first and then the other courts would follow suit. All those things fall into place. And to force this group of Idaho businessmen to come to Washington is not in the best interests of the courts, which then makes D.C. courts swamped. Here is a D.C. court then that if we walk across the street we cannot get in the door, it is so crowded.

Mr. WATT of North Carolina. If the gentlewoman will yield, I do not know how one lawsuit in the District of Columbia is going to swamp the District of Columbia District Court, because once one lawsuit is filed in the District of Columbia, this determination can be made in that lawsuit for the whole Nation. We are not going to need all of these different groups coming in here to make that determination.

Let me just say I have no intention of requesting a recorded vote on this. I hope the American business people and the American people are listening, because what you are doing makes absolutely no sense. On a procedural issue, we are going to tax and use the resources of business people all across America simply because my colleagues here will not even read their own bill and understand what their own bill provides for, and what this simple, straightforward amendment would do in terms of cost savings.

Now we talk about how the American people are disgusted with what we are doing here. If the American people are looking at this, they ought to be disgusted, and in the bill we come out with, the American people are going to get exactly what they deserve. I have no intention of asking for a recorded vote on this. You all can vote it down, if you do not want your bill to improve; let us leave it disgusting and costly to the American taxpayers, and to small businesses, and you go out there and tell them why you wrote such a shoddy piece of legislation.

Mr. GEKAS. I will, thank you.

Mrs. CLAYTON. Let me just conclude to say that this is I think an opportunity to perfect a bill and we should take the opportunity to do that. Sometimes we are so anxious to say that our original drafting is perfect, we do not even consider things. I think this is an opportunity to perfect the bill, to achieve the very goals you want to.

Again I say I come from the Small Business Committee and voted for this and hope to vote for the final version. This is an opportunity to make sure that cost efficiency works both for small business as well as for the Government. It consolidates our efforts in doing this and I urge Members to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Strike from page 6, line 24 through page 7, line 11 and insert in lieu thereof the following language:

''(4) SPECIAL RULE.—No proposed rules issued by an appropriate federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, shall be subject to the requirements of this subsection.''

Mr. WATT of North Carolina. Mr. Chairman, again, I will not belabor this. It is quite obvious that my colleagues here have no interest in improving this bill. They are just marching right straight down the line, and I will make the point in this amendment that what we are trying to do is exempt Federal banking agencies from the provisions of this bill. They exempt them for monetary policy issues.

I submit to my colleagues that there are issues that banking regulators, Federal banking agencies deal with that are equally as important to small businesses as monetary policy issues. There are issues that have to do with assuring that banks are investing and lending without discrimination. There are issues having to do with the Community Reinvestment Act. There are a number, a range of issues that have an equal footing, and I submit that these issues should be exempted from the effect of this bill on the same basis that the monetary policy issues are exempted.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I ask the Members to vote no to reject the thrust of this amendment and to vote no in final consideration of this amendment.

We have made it abundantly clear from the very beginning, and I say this advisedly to the gentleman from North Carolina, if I could have his attention in the preliminary remarks I want to make here, the gentleman from North Carolina seems to express rather forcefully and implies very strongly that somehow we are bound to go straight down the line, as he says, as if we are commanded to do certain things. He overlooks or denigrates then the sense of cooperation that the gentleman from Rhode Island and I have tried to put into this, recognizing Democrat amendments, working to put things together. I want him to know that, that his accusation, if that is what it is, or whatever implication he wants to have people derive from it, that somehow we are going to do the orders of somebody without regard to the Democrats or the minority is dead wrong, and I want him to know that, No. 1.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield on that issue?

Mr. GEKAS. Yes; I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. If I denigrated the hard work of the gentlemen, minority or majority on this bill, I had no intention of doing that. But you cannot stop in the middle of the process and say we have got a product that is perfect in the legislative process, and quit trying to work on it and put your blindfolds on and keep marching down the road without improving the bill.

Mr. GEKAS. Reclaiming my time, there has been nothing perfect on this floor since I have been here except when they extended congratulations to me on one of my birthdays; that is about the only thing.

Mr. TALENT. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Missouri.

Mr. TALENT. Mr. Chairman, very briefly I would like to make a point in keeping with the point the gentleman made that this particular provision which the gentleman from North Carolina seeks to amend was added in the Small Business Committee and carefully worked out by Members on both sides of the aisle and adopted by consensus. So I just want to emphasize the point the gentleman made, this was the result of a bipartisan agreement in the Small Business Committee.

Mr. GEKAS. I just want to point out for the record and so the Members would recognize where we are on this, that we acceded to the banking exception and we did on the strength largely of the assertions by the chairman of the Committee on Banking and Financial Services, the gentleman from Iowa [Mr. LEACH], who was very much concerned that the safety and soundness portions of fiscal policy would be affected adversely if they would have to comply with the text of our bill. So we narrowly exempted those kinds of rules and regulations that would be couched in that soundness of the fiscal policy out of the Committee on Banking and Financial Services. But the gentleman who is the chairman of the Committee on Banking and Financial Services agrees with us, that all other regulations, banks, and financial institutions should be subject to the thrust of our main bill for the protection of the small businessman and the consumer and the taxpayer, and the workers who work for small business who are affected adversely by the impact of some of these regulations.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield on that point?

Mr. GEKAS. Yes; I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I just want to make it clear that I would submit to the gentleman that working out a deal on this with the chairman of the Committee on Banking and Financial Services or even with the bank regulators themselves does not get the people who are adversely affected by this. They are the poor people who did not have a representative in that room.

Mr. GEKAS. Reclaiming my time, two members of the Committee on Banking and Financial Services from the gentleman's side who are members of the Committee on the Judiciary concurred in what we are trying to do here, so they who have historically—and I will discuss this with the gentleman afterwards—have always taken into account these concerns the gentleman has expressed here, also agreed that these would be proper exemptions to the exemption.

Mr. WATT of North Carolina. If the gentleman will yield, I offered this amendment in the Committee on the Judiciary and, as I recall, everybody on our side voted in favor of this amendment in the committee.

Mr. GEKAS. The majority prevailed.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 2, line 7, insert ''(1)'' after ''(a)'' and insert ''(b)'' after ''611''.

Page 2, strike line 9.

Page 2, line 2, strike ''(a)'' and insert ''(b)''.

Page 4, line 24, insert close quotation marks after the period and a period following and insert after line 24 the following:

(2) Section 611(c) of title 5, United States Code, is amended to read as follows:

Page 5, line 1, strike ''(b)'' and insert ''(c)''.

Page 5, line 5, insert close quotation marks and a period following and after line 5 insert the following:

(3) At the end of section 611(c) of title 5, United States Code, insert the following:

Page 5, line 6, strike ''(c)'' and insert ''(d)''.

Mr. WATT of North Carolina (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. WATT of North Carolina. Mr. Chairman, this amendment has a very simple purpose.

It is designed to ensure that we do not inadvertently create a right of judicial review for issues and entities other than those set out with great particularity in title I.

The right to judicial review in title I is intended to protect the right of small entities to have their interests considered during the development of a rule.

If an agency improperly certifies that a rule would not have a significant economic impact on a substantial number of small entities or fails to prepare a final regulatory flexibility analysis that is required under section 604 of title 5, an effected small entity would have the right to seek judicial relief within the framework established by title I.

I know that the committee did not intend to create a right of relief that goes beyond the text of the bill, but I fear that may be the unintended consequence if we pass this legislation, as drafted.

This problem is the result of the drafters' decision to replace current section 611(a) of title 5, which states that a determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review, except as otherwise provided later in the section.

If we retain that provision and style the remainder of the text of title I as an exception to the rule against judicial review, we will make absolutely clear that the right to judicial review and the remedies described in title I are the limits of what Congress intends to provide in the way of judicial review.

This is not an academic point.

Under the Regulatory Flexibility Act, an agency's duties are not limited to those activities for which a right of judicial review is explicitly described in title I.

For example, section 602(a) of title 5, which is part of the act, requires each agency to publish a ''regulatory flexibility agenda'' during the months of October and April of each year.

[The semi-annual Reg/Flex ''Agenda'' is to contain a brief description of the subject of any rule under consideration which is likely to require a regulatory flexibility analysis; the objectives and legal basis for the rule; and an approximate schedule for completing action on any rule for which the agency has issued a general notice of rulemaking. However, an agency is neither required, nor precluded from considering or acting on any matter either listed or not listed on the Agency's agenda.]

Also part of the Regulatory Flexibility Act of 1980 is section 610 of title 5, United States Code, which requires the agencies to conduct periodic reviews of its rules.

While I am quite sure that the committee did not intend to provide judicial review of agency decisions under these sections, the way the legislation is drafted, a court would have no way of knowing that was the case.

Indeed, because this legislation drops the general restriction on judicial review, we could wind up with the courts declaring that the right of judicial review of matters not specifically dealt with in title I is even more expansive than the approach established by title I.

There is absolutely no reason for the House to pass this legislation without having resolved this ambiguity.

My amendment would retain the current text of section 661(a) and make the judicial review provisions of title I an exception to the general rule against judicial review.

□ 1445

I have no anticipation that anybody is going to worry about this, and we are going to go ahead and pass this bill like it is. I have no intention of requesting a recorded vote. If you want to leave this like it is, leave it ambiguous, then vote against the amendment.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment.

We oppose the amendment, and we ask all the Members to oppose it, to vote ''no.''

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title I? If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—REGULATORY IMPACT ANALYSES

SEC. 201. DEFINITIONS.

Section 551 of title 5, United States Code, is amended by striking ''and'' at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

''(15) 'major rule' means any rule subject to section 553(c) that is likely to result in—

''(A) an annual effect on the economy of $50,000,000 or more;

''(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or

''(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; and

''(16) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

''(f)(1) Each agency shall for a proposed major rule publish in the Federal Register, at least 90 days before the date of publication of the general notice required under subsection (b), a notice of intent to engage in rulemaking.

''(2) A notice under paragraph (1) for a proposed major rule shall include, to the extent possible, the information required to be included in a regulatory impact analysis for the rule under subsection (i)(4) (B) and (D).

''(3) For a major rule proposed by an agency, the head of the agency shall include in a general notice under subsection (b), a preliminary regulatory impact analysis for the rule prepared in accordance with subsection (i).

''(4) For a final major rule, the agency shall include with the statement of basis and purpose—

''(A) a final regulatory impact analysis of the rule in accordance with subsection (i); and

''(B) a clear delineation of all changes in the information included in the final regulatory impact analysis under subsection (i) from any such information that was included in the notice for the rule under subsection (b).''.

SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES; AND EXTENSION OF COMMENT PERIOD.

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, as amended by section 202, is further amended by adding after subsection (f) the following:

''(g) If more than 100 interested persons acting individually submit request for a hearing to an agency regarding any rule proposed by the agency, the agency shall hold such a hearing on the proposed rule.''.

(b) EXTENSION OF COMMENT PERIOD.—Section 553 of title 5, United States Code, as amended by subsection (a), is further amended by adding after subsection (g) the following:

''(h) If during the 90-day period beginning on the date of publication of a notice under subsection (f) for a proposed major rule, or if during the period beginning on the date of publication or service of notice required by subsection (b) for a proposed rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

''(1) shall provide an additional 30-day period for making those submissions; and

''(2) may not adopt the rule until after the additional period.''.

(c) RESPONSE TO COMMENTS.—Section 553(c) of title 5, United States Code, is amended—

(1) by inserting ''(1)'' after ''(c)''; and

(2) by adding at the end the following:

''(2) Each agency shall publish in the Federal Register, with each rule published under section 552(a)(1)(D), responses to the substance of the comments received by the agency regarding the rule.''.

SEC. 204. REGULATORY IMPACT ANALYSIS.

Section 553 of title 5, United States Code, as amended by section 203, is amended by adding after subsection (h) the following:

''(i)(1) Each agency shall, in connection with every major rule, prepare, and, to the extent permitted by law, consider, a regulatory impact analysis. Such analysis may be combined with any regulatory flexibility analysis performed under sections 603 and 604.

''(2) Each agency shall initially determine whether a rule it intends to propose or issue is a major rule. The Director shall have authority to order a rule to be treated as a major rule and to require any set of related rules to be considered together as a major rule.

''(3) Except as provided in subsection (j), agencies shall prepare—

''(A) a preliminary regulatory impact analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of notice of proposed rulemaking, and

''(B) a final regulatory impact analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of a major rule.

''(4) Each preliminary and final regulatory impact analysis shall contain the following information:

''(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

''(B) An explanation of the necessity, legal authority, and reasonableness of the rule and a description of the condition that the rule is to address.

''(C) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs.

''(D) An analysis of alternative approaches, including market based mechanisms, that could substantially achieve the same regulatory goal at a lower cost and an explanation of the reasons why such alternative approaches were not adopted, together with a demonstration that the rule provides for the last costly approach.

''(E) A statement that the rule does not conflict with, or duplicate, any other rule or a statement of the reasons why such a conflict or duplication exists.

''(F) A statement of whether the rule will require on-site inspections or whether persons will be required by the rule to maintain any records which will be subject to inspection.

''(G) An estimate of the costs to the agency for implementation and enforcement of the rule and of whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

''(5)(A) the Director is authorized to review and prepare comments on any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule based on the requirements of this subsection.

''(B) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary impact analysis or notice of proposed rulemaking and shall refrain from publishing its preliminary regulatory impact analysis or notice of proposed rulemaking until such review is concluded. The Director's review may not take longer than 90 days after the date of the request of the Director.

''(6)(A) An agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon in writing by the Director or by an individual designated by the Director for that purpose.

''(B) Upon receiving notice that the Director intends to comment in writing with respect to any final regulatory impact analysis or final rule, the agency shall refrain from publishing its final regulatory impact analysis or final rule until the agency has responded to the Director's comments and incorporated those comments in the agency's response in the rulemaking file. If the Director fails to make such comments in writing with respect to any final regulatory impact analysis or final rule within 90 days of the date the Director gives such notice, the agency may publish such final regulatory impact analysis or final rule.

''(7) Notwithstanding section 551(16), for purposes of this subsection with regard to any rule proposed or issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, the term 'Director' means the head of such agency, Administration, or Office.''.

SEC. 205. STANDARD OF CLARITY.

Section 553 of title 5, United States Code, as amended in section 204, is amended by adding after subsection (i) the following:

''(j) To the extent practicable, the head of an agency shall seek to ensure that any proposed major rule or regulatory impact analysis of such a rule is written in a reasonably simple and understandable manner and provides adequate notice of the content of the rule to affected persons.''.

SEC. 206. EXEMPTIONS.

Section 553 of title 5, United States Code, as amended by section 205, is further amended by adding after subsection (j) the following:

''(k)(1) The provisions of this section regarding major rules shall not apply to—

''(A) any regulation that responds to an emergency situation if such regulation is reported to the Director as soon as is practicable;

''(B) any regulation for which consideration under the procedures of this section would conflict with deadlines imposed by statute or by judicial order; and

''(C) any regulation proposed or issued in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such institution, credit unions, or government sponsored housing enterprises regulated by the Office of Federal Housing Enterprise Oversight.

A regulation described in subparagraph (B) shall be reported to the Director with a brief explanation of the conflict and the agency, in consultation with the Director, shall, to the extent permitted by statutory or judicial deadlines, adhere to the process of this section.

''(2) The Director may in accordance with the purposes of this section exempt any class or category of regulations from any or all requirements of this section.''.

SEC. 207. REPORT.

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rulemaking procedures of Federal agencies and an analysis of the impact of those rulemaking procedures on the regulated public and regulatory process.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GEKAS: Page 16, after line 18, insert the following:

SEC. 208.

EFFECTIVE DATE.—The amendment made by this title shall apply only to final agency rules issued after rulemaking begun after the date of enactment of this Act.

Page 9, line 15, insert ''a summary of'' before ''a final''.

Page 9, line 21, strike the close quotation marks and the period following and add after that line the following.

The agency shall provide the complete text of a final regulatory impact analysis upon request.

Page 9, line 21, strike the close quotation marks and the period following and insert after that line the following:

''(5) The issuance of a notice of intent to engage in rulemaking under paragraph (1) and the issuance of a preliminary regulatory impact analysis under paragraph (3) shall not be considered final agency action for purposes of section 704.''.

Page 10, line 8, strike out ''any rule'' and insert ''any major rule'' and in line 18, strike out ''proposed rule'' and insert ''proposed major rule''.

Page 14, line 16, strike ''publish'' and insert ''adopt''.

Page 15, line 22, strike ''and'', page 16, line 3, strike the period and insert ''; and'', and insert after line 3 on page 16 the following:

''(D) any agency action that the head of the agency certifies is limited to interpreting, implementing, or administering the internal revenue laws of the United States.

Mr. GEKAS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GEKAS. Mr. Chairman, at an appropriate time, I want to yield to the gentleman from Rhode Island to further concur in what we are attempting to do here. This is a bipartisan en bloc amendment, and the product of the ongoing negotiations between the minority and the majority in the whole series of questions that we jointly raised.

One of the important parts here is that to cover the IRS situation, which we will get to in a little bit of time, but by and large, these are technical amendments, but all intended to reduce the friction that could arise if we did not agree on them.

Let me start off by just saying some of the contents of this bill, as I say, are rather technical. For instance, the changes that we intend to make to the Administrative Procedures Act will apply only to informal rulemakings which begin after the date of enactment of this legislation. You would think that that is generally understood, but this makes it clear, but it is still a technical amendment.

Another one is that we would allow an agency to provide a summary of the final impact analysis to be included in the statement of basis and purpose for final major rule, and this would be in the economy of what printing materials would require and the Federal Register printing, et cetera.

Another one is that in no way should we consider that a preliminary regulatory impact analysis, as required by this legislation, shall be considered final agency action for purposes of judicial review. We make that clear. That is a technical amendment. I would have thought that that could be accomplished simply because of the language that we have or the reporting language, but this clears it up. It is another technical amendment.

Finally, the en bloc amendment to which other reference has been made by other Members includes an exemption provision of the bill's provision to exempt the IRS from the impact analysis requirements.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. Mr. Chairman, I concur with the gentleman. We have worked with these issues which are very important, but technical, together with the majority and minority staffs. I think we have reached a good balance between the need to make this a streamlined, effective procedure, and this amendment is a good one, and I would urge passage, and I believe that the gentleman would also recognize my colleague, the gentleman from Ohio.

I would also urge that his proposal be supported.

AMENDMENT OFFERED BY MR. TRAFICANT TO THE AMENDMENT OFFERED BY MR. GEKAS

Mr. TRAFICANT. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT to the amendment offered by Mr. GEKAS: At the end of the Gekas amendment, strike the period and insert: '', including any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States.''

Mr. TRAFICANT. Mr. Chairman, more than likely this bill may extend, and probably does, to cover that provision, but sometimes when we deal with these international matters there seems to be some roadblock somewhere in some procedure somewhere that just seems to reduce the impact of our efforts to try and resolve some of these differences we have.

Now, very simply, this additional safeguard language ensures that companies who use the superior productivity of the American worker and earn millions of dollars out of our economy, then take much of that money back home, at least pay some of their taxes here. We do not tie the IRS, and we let the IRS know the Congress of the United States wants them to address these matters with the subsidiaries.

I ask the gentleman accept the amendment. It is common sense. It specifies it.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding.

We, too, believe, as the gentleman from Ohio has asserted in his opening remarks, that we have already covered the situation which he intends to implement here, but we see it, at worst, as being surplusage, at best as being more explicit in the coverage that we intend.

The gentleman from Rhode Island and I have both concurred in that result.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Rhode Island.

Mr. REED. Similarly, we concur and accept your perfecting amendment, I say to the gentleman from Ohio [Mr. TRAFICANT].

Mr. GEKAS. If the gentleman will yield further, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS], as amended.

The amendment, as amended, was agreed to.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GEKAS. Mr. Chairman, are we now in title II? Are we all agreed that title I has been disposed of?

The CHAIRMAN. Title II continues to remain open for amendment.

AMENDMENT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. LOFGREN: Page 16, line 11, strike the close quotation marks and the period following and insert after line 11 the following:

''(3) For purposes of paragraph (1), the term 'emergency situation' means a situation that is—

''(A) immediately impending and extraordinary in nature, or

''(B) demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans or substantial

endangerment to private property or the environment if no action is taken.''.

Ms. LOFGREN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. LOFGREN. Mr. Chairman, this morning I mentioned my intention to offer an amendment to define emergencies. I did offer an amendment in committee, and the gentleman from Pennsylvania [Mr. GEKAS] and I agreed that we would work together to come up with a resolution and, in fact, in all fairness to the gentleman from Pennsylvania [Mr. GEKAS], I had language, and the language before us now certainly bears his imprint more than mine. I think it is acceptable.

I would note that in the committee report, emergency is now defined in a circular manner, specifically exempts an impact analysis requirement of this legislation any regulation that responds to an emergency situation, defining an emergency as an emergency, and this language gives us further guidance.

I would like to just make clear, since demanding attention in section B is, if not vague, at least not precise, that it would be the intention of this body that in the following circumstance or hypothetical, for example, if a cure for cancer was found, in order for that drug to be released by the FDA to cure cancer victims, there needs to be a regulatory action. The cure for cancer would certainly have an impact on small business entities around the country. No one wants to stop the cure for cancer from being released.

This would allow those procedures to move forward under the definition, if I am hearing the minority counsel correctly, and I would offer this amendment, and I hope, I believe, that it is acceptable.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentlewoman's amendment is perfectly acceptable to us, and as she said, it is itself a product of the communication that has existed between her office and mine and fills a need we think that was evident in yesterday's debate on another bill in which the same kind of constriction was implemented in the final version of that bill.

So we are prepared even further in the report language that will accompany the conference report which is yet down the line to incorporate even further the sentiments that have been expressed by the gentlewoman.

We accept the amendment, and ask for a vote.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. LOFGREN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: Page 15, line 22, strike ''and'', in line 3 on page 16 strike the period and insert ''; and'', and add after line 3 the following:

''(D) any regulation proposed or issued pursuant to section 553 of title 5 of the United States Code in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, in our discussion with the U.S. Trade Representative, my amendment basically would exempt any regulation proposed or issued pursuant to section 553 of title V of the code, which is the Administrative Procedures Act in connection with imposing trade sanctions against any country that engages in illegal trade activities against America that are injurious to our technology, jobs, pensions, or general economic well-being.

□ 1500

The effect of this amendment, although the Trade Representative said that general rulemaking is, in fact—that sanctions are not the result of rulemaking action, they could not be definitive to define any and all areas.

My amendment would serve to say that under the Administrative Procedures Act there shall be no trade rulemaking, and if by any chance there is, that would fall into that loophole, then the safeguard provision would say that they are not going to have their hands tied in responding, when necessary, to such activity. But it clarifies the Administrative Procedures Act and the aspect within that law.

Let me just say this to the Members, one of the things that we found in dealing at times with the trade aspect through the executive branch—and this is not, in fact, a slap at the Clinton administration, from my experience both Democrat and Republican administrations at times have been a little soft in some of these areas—this will clarify that, in fact, it ensures that sanctions are not covered by the Administrative Procedures Act of 1946, but in the event there are some areas that fall between the cracks, which they could not answer, this amendment would be a further safeguard.

Mr. GEKAS. Mr. Chairman, would the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania [Mr. GEKAS], chairman of the subcommittee.

Mr. GEKAS. I thank the gentleman for yielding to me.

Mr. Chairman, the gentleman has made it clear to us what he intends and we have made it clear to him that we believe that we had covered this situation. But so long as the gentleman continues to agree that his amendment will cover those issues that are pursuant to 553 of the Administrative Procedures Act, as he says, we are in accord, and I accept the amendment.

Mr. TRAFICANT. I appreciate that. It does clarify those positions.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FRANKS OF NEW JERSEY

The CHAIRMAN. Are there further amendments to title II?

Mr. FRANKS of New Jersey. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. FRANKS of New Jersey: Page 13, line 10, before the period insert the following: '', and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines''.

Mr. FRANKS of New Jersey. Mr. Chairman, this amendment makes a small but important change to the regulatory impact analysis, found in title II of the bill.

Under this particular amendment, regulators proposing a major new rule would have to state up front whether that rule will require anyone to obtain licenses, permits, or other certifications.

Furthermore, agencies would be compelled to report whether they plan to impose fines or fees as part of their rule.

This amendment, as well as the entire regulatory impact analysis, is designed to cause regulators and regulated parties to have full knowledge at the outset of the intended effect of a proposed rule.

Not only will adoption of this amendment cause regulated parties, especially small businesses, to know a rule's potential impact, but it will provide for a better understanding of regulatory changes at the earliest stages of the process and, thereby—and I think this is most important—thereby reduce the incidence of fines, litigation, and noncompliance.

Mr. Chairman, I urge its favorable consideration.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding to me.

Mr. Chairman, I am delighted to say that I accept the thrust of the amendment that the gentleman offers, and it is in perfect keeping with what we

learned in the testimony from the various businessmen who appeared before us on the various, sometimes anecdotes but nevertheless strong indications of how they were hurt in the process in the past.

We like the amendment, and we urge favorable consideration.

Mr. REED. Mr. Chairman, I move to strike the last word and say that we have looked at the amendment. It simply requires a further specification in the regulatory impact analysis of certain provisions for the proposed regulation, including whether the individual would have to obtain licenses, permits, or other certification and a discussion of the question of fees or fines.

It strikes me that most of these provisions would be outlined in the basic law governing the particular activity. I do not see any particular harm by specifying the regulatory impact analysis. It tends, I would think, to simply do what is done elsewhere. But I at this point, subject to further review and perhaps if we have comments, working with the gentleman from New Jersey as we move through the process, would be prepared, I think, to accept the amendment unless someone else has a more persuasive argument at the moment.

I believe at this time we are prepared to accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. FRANKS].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REED: Page 13, beginning in line 2, strike ''the least costly approach'' and insert ''the most cost-effective approach''.

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, this amendment goes to a very important issue, the issue of the standard by which the regulator will choose a particular process of regulation, a particular path to implement the law that that individual has been entrusted with by the Congress.

The present language of the bill requires that the regulator adopt the least costly approach. It has a rather superficial appeal. We all want things to be done at the lowest cost. But I think the problem is that this particular expression, ''least costly'' approach, fails in any way to require a consideration of the benefits.

What I think we have learned over the last several decades in terms of regulatory reform is that regulations, laws, should balance cost and benefits. Preoccupation with just benefits leads, in many cases, to excessively expensive regulations. On the other hand, a preoccupation with just the lowest cost could lead to a situation where we do not get the most for our dollar.

A very simple example would be that there could be two different approaches to achieve a regulatory goal. One might be costs, say, that require, for example, $3 to achieve. That would be in contrast to something that cost $3.20. Yet the $3.20 approach yields, 7, 8, 9 times the benefit. I think we all can understand that language. That is why cost-benefit analysis, not just cost analysis, is so critical.

The problem I have with the legislation is it does not make sensible, reasonable people make a judgment about regulations to consider the benefits, to take not the least costly approach but the most cost-effective approach, one that for the dollar gets the biggest benefit.

I honestly believe that is what the American people want us to pursue. You know, the old saying, ''penny-wise and pound-foolish.'' I believe that is exactly what the present language in the bill would require all of our administrators to be, penny-wise and pound-foolish, get the cheapest approach even if it gives marginal benefits, but ignore, in fact, legislatively be unable to adopt, an approach that may be marginally more costly but significantly more beneficial to the whole country.

So I would very much urge that we consider this provision. I would be very generally interested in the comments of the chairman as to whether we could at this point, or going forward, really, work on getting in the bill not this least costly analysis, but a true cost-benefit analysis.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I reluctantly oppose the amendment, not because there is any strong visceral reaction to it, but we have the least language in it. I think we are playing with words here.

But if we look at it as non-lawyers for a moment the general populace, the people most affected by this legislation, the small business men, the employers of our working constituents, when they look at this, least costly is exactly what is most understandable.

We all want it to be cost-effective, but while we are doing that, we want it to be least costly. I do not know how to argue this except to say that it is so minute that I ask the gentleman to withdraw the amendment and to then convince me separately later on how we can join in conference to better implement his thoughts on it.

This is not worth fighting about, but if the gentleman wants to fight, I am going to protect my language out of ego, if nothing else.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, when amendments of this kind are rejected by the other side, it forces me to raise the question again: What is the purpose that we are trying to achieve here? Is the purpose to make our Government and the regulations and rules that we adopt more reasonable, or is the purpose to do away with rulemaking and regulations?

I hate to keep questioning the purpose of this bill. I had thought that the underlying purpose of the bill was to try to encourage Federal Government agencies to approach rulemaking and regulation-making in a reasonable way, to try to reduce the burden that these agencies are imposing on the American people, but not to do away with the value and the purposes that sound rulemaking accomplishes in the public interest.

So when I see a simple cost-benefit approach, which is what this amendment contemplates, being rejected by my colleagues out of hand, then I start to question what are we trying to do here?

If we are trying to do away with every rule and regulation that the Federal Government has that my colleagues in this body do not like because many of them serve a public interest, a public purpose that they do not support even though they are in the interest of our Nation, then at least my colleagues ought to be honest enough to stand up and say that to the American people.

Do not try to do with subterfuge what you cannot and will not be honest with the public on and do directly. If you want to do away with regulations or some law that you do not like, bring it into the body here and let us debate the merits or lack of merits of that particular law. Do not come in through the back door and try to undercut the law by undercutting rules and regulations that are promulgated pursuant to that law.

I submit that it is just gutless for us to come into this body and say to the American people that we have got a regulatory process that is out of control and we will not bring that regulatory process back into control by cutting back on the laws themselves that are generating the regulations.

I do not know of any Federal Government agency—I want to repeat it again—that is out there just making up some rules and regulations and promulgating them pursuant to something other than a congressionally approved law.

If we did our job and specified in some reasonable way what the law says instead of delegating our responsibility to the government agencies, then they would not have to guess and write a bunch of regulations that we should have written into the law.

□ 1515

And if they step beyond the ambit of a law that we have passed in promulgating regulations, then we ought to have the guts to snatch them back within the law, but not undercut what

they are doing by undercutting their regulation, but by revoking the law. This makes no sense, and I encourage my colleagues to support this amendment.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the whole purpose of this title is to streamline and make less costly the whole process of regulations in this country, less costly to the people to whom government is supposed to serve, less costly to the businesses in which we all have an interest in ensuring that they operate very properly with due regard for the safety of the public.

What we have done and what this committee has come up with here in the language ''least costly'' is about as straightforward as anybody, save the gentleman from North Carolina, could hope to come up with. There is no subterfuge here. As a matter of fact, if one were looking for words that provided a lot more wiggle room a lot more word smithing, then one might want to use the words ''most cost effective'' because those are words that are fraught in the context of this title with what it intends to do, whose words are fraught with a lot more ambiguity than the words ''less costly.''

So I am somewhat surprised by the gentleman from North Carolina [Mr. WATT] arguing that the words ''least costly'' are not clear, are somehow designed to allow some sort of subterfuge or back-door approach here. This could not be more straightforward, and they are certainly in keeping, Mr. Chairman, with the overall intent of this title.

Mr. VOLKMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was going to ask the gentleman from Georgia [Mr. BARR] a question. Maybe the gentleman from Pennsylvania [Mr. GEKAS] will be glad to answer the question in regard to this very provision.

Mr. Chairman, I say to the gentleman, Assuming that you had a regulation being proposed to meet a certain goal to do a certain thing, OK, whether it's in the area of safety, area of health, automobile emissions, whatever you want to call it, and there are several ways that this can be done, methodologies in which through rule making you can achieve that goal or near that goal. But the least costly to, let's say, automobiles, to the automobile industry or to the consumers, would be a methodology that doesn't achieve that goal but is the least costly to the automobile industry. Let's say you wanted to reduce emissions that are polluting our air and are causing people to be sick and die, and everything else, by 10 percent, and let's say the Congress required you to do that. Now does that mean that the 10 percent requirement, if the Congress requires it, is the end and it's the least costly to get to 10 percent, or is it least costly to do an emissions reduction?

Does the gentleman understand my problem?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I say to my colleague, Well, I think you are overlooking the language of the paragraph that precedes the use of the words ''least costly approach'' because by that time we've gone through a whole series of things like including market based mechanisms that can substantially achieve the same regulatory goal at a lower cost and explanation of the reasons why such alternative approaches were not adopted. Then, after we do all that, which implies that all the reasonable approaches were taken to try to make this work, then, when you put that into its proper perspective, we then follow up with a demonstration that, putting all of this together, we're going to use the least costly approach together with——

Mr. VOLKMER. Together with the demonstration——

Mr. GEKAS. To say the least costly cost effective approach, where there are several cost effective ways to do it, we would still want to put in ''least costly, cost effective'' if the gentleman knows what I mean.

Mr. VOLKMER. Right, least costly approach to remedying the goal; is that correct?

Mr. GEKAS. Correct.

Mr. VOLKMER. So, in other words, if the least costly idea to achieve near the goal is not sufficient, if the purpose is to regulate as far to achieve a certain goal——

Mr. GEKAS. If the gentleman would continue to yield, the statute calls for the agencies to do X, Y, and Z. Once we apply these little formulas and try to get a marketplace approach to all of this, and we have choices ahead of us, we want to make the least costly approach choice. That is what this is all about.

I say to the gentleman, it's nothing to worry about, HAROLD.

Mr. VOLKMER. Well, I have a little bit to worry about because I am afraid if it does not do exactly what the gentleman says it does, I have got to worry about the——

Mr. GEKAS. I have already asserted to the gentleman from Rhode Island that following—before we get to conference he and I are going to be discussing this language.

Mr. VOLKMER. Fine.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will be briefer than 5 minutes. I appreciate the chairman's offer to work with us on this issue. This is an important issue. We have worked to date to try to narrow the language and make it more effective. I think what has been said before by my colleagues though indicates that this is a very important issue, and let me just respond very briefly to the tenor of some of their remarks.

First, there needs to be some discussion, I think, and obviously a discussion about small business and how they are oppressed, et cetera, but I would like to make the point that small business people do not run their companies simply to minimize costs. In fact, there are a lot of businesses out of business today because that is all they did. What they tried to do is maximize profit, and that is taking into consideration not only the cost, but how well they are doing, how well they are serving their customers, et cetera, so to have a single factor analysis at least cost is, I think—I am skeptical of this, and skepticism has prompted this amendment and prompted a continuing dialogue with the gentleman from Pennsylvania, and we can discuss these things in very theoretical terms, but it helps, I think, to focus on very practical, pragmatic terms.

For example, the FAA requires deicing of aircraft. There is probably least costly ways to de-ice an aircraft than having the truck go two or three times with the fluid and having all these procedures which I just observed flying down here 3 days ago, and thank goodness. I say to my colleague, you could probably prove to the FAA that somebody with a squeegee brush on the wing might be cheaper than the truck, and the capital investment, et cetera. The point though is that the FAA is not constrained just on least cost. They want to have a cost that justifies the benefits of some approach that is cost effective, so I think this is a very valuable discussion. I think it is a discussion that makes a great deal of sense and in the spirit which the gentleman from Pennsylvania has offered to continue this dialogue to seek language that might not be most cost effective might be another way to phrase it. But to get to the point where, and I think this is the fear of some of my colleagues, that an agency would feel that they have a very good solution like de-icing airplanes today, but they cannot use it because they have to use something that is just cheap, but not good.

Mr. Chairman, I would in this spirit ask unanimous consent to withdraw the amendment and continue to work with the gentleman from Pennsylvania [Mr. GEKAS].

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

AMENDMENT OFFERED BY MR. CHAPMAN

Mr. CHAPMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CHAPMAN: PAGE 12, LINE 5, STRIKE ''AND'', IN LINE 8 STRIKE THE PERIOD AND INSERT '', AND'', AND INSERT AFTER LINE 8 THE FOLLOWING:

''(C) a renewal regulatory impact analysis, which shall be prepared and transmitted to the Director within 7 years after the publication of the final rule and every 7 years thereafter.

Page 12, line 9, strike ''and final'' and insert '', final, and renewal''.

Page 13, insert after line 15 the following:

''(H) In addition, in the case of an analysis under paragraph (3)(3), the agency shall consider the benefits and costs, if any, associated with each of the following:

''(i) The extent to which the rule impedes domestic competition or international competitiveness.

''(ii) The extent to which capital investments already expended in complying with the rule have been reviewed.

''(iii) The extent to which information requirements under the rule can be reduced, particularly for small business.

''(iv) Whether the rule is clear and certain regarding who is required to comply with the rule.

''(v) Whether the rule is crafted to minimize needless litigation.

''(vi) Whether the rule is fashioned to maximize net benefits to society, particularly whether the rule evaluated risk and cost benefits on an industry-by-industry and sector-by-sector basis.

''(vii) Whether the total effect of the regulation across Federal agencies has been examined.

Page 13, line 17, strike ''or final'' and insert '', final, and renewal''.

Page 15, redesignate sections 205 through 207 as sections 206 through 208 and insert before line 1 on that page the following:

SEC. 205. RENEWAL REVIEW REQUIRED.

Section 55 of title 5, United States Code, as amended in section 204, is amended by inserting after subsection (i) the following:

''(j) The head of each agency shall conduct a renewal regulatory impact analysis of each major rule of the agency issued after the date of the enactment of the Regulatory Reform and Relief Act in accordance with subsection (i)(3)(C) and shall issue a report on the findings of such analysis with recommendations for termination or extension of the effectiveness of such major rule, any appropriate modification to such major rule to be extended, or any appropriate consolidation of such major rule. Such report shall be submitted to Congress not later than 60 days before the termination date for such major rule as determined under this subsection. Such major rule shall terminate 7 years after it was initially published as a final rule or after it was last reviewed under subsection (i)(3)(C) unless the head of the agency in its report under this subsection recommends that such major rule be extended.''.

Page 15, line 5, strike ''(j)'' and insert ''(k)''.

Page 15, line 14, strike ''(k)'' and insert ''(l)''.

Mr. CHAPMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. CHAPMAN. Mr. Chairman, I will only take a minute to explain both the amendment and the history that leads up to my offering the amendment today, and I do so recognizing that I have worked on this amendment with my colleague, the gentleman from Florida [Mr. MICA], who joins us today on the House floor to discuss what I know we believe to be a very, very important missing link, if my colleagues will, in the reform of our regulatory scheme that the House is considering this week.

We had intended yesterday to offer an amendment to the bill under consideration at that time that would provide for the periodic review of all existing regulation and prospectively the review of new regulations on a 7-year rotating basis. It is my belief that not only should we apply the criteria in this legislation and criteria that are contained in our amendment to regulations that are promulgated and adopted in the future, but that we ought to apply those same common sense criteria to the regulations that currently exist on the books of the Federal agencies today.

I believe that one of the things that will help enforce and have a good application of those criteria would be a provision that would sunset Federal regulations unless they are so reviewed, not only prospectively, but also currently, on the books. So yesterday our amendment would have provided for a review of all existing regulations and a review on a 7-year basis of new regulations with the threat to the agency of that regulation sunsetting unless that review were performed under a very common sense criteria.

We ran out of time, Mr. Chairman, yesterday before we could get our amendment offered, but I believe that amendment does, and in fact I know it does, enjoy strong bipartisan support.

So today on this legislation this amendment is not as broad in scope as that we had hoped to be able to offer, but it still contains the basic components of that approach to regulatory review in that it would require, it would require the agencies, to conduct a review under the criteria that the gentleman's bill provides a very—my common sense criteria that tracks almost directly the criteria that were contained in the amendment we were to offer yesterday, but it also continues to provide that the agencies that currently have regulations between now and 7 years from now review every single regulation currently on the books applying the gentleman's same criteria outlined in this bill and again with a provision that, if that review does not occur, then the regulations not reviewed would sunset.

This is the best way I know, and I believe that we can force Federal agencies to stay up to date, to look at times change as conditions change, as governments' functions change and as industry and technology changes to make sure, to make sure that we are applying up-to-date, common sense regulatory solutions to the problems that the agencies have in administering the laws that we pass.

So I believe it is a very common sense amendment because it does simply two things. It requires that all existing regulation undergo the same scrutiny that the gentleman's bill would provide for new regulations, and it also provides that regulations would terminate, would sunset, if that review does not occur on a 7-year basis.

So, I offer that amendment. I believe it is an improvement to the bill.

Mr. Chairman, I reserve the balance of my time, but I know the gentleman from Florida [Mr. MICA] would have some comments on this.

Mr. MICA. Mr. Chairman, I move to strike the last word.

(Mr. MICA asked and was given permission to revise and extend his remarks.)

☐ 1530

Mr. MICA. Mr. Chairman, I am really pleased to join one of the leaders in regulatory reform, the gentleman from Texas [Mr. CHAPMAN], to offer this amendment today. I think what we need to do is stop and look and see where we have been and what we have done over the past couple of days.

Actually it is quite monumental in the area of regulatory reform. Only a matter of months ago, a year ago, it was almost impossible to discuss some of the issues, let alone vote and pass some of the measures we have passed in the past few days here on the floor of the House.

But we have passed here a moratorium, a temporary moratorium on regulations until we get other measures in place.

We passed risk assessment regulation, which is long overdue, setting some general guidelines and parameters, which will provide a tool for assessing risk and then using cost and benefit to see how we can do a better job in the regulatory process.

Then today we have been discussing regulatory flexibility and regulatory impact analysis. Some of that gets a little bit heavy, but all we have been trying to do is make some common sense out of the regulatory process.

The amendment my colleague is offering and I am offering with him today says let us have a periodic review of regulations. None of the measures that we have looked at in the past few days dealing with regulatory reform have really addressed that issue. We think it is critical that we look forward and periodically review all of the mass of regulations that are pending.

For example, right now there are over 4,300 regulations pending or being considered by the various Federal agencies. I do not want to get back into the look-back, which I think we need to address, but do you know in the last 20 years we have adopted 1,055,000 in the Federal Register of regulations? That is what we need to do, is go back and look at what we have done. What we are offering today is prospective, but even the President of the United States has recognized the need, and I hope we prompted his action.

Let me quote from the February 22 Washington Post: ''Clinton said he was ordering Federal regulators to examine each rule they administer to see what has become obsolete and to produce by June 1st rules that can be discarded.''

What we are saying here is we would like to do that for the future. Of

course, we would like to do that for the past and we think it needs to be done, and we should really have a hearing, have an opportunity to do just that.

But again, what we are asking for here in this amendment is a return of common sense, a periodic review of outdated regulations, a periodic review of regulations that should be terminated, and a periodic review of regulations that make us less competitive, that put people out of business, that send jobs overseas.

So that is the basis for our request today. It is my understanding, too, that my colleague and I have agreed that we will agree in a few moments here to withdraw our amendment, but I do want to compliment, first of all, the chairman for his agreeing with us today to conduct full hearings on this issue and that we can go back and look at what needs to be done retroactively, and we need to look at what goes forward as far as review of these regulations.

Mr. Chairman, I thank the gentleman for his leadership, I thank the gentleman from Pennsylvania [Mr. WALKER], the gentleman from Virginia [Mr. BLILEY], the gentleman from Texas [Mr. DELAY], the gentleman from Louisiana [Mr. TAUZIN], the gentleman from California [Mr. CONDIT], the gentleman from Louisiana [Mr. HAYES], and again the gentleman from Pennsylvania [Mr. GEKAS], and our Speaker, the gentleman from Georgia [Mr. GINGRICH], for their leadership on these regulatory reform issues, and on what we have accomplished and hope to accomplish by offering this amendment, and also withdrawing this amendment today, but with the opportunity to address this as the next stop in the regulatory reform process.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I must say, and I felt this from the first moment that we had preliminary discussions with the gentleman from Texas [Mr. CHAPMAN], this is a very attractive amendment, one that if it had been the subject of our hearings and had the gentleman presented it in a fashion that it would have blended in with our legislation, and I would have been happy to consider it in the final implementation of this legislation. I still feel that way. It is going to occur. I am positive of that.

But in the interests of a proper approach to the entire process here, I am most appreciative of your willingness to withdraw the amendment on the basis that we will revisit the subject matter, we will accommodate hearings or whatever it takes to bring it back to the House in a proper form.

Mr. CHAPMAN. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Texas.

Mr. CHAPMAN. Mr. Chairman, if I may, with the assurances of the chairman, and let me say with very much thanks to the chairman for his commitment to give us an opportunity to make a factual case for this amendment before his committee, we will withdraw our amendment and look forward to that hearing process, because we believe that not only will our amendment appear attractive, we believe there is sound legal and factual basis for this kind of addition to the commonsense regulatory reform measures the House has been considering.

Mr. Chairman, with the gentleman's leadership in that kind of hearings, I believe we can revisit this issue here in this Chamber. I believe this is something that the House would likely look very favorably upon, and I am anxious to hasten the time when we would do so. I thank the gentleman for his pledge of cooperation.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment, the amendment at the desk, which is designated amendment B.

The Clerk read as follows:

Amendment offered by Mr. REED: Page 8, line 11, strike out ''50,000,000 or more;'' and insert ''100,000,000 or more; and'' and strike lines 12 through 20.

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, this is a critical amendment if we want to have a reasonable, cost-effective regulatory reform bill. I must from the outset say that we have made great progress already discussing this issue, and the issue essentially is what is the threshold for a major rule in the context of title II.

That is a very important issue, because once a rule has been declared a major rule, then an agency must do a rather elaborate and potentially expensive regulatory impact analysis. To the extent that all rules are major rules, then regulatory agencies will be spending lots of money thinking up alternative approaches and all sorts of paperwork and doing very little in terms of serving the American people directly by carrying out the duties of their agency.

This is a very, very important principle that we must I think establish. Initially the legislation proposed a very, very low threshold, a million dollar effect on an individual in the United States. It has been raised to $50 million, but frankly that $50 million still in my view and that of many Members does not constitute a truly major rule. Let me tell you why.

Years ago when President Ford first by Executive order instituted the regulatory impact analysis approach, he chose as the benchmark for a major rule $100 million. Today, in 1995, that $100 million would be somewhere between $300 and $400 million in today's dollars. So you can see not only has the major rule threshold shifted and slipped down, but in fact this legislation would bring it down from the current $100 million to $50 million. Every succeeding President, President Ford, President Carter, President Reagan, all chose a very simple, clearly understood threshold, $100 million, because they knew and they understood that valuable resources in terms of doing studies cannot be dissipated for every rule that the Federal Government does.

In fact, if that is the process, if that is what takes place, we will actually trivialize all we are doing today. Indeed, in testimony before the committee, C. Boyden Gray, who was the counsel to President Ford and chairman of Citizens for a Sound Economy, recommended that the threshold remain at $100 million. That is simply the purpose of my amendment, to move the threshold from $50 to $100 million and make it a clear, simple, bright line test, $100 million.

The current language of the bill, although an improvement, still contains some vague terms about impacts that would make the rule major. All I think this will do is require judges and courts to make endless determinations of whether or not a particular rule has an impact on employment that is major or significant, an impact on competitiveness, et cetera.

What I think we are about today is trying to develop a system that is simple, cost effective, makes sense, and is reasonable. The best way to do this is pick an objective, sensible, reasonable target, $100 million. If it was good enough for President Bush and President Reagan, and currently President Clinton's Executive order, I think it should be good enough today. We are not trying to advance the ball. We are not trying to raise the threshold to $500 million, which as I pointed out before would be the equivalent of the same measure used by President Ford when he started this process.

The consequences could be very real if we continue this $50 million threshold. Rules which most Americans would consider to be innocuous, routine, would require expensive analysis. Rules, for example, on raising and lowering drawbridges over naval waters, things that are done every year by the regulatory authorities, could require each year a $1 million or several hundred thousand dollar analysis. That does not make sense.

One final point: We have in the language of the bill given the Director of OMB the authority to declare any rule, regardless of its impact, its financial impact, a major rule. I think that is a sufficient escape clause to confront those situations in which it might be $99.9 million, or might even be $9 million in impact, but it is an important

rule to a major part of this country and major sector.

So I urge all my colleagues to save money, to make sure that this works, to make sure that this process does not result in the trivialization of the regulatory impact analysis, that we support this amendment, raise the level to $100 million, and continue the sensible policies of President Ford, President Reagan, President Carter, and now President Clinton.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Rhode Island [Mr. REED].

Mr. Chairman, as the gentleman has said, this is an important amendment only because it is one that is devastating to the entire purpose of the bill in the first place. If indeed the gentleman's complaint is that, why change it from $100 million where it found its way into the Clinton Executive order, to the Reagan Executive order, and before that to the Ford Executive order, why the gentleman asks, if it was good enough for them should it not be good enough for us, the answer is implicit in the question.

The hue and cry of the business community, the bombast that we have received as Members of Congress, the complaints that have been issued from every corner of the Nation on these issues, has come about because the $100 million many times was never reached and no consideration was given to a rule for analysis, because it never reached that kind of majority, major emphasis that the major rule required.

That is why people are saying my gosh, if it has to be $100 million, it is a useless rule, because we never get to a point where we can have the benefit of an analysis on which we can act or react.

So that is implicit in the rationale of why we fashioned a threshold that is lower than $100 million, so that we can include more rules in the process, so that we can include, by including more rules, more individuals who are disaffected by the adverse rule.

That is the gravamen of this bill. The other thing we have to keep in consideration, this is important to us, and I think the gentleman from Rhode Island acknowledges it as well, that we started out with $1 million as the threshold, and I, who am admittedly an advocate for small business, found that very attractive. But when title II is considered to apply to all business, small, medium, large, gigantic, all these businesses have one thought in mind: They want to increase competitiveness.

□ 1545

They want to have rules that make sense. They want analysis that will help them respond and, indeed, not just help them respond to a rule but to help the agency fashion a better rule, to impact upon the rulemaking process itself. This is a long way toward expanding the economy and exploding the initiatives that the free enterprise system accords our businessmen and our entrepreneurs. And the working people, the people who benefit most by a small business expansion, are the ones who are absolutely the trickle-down beneficiaries of what we attempt to do here.

I love that term ''trickle down'' when it obtains to the benefit of the working people who, when they see their employer expand the business and hire two more people and raise wages because they are loosened up from the exasperating rules and regulations. That is the thrust of this bill. To raise it back to $100 million would be to make a top-only type of rule possible for the jointure of the businessman's will and determination in the formation of that rule. I oppose the amendment.

Mr. GENE GREEN of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Reed amendment. Let me, before I get into my remarks, respond that the, I never heard trickle down, Mr. Chairman, referred to in a positive way, particularly from this side of the aisle. But the chairman's opposition to the amendment talks about that it did not work under President Ford, Carter, Reagan or Bush or President Clinton. But the OMB has the authority to, under any rule, to designate as a major rule that would truly have significant regulations and so we would not have it fall through the crack based on $50 or $100 million.

So we would hope that the OMB would be able, whether they are under President Clinton or under President Ford or Carter and the other President, they could have made that designation and decision instead of being stuck by an arbitrary dollar figure.

My support for the amendment talks about the dollar figure and recognizing what the sponsor of the amendment, my colleague from Rhode Island, talked about, that if we used $100 million in 1975, it is different than 1995 and reflects that the need for it. But even more so, I have some concern about the amendment. It also addresses a provision in the bill on page 8 where the language that says, not only the $50 million that we would change to $100 million but striking out lines 12 through 20, some of the language in that bill.

I am concerned on this bill but for a number of bills. Let me say that I supported the bill yesterday. I voted for the bill yesterday that in title II had $100 million in it. I know there was other thresholds in the bill yesterday, but the risk assessment bill yesterday also had $100 million even in title II. But the provisions in this bill that we are striking out have some language, I think, that it will be hard for a court to decide, particularly in section C where it says, ''significant adverse effects on competition, employment, investment, productivity.'' We are writing a statute here. That needs to not be so subjective.

I think, where are we going to define ''significant adverse effects''? The oil crisis of 1980's in Texas had very significant adverse effects on Texas economy, but oftentimes we could not get the response that we needed out of the various agencies to loosen up on some of the regs that would have us be able to compete better.

The provisions of the amendment not only are good because it raises from 50 to 100 and reflects more 1995 dollars, but it also strikes out lines 12 through 20 that gives other criteria that, frankly, the OMB can make that decision already without putting in there language that is not defined in the bill as far as I can see and very difficult to define anyway.

Major increases in costs or prices for consumers, we can define that many times. Again, major increases sometimes affect certain geographic areas of the country where it may not others. That is why I rise to support the amendment and think that it is a good amendment and makes this bill much easier to support, Mr. Chairman.

Mr. FRANKS of New Jersey. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it seems to me that if a rule or regulation coming from an agency in Washington has a severe impact in a given region of the country or has the net effect of increasing cost for local governments, perhaps a class of small local governments across the country, then it seems to me that this Congress would want to trigger a regulatory impact analysis so we can learn more about the consequences of the regulatory action that is being contemplated. Yet under the amendment of the gentleman from Rhode Island, that criteria would be stricken. The fact that it would have a disproportionate impact on a particular region or on local governments would not trigger the imposition of the requirement of a regulatory impact analysis.

Another example, Mr. Chairman, that really troubles me is if a rule or regulation has a potential unintended consequence of killing off jobs by having an impact on a new industry that is growing in this country. And inadvertently a regulatory action might have an impact on that industry in such a way as to reduce employment. Then, again, under this amendment, that adverse impact on employment would be insufficient per se to trigger the regulatory impact analysis.

Mr. NADLER. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from New York.

Mr. NADLER. Would not the gentleman say that if it was unintended and unanticipated, this impact on some new industry, by definition ''unanticipated'' means no one foresaw it. The escape valve is not the language that the gentleman's amendment repeals. The escape valve is the ability to go to OMB and say, hey, we have got this problem. How about calling this a major rule because we did not, you did

not, nobody anticipated this problem, but here it is now?

Mr. FRANKS of New Jersey. Reclaiming my time, Mr. Chairman, I would merely seek to say that these adverse impacts should be reviewed by the rulemaking agency and we ought not to merely surrender to the director of the OMB, as if he is going to be some kind of regulatory czar who is the gatekeeper of whether or not we are going to be requiring this regulatory impact analysis.

I think what this system needs is uniformity across the board from every rulemaking agency and not the ability of a particular class of rule makers in an agency to say, the OMB director did not trigger the regulatory impact analysis, therefore, I felt there was no need to engage in one.

We ought to put this responsibility squarely on the shoulders of those who seek to change the regulatory status quo by issuing a new regulation.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from Rhode Island.

Mr. REED. The legislation itself and perhaps for good or bad makes the OMB director a regulatory czar. At page 143, an agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon by the director of OMB. So I mean, specifically, the OMB director is involved in this process. The gentleman from New York is making a very good point.

That is, I think, the appropriate way to respond to some of your concerns. Indeed, some of your concerns demonstrate some of my fears, which is a very able, articulate and thoughtful attorney can find in every rule some of the consequences you made. And my concern ultimately is if every rule is a major rule, then in a sense there are no major rules. We have taken the process and we have to do analysis for everything. We do not have the resources to do that. I think, again, as I know we disagree, we disagree in principle that a bright line $100 million represents an efficient practical way to do what we want to do, which is make sure the big rules that impact on people at sectors and regions get addressed and the other rules can go to routinely.

Mr. FRANKS of New Jersey. Reclaiming my time, Mr. Chairman, I would merely say that the requirement of the regulatory impact analysis is designed to give protection to those parties that would be regulated and also knowledge to the rule makers that their activities are going to have a social and financial impact on the regulated community. It is in the public's interest that we know as much about that social impact and that financial impact as we possibly can before the rule is finally adopted.

I think it is best to have this regulatory impact analysis apply within reason to the broadest possible category of potential rules.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think the problem that is sought to be addressed by this amendment is very simple. This bill could have one of two purposes. Either it is an honest attempt to elicit more information about the effects of a rule, of a major rule before that rule is effective, analogous to the environmental impact statement in environmental law, or it is a disingenuous attempt to thwart all Federal rulemaking because of a desire to let corporations not have to worry about new Federal rules because of a feeling that there are enough or too many Federal rules.

We do not want to see anymore, so let us bog down all the new Federal rules, the proposed ones, in litigation, let us bog them down in impact analysis. Let us make every rule have to have an impact analysis and then tie it up in litigation. It is one or the other.

I submit, Mr. Chairman, that the gentleman's amendment would make it clear that it is the former and not the latter. Because then you would have a clear guideline, a very modest guideline, one quarter. The chairman said that the reason we had to get away from the $100 million of President Ford and President Reagan is because the hue and cry of the business community was that that was too high or too low, that too many, that too much escaped it. That you did not have enough analysis.

But that is now $300 to $400 million. What the gentleman's amendment is proposing is a rule of $100 million which is a quarter of what it was under President Ford, because President Ford's $100 million is today worth $300 to $400 million. So we are reducing it by 75 percent. That seems adequate.

But second of all, let us look at the other key to the definition. A major rule would be defined as something that seems likely to result in a major increase in cost or prices for consumers, individual industries, Federal, State, local governments or geographic regions.

What does that mean? What is a geographic region? The South Bronx? The entire State of New York? New York City? If a rule has a particular impact only on the South Bronx, do you need an impact analysis that is going to cost $1½ million or $2 million for the entire country? What does that mean?

I will tell you what it means, about 5 years of lawsuits on that question.

What does a major increase in cost or prices mean? Does that mean a 15-percent price increase? Does it mean a 5-cent increase in a $1 item, a 5-cent increase in a 15-cent item. I tell you what it means. It means 5 years of high-priced litigation on that question.

You then say, it is a major rule if it seems likely to result in significant adverse effects on competition, employment, et cetera, et cetera. What does significant adverse affects mean? I will tell you what it means. Five years of high-priced litigation is what it means.

Mr. Chairman, if we are seeking to bog down any Federal agency and rulemaking, if we are seeking to enable companies to litigate everything and to tie it up in litigation forever, then this is a fine provision. But if this is an honest bill, if we want major rules that have real impacts to be subject to impact analysis, then the gentleman's amendment solves the problem, a $100 million clear rule, a heck of a lot less than President Reagan's and President Ford's threshold, because in their day it is $300 to $400 million in today's dollars, and the ability of the OMB director when something is unanticipated to reach down and say, that is a major rule even though it is only $25 million or some other figure under $100 million.

□ 1600

That is enough. To do anything more is to greatly increase the risk of tremendous litigation on every question, to almost beg for it. Open-ended phrases once gone into practice to be interpreted by the courts would sweep an enormous number of regulations that do not warrant and could not conceivably profit from a full-blown cost-benefit analysis into this bill, and it would lead to endless litigation.

Again, Mr. Chairman, this amendment will answer, and how the majority, frankly, determines, this amendment will answer one question: what is the intent of this bill. Is it an honest attempt to deal with major rules and give it a regulatory analysis, in which case we will see a yes vote on this amendment, or is it a disingenuous attempt?

The CHAIRMAN. The time of the gentleman from New York [Mr. NADLER] has expired.

(By unanimous consent, Mr. NADLER was allowed to proceed for 30 additional seconds.)

Mr. NADLER. On the other hand, Mr. Chairman, is it a disingenuous attempt to block most Federal rulemaking and to give major corporations subject to Federal rulemaking the ability to tie anything they do not like up in litigation for years by putting into the language of the bill such vague, indeterminate language as to invite litigation?

Mr. Chairman, I submit the answer, if we see the majority vote against this amendment, we will know the answer to that question.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

There was no objection.

Mr. GEKAS. Mr. Chairman, I am constrained to try to point out something to the gentleman from New York [Mr. NADLER] and the gentleman from Rhode Island [Mr. REED], if I could have his attention. This is something that means a lot to me.

When we conducted the hearings, if the gentleman will recall, we paid attention to every single word that was uttered by the witnesses. As a result of the hearing and as a result of the testimony, for instance, on title III by the Justice Department, we sat back and looked at that legislation again that we had proposed, and we felt that we had to change it radically.

The point is that I paid strict attention to what the witnesses said, and felt constrained to do something to alter our original purpose in it. By the same token, I gave tremendous credibility to the business people witnesses that we had sitting to tell us about the threshold, which is the issue we are discussing here right now.

One of them, a witness, just like the Justice Department witness on title III, this witness was talking about, and his name was Cornelius Hubner, from American Felt and Filter Co., who speaks for thousands of people just like him, he said ''In fact, even more stringent requirement could be written in the legislation to reduce the threshold of affected persons from 100 to 50 or 25, and reduce the threshold of expenditure from $1 million to $100,000;'' not the 50 that I want, he wants $100,000.

The point is, I would not deign to try to make it $100,000, but I want to give credibility to this man. I want to honor the hue and cry of the business community, the job creators, the hirers of the people the gentlemen represent, the people in their districts, and to base the final language of this bill on the testimony or the range of testimony that was given to us by the business people who are most affected by this.

Give me credit for trying to do the job that we were asked to do by giving vent to what the testimony was, and try to do the best to reflect the best, and to reject the worst, of what the testimony was that was presented.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. Mr. Chairman, I give the gentleman from Pennsylvania [Mr. GEKAS] great credit to this process of witnessing to the witnesses, and trying to adjust the form of the legislation.

I believe Mr. Hubner was the only business person who spoke specifically about the threshold, and in fact, the witness that I heard with most sort of persuasive force was C. Boyden Gray, who is a representative of the business community, the president of Citizens for a Sound Economy, which is one of the groups that represents the business community.

In Mr. Gray's written testimony, and also in his verbal testimony, he said ''$100 million is a central threshold.''

Mr. GEKAS. Reclaiming my time on that point, Mr. Chairman, I knew the gentleman was going to say that. He did not exactly say that. He said ''One could move it up to $100 million,'' something like that, but all of these figures are arbitrary. We have to choose an arbitrary figure.

Again, Mr. Chairman, we take the $100,000 that one wants and the $100 million that the gentleman from Rhode Island wants, and we have to strike a figure. The $100,000 person does not want the $100 million, and you do not want the $100,000, of course. It is not unreasonable to strike a well-balanced compromise at $50 million. That is what I am saying.

Mr. REED. If the gentleman will continue to yield, I appreciate the gentleman's attempt to balance this. I think it is not only in good faith, but he is talking about the range of voices that we heard in the hearing, but I am persuaded by Mr. Gray, and I believe he was much more definitive in his selection of $100 million.

In response to my question to Mr. Miller, the former director of OMB, candidate for the Senate in the State of Virginia, recently, and someone else who is involved in the business community, he sort of said ''Sure, $100 million that is fine. We cannot have every regulation,'' and I am paraphrasing, but clearly there was no objection to the $100 million threshold.

The other point I would say again, reiterating, is that this is a threshold that has been on the books for 20 years, that has been part and parcel of both Republican and Democratic administrations.

I do not think also that dropping this $50 million threshold will give relief to the small business people that the gentleman is very sincerely trying to protect. Frankly, Mr. Chairman, there are rules that well be picked up that apply only to multimillion-dollar enterprises.

Mr. GEKAS. Seizing back my time, Mr. Chairman, the gentleman will acknowledge that reducing to $50 million will bring an additional body of rules in that then, just by the very force and nature of their existence, would occupy the space of more business people.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, I want to say as a member of the Committee on the Judiciary, I want to compliment both the gentleman from Pennsylvania [Mr. GEKAS] and the gentleman from Rhode Island [Mr. REED] because I am not on their subcommittee, but my overall view was the two of them had the most thoughtful markup, and did make a very, very good faith effort on this bill.

I think we should really thank them, because so much of what has gone through, it has been hard to even see the ink dry before it is out of the committee.

Mr. Chairman, I think part of what the gentleman from Rhode Island is saying is that all the Members very thoughtfully in title I struck the indirect issue, and that he is afraid that if we do not adopt his amendment, we will be doing, indirectly, what they did directly in Title I by striking the indirect area.

That sounds roundabout, but I think that is exactly what he is leaning on. If we leave it the way it is, there will be so many things that will require both this risk assessment, or the regulatory impact analysis, that it could be a real job generator in those areas, but it will be a real cost generator, and it will be a thing that will slow down regulations that a lot of people think should be more pro forma, or they may be for safety or whatever.

Coming from an area that just opened its airport, let me say, one of the things might be something that would establish air traffic lanes for airplanes. I would certainly hate to think we would have to sit around and wait for some kind of risk assessment analysis or whatever.

We could think of all sorts of other things that come along, such as change for education funding programs. We could miss a cycle because of that. There are any number of regulations that come out of the Federal Government.

I think this subcommittee tried very hard to reach a reasonable compromise, and I really want to thank the gentleman from Rhode Island, because I think what he is saying is that when he saw $100 million being used as the cutoff by President Ford and President Reagan and President Bush and President Clinton, and by C. Boyden Gray recommending that in his role as chairman of the Citizens for a Sound Economy, that sounds reasonable, and that sounds like a reasonable cutoff.

If we do not do this, everybody will want to claim that their rule is a major rule, or it has that kind of impact, and we will just be all tied in knots, spending all sorts of money, and losing all sorts of time.

Mr. Chairman, I also think we have to realize that as we are downsizing government, when we do things like this, we are going counter to what we are trying to do in downsizing, because we are putting a lot of burdens on agencies that we are trying to get down to bare bones. To add this is another burden which only adds frustration, adds cost, and adds delay.

As we try to find a way to make government more user-friendly, and that is the bottom line here, how do we make it more user-friendly, and yet make sure that what we do does not harm our intended goal, this seems to be a very appropriate follow-on to what the subcommittee did in title I.

I would just hope, Mr. Chairman, we could adopt this amendment by voice. I think it makes a lot of sense, and again, I say, and I mean it very sincerely, I think this subcommittee tried harder than any other to really get to the bottom of this and understand what the different words meant, and what the different impacts would be.

I congratulate the gentleman from Rhode Island and the gentleman from Pennsylvania, and I just hope somehow

we can get a consensus here, move forward, because I think this $100 million cutoff threshold impact makes a tremendous amount of sense.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, I would like to add my applause and congratulations to the gentleman from Pennsylvania [Mr. GEKAS] and the gentleman from Rhode Island [Mr. REED] for what I think has been a very conciliatory and very strong effort at something that we have been talking about in the Committee on the Judiciary, as a member of that committee, a bipartisan bill.

I would simply say to the gentleman from Pennsylvania, I would like to focus on a narrow part of the discussion, and I rise to support the amendment offered by the gentleman from Rhode Island [Mr. REED] in terms of the threshold being moved to $100 million.

I would like to emphasize, Mr. Chairman, in particular that these words should be really directed towards the small business community, which all of us have in our community or in our particular districts and throughout the Nation. We know that the business of America is business. We can certainly applaud the efforts that small businesses have made in contributing to the economy, and certainly, to the job market in this Nation.

However, if we would look at what we are trying to do here, it is to make their lives easier. We are talking about some 21 million small businesses in this Nation, some 8 million of them being those who are self-employed. The $100 million threshold we are talking about is an aggregate figure. We should not be looking that one single business, small or medium, or one single self-employed that has to prove $100 million. It is an aggregate figure that allows us to be more reasonable and more fiscally responsible in how these regulations and this particular legislation will be applied.

In particular, the regulatory impact analysis and risk assessment analysis can cost up to $1.6 million, so, for example, if there was an inquiry and a petition being made, which I certainly do agree with, if the threshold was not moved, we are talking about spending $1.6 million on every one of those particular inquiries. That would mean that we would have the occasion to read in our newspaper of agencies spending $100,000 every time they wanted to issue a rule.

Let me give the Members an example. If they wanted to do it—we voted for the ducks the other day. Suppose they wanted the rule on opening hunting season, or if they wanted to do it on preventing fisheries from being overfished or compensating veterans who are suffering from the gulf war syndrome, or changing the formula for education funding programs, or raising and lowering drawbridges on inland waterways, or establishing traffic lanes for airplanes, and certainly, in the community that I come from where we are near a very strong port, we have some difficulties sometimes with raising and lowering bridges, and also some difficulties with some major incidence that cause a slow-up on our very busy port.

The question then becomes, let us narrow it to what it is. It is an aggregate figure that applies to all of the impact. It does not burden one individual business, that they would have to prove that that was the overall impact on their single business. It would be an aggregate impact on all of the businesses.

Then, Mr. Chairman, if I might, as it relates to the provisions that relate to the other language to the provisions that relate to the other language of sections B and C, one thing about the Administrative Procedures Act that we learned in first- or second-year law classes is the need to be as precise as we possibly could, and to avoid vagueness.

I certainly appreciate the direction in which this legislation is going, but some of these words and phrases are extremely broad and might cause a great deal of difficulty in refining and detailing, so we would never bring closure to this process of regulation.

We certainly want to stop the burden on our small businesses, but we also want to bring closure to this process so we can go on with the business of governing and they can go on with the business of their business, which is making money, I hope, and employing citizens around this Nation.

I would simply argue, Mr. Chairman, that the threshold is one that is reasonable, because it is not a threshold that someone has to prove singly, it is the aggregate impact, and I would think that out of 21 million businesses, you could prove an aggregate of a $100 million impact.

The last sections, B and C, I would find great difficulty in bringing what we would want to have happen, the process to close because of the vagueness.

□ 1615

Mr. SCHUMER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. SCHUMER asked and was given permission to revise and extend his remarks.)

Mr. SCHUMER. Mr. Chairman, let me say as we go through them that many of these bills in the contract deal with the relationship between Government and business. Like many on my side of the aisle, and I suppose a good number on the other side of the aisle, I find myself on these particular ones in a quandary.

There is a germ of an idea in many parts of the contract. There have been instances where Government regulations went too far, became too removed, became too immutable. There have been many instances where for a small amount of good, a lot of bad was done.

The trouble I find time and time and time again with the bills that are before us is they do not seek a balance, they do not seek to redress the balance and move the pendulum back to the middle, but they seek to go all the way over. In fact, some of them seem to have been written by the very businesses they regulate, and I am sure most of my colleagues would agree that would be a bad practice if it had ever happened.

This bill is one that is far more moderate. This bill is one that I think does try to seek a balanced ground. It did not start out that way but through the good efforts of the gentleman from Rhode Island and the gentleman from Pennsylvania and some just facts in the hearing process when we learned that parts of the bill, other parts of H.R. 9 might exempt Keating from being prosecuted because he would be informed that he might be and he would have his lawyer sitting in everywhere, and we did amendments to correct that.

I would say that the bill strikes a pretty good balance. It realizes the excesses of the past and yet does not react overboard.

I would say in all due respect to my good friend the gentleman from Pennsylvania, he is seeking to push things too far again. The $100 million level makes a good deal of sense in this area. This is a middle ground. One hundred million dollars was used by President Ford. In today's dollars, that would be $300 to $400 million.

It was used by President Reagan in his Executive order, H.R. 9. That would be $170 or $180 million today. In testimony before the subcommittee chaired by the gentleman from Pennsylvania, C. Boyden Gray, the former White House counsel and chairman of Citizens for a Sound Economy, recommended the threshold remain at $100 million. Mr. Gray is not a crazy wild-eyed environmentalist or an anti-business crusader. He is a very staid, rational, essentially conservative gentleman, He, too, recommended the $100 million.

So I say to my colleagues, why push things down further? There are as the gentlewoman from Texas and the gentlewoman from Colorado documented hundreds and hundreds of regulations that have rather minor impact and yet would be affected. Metaphorically but actually as well, why should we spend the millions of dollars it takes to do one of these reviews every time we open up the duck hunting season? These are the kinds of things that we are talking about.

So I would say to my colleagues, yes, this is a good bill. This is a bill that makes a great deal of sense. But by moving to $100 million, we keep that sort of moderate, centrist approach which is in my opinion what the American people have wanted. By moving to 50, we bring the bill too far over, and,

therefore, I would urge that we keep the $100 million level.

I thank the gentleman from Rhode Island for his leadership on this issue.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to be brief and make four very quick points and then yield to the gentleman from Rhode Island.

First of all, I would hope that one of the objectives that we are trying to achieve by this legislation is to save the taxpayers money. It seems to me that it makes sense for us not to be doing major studies, paperwork, and so forth anytime any minor rule is promulgated. It ought to be restricted to major rules and rules which have major impact, and I would think that the $100 million figures has a lot more sense in that regard than his $50 million figure does which is in the bill.

Second, I do not think anybody could argue that President Reagan or President Bush or President Ford were wild-eyed liberal people. The $100 million figure was sufficient for them, and I always thought of them as being rather conservative myself, and I do not know why we are trying to cut back on the conservative-liberal scale, so to speak.

It is like the gentleman from New York [Mr. SCHUMER] said, we are trying to swing the pendulum all the way to the opposite end and in a way we are overreacting here.

The third point I would make quickly is that since President Reagan and President Ford were there, the cost of living has gone up substantially. So that what would have been a $100 million figure in their administration actually should now probably be $130 million or $150 million, quite conceivably. It would have gone up, certainly not gone down.

Then finally as the chairman of the committee has indicated, this is an arbitrary figure. There is nothing scientific about this. What we ought to be striving toward is a figure that makes the most sense and the criteria in determining whether it makes the most sense, one of those criteria at least, the primary criteria ought to be were we saving the taxpayers money?

I yield to my colleague, the gentleman from Rhode Island [Mr. REED].

Mr. REED. I thank the gentleman from North Carolina for yielding. I echo his sentiments. I think he has expressed very eloquently the major points we have been talking about this afternoon.

I would just like to briefly say that again we are trying to create a responsive, streamlined process that saves the American people money and aggravation, particularly businesspeople.

What I would regret very much is that 6 months, a year from now, if this legislation becomes law, if we saw articles about a Federal agency spending $1.6 million proposing a regulation and doing a regulatory impact analysis for a regulatory matter that was, say, much less than that. You can pick out an abundant amount of examples, raising, lowering bridges, setting time zones. All these things potentially could have a $50 million impact triggering this procedure, but I think the American people would say why are we spending money doing something we have done year in and year out which has very little effect at all on small business or most Americans or if it does have an effect it is not at all deleterious or harmful.

I think again we have to be very, very careful. If we stick with what seems to be working, which is the $100 million threshold, I believe we will have a bill that is better than the present model and one that we can support strongly.

Again, I would urge everyone to support the amendment to raise the threshold to $100 million.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words in order to engage in a colloquy with the gentleman from Rhode Island.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

There was no objection.

Mr. GEKAS. Mr. Chairman, I want to inform the Members here and in their offices and wherever they may be working at the moment that we are nearing the end of the legislation at hand.

As I understand it—and this is where I ask the gentleman from Rhode Island [Mr. REED] to correct me—after this vote is taken, whether by voice vote or by recorded vote, whatever, then we are at a point where we can move to final passage; is that correct?

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. I thank the gentleman from Pennsylvania [Mr. GEKAS] for yielding.

Mr. Chairman, I believe that when we complete this vote, and I would at this point request a recorded vote when it is in order to do so, we are very close to final passage. I believe the gentleman might have colloquy with another Member.

Mr. GEKAS. That is correct.

Mr. REED. There very well might be an issue that I would raise but not with the anticipation of calling for a vote or actually formally presenting an amendment, but I would like to reserve that right, if I may.

I am also told that the ranking member, the gentleman from Michigan [Mr. CONYERS] has an amendment and he is not here yet, but I am sure he will be here. I cannot speak for the ranking member.

Mr. GEKAS. The gentleman threw cold water in my face now. I thought that we were going to be in good-faith compliance with the wishes of Members to wind this down.

At any rate, we have an idea that we are winding down. I am ready, then, to call for the Members to vote ''no'' on this amendment and to proceed to final passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Rhode Island [Mr. REED].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. REED. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 159, noes 266, not voting 9, as follows:

[Roll No. 185]

AYES—159

Ackerman	Gibbons	Nadler
Andrews	Gordon	Neal
Baldacci	Green	Oberstar
Barcia	Gutierrez	Obey
Barrett (WI)	Hall (OH)	Olver
Becerra	Hamilton	Ortiz
Beilenson	Hastings (FL)	Owens
Bentsen	Hefner	Pallone
Berman	Hilliard	Pastor
Bishop	Hinchey	Payne (NJ)
Bonior	Holden	Pelosi
Borski	Hoyer	Pomeroy
Boucher	Jackson-Lee	Rahall
Brown (FL)	Jefferson	Rangel
Brown (OH)	Johnson (SD)	Reed
Bryant (TX)	Johnson, E. B.	Reynolds
Clay	Johnston	Richardson
Clayton	Kanjorski	Rivers
Clement	Kaptur	Roemer
Clyburn	Kennedy (MA)	Rose
Coleman	Kennedy (RI)	Roybal-Allard
Collins (IL)	Kennelly	Sabo
Collins (MI)	Kildee	Sanders
Conyers	Klink	Sawyer
Costello	LaFalce	Schroeder
Coyne	Lantos	Schumer
de la Garza	Levin	Scott
DeFazio	Lewis (GA)	Serrano
DeLauro	Lipinski	Shays
Dellums	Lofgren	Skaggs
Deutsch	Lowey	Slaughter
Dicks	Luther	Spratt
Dingell	Maloney	Stark
Dixon	Manton	Stokes
Doggett	Markey	Studds
Doyle	Martinez	Stupak
Durbin	Mascara	Thompson
Engel	Matsui	Torres
Eshoo	McCarthy	Torricelli
Evans	McDermott	Towns
Farr	McHale	Traficant
Fattah	McKinney	Tucker
Fazio	Meehan	Vento
Fields (LA)	Meek	Visclosky
Filner	Menendez	Ward
Flake	Mfume	Waters
Foglietta	Miller (CA)	Watt (NC)
Ford	Mineta	Waxman
Frank (MA)	Minge	Williams
Frost	Mink	Woolsey
Furse	Moran	Wyden
Gejdenson	Morella	Wynn
Gephardt	Murtha	Yates

NOES—266

Abercrombie	Bilbray	Callahan
Allard	Bilirakis	Calvert
Archer	Bliley	Camp
Armey	Blute	Canady
Bachus	Boehlert	Cardin
Baesler	Boehner	Castle
Baker (CA)	Bonilla	Chabot
Baker (LA)	Bono	Chambliss
Ballenger	Brewster	Chapman
Barr	Browder	Chenoweth
Barrett (NE)	Brownback	Christensen
Bartlett	Bryant (TN)	Chrysler
Barton	Bunn	Clinger
Bass	Bunning	Coble
Bateman	Burr	Coburn
Bereuter	Burton	Collins (GA)
Bevill	Buyer	Combest

Condit	Houghton	Quillen
Cooley	Hutchinson	Quinn
Cox	Hyde	Radanovich
Cramer	Inglis	Ramstad
Crane	Jacobs	Regula
Crapo	Johnson (CT)	Riggs
Cremeans	Johnson, Sam	Roberts
Cubin	Jones	Rogers
Cunningham	Kasich	Rohrabacher
Danner	Kelly	Ros-Lehtinen
Davis	Kim	Roth
Deal	King	Roukema
DeLay	Kingston	Royce
Diaz-Balart	Klug	Salmon
Dickey	Knollenberg	Sanford
Dooley	Kolbe	Saxton
Doolittle	LaHood	Scarborough
Dornan	Largent	Schaefer
Dreier	Latham	Schiff
Duncan	LaTourette	Seastrand
Dunn	Laughlin	Sensenbrenner
Edwards	Lazio	Shadegg
Ehlers	Leach	Shaw
Ehrlich	Lewis (CA)	Shuster
Emerson	Lewis (KY)	Sisisky
English	Lightfoot	Skeen
Ensign	Lincoln	Skelton
Everett	Linder	Smith (MI)
Ewing	Livingston	Smith (NJ)
Fawell	LoBiondo	Smith (TX)
Fields (TX)	Longley	Smith (WA)
Flanagan	Lucas	Solomon
Foley	Manzullo	Souder
Forbes	Martini	Spence
Fowler	McCollum	Stearns
Fox	McCrery	Stenholm
Franks (CT)	McDade	Stockman
Franks (NJ)	McHugh	Stump
Frelinghuysen	McInnis	Talent
Frisa	McIntosh	Tanner
Funderburk	McKeon	Tate
Gallegly	McNulty	Tauzin
Ganske	Metcalf	Taylor (MS)
Gekas	Meyers	Taylor (NC)
Geren	Mica	Tejeda
Gilchrest	Miller (FL)	Thomas
Gillmor	Molinari	Thornberry
Gilman	Mollohan	Thurman
Goodlatte	Montgomery	Tiahrt
Goodling	Moorhead	Torkildsen
Goss	Myers	Upton
Graham	Myrick	Volkmer
Greenwood	Nethercutt	Vucanovich
Gunderson	Neumann	Waldholtz
Gutknecht	Ney	Walker
Hall (TX)	Norwood	Walsh
Hancock	Nussle	Wamp
Hansen	Orton	Watts (OK)
Harman	Oxley	Weldon (FL)
Hastert	Packard	Weldon (PA)
Hastings (WA)	Parker	Weller
Hayes	Paxon	White
Hayworth	Payne (VA)	Whitfield
Hefley	Peterson (FL)	Wicker
Heineman	Peterson (MN)	Wilson
Herger	Petri	Wise
Hilleary	Pickett	Wolf
Hobson	Pombo	Young (AK)
Hoekstra	Porter	Young (FL)
Hoke	Portman	Zeliff
Horn	Poshard	Zimmer
Hostettler	Pryce	

NOT VOTING—9

Brown (CA)	Istook	Rush
Gonzalez	Kleczka	Thornton
Hunter	Moakley	Velázquez

□ 1644

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Istook against.

Ms. DANNER and Mr. WISE changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Page 9, line 21, strike the close quotation marks and the period following and insert after line 21 the following:

''(5) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a non-governmental person, the written record of such contact shall be made available, upon request to the public.''.

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, I rise in support of the sunshine amendment that would require that there be a written record of any contacts between agency persons and persons outside of an agency during the rulemaking process. The necessity for this rule has come from long experience for those of us who have served on the Committee on Government Operations or the Committee on the Judiciary.

Mr. Chairman and Members, in connection with this sunshine amendment, Justice Brandeis once said there is no better antiseptic than sunshine in order to prevent the misdeeds of government, and that is exactly what this amendment is about.

While we are trying to seek accountability in the regulatory process, we should ensure that what often goes on behind the scenes and off the record is accountable also. That is all that this is about. Regulations are public law and should not be conducted in secrecy.

Now, in truth we have an Executive order that covers this, and what we are doing is putting it into the law, nothing more, nothing less. The amendment would ensure that the regulatory process is open and accountable and that there are records of those who seek to influence regulations from behind the scenes.

This is not an abstract matter. It is the real world. It comes out of many years in which special interests were able to shape regulations regardless of whatever new procedures were put in place without any record or trace of their involvement, and what we are trying to do is make sure that we know everybody that had a hand, a meeting, a phone call involved in the shaping of these all-important rules.

Ladies and gentlemen, the Government is already living in this sunshine. As I have already indicated, President Clinton's Executive Order 12866 has already put in place many of the sunshine requirements that we are proposing here today.

The amendment before the House would do two things. First, it would require that all communications between an agency and the Office of Management and Budget during the consideration of this rule be recorded. During past administrations there were countless examples of the OMB informally rewriting agency rules before they were submitted to them for review, only there was no way for congressional committees to conduct oversight of this process because no records were kept of this highly influential and highly secret process. We want sunshine.

Second, my amendment would require that all communications, including oral ones between Government officials involved in a particular regulation and private parties, be recorded and that such a record be publicly available. This is to prevent what we have seen in the past as backdoor channels whereby favorite special interests were able to profoundly influence regulations behind the scenes without any public record.

Is there anybody here that would not want this kind of openness to be a part of the law that we are passing here today?

It is a terrible abuse of the principles of openness that the Administrative Procedures Act symbolizes.

We on this side of the aisle continue to be concerned about the possibility of perverting the requirement for openness and accountability in the regulatory process by allowing ex parte or third-party contacts to be off the record at critical stages of the regulation process.

Congressional investigations over the years have repeatedly documented the profound impact that such secret contacts have had on important regulations affecting public health and welfare. Remember the Clean Air Act where we had all kinds of problems in terms of behind-the-scenes activity in which we found out that the Clean Air Act, the rules on it, were being negotiated secretly? The Nutrition Labeling Act with the Food and Drug Administration had the same problem. We had the biodiversity accord scuttled during the summit in Rio because of outside, behind-the-scenes undermining of the U.S. support. We had the guidelines on disabled access to public housing weakened as a result of backdoor intervention that was not recorded and not very well known. I have a long list that goes on and on.

We believe that it is consistent with the spirit of the Administrative Procedures Act that should be kept when Government officials involved in writing regulations meet with private parties, attempting to influence the outcome of those regulations, and it might not always be illegal or subversive. It could be a good-faith meeting.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. CONYERS] has expired.

(At the request of Mr. DOGGETT and by unanimous consent, Mr. CONYERS was allowed to proceed for 2 additional minutes.)

Mr. CONYERS. What I am saying now is that every meeting or call between the private sector and the OMB

or the White House may not be subversive or ill-motivated. It may be a perfectly legitimate attempt to get a position or something on the record. What we want to know before the rule comes out is what happened, and that is what this does.

Mr. DOGGETT. If the gentleman will yield, if I understand, all you are really trying to do is take an Executive order that is in place now and put it into the statute, so we will be assured that any future administration would follow this principle of sunshine.

Mr. CONYERS. Precisely, that and no more, and we continue the rule in the Administrative Procedures Act which does not cover these kinds of activities once it leaves the agency and goes to OMB and to the White House and elsewhere in the executive branch.

Mr. DOGGETT. I have some other questions for you, but the most obvious question is why would anybody be against this? Surely this is an acceptable amendment, and it will not be necessary for us to talk further if it is acceptable to the sponsors of the legislation. Surely they do not have any argument against this.

Mr. CONYERS. Surely. We debated it in the full committee with not the complete success that got it or that would have gotten it included in the bill.

I would just like to make a couple of concluding remarks.

Because even the Reagan administration, what I have not quoted recently, in the so-called Graham memorandum governing regulatory review procedures by OMB, recognized the need to address the problem of secret off-the-record contacts.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman from Michigan characterizes his amendment as a sunshine amendment. It is more like a sunstroke amendment. It paralyzes everybody with whom it comes into contact.

Having said that, in my characteristic way, even though I believe that this is trying to kill a fly with a sledge hammer, I find no great reason to oppose it. It simply will pile the agency up with more memos and more graphs that it has to contain in the file.

I am not saying to the gentleman that, as this bill moves farther, that I will not be consulting with him with an idea of how we can make the amendment better. I have some ideas. But for now, I will accept the amendment with no promise to him that I am going to stay in concert with him on this issue.

Mr. CONYERS. Mr. Chairman, will the gentleman yield to me?

Mr. GEKAS. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I thank you for your unwavering, steadfast, and totally committed support that you bring from the other side to this amendment. And I assure the gentleman that we on the Judiciary Committee will work to keep the kinds of recording activities that this suggests to a minimum. We are talking about recording a phone contact or a meeting, not a complete recall of the entire transaction.

Mr. GEKAS. Reclaiming my time, by that statement, the gentleman acknowledges that this may be overinclusive. We will work to see what exactly the gentleman thinks might have to be required to be kept in the agency file.

Ms. JACKSON-LEE. Mr. Chairman, if the gentleman will yield, Mr. Chairman, let me just thank you very much for adding to, I think, what was offered as a conciliatory amendment, not to burden small businesses or to burden any other process under this legislation but simply it is a two-way street. I want to add my support to this amendment. It is to list not only those who are in the private sector but I think you will find it constructive that you would also list contacts from those from other government agencies or the executive branch or the White House, because that, too, has on occasion the opportunity to influence what goes on.

□ 1700

So, consider it a sunshine, not to burden the private sector or small businesses but as well as the gentleman has gleaned from it by his willingness to accept it, as well as a protection of the private sector from government intrusion.

So they too have knowledge of who is weighing in on various regulations. I think it is an excellent amendment. I appreciate the gentleman from Pennsylvania [Mr. GEKAS] in his receptiveness for what I think will add to the process by providing that sunshine on the issue.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. Seizing back my time, I yield further to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. I thank the gentleman for yielding further.

Mr. Chairman, having worked with the gentleman from Pennsylvania [Mr. GEKAS] on a variety of committees in the Committee on the Judiciary over a dozen years or more, I say it is true that his record as committee chairman in this new role—where I have not witnessed him before—on judiciary, it is true that his record as being a committee chairman in this leadership position that he is discharging it in a very excellent way and he deserves the accolades on that subject.

Mr. GEKAS. Mr. Chairman, I thank the gentleman from Michigan for his kind remarks.

Mr. Chairman, I would say to the Members we should vote in acceptance of this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken, and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 406, noes 23, not voting 5, as follows:

[Roll No 186]

AYES—406

Abercrombie	Diaz-Balart	Houghton
Ackerman	Dickey	Hoyer
Allard	Dicks	Hutchinson
Andrews	Dingell	Hyde
Bachus	Dixon	Inglis
Baesler	Doggett	Istook
Baker (LA)	Dooley	Jackson-Lee
Baldacci	Dornan	Jacobs
Ballenger	Doyle	Jefferson
Barcia	Dreier	Johnson (CT)
Barr	Duncan	Johnson (SD)
Barrett (NE)	Dunn	Johnson, E. B.
Barrett (WI)	Durbin	Johnston
Bartlett	Edwards	Jones
Barton	Ehrlich	Kanjorski
Bass	Emerson	Kaptur
Bateman	Engel	Kasich
Becerra	English	Kelly
Beilenson	Ensign	Kennedy (MA)
Bentsen	Eshoo	Kennedy (RI)
Berman	Evans	Kennelly
Bevill	Everett	Kildee
Bilbray	Ewing	Kim
Bilirakis	Farr	Kingston
Bishop	Fattah	Kleczka
Bliley	Fawell	Klink
Blute	Fazio	Klug
Boehlert	Fields (LA)	Knollenberg
Boehner	Fields (TX)	Kolbe
Bonior	Filner	LaFalce
Bono	Flake	LaHood
Borski	Flanagan	Lantos
Boucher	Foglietta	Largent
Brewster	Foley	Latham
Browder	Ford	LaTourette
Brown (CA)	Fowler	Laughlin
Brown (FL)	Fox	Lazio
Brown (OH)	Frank (MA)	Leach
Brownback	Franks (CT)	Levin
Bryant (TN)	Franks (NJ)	Lewis (CA)
Bryant (TX)	Frelinghuysen	Lewis (GA)
Bunn	Frisa	Lewis (KY)
Bunning	Frost	Lightfoot
Burr	Funderburk	Lincoln
Burton	Furse	Lipinski
Buyer	Gallegly	Livingston
Callahan	Ganske	LoBiondo
Calvert	Gejdenson	Lofgren
Camp	Gekas	Longley
Canady	Gephardt	Lowey
Cardin	Geren	Lucas
Castle	Gibbons	Luther
Chabot	Gilchrest	Maloney
Chambliss	Gillmor	Manton
Chapman	Gilman	Manzullo
Chenoweth	Goodlatte	Markey
Christensen	Goodling	Martinez
Chrysler	Gordon	Martini
Clay	Goss	Mascara
Clayton	Graham	Matsui
Clement	Green	McCarthy
Clinger	Greenwood	McCollum
Clyburn	Gunderson	McCrery
Coble	Gutierrez	McDade
Coleman	Gutknecht	McDermott
Collins (GA)	Hall (OH)	McHale
Collins (IL)	Hall (TX)	McHugh
Collins (MI)	Hamilton	McInnis
Condit	Hansen	McKeon
Conyers	Harman	McKinney
Costello	Hastert	McNulty
Cox	Hastings (FL)	Meehan
Coyne	Hastings (WA)	Meek
Cramer	Hayes	Menendez
Crane	Hefley	Metcalf
Crapo	Hefner	Meyers
Cremeans	Heineman	Mfume
Cubin	Herger	Mica
Cunningham	Hilleary	Miller (CA)
Danner	Hilliard	Miller (FL)
Davis	Hinchey	Mineta
de la Garza	Hobson	Minge
Deal	Hoekstra	Mink
DeFazio	Hoke	Mollohan
DeLauro	Holden	Montgomery
Dellums	Horn	Moorhead
Deutsch	Hostettler	Moran

Morella	Rohrabacher	Taylor (MS)
Murtha	Ros-Lehtinen	Taylor (NC)
Myrick	Rose	Tejeda
Nadler	Roth	Thomas
Neal	Roukema	Thompson
Neumann	Roybal-Allard	Thornberry
Ney	Royce	Thornton
Norwood	Sabo	Thurman
Nussle	Salmon	Tiahrt
Oberstar	Sanders	Torkildsen
Obey	Sanford	Torres
Olver	Sawyer	Torricelli
Ortiz	Saxton	Towns
Orton	Scarborough	Traficant
Owens	Schaefer	Tucker
Oxley	Schiff	Upton
Packard	Schroeder	Velazquez
Pallone	Schumer	Vento
Parker	Scott	Visclosky
Pastor	Seastrand	Volkmer
Paxon	Sensenbrenner	Vucanovich
Payne (NJ)	Serrano	Waldholtz
Payne (VA)	Shadegg	Walker
Pelosi	Shaw	Walsh
Peterson (FL)	Shays	Wamp
Peterson (MN)	Shuster	Ward
Petri	Sisisky	Waters
Pickett	Skaggs	Watt (NC)
Pombo	Skeen	Watts (OK)
Pomeroy	Skelton	Waxman
Porter	Slaughter	Weldon (FL)
Portman	Smith (MI)	Weldon (PA)
Poshard	Smith (NJ)	Weller
Pryce	Smith (TX)	White
Quillen	Smith (WA)	Whitfield
Quinn	Solomon	Williams
Radanovich	Spence	Wilson
Rahall	Spratt	Wise
Ramstad	Stark	Wolf
Rangel	Stearns	Woolsey
Reed	Stenholm	Wyden
Regula	Stockman	Wynn
Reynolds	Stokes	Yates
Richardson	Studds	Young (AK)
Riggs	Stupak	Young (FL)
Rivers	Talent	Zeliff
Roberts	Tanner	Zimmer
Roemer	Tate	
Rogers	Tauzin	

NOES—23

Archer	DeLay	Linder
Armey	Doolittle	McIntosh
Baker (CA)	Ehlers	Molinari
Bereuter	Forbes	Myers
Bonilla	Hancock	Nethercutt
Coburn	Hayworth	Stump
Combest	Johnson, Sam	Wicker
Cooley	King	

NOT VOTING—5

Gonzalez	Moakley	Souder
Hunter	Rush	

□ 1719

Messrs. BAKER of California, LINDER, COBURN, COOLEY and HAYWORTH changed their vote from ''aye'' to ''no.''

Mrs. MYRICK and Messrs. NEUMANN, MANZULLO, BARR, and ROYCE changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER: On page 8, line 12, strike ''major'' and insert ''five percent''.

Mr. VOLKMER. Mr. Chairman, before I get into the amendment, I wish to commend the gentleman from Pennsylvania, the gentleman from Rhode Island and others, including members of the Committee on Small Business, who have worked very diligently on this legislation, however I guess one of my biggest problems is that I happen to have a bad habit, I guess, up here when I read the bills, and, as I read this bill, I find that there is something in here that I do not quite understand, and I am talking to the gentleman from Rhode Island and other Members that are on this side of judiciary. I find that the matter was not even discussed in committee because of limited time in markup, and I have come to the conclusion that the use of the word ''major'' where it is used is purely subjective, and it may mean something to the gentleman from Pennsylvania, and a completely different something to me, and a completely different something to the gentleman from Rhode Island or anybody else in this Chamber, and, as far as the regulatory bodies, it would mean different things to different people, and what it means to me is that, being so ambiguous, that we end up possibly with a bunch of lawsuits over it, and I do not think that is what the gentleman really wants and I do not want. Nobody wants that in here.

So, this is an attempt, and I will agree that it may not be the right figure, that 5 percent may not be a right figure, but it is an attempt to bring to the gentleman from Pennsylvania another what I consider a major problem. The bill says a major rule means any rule subject to section 553c or Administrative Procedures Act is likely to result in an annual effect on an economy of 50 million or more. I have no objection to that, none whatsoever. That makes sense. That is pretty easily readily identifiable, but then it goes on to say a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions.

Now what is a major increase in costs or price?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, as the gentleman may recall, part of the drafting of our final bill here was as a result of lifting from the executive order issued by president Reagan and during his administration covering this same subject matter. Now since that time, right up until the time that we are having this colloquy, the agencies have built up a body of experience and files that have from time to time interpreted ''major.'' Now right or wrong, Mr. Chairman, there is a definition lurking out there among the agencies which they have applied or refused to apply because they determined it was not major. Now we are drawing on that body of experience in incorporating that phraseology into this language.

Further, Mr. Chairman, I would say that what the gentleman complains of, that it is ambiguous and so forth, occurs in every bill we have ever offered here, and the final arbiter, as in this legislation and what we specifically project for this legislation, those final arbiters result in judicial review. That is what we want. So where the individual small business person or an agency, executive director, conflict on what is major, the courts will finally decide that. So it is a reasonable effort here to give an alternative to the agencies to determine what is or what is not a major increase as we——

Mr. VOLKMER. That is again, I think, one problem, and I will not deny that has happened to other legislation that has passed through this body, that this body and the other body does not really want to address the issue. It is passed on to the regulators, and then we leave it up to them to decide, and then, if they do not decide right as far as some individuals who are being affected by the regulations are concerned, they file suit, and we end up in a court, and we let the court decide.

Well, Mr. Chairman, I ask, why can't we decide? Why can't we write it so we know what it means, and they know what it means, and everybody else knows what it means?

Mr. GEKAS. Mr. Chairman, if the gentleman would yield?

Mr. VOLKMER. Yes.

Mr. GEKAS. The gentleman has spoken eloquently in defense of the $50 million which is a stated amendment, and so we agree with him; no one can dispute that line. But the major increase or even a major rule or other phraseologies that we imply in this bill are always subject to court review, and any bill that my colleague has ever sponsored, any paragraph within that, is subject to judicial review. That is why we have it.

Mr. VOLKMER. Well, Mr. Chairman, what I have proposed in my amendment is less subject to a substantive determination than what we have here.

Mr. GEKAS. Mr. Chairman, will the gentleman yield on that?

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 3 additional minutes.)

Mr. VOLKMER. But the gentleman has admitted that the agencies—and I will not deny that they themselves have now over the period of years said what they think major means. Now I do not know that every agency agrees with each other as to what major means, and I do not say that the 5 percent increase that I put in cost of prices is the right amount, but it is much—it is like the 50 million. Whatever figure goes in, whether it is 5 percent, 10 percent, 20 percent, 15 percent, 12 percent or whatever it is that we want to do, that is really easily ascertainable. That is very easily ascertainable.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, the gentleman states as a fact that it would be easily ascertainable, but I think that

that could be as much subject to judicial review as the word ''major.'' In ''major'' we have a body of experience and files for a dozen years which can help the courts interpret 5 percent. Does that mean the overall cost? Does that mean profit cost? Does that mean 5 percent of the total package, 5 percent of a shipment? Does it mean 5 percent of the geographic region's products? So 5 percent itself is subject to judicial review and interpretation. When the consumer on the one hand says one thing, and the agency head says something else, and the small businessman says something different than what the 5 percent is that they are applying, and, as a matter of fact, our version has more precedent upon which the final decision can be made by the judge.

So, Mr. Chairman, I ask the gentleman to withdraw the amendment or I am going to ask the Members to soundly defeat this just to keep a kind of balance in what is already a part of the Executive order that we have transplanted from the Reagan Executive order to our bill.

☐ 1730

Mr. VOLKMER. Mr. Chairman, I disagree with the gentleman. All I am attempting to do is make a little more sense out of a matter that the gentleman agrees it is left to the bureaucrat to make determination, and readily agrees with this language bureaucrats will continue to make the determination, not Members of Congress, and that if they do not make it the way some people agree to do, you have nothing but the Federal courts, so the judges make the decision. They may even disagree, depending on the rulemaking.

Mr. Chairman, at this time I think the House should decide whether they want a definitive matter in here or subjective. The gentleman says that the 5 percent is just subjective. I do not believe so. I think if I look at a price in a store or anyplace else and I can say that it is a 5-percent increase or a 3-percent increase or a 10-percent increase, I can figure it out better than if I see it is a major or minor increase.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the 5 minutes, but I do want to say that while I do not agree with the 5-percent figure in the gentleman's amendment, it does raise a significant issue. The gentleman thinks the figure ought to be 5 percent. I would probably think it ought to be 25 percent, and I think that really points up the issue that the gentleman is making here and bringing to us.

The problem is there is no definition of what that means in this bill, and the very sponsors of the bill who are saying we are trying to cut down on the authority of regulators and agencies to promulgate regulations come right around the corner and now say we are going to leave the definition of what is major up to the very regulators which we distrust.

So here we are again delegating responsibility, abdicating, I might say, responsibility that we ought to take as a body to define what we mean in a law to agencies, and then next month, next year, we will be right back here second-guessing the way they have exercised that authority that we have delegated to them. And this is a vicious circle we are engaged in.

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment designated amendment A.

The Clerk read as follows:

Amendment offered by Mr. REED: On page 16, line 11, insert the following:

''SEC. 207. JUDICIAL REVIEW

Section 553 of Title 5, United States Code, as amended by section 206 is further amended by adding after subsection (k) the following:

(l)(1) When an action for judicial review is instituted—

(A) any regulatory impact analysis for such rule shall constitute part of the whole record of agency action in connection with the review; and

(B) the reviewing court may order an agency to prepare a final regulatory impact analysis for any final rule that the agency or the Director determined was a major rule (other than a rule described in subsection (k)) and for which the agency failed to prepare such analysis.

(2) Except as provided in (1), a regulatory impact analysis prepared for a major rule pursuant to subsection (i) and the compliance or noncompliance of an agency or the Director with the provisions of subsections (i) through (k) shall not be subject to judicial review.''

Page 16, line 12, strike ''207'' and insert ''208''.

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, first let me say it is my intention to discuss briefly this amendment, because it is important, and then ask unanimous consent to withdraw it.

This amendment focuses on the issue of judicial review in title II of this legislation. It is an important issue because I think we are all concerned about having an economical judicial review process. The language now is not specific enough, and I would in this amendment make it more specific by making it clear that the review process would only be commenced upon final regulation of a rule and not somewhere or anywhere within the process itself.

I think that leads to a more efficient adjudication of the rules, it allows for a more coherent review by the judicial authorities, and it saves money for the American taxpayers.

In addition, this amendment would limit the review with respect to the regulatory impact analysis to the procedural aspects. Was it performed, did the agency act arbitrarily and capriciously in performing that analysis. It would not invite, encourage, require a battery of experts to battle over every detail, whether the tests should have been done on cats, dogs, are applicable to large people or small people, et cetera.

This is important legislation, and I would ask the gentleman from Pennsylvania [Mr. GEKAS] that as we consider this bill in the future that we would once again return to this issue of judicial review and ask with your good offices if we could once again study it.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. REED. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I feel very strongly about the element of judicial review and have some trepidations about agreeing with the gentleman on any part of what you have just said. I am willing and want to discuss further the ramifications of what the gentleman is discussing here for some future debate with you.

I must tell the gentleman, judicial review in my judgment is the heart and soul of this legislation, and I will not be a party to shrinking it. But to improve the language, I would be glad to meet with the gentleman.

Mr. REED. Reclaiming my time, I am very sensitive to shrinking anything. So I do not want to shrink judicial review. I am a supporter of judicial review. I just want to make sure the review is efficient, cost effective, and reaches the merits on a final point and not several points in the process.

I believe with the gentleman's proffer of working together, we can work out these details. I hope I can persuade the gentleman this language or some version will be an improvement and not a detriment.

Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

The CHAIRMAN. Are there further amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—PROTECTIONS

SEC. 301. PRESIDENTIAL ACTION.

Pursuant to the authority of section 7301 of title 5, United States Code, the President shall, within 180 days of the date of the enactment of this title, prescribe regulations for employees of the executive branch to ensure that Federal laws and regulations shall be administered consistent with the principle that any person shall, in connection with the enforcement of such laws and regulations—

(1) be protected from abuse, reprisal, or retaliation, and

(2) be treated fairly, equitably, and with due regard for such person's rights under the Constitution.

The CHAIRMAN. Are there any amendments to title III?

If not, are there any other amendments?

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I simply want to say we are winding down on this legislation. I want to again thank the gentleman from Rhode Island [Mr. REED] for his superb cooperation, and the minority members of the subcommittee. I would like to thank my staff, Ray Smietanka, Roger Fleming, and Charlie Kern, and even the gentleman from Alaska, who is watching these proceedings. I thank everybody in sight.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. If there are no further amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTERT) having assumed the chair, Mr. BARRETT of Nebraska, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GEKAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 415, nays 15, not voting 4, as follows:

[Roll No 187]

YEAS—415

Abercrombie	Doolittle	Kanjorski
Ackerman	Dornan	Kaptur
Allard	Doyle	Kasich
Andrews	Dreier	Kelly
Archer	Duncan	Kennedy (MA)
Armey	Dunn	Kennedy (RI)
Bachus	Durbin	Kennelly
Baesler	Edwards	Kildee
Baker (CA)	Ehlers	Kim
Baker (LA)	Ehrlich	King
Baldacci	Emerson	Kingston
Ballenger	Engel	Kleczka
Barcia	English	Klink
Barr	Ensign	Klug
Barrett (NE)	Eshoo	Knollenberg
Barrett (WI)	Evans	Kolbe
Bartlett	Everett	LaFalce
Barton	Ewing	LaHood
Bass	Farr	Lantos
Bateman	Fattah	Largent
Beilenson	Fawell	Latham
Bentsen	Fazio	LaTourette
Bereuter	Fields (LA)	Laughlin
Berman	Fields (TX)	Lazio
Bevill	Filner	Leach
Bilbray	Flake	Levin
Bilirakis	Flanagan	Lewis (CA)
Bishop	Foglietta	Lewis (GA)
Bliley	Foley	Lewis (KY)
Blute	Forbes	Lightfoot
Boehlert	Ford	Lincoln
Boehner	Fowler	Linder
Bonilla	Fox	Lipinski
Bono	Frank (MA)	Livingston
Borski	Franks (CT)	LoBiondo
Boucher	Franks (NJ)	Lofgren
Brewster	Frelinghuysen	Longley
Browder	Frisa	Lowey
Brown (CA)	Frost	Lucas
Brown (FL)	Funderburk	Luther
Brown (OH)	Furse	Maloney
Brownback	Gallegly	Manton
Bryant (TN)	Ganske	Manzullo
Bryant (TX)	Gejdenson	Markey
Bunn	Gekas	Martinez
Bunning	Gephardt	Martini
Burr	Geren	Mascara
Burton	Gibbons	Matsui
Buyer	Gilchrest	McCarthy
Callahan	Gillmor	McCollum
Calvert	Gilman	McCrery
Camp	Goodlatte	McDade
Canady	Goodling	McDermott
Cardin	Gordon	McHale
Castle	Goss	McHugh
Chabot	Graham	McInnis
Chambliss	Green	McIntosh
Chapman	Greenwood	McKeon
Chenoweth	Gunderson	McNulty
Christensen	Gutierrez	Meehan
Chrysler	Gutknecht	Meek
Clay	Hall (OH)	Menendez
Clayton	Hall (TX)	Metcalf
Clement	Hamilton	Meyers
Clinger	Hancock	Mfume
Clyburn	Hansen	Mica
Coble	Harman	Miller (CA)
Coburn	Hastert	Miller (FL)
Coleman	Hastings (WA)	Mineta
Collins (GA)	Hayes	Minge
Combest	Hayworth	Mink
Condit	Hefley	Molinari
Cooley	Hefner	Mollohan
Costello	Heineman	Montgomery
Cox	Herger	Moorhead
Coyne	Hilleary	Moran
Cramer	Hilliard	Morella
Crane	Hobson	Murtha
Crapo	Hoekstra	Myers
Cremeans	Hoke	Myrick
Cubin	Holden	Neal
Cunningham	Horn	Nethercutt
Danner	Hostettler	Neumann
Davis	Houghton	Ney
de la Garza	Hoyer	Norwood
Deal	Hutchinson	Nussle
DeFazio	Hyde	Oberstar
DeLauro	Inglis	Obey
DeLay	Istook	Olver
Deutsch	Jackson-Lee	Ortiz
Diaz-Balart	Jacobs	Orton
Dickey	Jefferson	Owens
Dicks	Johnson (CT)	Oxley
Dingell	Johnson (SD)	Packard
Dixon	Johnson, E. B.	Pallone
Doggett	Johnson, Sam	Parker
Dooley	Jones	Pastor
Paxon	Schaefer	Thornberry
Payne (NJ)	Schiff	Thornton
Payne (VA)	Schroeder	Thurman
Pelosi	Schumer	Tiahrt
Peterson (FL)	Scott	Torkildsen
Peterson (MN)	Seastrand	Torres
Petri	Sensenbrenner	Torricelli
Pickett	Serrano	Towns
Pombo	Shadegg	Traficant
Pomeroy	Shaw	Tucker
Porter	Shays	Upton
Portman	Shuster	Velazquez
Poshard	Sisisky	Vento
Pryce	Skaggs	Visclosky
Quillen	Skeen	Volkmer
Quinn	Skelton	Vucanovich
Radanovich	Slaughter	Waldholtz
Rahall	Smith (MI)	Walker
Ramstad	Smith (NJ)	Walsh
Reed	Smith (TX)	Wamp
Regula	Smith (WA)	Ward
Reynolds	Solomon	Watts (OK)
Richardson	Souder	Weldon (FL)
Riggs	Spence	Weldon (PA)
Rivers	Spratt	Weller
Roberts	Stark	White
Roemer	Stearns	Whitfield
Rogers	Stenholm	Wicker
Rohrabacher	Stockman	Williams
Ros-Lehtinen	Stokes	Wilson
Rose	Studds	Wise
Roth	Stump	Wolf
Roukema	Stupak	Woolsey
Roybal-Allard	Talent	Wyden
Royce	Tanner	Wynn
Sabo	Tate	Yates
Salmon	Tauzin	Young (AK)
Sanders	Taylor (MS)	Young (FL)
Sanford	Taylor (NC)	Zeliff
Sawyer	Tejeda	Zimmer
Saxton	Thomas	
Scarborough	Thompson	

NAYS—15

Becerra	Dellums	Nadler
Bonior	Hastings (FL)	Rangel
Collins (IL)	Hinchey	Waters
Collins (MI)	Johnston	Watt (NC)
Conyers	McKinney	Waxman

NOT VOTING—4

Gonzalez	Moakley
Hunter	Rush

☐ 1758

Mr. HASTINGS of Florida and Mrs. COLLINS of Illinois changed their vote from ''yea'' to ''nay.''

Mr. MARKEY changed his vote from ''nay'' to yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

☐ 1800

ANNOUNCEMENT BY THE CHAIRMAN OF THE COMMITTEE ON RULES

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Rules Committee will be meeting on Friday, March 3, to grant rules for the consideration of H.R. 988, The Attorney Accountability Act, and H.R. 1058, The Securities Litigation Reform Act. H.R. 1058 was initially reported by the Commerce Committee as title II of H.R. 10 (Report 104–50, Part 1).

Each rule may include a provision giving priority in recognition to Members who have caused their amendments to be printed in the amendment section of the CONGRESSIONAL RECORD