

behind a diverse list of successful and essential military programs: the AV-8B, F/A-18, T-45, C-17, Apache helicopter, and Harpoon, SLAM, and Tomahawk missiles. Most recently, he provided the management focus on affordability which dramatically reduced costs on the new Joint Direct Attack Munitions Program.

Yet of all his achievements and contributions to our national defense, none eclipses his work to bolster our maritime strength via the F/A-18 Hornet program. He was there on day one when the idea of a combination fighter and attack aircraft—a strike fighter—was no more than a study project with a fancy acronym. He shepherded the program through its infancy, planned its growth and improvement, and watched it mature into the safest, most reliable and maintainable aircraft ever flown into combat by the Navy. Never one to fear following a tough act, Mr. Capellupo later directed the studies that defined the Navy's strike fighter for the 21st century—the F/A-18E/F Super Hornet. Under his leadership, and with the future of Naval aviation hanging in the balance, this program has become a monument to efficient and effective defense program management.

In my tenure in the Senate and as the Governor of Missouri, I have worked with thousands of business leaders and defense officials from across the country and around the world. There are very few of the same high caliber as John Capellupo. His energy, integrity, enthusiasm, and dedication are unequalled. So, too, are his achievements on behalf of our military strength and national security. For this, our great Nation and its people thank him and wish him and his family the very best.

RECOGNITION OF THE REPUBLIC OF CHINA PRESIDENTIAL ELECTION

Mr. CRAIG. Mr. President, on March 17, 1996, Representative and Mrs. Benjamin Lu of the Taipei Economic and Cultural Representative office in Washington, DC, will sponsor the Music for Democracy concert at the Kennedy Center. It will be an occasion to celebrate Taiwan's long journey toward democracy.

The late President Chiang Ching-Kuo nurtured the seeds of democracy on Taiwan by lifting the emergency decree, liberalizing personal freedoms and legalizing opposition political parties. After Chiang's death in 1988, President Lee Teng-Hui presided over further economic and political liberalization, vowing to make the Republic of China a nation built on economic opportunity and democracy.

Now in 1996, Taiwan is indeed a success story with a strong, growing economy and open democratic elections. Over the last 8 years, the People of the Republic of China have participated in the free election of the National As-

sembly, three elections of the Legislative Yuan, the election of the Governor of Taipei Province, and mayoral elections in Taipei and Kaohsiung.

The most notable in the progression will occur on March 23 of this year, when Taiwan will hold its first free and direct election of the President of the Republic of China.

Mr. President, there will be four presidential candidates on the ballot, the incumbent President Lee Teng-Hui being one of the four. This presidential election will answer the old question of whether democracy is possible or appropriate in a Chinese society. As the Republic of China has demonstrated to the world, democracy is truly appropriate and possible for Taiwan, and for all countries. Democracy, in Taiwan's case, has been achieved without sacrificing either political stability or economic growth.

I have met President Lee Teng-Hui and have been impressed by his commitment to democratic principles. I also understand from individuals associated with President Lee and his Government, such as Professor N. Mao, that he is a man truly dedicated to making the Republic of China a first-rate nation and its people prosperous and free.

Mr. President, I commend Representative and Mrs. Lu for sponsoring the Music for Democracy Concert on March 17. I join the people of the Republic of China on Taiwan in their celebration of democracy and commend President Lee for his efforts in leading the Republic of China down that road. Mr. President, I salute President Lee and his people.

MEASURE PLACED ON THE CALENDAR—S. 161

Mr. BOND. Mr. President, I understand there is a bill due for second reading at the desk.

The PRESIDING OFFICER. The Senator is correct. The clerk will read the bill for the second time.

The legislative clerk read as follows: A bill (S. 161) to provide uniform standards for the award of punitive damages for volunteer services.

Mr. BOND. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. Under rule XIV, the bill will be placed on the calendar.

CONCLUSION OF MORNING BUSINESS

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

The PRESIDING OFFICER. If there is no further morning business, morning business is concluded.

SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, we will now turn to S. 942.

The clerk will report.

The legislative clerk read as follows:

A bill (S. 942) to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Small Business, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Regulatory Enforcement Fairness Act of 1996".

SEC. 2. FINDINGS.

Congress finds that—

(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) small businesses bear a disproportionate share of regulatory costs and burdens;

(3) fundamental changes that are needed in the regulatory and enforcement culture of federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) three of the top recommendations of the White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

(5) the requirements of the Regulatory Flexibility Act have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

(6) small entities should be given the opportunity to seek judicial review of agency actions required by the Regulatory Flexibility Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

(2) to provide for judicial review of the Regulatory Flexibility Act;

(3) to encourage the effective participation of small businesses in the Federal regulatory process;

(4) to simplify the language of Federal regulations affecting small businesses;

(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

(1) the terms "rule" and "small entity" have the same meanings as in section 601 of title 5, United States Code;

(2) the term "agency" has the same meaning as in section 551 of title 5, United States Code; and

(3) the term "small entity compliance guide" means a document designated as such by an agency.

SEC. 102. COMPLIANCE GUIDES.

(a) **COMPLIANCE GUIDE.**—For each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under section 604 of title 5, United States Code, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The guides shall explain the actions a small entity is required to take to comply with a rule or group of rules. The agency shall, in its sole discretion, ensure that the guide is written using sufficiently plain language to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities, and may cooperate with associations of small entities to develop and distribute such guides.

(b) **SINGLE SOURCE OF INFORMATION.**—Agencies shall cooperate to make available to small entities through a single source of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

(c) **LIMITATION ON JUDICIAL REVIEW.**—Except as provided by this subsection, an agency's designation of a small entity compliance guide shall not be subject to judicial review. In any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small business guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

(a) **IN GENERAL.**—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency, it shall be the practice of the agency to answer inquiries by small entities concerning information on and advice about compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance provided by an agency to a small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages imposed on such small entity.

(b) **PROGRAM.**—Each agency shall establish a program for issuing guidance in response to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended—

(1) in subparagraph (O), by striking "and" at the end;

(2) in subparagraph (P), by striking the period at the end and inserting a semicolon; and

(3) by inserting after subparagraph (P) the following new subparagraphs:

"(Q) providing assistance to small business concerns regarding regulatory requirements, including providing training with respect to cost-effective regulatory compliance;

"(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to small business concerns; and

"(S) developing programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to small business concerns and assisting small business concerns in analyzing the business development issues associated with regulatory implementation and compliance measures."

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.

The Manufacturing Technology Centers and other similar extension centers administered by

the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the programs to provide confidential onsite assessments and recommendations regarding regulatory compliance described in Section 104 of this Act.

TITLE II—REGULATORY ENFORCEMENT REFORMS**SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.**

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

"(a) **DEFINITIONS.**—For purposes of this section, the term—

"(1) 'Board' means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

"(2) 'Ombudsman' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

"(b) **SBA ENFORCEMENT OMBUDSMAN.**—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman utilizing existing personnel to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

"(2) The Ombudsman shall—

"(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a confidential means to comment on and rate the performance of such personnel;

"(B) establish means to solicit and receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement related activities with respect to the small business concern, and maintain the identity of the person and small business concern making such comments on a confidential basis; and

"(C) based on comments received from small business concerns and the Boards, annually report to Congress and affected agencies concerning the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices and personnel of each agency; and

"(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administration and to the heads of affected agencies.

"(c) **REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.**—

"(1) Not later than 180 days after the date of enactment of this section, the Administration shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

"(2) Each Board established under paragraph (1) shall—

"(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

"(B) report to the Ombudsman on instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

"(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

"(3) Each Board shall consist of five members appointed by the Administration, after receiving the recommendations of the chair and ranking minority member of the Small Business Committee of the House and Senate.

"(4) Members of the Board shall serve for terms of three years or less.

"(5) The Administration shall select a chair from among the members of the Board who shall serve for not more than 2 years as chair.

"(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

"(d) **POWERS OF THE BOARDS.**—

"(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

"(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

"(3) The Board may accept donations of services necessary to conduct its business.

"(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board."

SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

(a) **IN GENERAL.**—Each agency regulating the activities of small entities shall establish a policy or program to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

(b) **CONDITIONS AND EXCEPTIONS.**—Policies or programs established under this section may contain conditions or exceptions such as—

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a State, or through a compliance audit resulting in disclosure of the violation;

(3) exempting small entities that have been subject to multiple enforcement actions by the agency;

(4) exempting violations involving willful or criminal conduct; and

(5) exempting violations that pose serious health, safety or environmental threats or risk of serious injury.

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS**SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

Section 504(b)(1) of title 5, United States Code, is amended—

(1) by striking "\$75" in subparagraph (A) and inserting "\$125";

(2) by striking ", or (ii)" in subparagraph (B) and inserting "; (ii)";

(3) at the end of subparagraph (B), by striking ";" and inserting the following: "; or (iii) a small entity as defined in section 601;";

(4) by striking "; and" in subparagraph (D) and inserting ";"; and

(5) by adding at the end the following new subparagraphs:

"(F) 'prevailing party' includes a small entity with respect to claims in an adversary adjudication brought by an agency (1) that the small entity has raised a successful defense to, or (2) with respect to which the decision of the adjudicative officer is substantially less than that sought by the agency in the adversary adjudication, provided that such small entity has not

committed a willful violation of the law or otherwise acted in bad faith, and

“(G) in an adversary adjudication brought by an agency against a small entity, in the determination whether the position of the agency, including any citation, assessment, fine, penalty or demand for settlement sought by the agency, is ‘substantially justified’ only if the agency demonstrates that such position does not substantially exceed the decision of the adjudicative officer in the adversary adjudication, and the position of the agency is consistent with agency policy.”

SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended in paragraph (d)(2)—

(1) by striking “\$75” in subparagraph (A) and inserting “\$125”;

(2) by striking “, or (ii)” in subparagraph (B) and inserting “, (ii)”;

(3) by striking “; and” subparagraph (G) and inserting “;”;

(4) in subparagraph (H)—

(i) after “prevailing party,” by inserting “includes a small entity with respect to a claim in a civil action brought by the United States (1) that the small entity has raised a successful defense to, or (2) with respect to which the final judgement in the action is substantially less than that sought by the United States, provided that such small entity has not committed a willful violation of the law or otherwise acted in bad faith, and”; and

(ii) at the end of the subparagraph, by striking the period and inserting “; and”;

(5) by adding at the end the following new subparagraph:

“(I) In a civil action brought by the United States against a small entity, a position of the United States, including any citation, assessment, fine, penalty or demand for settlement sought by an agency, is ‘substantially justified’ only if the United States demonstrates that such position does not substantially exceed the value of the final judgement in the action, and the position of the United States is consistent with agency policy.”

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Section 603(a) of title 5, United States Code, is amended—

(1) by inserting after “proposed rule”, the phrase “, or publishes a notice of interpretive rule making of general applicability for any proposed interpretive rule”; and

(2) by inserting at the end of the subsection, the following new sentence: “In the case of interpretive rule making involving the internal revenue laws of the United States, this section applies only to regulations as that term is used in section 7805 of the Internal Revenue Code of 1986 that impose a record keeping, reporting or paperwork requirement on small entities.”

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended—

(1) in subsection (a) to read as follows:

“(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or otherwise publishing an initial regulatory flexibility analysis, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

“(1) a succinct statement of the need for, and objectives of, the rule;

“(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

“(3) a description of, and an estimate of the number of, small entities to which the rule will

apply or an explanation of why no such estimate is available;

“(4) a description of the projected reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

“(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency was rejected.”; and

(2) in subsection (b), by striking “at the time” and all that follows and inserting “such analysis or a summary thereof.”

SEC. 402. JUDICIAL REVIEW.

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

“§611. Judicial review

“(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by agency action is entitled to judicial review of agency compliance with the requirements of this chapter, except the requirements of sections 602, 603, 609 and 612.

“(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of non-compliance with this chapter, except the requirements of sections 602, 603, 609 and 612.

“(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of such one year period, such lesser period shall apply to a petition for judicial review under this section.

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

“(i) one year after the date the analysis is made available to the public, or

“(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the one year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

“(4) If the court determines, on the basis of the rulemaking record, that the agency action under this chapter was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court shall order the agency to take corrective action consistent with this chapter, which may include—

“(A) remanding the rule to the agency, or

“(B) deferring the enforcement of the rule against small entities, unless the court finds good cause for continuing the enforcement of the rule pending the completion of the corrective action.

“(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

“(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

“(c) Except as otherwise required by this chapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct a rule making.

“(d) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

“(e) 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 permitted by law.”

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 605(b) of title 5, United States Code, is amended to read as follows:

“(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rule making for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.”

(b) Section 612 of title 5, United States Code, is amended—

(1) in subsection (a), by striking “the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives” and inserting “the Committees on the Judiciary and Small Business of the Senate and House of Representatives”;

(2) in subsection (b), by striking “his views with respect to the” and inserting in lieu thereof, “his or her views with respect to compliance with this chapter, the adequacy of the rule-making record and the”.

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND INTER-AGENCY COORDINATION.—Section 609 of title 5, United States Code, is amended—

(1) before “techniques,” by inserting “the reasonable use of”;

(2) in paragraph (4), after “entities”, by inserting “including soliciting and receiving comments over computer networks”;

(3) by designating the current text as subsection (a); and

(4) by adding the following new subsection:

“(b) Prior to publication of an initial regulatory flexibility analysis—

“(1) an agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

“(2) the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

“(3) the agency shall convene a review panel for such rule consisting wholly of full time federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

“(4) the panel shall review any material the agency has prepared in connection with this chapter, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 603(b), paragraphs (3), (4) and (5);

“(5) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 603(b),

paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rule-making record; and

“(6) where appropriate, the agency shall modify the proposed rule or the decision on whether an initial regulatory flexibility analysis is required.

“(c) Prior to publication of a final regulatory flexibility analysis—

“(1) an agency shall reconvene the review panel established under paragraph (b)(3), or if no initial regulatory flexibility analysis was published, undertake the actions described in paragraphs (b)(1) through (3);

“(2) the panel shall review any material the agency has prepared in connection with this chapter, collect the advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4) and (5);

“(3) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 604(a), paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rule-making record; and

“(4) where appropriate, the agency shall modify the final rule or the decision on whether a final regulatory flexibility analysis is required.

“(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.”.

(b) *SMALL BUSINESS ADVOCACY CHAIRPERSONS.*—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency's review panels established pursuant to this section.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, my ranking member, Senator BUMPERS, and I are very pleased to be able to bring to the floor this vitally important small business regulatory reform bill. I want to express at the beginning my heartfelt thanks to Senator BUMPERS, to his staff, and to the many Members on both sides of the aisle and their staffs who helped us work on this measure. We will be presenting a managers' amendment very shortly, when they complete drafting all of the good ideas that came in.

We had a very good hearing on this in the Small Business Committee. Lots of people have had good ideas. We have been able to incorporate most of them. We are not able to handle all of them. But this measure is targeted clearly to small business.

As we come up on the first anniversary of the White House Conference on Small Business, I think it is very important that we move forward. I appreciate the Members who have allowed us to go forward today with this bill.

As most of my colleagues know, last June almost 2,000 delegates to the White House Conference on Small Business came to Washington to vote on an agenda of top concerns for small business. The top 60 recommendations were published by the conference last September as a report to the President and

Congress entitled, “Foundation for a New Century.” Three of the top recommendations in the White House conference call for reforms in the way that Government regulations are developed, the way they are enforced, and reforms in Government paperwork requirements.

The common theme of all recommendations is the need to change the culture of Government agencies, the need to provide a responsive ear and a responsive attitude toward small business and small entities.

Let me emphasize, while we are talking about small business, many people just think maybe it is the business downtown on the square or the mom-and-pop operation or the small contractor, but this bill also includes small entities. We have many entities of local government, charitable entities, educational entities, that would be affected and would be protected by the provisions in this bill.

We held a hearing in Atlanta, GA, on small business. We were very graciously provided the facilities of Georgia Tech to hold that hearing. The president of Georgia Tech was kind enough to come and be with us. As he and I listened to the concerns of small business, he told me afterward, “It is amazing how many of these concerns actually affect small colleges and universities as well.” So, while traditionally we think of the small for-profit entities, there are benefits as well for nonprofits, for governmental entities, and charitable organizations as well as educational entities.

One of the top recommendations of the conference of the White House and small business was to put teeth into the Regulatory Flexibility Act, to provide regulatory relief for small entities, small businesses, small towns, small school districts, small nonprofit organizations. Back in 1980, Congress passed what was called the Regulatory Flexibility Act. I suppose regulatory flexibility came from the idea that Federal agencies are supposed to look at the issuance of regulations and make them flexible, so the impact on the small entities could be made flexible enough to carry out the purpose of the underlying statute under which the regulations were issued, without imposing unnecessary burdens on those small entities, hence the name regulatory flexibility. “Be flexible,” is what Congress told Federal agencies, “in dealing with regulations impacting small entities, small businesses, and not-for-profits.”

There is a problem with that. Congress said we are not going to have any judicial enforcement of regulatory flexibility. With that, too many Federal agencies took that as a sign to say we are not going to pay any attention to it. When small businesses said, “Have you paid attention to regulatory flexibility,” they said, “No, it did not apply.” Even the advocacy council, the Small Business Administration, has been totally stiffed by many Federal

agencies when it has gone before them and said, “Look, we serve small business and believe there is a problem. It is not a reg-flex-compliant, small-entity regulation that you have issued.”

We had hearings before the Small Business Committee in the past year, where the SBA's chief counsel for advocacy indicated that not only was regulatory flexibility being ignored, but that there is a tremendous burden on small business in many of these regulatory directives. In general, they say that the burden on small business is some 50 to 80 percent more per employee than it is for larger businesses.

Let me cite just one particular statistic that I found striking. In a manufacturing business, a large business can calculate that all the Federal regulations that I think we would all agree are designed to achieve worthwhile purposes of worker safety, a healthy environment, and a whole range of issues that we work on, cost about \$2.50 per hour per employee.

For every hour that is worked, the manufacturing business pays the employee his or her salary, plus they have to calculate another \$2.50. For a small manufacturing business with 50 or fewer employees, that costs \$5 an hour. That means the small business starts off with a \$2.50 an hour penalty over what the larger business has to pay. That makes our small businesses less competitive with larger businesses. It also makes our small businesses much less competitive with overseas competitors who may not have those burdens.

As a result, there has been strong bipartisan support to provide for judicial enforcement of the Regulatory Flexibility Act. The President has called for it. The Administrator of the Small Business Administration has called for it. Leading Members on both sides of the aisle in this body have called for it.

Mr. President, I ask unanimous consent to have printed in the RECORD letters of support for S. 942 that come from the National Federation of Independent Business, the Small Business Legislative Council, the National Retail Federation, the National Association of Home Builders, Associated Builders and Contractors, the National Association of Towns and Townships, and the National Association of Manufacturers.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER BOND,
Chairman, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the more than 600,000 small business owners of the National Federation of Independent Business (NFIB), I urge all your colleagues to support S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. The Bond-Bumpers legislation includes important provisions that have been top priorities for NFIB members for many years. It also includes provisions that were recommended by

small business owners at the 1995 White House provisions that were recommended by small business owners at the 1995 White House Conference on Small Business. The bill has these important elements:

Strengthening the Regulatory Flexibility Act

Provisions that would encourage a more cooperative regulatory enforcement environment regulation.

Updating the Equal Access to Justice Act. Providing for the judicial review of the Regulatory Flexibility Act of 1980 is of particular concern to the small business community because it has the potential to fulfill the promise of that 16 year old law. The purpose of "reg.flex." was to fit regulations to the scale and resources of the regulated entity. A strong "reg.flex." process will provide a substantial measure of the regulatory reform that small business owners have wanted for years.

The vote on S. 942 will be a "Key Small Business Vote" of the 104th Congress.

Sincerely,

DONALD A. DANNER,
Vice President,
Federal Government Relations.

SMALL BUSINESS
LEGISLATIVE COUNCIL,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER BOND,
Committee on Small Business, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Small Business Legislative Council (SBLC), I wish to express our strong support for your legislation to amend the Regulatory Flexibility Act (RFA) to add judicial review, and to make other small business regulatory process improvements.

As long-time supporters of the RFA, we know from first-hand experience that agencies have been able to ignore the law due to the lack of judicial review. At the time of the enactment of the original RFA, we thought it was a risk we could reluctantly accept in order for us to overcome the then formidable resistance of the bureaucracy to the entire law. Time has proven that the price was too much to pay.

The original concept of the original law is still sound. The goal is to have agencies undertake an analysis of proposed rules to determine whether they have an adverse impact on small business. If such a determination is made, then the agency must explore alternatives to mitigate the impact on small business. Unfortunately, agencies have simply ignored the law in the absence of judicial review.

Small business is at the regulatory breaking point. All too frequently, small business owners tell us, "I am not sure I can advise my son or daughter to join me in the business. It is not worth it, the hassles outweigh the joys. They just might be better off working for someone else." It is time to reverse that trend.

Enactment of the judicial review amendment to the RFA was one of the priority recommendations of last year's White House Conference on Small Business.

Congratulations on this initiative! We look forward to working with you towards the passage and enactment.

The SBLC is a permanent, independent coalition of nearly one hundred trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views. For

your information, a list of our members is enclosed.

Sincerely,

GARY F. PETTY,
Chairman of the Board.

Enclosure.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance for American Innovation.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association international.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Franchise Association.
International Television Association.
Machinery Dealers National Association.
Mail Advertising Service Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.

National Association of the Remodeling Industry.

National Chimney Sweep Guild.
National Electrical Contractors Association.

National Electrical Manufacturers Representatives Association.

National Food Brokers Association.
National Independent Flag Dealers Association.

National Knitwear & Sportswear Association.

National Lumber & Building Material Dealers Association.

National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.

National Paperbox Association.
National Shoe Retailers Association.

National Society of Public Accountants.
National Tire Dealers & Retreaders Association.

National Tooling and Machining Association.

National Tour Association.
National Wood Flooring Association.

NATSO, Inc.
Opticians Association of America.

Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.

Power Transmission Representatives Association.

Printing Industries of America, Inc.
Professional Lawn Car Association of America.

Promotional Products Association International.

The Retailer's Bakery Association.
Small Business Council of America, Inc.

Small Business Exporters Association.
SMC Business Councils.

Society of American Florists.
Turfgrass Producers International.

NATIONAL RETAIL FEDERATION,
Washington, DC, March 13, 1996.

Hon. KIT BOND,
Chairman, Committee on Small Business, U.S. Senate, Washington, DC.

DEAR KIT: On behalf of the National Retail Federation (NRF) and America's 1.4 million U.S. retail establishments, I am writing to strongly support your bipartisan, "Small Business Regulatory Enforcement Fairness Act" (S. 942). For years Main Street retailers have been shouting for relief from the federal regulatory nightmare. The bipartisan legislation you've assembled should provide exactly that.

This bill includes important relief for small retailers—in particular strengthening the Regulatory Flexibility Act. Reg-Flex was designed to force federal regulators to consider the excessive burden regulations place on small businesses. The improvements included in this bill will give family-owned retailers the hammer necessary to break the regulatory juggernaut. It will help provide Main Street businesses with the common sense solutions they have been searching for.

Other features of the bill such as its "Plain English" requirement and its direction to agencies to set-up programs to waive civil penalties for first-time violations are also important and valuable. Small retailers simply cannot afford to spend valuable time in non-productive activities.

Again thank you on behalf of America's retailers and the one in five Americans employed in the retail industry for your leadership in important regulatory relief.

Sincerely,

JOHN J. MOTLEY III,
Senior Vice President,
Government and Public Affairs.

NATIONAL ASSOCIATION
OF HOME BUILDERS,
Washington, DC, March 7, 1996.

DEAR SENATOR: It is my understanding that you may be considering S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. S. 942 was reported to the full Senate unanimously by the Senate Small Business Committee on March 6, and on behalf of the 185,000 member firms of the National Association of Home Builders (NAHB), I urge you to support this bill and oppose any weakening amendments.

S. 942 is based on several recommendations of the White House Conference on Small Business (the Conference) which addresses the regulatory burden currently faced by small businesses in the United States. First of all, S. 942 would require federal agencies to streamline and simplify their regulations. Secondly, this legislation would create a Small Business and Agriculture Enforcement Ombudsman to compile the comments of small businesses with respect to regulatory enforcement, and annually rate agencies based on these comments. While this is a step in the right direction, NAHB would respectfully suggest that the Ombudsman be given meaningful authority to intervene on behalf of an aggrieved small business.

Additionally, S. 942 would establish a meaningful judicial review process for regulations under the Regulatory Flexibility Act, enabling small business owners to challenge onerous regulations in court, forcing agencies to ensure that rules do not adversely impact small businesses.

Many of our members were active participants in the Conference. Hence, we feel strongly that the recommendations adopted by the Conference should be implemented by Congress. As the recent report of the Small Business Administration (SBA) points out, small businesses currently shoulder a disproportionate share of the regulatory burden and generally have the least amount of resources to devote to regulatory compliance.

Most NAHB members are truly small businesses, and we support the provisions of S. 942. This legislation has broad, bipartisan support, and we strongly urge you to pass this bill without any weakening amendments.

Thank you for considering our views.

Sincerely,

RANDALL L. SMITH,
President.

ASSOCIATED BUILDERS
AND CONTRACTORS, INC.,
Rosslyn, VA, March 11, 1996.

Hon. CHRISTOPHER S. BOND,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: The Senate will soon be considering the Small Business Regulatory Enforcement Fairness Act of 1996 (S. 942). On behalf of Associated Builders and Contractors (ABC)—and its more than 18,000 contractors, subcontractors, material suppliers, and related firms from across the country—I urge you to support the legislation.

S. 942 will implement key recommendations from the 1995 White House Conference on Small Business aimed to facilitate compliance with federal regulatory and administrative requirements imposed on the private sector. ABC believes S. 942 is an important step in managing the increasing regulatory burden on U.S. companies and small businesses in particular.

In particular, the legislation would strengthen enforcement of the Regulatory Flexibility Act. It would grant judicial review to ensure regulatory flexibility requirements are carried out by allowing small businesses to challenge certain agency actions or inactions in court. This will help en-

force the Regulatory Flexibility Act, which was intended to require that federal agencies "fit regulatory and informational requirements to the scale of the businesses." It is critical that Congress enact this judicial "hammer" to enforce agencies to address regulatory impacts on small businesses.

Although the nation's regulations are intended to benefit the public, they in fact place a disproportionate burden on small businessmen and women—those who actually create the vast majority of jobs in America. The Small Business Regulatory Enforcement Fairness Act of 1996 will help alleviate this main obstruction to economic development and free America's small business owners to generate valuable jobs.

The majority of ABC's members are small businesses. The U.S. Small Business Administration has identified construction contractors as one of the top small business-dominated industries responsible for generating a significant number of new jobs annually. In fact, from 1993 to 1994, general building and specialty construction contractors created almost 290,000 new jobs.

Over-regulation is not only burdensome for small businesses, but also impacts the economy. For the construction industry, excessive regulation translates into higher costs that are eventually passed onto the consumer for private sector contracts. Over-regulation on public sector contracts costs the federal government and the taxpayer millions of dollars per year. An additional burden is placed on the nation's economy because the increased cost of doing business from excessive regulations results in fewer jobs.

Again, ABC urges you to vote in support of S. 942 to help improve the ability of small businesses to comply with federal regulations. The Small Business Regulatory Enforcement Fairness Act of 1996 will encourage small business participation in the regulatory process and provide the necessary opportunity for redress of arbitrary enforcement actions. Thank you for your consideration of this important matter.

Sincerely,

CHARLOTTE W. HERBERT,
Vice President,
Government Affairs.

NATIONAL ASSOCIATION OF
TOWNS AND TOWNSHIPS,
Washington, DC, March 7, 1996.

Hon. KIT BOND,
Chairman, Small Business Committee, U.S. Senate,
Washington, DC.

DEAR SENATOR BOND: The National Association of Towns and Townships (NATA) would like to thank you for your leadership in developing legislation to strengthen the Regulatory Flexibility Act of 1980 (RFA). NATA strongly supports S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. NATA has long supported judicial review of the Regulatory Flexibility Act (RFA), which is a major component of S. 942.

NATA represents approximately 13,000 of the nation's 39,000 general purpose units of local governments. Most of our member local governments are small and rural and have fewer than 10,000 residents. These small communities simply do not have the resources to comply with many mandates and regulations in the same fashion that larger localities are able. The impact of federal regulations on small localities was understood by the authors of the RFA and small localities were therefore included under the definition of small entities in that act.

NATA has long recognized the failings of the RFA and has fought to strengthen it over the years. We have concluded that the only way to get federal agencies to take notice of their responsibilities under the RFA is to

allow small entities to take an agency to court for failure to follow the provisions of the RFA. Strong judicial review language would do just that. NATA strongly supports the judicial review language and would oppose any efforts to weaken it.

TOM HALICKI,
Executive Director.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, March 7, 1996.

Hon. CHRISTOPHER S. "KIT" BOND,
U.S. Senate, Senate Russell Office Building,
Washington, DC.

DEAR KIT: The National Association of Manufacturers (NAM) is pleased to offer its strong support for S. 942, The Small Business Regulatory Enforcement Fairness Act of 1996. This measure, which may be considered on the Senate floor today, is an important down payment on improvements to the nation's regulatory system.

Senate passage of S. 942 would be an important first step toward lifting regulatory barriers to increased flexibility, productivity and growth, particularly for small companies. The measure would allow small companies to stay focused on growing their businesses and creating jobs by increasing the accountability of regulatory agencies and decreasing unnecessary compliance burdens.

A recent study commissioned by the U.S. Small Business Administration concludes that small businesses shoulder 63 percent of the total regulatory burden while accounting for 50 percent of employment and sales. According to the report, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business," the average cost of regulation per employee in firms with 500 or more workers is \$2,979. That compares with \$5,532 for firms with 20 or fewer employees, an intolerable burden that must be reduced.

We also support the Nickles/Reid amendment, which will provide Congress with an opportunity to review major regulations under a fast track procedure. This will encourage the Federal bureaucracy to do a better job of developing sensible regulations.

The NAM believes that this legislation will yield smarter regulations that protect health, safety and the environment and bolster economic growth and job creation. I strongly urge you to support S. 942 and the Nickles-Reid amendment as part of a continuing effort to modernize the nation's antiquated regulatory system.

Sincerely,

JERRY J. JASINOWSKI,
President.

Mr. BOND. Mr. President, there are a number of other important amendments and provisions in this bill, in addition to providing judicial enforcement of regulatory flex. We take a very simple step of saying, with respect to compliance guides, when you write a regulation, you have to tell the small entities how, in plain English, they are supposed to abide by the regulation, what it is supposed to do, and how they can comply with it.

If a regulatory agency brings an enforcement action against a small entity, the small entity has a right to take a look at those so-called plain English guidelines and present it to the court or the administrative hearing officer and say, "Hey, look, we are doing what they told us to do," or if it is so confusing that they cannot figure it out, they have a case to make in the court or in the administrative hearing: "We had no idea what we were supposed to do to comply with this."

Another area that we think is very, very important is to change the atmosphere of inspectors and examiners who go out into the field representing the Federal Government to administer regulations.

Mr. President, you and I can cite many examples, I am sure. There are an overwhelming number of examples where dedicated public servants go out and work with the people they regulate to help them come into compliance. But I know we also can cite examples where a regulator goes out, an examiner goes out, and they think they have been sent from the king to impose fines, to impose sanctions and that their objective is to make life miserable. That is certainly the impression that too many of the witnesses before our hearings have held. They feel that there are some agencies in some areas or even some individuals who just have the wrong idea: They do not work for the people; they are there to collect fines and to impose penalties.

We set up fairness rules, and we set up an ombudsman. The ombudsman provision creates a small business enforcement ombudsman to provide a place where small businesses can complain and voice their concerns on excessive regulatory enforcement actions.

Right now, I have asked some of those small businesses why they do not complain to the guy's boss. They said, "Well, as soon as we do that, he is going to tell the inspector who is giving us so much trouble, who fined us \$4,000 for not having a warning label on a bottle of kitchen dishwashing soap, and we are liable to get twice that fine the next time."

We set up an ombudsman system, regional fairness boards where you can go to complain, and if a number of small entities pinpoint a particular agency or even a particular inspector, then through the Small Business Administration, which knows the identity of the complaining witnesses, the attention of the supervisory personnel in the enforcing agency can be advised that this particular inspector or maybe this particular office is overreaching, is not performing its function of seeing that the purpose of the statute is carried out, that they are more interested in the enforcement sanctions and the fines.

We believe this will help change the culture so that regulators, examiners and inspectors know that their job, when they go out, is to see that the workplace is environmentally sound, healthful, safe and not to impose fines, and regulations. This does not take away any of the penalties. This says how you go about it should be designed to achieve compliance, not to impose penalties.

There is another measure which is included in this bill, one which was introduced by Senator DOMENICI as a result of hearings we had in New Mexico, to provide, on a pilot basis, in OSHA and EPA for the involvement of small busi-

nesses and small entities in the early stages of regulatory development, so you can have somebody sitting at the table as you look at the statute and you try to determine how best to carry it out. Somebody can say, "Well, to do this in the small entities, it will be easier to go this way to get the job done than to go that way."

We think that offers great promise. It will be tested, and we will see if we can, in fact, make sure that we get the job done of complying with the law.

Finally, there is a change in the Equal Access to Justice Act. That act is supposed to provide compensation for small businesses and small entities who are subject to regulatory proceedings, the imposition of fines. If it turns out that the Federal Government has asked for much larger fines or penalties than are warranted in the case, they are supposed to get compensation. Under existing law, however, the standards are so strict that it is a promise without performance.

We amend the Equal Access to Justice Act to level the playing field to bring some accountability to the actions between an agency and a small business entity so that when the agency makes a demand, it is going to have to be in proportion to what the violation is worth and what can actually be proven in a hearing, either administrative or judicial, to allow them to recover costs for representing themselves against an overreaching agency.

These things, I think, make this a good starting point for ensuring that Federal agencies give a hearing to small businesses and to small entities and take account of how their activities may impact those businesses.

With that, Mr. President, I hope that when we vote on this measure next Tuesday, we will have overwhelming support from this body. The House has considered but has not moved forward on legislation. I hope that by listening to Members on both sides and doing a tremendous amount of staff work—and I want to compliment not only the staff on this side, but on the minority side for their diligent work—we have a reasonably good piece of legislation.

We have made accommodations. There are a number of amendments we believe we can accept by voice vote. Senator NICKLES and Senator REID have one for congressional review that we think is vitally important. It has overwhelmingly passed the Congress. I think it was 100 to 0. That is about as good as you can get. It has already passed the Senate. I do not think we need another vote on that one, but we expect to accept that. And there will be a managers' amendment.

PRIVILEGE OF THE FLOOR

With that, as I turn to my ranking member, I ask unanimous consent to allow Tom McCully, a legislative fellow in the Small Business Committee, privilege of the floor for the duration of the consideration of this bill.

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

Mr. BOND. I thank the Chair.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, the chairman of the Small Business Committee, my colleague, Senator BOND, made a magnificent statement on this very comprehensive bill. As Mo Udall used to say, "Just about everything that needs to be said has been said, but everybody hasn't said it." I know that what I have to say will be largely repetitious, but let me start, first, by just complimenting Senator BOND for his tenacity and determination in getting this bill out of the committee and getting it to the floor.

I believe I can truthfully say this is one of the two or three times since I have been in the Senate where Members, if this becomes law, will have an opportunity to go home and actually tell the small business community that we have done something for them that was actually meaningful, that they can relate to and that they will applaud.

Sometimes the small business community can get very volatile and vocal about the fact that nobody here hears them or really cares about their problems. And there is some merit to that. Very few of the recommendations they have made at these various White House conferences on small business have ever resulted in legislation here. In 1980, when we passed the Regulatory Flexibility Act, we patted ourselves on the back and gave ourselves the good government award and went home and told the small business community what we had done for them. Not much time elapsed before they said, "You didn't do anything for us."

They were absolutely right about that. The Regulatory Flexibility Act simply has not worked. If it had, we would not be here this morning. So really the initiative taken by Senator BOND is to correct that, and to fulfill a promise to the small business community—oh, yes, if you want to put the political aspect to it—to enable the Members of the U.S. Senate to go home and appear before small business groups and tell them how much you love them, but this time you can actually justify it by pointing to this legislation, if it becomes law, which I feel sure it will.

Why did the Regulatory Flexibility Act not work? Because it had a provision in it that said the agencies who write the rules that govern the people subject to their jurisdiction, it said that those agencies, first of all, had to make a determination that the rules they were writing were or were not unduly burdensome on the small business community. If they were, of course, then they had to do a regulatory analysis of how it affected small business as opposed to others. They have to do that to make a determination anyway. If they found that this was burdensome on the small business community, then they had to go through a lot of hoops.

Agencies do not like to jump through hoops. So what did they do? Almost

without exception they would simply say these regulations are not unduly burdensome on the small business community; therefore, they did not have to do anything more to accommodate the burden of that regulation on small business.

What was really the biggest omission of all in the Reg Flex Act of 1980 was that once the agency said, no, this does not hurt small business, small business could not do anything but stand there and take it because there was no judicial review. Under this bill, if they make a decision that a regulation is not burdensome, unduly harsh on small business, if they make that decision, they are going to have to defend it in court because the small business community has a right of judicial review on that determination.

So they are going to be much more circumspect about the regulation and certainly going to be much more circumspect about finding that the rules are not harsh on small business.

There are people who do not much like the judicial review part of this and say, you are going to clog the courts up with small business people contesting every regulation that has ever been written. That is powerful nonsense. Small business people do not like to spend money in court more than anybody else does.

But let me tell you, if I were going to summarize the vitality and the effectiveness of this bill in one sentence, or the reasons for it, it is because the small business people of this country spend 60 to 80 percent more dollars per employee to comply with Government regulations than big business does. How would you like to be a small business making widgets, and let us assume General Motors, one of the biggest corporations in America, also makes widgets, and you have to compete with General Motors, and then they come out with all these burdensome regulations, which are a piece of cake to General Motors, but, you know, you are going to have to spend 60 to 80 percent more than they are per employee to comply with those rules?

That is what this is all about, Mr. President. It is going to sail through. If there is a vote against this bill I am going to be surprised because everybody here knows those things I just described to you make sense.

The equal access to justice, which gives the small business community the right to go two court and to challenge some of the findings of the agencies, is long overdue. The equal access to justice, which says if the Government sues you for \$1 million, and they wind up getting an award of \$10,000 or even \$50,000, the Justice Department, the small business person can sue for his attorney fees. This is a point that the Justice Department helped us with. And we accepted it. I applaud the Justice Department for it because the language says that if the award is disproportionately smaller than that requested, you are entitled to attorney fees.

Mr. BUMPERS. Mr. President, I am pleased to cosponsor S. 942 and the pending managers' amendment with the distinguished chairman of our committee, Senator BOND. This bill is one of the most significant accomplishments of the 104th Congress, and it is one of the best bills for the small business community in the last 15 years. It is important because it resolves major concerns to the small business community that have been unresolved for many years. And, it follows by less than 1 year the conclusion and recommendations of the 1995 White House Conference on Small Business.

Senators who support this bill can say to their small business constituents, "We not only hear you; we agree with much of what you are saying, and we are responding." With this bill, Senators can do more than give platitudes for small business. We can do something that will effect the lives of every business owner who deals with a Federal regulator.

S. 942 makes important, positive changes in two statutes which grew out of the 1980 White House Conference on Small Business: The Regulatory Flexibility Act and the Equal Access to Justice Act. This is a bill—all too rare in this Congress—which I can assure my colleagues that we would be considering if my party were in the majority. Some of today's bill's issues—particularly the judicial enforceability of the Regulatory Flexibility Act, or Reg Flex—have been the subject of consternation among small business owners almost since the act was passed in 1980. The recommendations of the White House Conference, as well as the work done by the National Performance Review under Vice President GORE, are the foundations of today's bill.

I want to emphasize that the spirit of S. 942 is one of reforming the regulatory environment—a cause which President Clinton's administration has championed since its inception both in the National Performance Review and in Executive orders which the President has signed. We are not only endorsing the Clinton administration's new regulatory philosophy, we are writing some of its program into law so that this new attitude does not change under some future President. Section 202 of the bill is specifically based on an Executive order, which President Clinton signed, providing for waiver or reduction of penalties and fines for small businesses in certain circumstances. His Executive order is exactly that approach to take if we are to change the climate of animosity between Government and small business which has existed for years.

There are several specific provisions of this bill which deserve mention. First, however, I want to compliment the chairman for the way he has handled this bill in our committee and since it was reported. Although the administration did not testify on the bill before the Small Business Committee,

in subsequent days the chairman, the staff and I have held literally dozens of consultations with various agency officials about the bill. More importantly, we have worked very hard to accommodate the views and suggestions of the Clinton administration. Without exception, the suggestions and requests both from the administration and from Senators on and off the committee have been constructive and helpful. The staffs of the Finance Committee and the Governmental Affairs Committee have been especially helpful in crafting this far-reaching bill.

The Managers' amendment incorporates dozens of changes, some quite significant, in either language or policy from the bill reported by the committee. However, it does not retreat in any way from the main purpose of the bill. In fact, the administration's views have helped us to make the bill stronger and more effective for small business. I want to dispel any notion that the so-called bureaucrats have opposed this bill for fear that it would create more work for their agencies. The General Counsels' offices at Treasury, Justice, Labor, and other departments have offered advice which has improved upon what our committee originally approved 2 weeks ago.

Allowing judicial enforcement of the rights created under the Regulatory Flexibility Act of 1980—which S. 942 for the first time does—removes a bone that has been stuck in the throat of small business owners for over 15 years. The original act did not permit anyone to go to Federal court to enforce the promise that agencies would: First, consider whether a proposed rule significantly affected a substantial number of small entities; and second, consider whether steps should be taken to account for the special problems of small entities. The only enforcement of the act was the moral authority of the law and SBA's Chief Counsel for Advocacy who is charged with monitoring agencies' implementation of Reg Flex.

Small firms, according to the GAO, pay between 60 and 80 percent more, per employee, for the cost of complying with Government regulations than do the big businesses who are often their competitors. Small business owners do not have armies of accountants, clerks, and lawyers to help them comply with the Government's endless demand for information and enforcement of rules.

For several years, the SBA Chief Counsel for Advocacy has reported to the Senate Small Business Committee on the performance of agencies in following the mandate of the Reg Flex Act. Some agencies have been conscientious, others sadly have not. That report, to date, has been almost the only means of enforcing agency compliance with the act. There is at least a perception that some agencies of the Government have routinely used the act's escape clause by saying that a significant number of small entities would not be substantially affected. This has occasionally been done when

the facts were obviously to the contrary. Yet there was no legal recourse for businesses affected.

Today, all that changes. Those who should be protected by the Reg Flex Act will be. Small business owners, small town governments, and small nonprofit associations will be empowered to go into Federal court and obtain justice if a Federal agency has not followed the law. This law puts the Reg Flex Act on the same footing with other parts of the Administrative Procedure Act—which is to say that individuals are protected against actions which are arbitrary, capricious, an abuse of discretion, or otherwise not in accord with the law.

Judicial review of reg flex was one of the top recommendations of the 1995 White House Conference on Small Business, as was overall regulatory reform. Less than a year after the end of that conference, Congress is acting on those recommendations—a large part of them—by enacting these major changes in Federal regulatory law and policy. Important as judicial enforcement is, however, it is not the only big change made in this bill.

Perhaps the headline for this bill should be: IRS made subject to reg flex law. For the first time, the scope of the Reg Flex Act is being extended to cover so-called interpretative rulemakings. IRS and a few other agencies issue what are termed interpretative rules which, they say, merely explain the requirements of the statute. Nonetheless, these rules have great weight in the courts. They must be observed if the business owner wants to avoid a confrontation with the Government. Until the present moment, interpretative rules have not been subject to the requirements of the Reg Flex Act. Today, that also changes. IRS will be required to conduct an analysis under the act if a new rule substantially effects a significant number of small entities. And that finding will itself be subject to judicial review under section 5 of the Administrative Procedures Act.

Let me hasten to add that we do not believe allowing judicial review will result in a flurry of spurious lawsuits against the Government. Instead, we believe that agency rule writers will follow the new reg flex law and perform analyses which will avoid the necessity of anyone going to court. IRS particularly has a problem with tax protesters filing frivolous suits against the Government. The courts should deal summarily with such people, including imposing costs and fines in appropriate cases for those who sue to obstruct the Government.

The Equal Access to Justice Act [EAJA] which this bill amends deserves special mention. This important law allows individuals of small firms who have been sued by Government to recover their attorneys fees if they prevailed in the suit. This law has often failed of its purpose because it contained a two-part test which court decisions made nearly impossible to

achieve. Under existing law, the small company must first show that he or she is a prevailing party. So, if the Government alleged 10 or 100 violations, and then only proved one minor one, the company was not a prevailing party.

Second, even if someone prevailed on each and every count, he has to show that the Government's action was not substantially justified. Courts have interpreted this phrase to mean that the Government's suit must have been without foundation in law or fact—virtually a frivolous suit under rule 11 of the civil rules. This is an almost impossible task, since the Government invariably has some basis for acting, even if it is not enough to persuade a judge or jury.

Our bill changes both these standards and makes it possible for the business owner to recover his fees by showing that the Government's final judgment was disproportionately less than an express demand by the Government during the course of the suit. So, if the Government sought \$1 million to settle the case, and the judge or jury awarded, for example, \$1,000 or \$5,000, the defendant should be able to recover his fees. The phrase "disproportionately less" than an express demand by the Government was suggested by the Justice Department, and it was a very helpful suggestion. Obviously, this will not prohibit any agency from telling anyone the maximum legal penalty for a violation.

Additionally—and this should be emphasized by all who read and apply this section—the court or agency can deny attorneys fees if it finds that "special circumstances make such an award unjust." This phrase also came from the Justice Department, and it is contained in the current law. Clearly, we do not want to pay attorneys fees for someone who escaped conviction on a mere technicality but who was, nonetheless, probably guilty.

It is certainly not our intention to pay the lawyers for people who are essentially bad actors but who escaped punishment by the grace of the Almighty. Many circumstances, such as an exclusionary rule challenge, can be imagined where it would be wrong for the taxpayers to reimburse someone's attorneys fees, and the courts are empowered to use some reasonable discretion.

Finally, the courts are not obliged to allow the maximum rate of \$125 per hour in every case. This is an increase from the \$75 per hour maximum in current law, a figure which has not been changed in many years. The courts should look to existing law under section 1988 of the Civil Rights Act for guidance. Fees should be set in relation to prevailing fees actually charged in the community. Moreover, courts should require attorneys to substantiate their fees through time-sheets or other appropriate records.

The Justice Department is still not entirely satisfied with this language, as the statement of administration pol-

icy indicates. But the administration has my assurance, and that of Senator BOND, that we will continue to work with them to improve upon this language in conference with the House.

The House previously passed a bill allowing for some judicial review of reg flex decisions, but our bill is broader. Moreover, the House bill does not amend the EAJA, does not contain an ombudsman provision, and does not allow for Regulatory Advisory Boards. It is a rather narrow bill, and I hope that we will be able to persuade the House to substantially broaden it or, better yet, to accept our bill. To this point, the House has not been able to bring major regulatory reform to a conclusion, just as the Senate failed to complete debate on S. 343 earlier in this session. This bill, however, can and should go forward regardless of the outcome of those debates. This bill can only help our economy's small business sector, and I hope our colleagues in the other body will move expeditiously to send this bill to the President for his signature.

I urge my colleagues to support this important bill. The small business community will undoubtedly appreciate those who have helped us today.

Again, I want to thank Senator BOND and his staff, particularly Keith Cole and Louis Taylor, for their cooperation and support during the development and consideration of this bill. This bill shows that reasonable people of good will can still accomplish a great deal in this Congress, and I hope it will be a precedent for other bills.

Mr. President, on the equal access to justice, I point out it was the Justice Department that came up with the phrase which I think is almost a stroke of genius when they said, "Why don't you use the term 'disproportionate award'?" That is, if the Government sues for \$1 million and they get a disproportionately smaller amount than that, then the small businessperson is entitled to his attorney fees. There are some exceptions to that, of course—if he has been guilty of a criminal act or willful wrongdoing or something like that—but normally he not only will be entitled to attorney fees, but the equal-access-to-justice provision, which is essentially incorporated here with Senator FEINGOLD, essentially the amendment he offered on the floor—I think it passed 98-0—that increased the amount the small businessperson could recover from \$75 an hour to \$225 an hour. We have put that in this bill.

Now, Mr. President, there are some cases in which offenses can be waived, penalties can be waived, under a certain set of conditions. If you really want, sometimes, to enforce a regulation, no exception, cross every "t" and dot every "i", you can still make things a little tough for some small business people.

The National Performance Review Group headed up by Vice President GORE had recommended that there be a provision in here that some people

could be excused from burdensome penalties if it was rather unintentional and had been corrected. That ought to be a source of some strength. I, frankly, thought that labor might oppose that, but they did not. It is not designed to ratify or condone bad conduct on the part of some small businessman but just to keep it from being too harsh.

Now, Mr. President, the final thing that I want to mention, there is a provision in here—and it may not be perfect; some people have voiced considerable reservation about it—but the provision is that the Small Business Administration will be home to an ombudsman, and that ombudsman is there to take complaints from the small business community.

You have heard that classic joke for 100 years, “I’m here from the IRS and I am here to help you,” and people are terrified when the IRS walks in. Usually if that agent happens to be abusive—and I use the IRS because they are everybody’s favorite whipping boy—if that agent happens to be abusive on top of the fact you know that he is there to get in your pocketbook, it makes it doubly troublesome. This is also true of a lot of people who come into your plant to enforce the OSHA laws or all the other regulations that they write. If a small business man or woman feels that he or she has been put upon in an unfair, burdensome, and abusive way, they will have somebody to report that to.

It just occurred to me, Mr. President, one of the biggest cases I ever had involved a defense contract. My client was a manufacturer of tent pins. Tent pins came in different sizes, anywhere from 18 inches to 24 inches, and they were designed, of course, to drive in the ground to hold a tent up for the army, for the troops. Now, you have to understand the tent pins had to be absolutely perfect—sanded. You would not believe the regulations that my client had to comply with to build a tent pin which, when used, was going to be hit by a sledgehammer.

He had one of those crazy, as luck would have it, a crazy inspector. The guy used to go through his trash at night after he would leave to see if he could find something. The reason I am telling you that—it is humorous now because that happened 35 years ago; it was not funny then—it bankrupted my client. It took 7 years—I had never had a case in the U.S. Court of Claims before. They sent a referee down to Fort Smith, AR, and we tried that thing. It took a week. Happily, the referee of the Court of Claims was a very attentive judge. He was an elderly man. He understood the problem. He listened very carefully. He awarded my client, I believe, \$100,000, one of the biggest judgments I ever got. You would think I could remember to the penny what it was.

It turned out, as a personal note, that Betty and I were getting ready to take our daughter to Boston to Chil-

dren’s Hospital for what we knew was going to be a tremendous expense and we did not know how to pay for it, and I collected on that judgment 3 days before we left. It saved my life.

I have had firsthand experience with the Government inspector who bankrupted my client. We did get that amount of money. But that was after 7 years. We did not get a dime of interest. We did not get a dime of penalty. We did not get a dime in attorney fees. All we got were actual damages.

Now, as a country lawyer in a town of 2,000 people, I could not believe the Government treated people like that. They admitted they were wrong, but no attorney fees, no interest, no penalty, after 7 years. Well, at least these people are going to be entitled to attorney fees.

Mr. President, I ask unanimous consent to add Senator CAROL MOSELEY-BRAUN as a cosponsor.

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

Mr. BUMPERS. I yield the floor.

Mr. BOND. Mr. President, I yield myself 2 minutes. I would like to add—to make sure we have a list of cosponsors, I will read for the record the cosponsors:

In addition to Senator MOSELEY-BRAUN, Senator BUMPERS and myself, we have Senator BURNS, Senator COATS, Senator COVERDELL, Senator DEWINE, Senator DOLE, Senator DOMENICI, Senator FAIRCLOTH, Senator FRIST, Senator GRAMS of Minnesota, Senator GRASSLEY, Senator HUTCHISON, Senator KEMPTHORNE, Senator KERRY of Massachusetts, Senator LIEBERMAN, Senator LOTT, Senator LUGAR, Senator PRESSLER, Senator ROBB, Senator STEVENS, and Senator WARNER.

I also note that a number of these people, including Senator ROBB, are working very actively with us, with Senator NICKLES, with Senator JOHNSTON, Senator DOLE and others on a broader regulatory reform package. I think they want it understood, as I certainly do, that this does not supplant the need for other regulatory reform efforts, and it in no way is a substitute for them. We think this is a very important rifle shot to deal with the problems of small business, and we believe it does not deal with the broader regulatory issues.

Now, Mr. President, I ask unanimous consent to have printed in the RECORD a statement of the legislative history of this measure which is prepared by staff for Senator BUMPERS and me on behalf of the committee.

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

COMMITTEE LEGISLATIVE HISTORY FOR S. 942

I. SUMMARY OF THE LEGISLATION

The final version of the bill, embodied in a managers amendment, makes a series of technical and other amendments to S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. The amendment resolves many of the questions raised by the Administration with the bill as reported by

the Small Business Committee. The amendment also makes changes for better implementation of certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The scope of the RFA requires a regulatory flexibility analysis of all rules that have a “significant economic impact on a substantial number” of small entities. Under the RFA, this term “small entities” includes small businesses, small non-profit organizations, and small governmental units.

As amended, S. 942 provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The goal of the Act is to foster a more cooperative, less threatening regulatory environment between agencies and small businesses and other entities. In addition, S. 942 provides a vehicle for effective and early participation by small businesses in the Federal regulatory process by incorporating amended provisions of S. 917, the Small Business Advocacy Act.

II. SECTION-BY-SECTION ANALYSIS

Section 1

This section entitles the Act the “Small Business Regulatory Enforcement Fairness Act of 1996.”

Section 2

The bill makes findings as to the need for a strong small business sector, the disproportionate impact of regulations on small businesses, the recommendations of the 1995 White House Conference on Small Business, and the need for judicial review of the Regulatory Flexibility Act.

Section 3

This section outlines the purposes for the bill. The bill addresses some key federal regulatory recommendations of the 1995 White House Conference on Small Business. The White House Conference produced a consensus that small businesses should be included earlier and more effectively in the regulatory process. The bill provides for a more cooperative and less threatening regulatory environment to help small businesses in their compliance efforts. The bill also provides small businesses with legal redress from arbitrary enforcement actions by making federal regulators accountable for their actions.

Section 4

This section provides that the effective date of the Act is 90 days after enactment. Proposed rules published after the effective date must be accompanied by an initial regulatory flexibility analysis or a certification under section 605 of the RFA. Final rules published after the effective date must be accompanied by a final regulatory flexibility analysis or a certification under section 605 of the RFA, regardless of when the rule was first proposed. However, IRS interpretive rules proposed prior to enactment will not be subject to the amendments made in chapter four of the Act expanding the scope of the RFA to include IRS interpretive rules. Thus, the IRS could finalize previously proposed interpretive rules according to the terms of currently applicable law, regardless of when the final interpretive rule is published.

TITLE ONE

Section 101

This section defines certain terms as used in the act. The term “small entity” is currently defined in the RFA to include small business concerns, as defined by the Small Business Act, small nonprofit organizations

and small governmental jurisdictions. The process of determining whether a given business qualifies as a small entity is straightforward, using thresholds established by the SBA for Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction. Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

Section 102

The bill requires agencies to publish "small entity compliance guides" to assist small entities in complying with regulations which are the subject of a required Reg Flex analysis. The bill does not allow judicial review of the guide itself. However, the agency's claim that the guide provides "plain English" assistance would be a matter of public record. In addition, the small business compliance guide would be available as evidence of the reasonableness of any proposed fine on the small entity.

Agencies should endeavor to make these "plain English" guides available to small entities through a coordinated distribution system for regulatory compliance information utilizing means such as the SBA's U.S. Business Advisor, the Small Business Ombudsman at the Environmental Protection Agency, state-run compliance assistance programs established under section 507 of the Clean Air Act, Manufacturing Technology Centers or Small Business Development Centers established under the Small Business Act.

Section 103

The bill directs agencies that regulate small businesses to answer inquiries of small entities seeking information on and advice about regulatory compliance. Some agencies already have established successful programs to provide compliance assistance and the amendment intends to encourage these efforts. For example, the IRS, SEC and the Customs Service have an established practice of issuing private letter rulings applying the law to a particular set of facts. This legislation does not require other agencies to establish programs with the same level of formality as found in the current practice of issuing private letter rulings. The use of toll free telephone numbers and other informal means of responding to small entities is encouraged. This legislation does not mandate changes in current programs at the IRS, SEC and Customs Service, but these agencies should consider establishing less formal means of providing small entities with informal guidance in accordance with this section.

The bill gives agencies discretion to establish procedures and conditions under which they would provide advice to small entities. There is no requirement that the agency's advice to small businesses be binding as to the legal effects of the actions of other entities. Any guidance provided by the agency applying statutory or regulatory provisions to facts supplied by the small entity would be available as relevant evidence of the reasonableness of any subsequently proposed fine on the small entity.

Section 104

The bill creates permissive authority for Small Business Development Centers (SBDC) to offer regulatory compliance assistance and confidential on-site assessments for small businesses. SBDCs would not become the single-point source of regulatory information, but would supplement agency efforts to make this information widely available. Neither this section nor the related language in section 105 are intended to grant any exclusive franchise on regulatory compliance assistance. Rather, these sections are de-

signed to add to the currently available resources to small businesses for assistance with regulatory compliance.

Section 105

the bill authorizes Manufacturing Technology Centers, commonly known as "Hollings Centers," and other similar extension centers administered by the National Institute of Standards and Technology, to engage in the types of compliance assistance activities described in Section 104 with respect to SBDCs.

This legislation places strong emphasis on compliance assistance programs for small businesses. These programs can save businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. The bill calls for both the Small Business Development Centers and the Department of Commerce's Manufacturing Technology Centers to provide a range of technical and compliance assistance to small businesses. Some of the manufacturing technology centers already are providing environmental compliance assistance in addition to general technology assistance.

The bill also provides that it in no way limits the authority and operation of the small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990. There is strong support for that program. There are also other excellent small business technical assistance programs in various forms in different states. This bill is not intended to affect the operation and authority of those programs, comments from small business representatives in a variety of fora support the need for expansion of technical assistance programs.

Section 106

This section directs agencies to cooperate with states to create guides that fully integrate federal and state requirements on small businesses. Separate guides may be created for each state, or states may modify or supplement a guide to federal requirements. Since different types of small businesses are affected by different agency regulations, or are affected in different ways, agencies should consider preparing separate guides for the various sectors of the small business community subject to their jurisdiction. priority in producing these guides should be given to areas of law where rules are complex and where businesses tend to be small. Agencies may contract with outside entities to produce these guides and, to the extent practicable, agencies should utilize entities with the greatest experience in developing similar guides.

TITLE TWO

Section 201

The bill creates a Small Business and Agriculture Regulatory Enforcement Ombudsman at SBA to give small businesses a confidential means to comment on and rate the performance of agency enforcement personnel. This might include providing toll-free telephone numbers, computer access points, or mail-in forms allowing businesses to rate the performance and responsiveness of inspectors, auditors and other enforcement personnel. As used in this section of the bill, the term "audit" is not intended to refer to audits conducted by Inspectors General. This Ombudsman would not replace or diminish any similar ombudsman programs in other agencies.

The Ombudsman will compile the comments of small businesses and provide an annual evaluation similar to a "customer satisfaction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are in fact treating small businesses more like customers than potential criminals. Agencies will be provided an opportunity to comment on the Ombudsman's draft report, as is currently the practice with reports by the General Accounting Office. The final report may include a section in which an agency can address any concerns that the Ombudsman does not choose to address.

The bill also creates Regional Small Business Regulatory Fairness Boards at SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report and make recommendations to the Ombudsman about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners or operators of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the Congressional small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms.

Section 202

The bill directs all federal agencies that regulate small businesses to develop policies or programs providing for waivers or reductions of civil penalties for violations by small businesses in certain circumstances. This section builds on the current Executive Order on small business enforcement practices and is intended to allow agencies flexibility to tailor their specific programs to their missions and charters. Agencies should also consider the ability of a small entity to pay in determining penalty assessments under appropriate circumstances. Each agency would have discretion to condition and limit the policy or program on appropriate conditions. For purposes of illustration, these could include requiring the small business to act in good faith, requiring that violations be discovered through participation in agency supported compliance assistance programs, or requiring that violations be corrected within a reasonable time.

An agency's policy or program could also provide for suitable exclusions. Again, for purposes of illustration, these could include circumstances where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or poses a grave threat to worker safety, public health, safety or the environment.

In establishing their programs, agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is

not intended to override, amend or affect provisions of the Occupational Health and Safety Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

TITLE THREE
Sections 301 & 302

The bill would amend the Equal Access to Justice Act to assist small businesses in recovering their attorneys fees and expenses in certain instances when agency demands for fines or civil penalties in enforcement actions are not sustained. While this is a significant change from current law, it is not the intention of the Committee that attorneys fees be awarded as a matter of course. Rather, the Committee's intention is that awards be made frequently enough to change the incentives of enforcement personnel and to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. A goal of this bill is to encourage Government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly.

The Equal Access to Justice Act (EAJA) provides a means for prevailing small parties to recover their attorneys fees in a wide variety of civil and administrative actions between small parties and the government. This bill amends the EAJA to create a new avenue for small entities to recover their attorneys fees in situations where the government has instituted an administrative or civil action against the small entity to enforce a statutory or regulatory requirement. In these situations, the test for recovering attorneys fees in whether the final outcome imposed or ordered in the case (whether a fine, injunctive relief or damages) is disproportionately less burdensome on the small entity than the government's actual demand. This test does not provide attorneys fees if there has merely been a reduction in the burden on a small entity between the demand and the final outcome. The test is whether the demand is out of proportion with the actual value of the violation.

The comparison is always between an "express demand" by the government and the final outcome of the case. An express demand is just that—any demand for payment or performed by the government, including a fine, penalty notice, demand letter or otherwise. However, the term "express demand" should not be read to extend to a mere recitation of facts and law in a compliant.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations where the agency's demand is so far in excess of the true value of the case, as demonstrated by the final outcome, that it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the facts and circumstances of the case. In addition, the bill excludes attorneys fee awards in connection with willful violations, bad faith actions and in special circumstances that would make such an award unjust.

The bill also increases the maximum hourly rate for attorneys fees under the EAJA from \$75 to \$125. Agencies could avoid the possibility of paying attorneys fees by settling with the small entity prior to final judgment. The Committee anticipates that if a settlement is reached, all further claims of either party, including claims for attorneys fees, could be included as part of the settlement. The government may obtain a release specifically including attorneys fees under EAJA.

TITLE FOUR
Section 401

The bill expands the coverage of the FRA to including IRS interpretive rules that provide for a "collection of information" from small entities. The intention of the Committees to permit enforcement of the RFA for those IRS rulemakings that will be codified in the Code of Federal Regulations. Although the Committee believes IRS should take an expansive approach in interpreting which of its actions could have significant economic impact on small businesses, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings are not covered by the bill. The term "collection of information" as used in the Paperwork Reduction Act (Title 44 U.S.C., Section 3502(4)) is defined to include the obtaining or soliciting of facts or opinions by an agency through a variety of means including the use of written report forms, schedules, or reporting or record keeping requirements, which the Committee interprets to include all tax recordkeeping, filing and similar compliance activities.

If an agency is required to publish an initial regulatory flexibility analysis, the agency also must publish a final regulatory flexibility analysis. In the final regulatory flexibility analysis, agencies will be required to describe the impacts of the rule on small entities and to specify the actions taken by the agency to modify the proposed rule to minimize the regulatory impact on small entities. Nothing in the bill directs the agency to choose a regulatory alternative that is not authorized by the statute granting regulatory authority. The goal of the final regulatory flexibility analysis is to demonstrate how the agency has minimized the impact of small entities consistent with the underlying statute and other applicable legal requirements.

Section 402

The bill removes the current prohibition on judicial review of agency compliance with the RFA and allows adversely affected small entities to seek judicial review of agency compliance with the Act within one year after final agency action, except where a provision of law requires a shorter period for challenging a final agency actions. The prohibition on judicial enforcement of the RFA is contrary to the general principle of administrative law, and it has long been criticized by small business owners. Many small business owners believe that agencies have given lip service at best to RFA, and small entities have been denied legal recourse to enforce the Act's requirements.

The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review. The bill does not subject all regulations issued since the enactment of the RFA to judicial review. After the effective date, if the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance

with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Section 403

The bill requires agencies to publish their factual, policy and legal reasons when making a certification under section 605 of the RFA that the regulations will not impose a significant economic impact on a substantial number of small entities.

Section 404

The bill amends the existing requirements of RFA section 609 for small business participation in the rulemaking process by incorporating a modified version of S. 917, the Small Business Advocacy Act, introduced by Senator Domenici, to provide early input from small businesses into the regulatory process. For proposed and final rules with a significant economic impact on a substantial number of small entities, EPA and OSHA would have to collect advice and recommendations from small businesses to better inform the agency's regulatory flexibility analysis on the potential impacts of the rule.

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The Agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. The findings of the panel and the comments of small business representatives would be made public as part of the rulemaking record. The final bill includes modifications requested by Senator Domenici after consultations with the Administration. These modifications clarify the timing of the review panel and create a limited process allowing the Chief Counsel to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

Mr. BOND. How much time does the Senator from Montana require?

Mr. BURNS. How much time does the Senator have?

Mr. BOND. I ask the Chair that question.

The PRESIDING OFFICER. The Senator from Missouri has 24 minutes, and the Senator from Arkansas has 29 minutes.

Mr. BOND. I yield to the Senator from Montana 5 minutes.

Mr. BURNS. I thank the Chair. It has been my pleasure to serve on the Small Business Committee ever since I came to the Senate, and under the chairmanship of both Senator BOND and Senator BUMPERS. I know of the hours they put in on this and the leadership they display. They have been trying to do this for quite a while. Finally, we have a product on the floor that I think will work.

Mr. President, I rise today in support of S. 942, the Small Business Regulatory Fairness Act. This is a bill that we have worked on in the Small Business Committee, with the help of many

White House Committee on Small Business delegates. It is a bill that will give much needed relief to small businesses all across the country. And the end result will benefit us all.

Small businesses are responsible for the vast majority of new jobs created in the last year, in spite of everything the Government is doing to hinder that growth. In Montana, where 98 percent of our businesses are considered small business, not 1 day goes by that I do not hear "Get the Government off our backs and we would be creating more jobs," or "If you would just get out of the way, more folks would be starting new businesses and our economy would be improving."

Mr. President, from the awesome amount of paperwork that various Government agencies require to the fines that threaten small businesses if they do not comply with the thousands of regulations imposed on them, it is no wonder that some folks are discouraged from starting or growing their business.

This bill will ease some of that burden. It makes it easier for small businesses to comply with regulations by letting them know what is expected from them—in clear, simple language. And if the rule is not clear or not spelled out specifically in a compliance guide, the small business cannot be penalized. It is just one way of making the Government agency more responsible—and of making compliance easier on our small businesses. Who can argue with that?

It also directs the SBA to set up regional ombudsmen for small business and agriculture, giving folks a place to go to voice their complaints about unfair enforcement of regulations—without fear of retribution. This provides a check on the agency, forcing their inspectors to be accountable for their actions. Small businesses can critique the inspectors and Government lawyers, and we then get an idea of how responsive different agencies are to small business.

There are a lot of ways we can help small business today. The White House Conference on Small Business produced 60 recommendations of what we can do to help. In nearly every category, dealing with regulations was mentioned. There is much more to be done to curtail unnecessary regulations and reduce the presence of Government in our lives—but this is just a first step.

We will always have rules and regulations—that is just the way our Government works. And no doubt we need some of those. But let us make it easy to understand and easy to comply. Let us give those being regulated a fair chance. I would encourage my colleagues to support this important legislation on Tuesday by voting for its passage. I know Montana's small businesses are counting on this and I would imagine that small businesses all across the country, as well as their customers, would be eager to see this passed.

Mr. President, we hear stories in our home States—we all have them—when we go home and sit down with the people who are providing the biggest percentage of new jobs in this country, which is the small business community, the entrepreneurs just starting out, and they are expanding. We know how important this is. They are also saying that we have to get Government off of their backs. If we just get out of the way, more folks would go into business and they would start expanding the economy as much as they can, just on a new idea, making some things happen.

Government rules and regulations are always going to exist in some areas of business and in other areas of our life, but now we will have a part of Government that is actually going to be an advocate for small business. This will put a person in the region to whom a small business can go and take the problem they are having with a regulatory agency—someone to hear them out and who they could have a relationship with, so that they might solve their problems.

Mr. President, we had a big problem in the State of Montana in the wood products industry, which is a big industry. We have some post and pole people who treated fencepost or treated lumber. They used some chemicals that, yes, are highly toxic. Rather than working with the people to get them in compliance, the EPA just went and found the violations and made the fines so big, and the cleanup so expensive, that they all went broke. I can cite four in the State of Montana alone. Here is the bad part about it. I forget the chemical they dip the posts into now, but there was one full 55-gallon drum and one half-full of creosote. What they did is, after they took the soil, they hired a person from Portland with an incinerator to burn the soil, and a soil handler from Florida to bring it clear to Montana, and we have people in Montana that can do the same thing. That was all charged against the owner. Then they left this big hole in the ground. They did not finish burning their soil. They gave up on that. They actually opened up the 55-gallon drum and poured what was left in it back into the hole, contaminating the whole area.

Now, this is our Government at work. And then they told the poor guy, "Fence that off, would you?" He put up a 36-inch web around it without any barb on top of it.

We can cite time after time after time examples of regulators or regulation enforcers that set up their own little fiefdom, and they are king for a day. And we hope this piece of legislation, which all of us had a hand in developing, will do something about that.

I am really happy that our good friend from Oklahoma is pursuing the way we write our regulations, the way we write our administrative rules, after the piece of legislation has been introduced. I have been preaching on

that for a long time. Those rules and regulations should come back to the committee of jurisdiction, if nothing else, to be reviewed so that they do reflect the intent of the law and the intent that we had.

I congratulate my chairman and ranking member on this committee because I think it is a humongous step in the right direction.

I yield the floor.

Mr. BOND. Mr. President, I thank the distinguished Senator from Montana. I note that he has been a very active participant in hearings, and he also held a very useful and productive hearing in Montana. He has contributed greatly to his committee.

Now I will yield 5 minutes to the Senator from Oklahoma, who has been very active in our issues and has come before our committee to testify on a number of small business issues. We are very happy to be able to accept an amendment that he and Senator REID of Nevada have offered.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, first, I want to compliment my colleague, the chairman of the Small Business Committee, Senator BOND, for his leadership, as well as that of Senator BUMPERS. It is great to see two people work together and push legislation that will be a real asset to small business. That is exactly what they have done. They have worked tirelessly in this committee. I served on that committee, and I tell my colleague, when I served on that committee, it was kind of frustrating because we talked a lot, but we did not do much.

Frankly, the Senator from Missouri and the Senator from Arkansas are doing things, passing legislation to help small business, trying to make sure with the legislation they have introduced today that the impact of regulations on small business will be heard. If, for some reason, the regulatory agencies do not take small business impacts into account, their legislation will provide a means for directing the agencies to take those impacts into account in their regulations. So I compliment them for their efforts and leadership.

AMENDMENT NO. 3534

(Purpose: To provide for a substitute.)

Mr. BOND. Mr. President, in order to make the procedural activities work appropriately, if the Senator from Oklahoma will withhold, I send to the desk the managers' amendment on behalf of Senator BUMPERS and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the managers' amendment.

The bill clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself and Mr. BUMPERS, proposes an amendment numbered 3534.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

AMENDMENT NO. 3535 TO AMENDMENT NO. 3534

(Purpose: To ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. Nickles], for himself, Mr. REID, Mrs. HUTCHISON, Mr. DOLE, Mr. BAUCUS, and Mr. FEINGOLD, proposes an amendment numbered 3535 to amendment No. 3534.

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

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

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. NICKLES. Mr. President, this is an amendment on which Senator REID, myself, and many others in the Senate, including Senator HUTCHISON, Senator BOND, Senator BUMPERS, have had a lot of input. We worked on it a lot and actually passed this amendment through the Senate on March 29, 1995, by a vote of 100 to 0. This amendment was in contrast to some legislation that the House passed. The House passed a moratorium on all regulations. We considered in the Senate actually a bill somewhat similar to that, which had passed through the Governmental Affairs Committee. However, this is a substitute.

The moratorium would have lasted only until the end of last year; it would have expired December 31, 1995. It would not have an impact today. It might have stopped some regulations that were going forward in that period of time. This legislation, though, will be permanent law. We did pass it with bipartisan support. I thank Senator REID. It is not often that we have bipartisan support on legislation that will really have a significant impact. I am glad we have it in the legislation that Senator BOND and Senator BUMPERS had, the so-called reg flex proposal, and also the congressional review proposal that Senators REID, HUTCHISON, and myself are pushing today.

This legislation, instead of having a moratorium, we will have a permanent law that says Congress should review all new regulations. If you find that an agency passes a final rule and it has a significant impact, and you do not like it, you should stop it, you should change it. We, in Congress, many times will pass a law and congratulate ourselves and say we did a good job, give the regulatory agencies a fair amount of flexibility in implementing that law, but then we kind of turn our backs and

we get busy and forget about what we did.

Then we find the full impact of the law once it is final and the rules are promulgated. It may be a year or two after we pass the legislative language that we find that rules issued pursuant to that law have a very significant economic impact—sometimes very, very significant negative economic impact. Sometimes the rules can be enormously expensive. Sometimes they can be ludicrous.

Yet we are sitting on our hands in Congress. And our constituents are saying, "When did you guys pass that law? What did you do? Do you know what you were doing?" A lot of times we sit back and say, "Well, the law had very good intentions." And, if you read the statutory language, it sounded pretty good. But the final rules implementing the statutory language leave a lot to be desired.

This proposal would say that when the regulatory agencies make their final rule, notification of that final rule will be sent to Congress, and sent to the GAO. And we can review it. If it is a major rule, or significant rule as determined by the administration, usually if it has an economic impact over \$100 million on the economy, that rule will be suspended for 45 days. So it does not go into effect immediately. So we have a chance to listen to people, and before it becomes final we can stop it. Under this proposal, Congress can pass a joint resolution of disapproval. We have expedited procedures in the bill so no one can filibuster, or stop the will of the majority.

So, you can get a vote in both Houses passing a resolution of disapproval, and send it to the White House, and say, "No. We think this rule is a mistake. This is not what we meant. We think it goes too far. It is too expensive, too cumbersome"—for whatever reason; maybe because our constituents are telling us this rule does not make sense. Maybe the rule does not have an economic impact over \$100 million. It does not have to, if our constituents convince us that the rule does not make sense. We can stop it.

That is what this legislation is all about. This is going to encourage congressional review of rules and I think put more responsibility on Congress. We have not done very good in legislative oversight. Maybe we are too busy. For whatever reason, there are lots of rules and regulations out there that many people say are idiotic and do not make sense, and they are too expensive.

I see the occupant of the chair. I know of his profession prior to coming to the Senate as a physician. And I can think of one law that passed—the Clinical Laboratory Improvement Act. It had very good intentions. But the net result was that in a lot of areas it was very expensive. As a matter of fact, I had physicians in my State telling me, "Wait a minute. We cannot do lab tests in our own office. We have been doing

it for 20 years. And I have to give blood tests. I have to give results to my patients, and quickly, if I am going to give quality health care. And now I have a rule implementing the Clinical Laboratory Improvement Act which says that I cannot do that in my office. I have to send it off to a pathologist in Nashville, TN, or Oklahoma City, or Maine. Their office is 200 miles away, and it may take 24 hours or 48 hours to turn that around." That is dangerous medicine. Maybe that rule implementing the legislative act went too far.

This proposal would give us a chance, if a regulatory agency comes down with a rule, to review that rule. And, if we do not like it for any reason, we can stop it and we send it to the President. If he disagrees with us, he can veto it.

Mr. President, I can think of any number of agencies that Congress needs to spend more time watching. And, again, maybe all of the legislation had very good intent. But the regulations' impact went too far.

There is a rule floating around right now in OSHA called ergonomics. It sounds very good. It protects people from injuries caused by repetitive motions. But, all of a sudden, the Department of Labor is telling people how high their desk has to be, or are getting ready to tell people that they cannot lift a box or a package which is over 25 pounds. The Department of Labor is suggesting you must have two people. There are implications from this regulatory proposal that could cost billions of dollars. Maybe something needs to be done to prevent injury to people from repetitive motions in the workplace. However, if the Department of Labor comes up with a final rule that is similar to the ergonomics language they have been floating, I think of a lot of us would say, "Stop that. Wait a minute."

I grew up in a machine shop. If you had someone saying that you cannot move anything over 25 pounds—we move a lot of heavy equipment around—that rule would not work.

So again we need a little common sense. That is what this legislation is all about. It is congressional review. If regulatory agencies pass a rule and it does not make sense, we have 45 days to pass a joint resolution of disapproval, and we have expedited procedures. People will not be able to filibuster that rule. So we can get it through the Senate, if you have 51 votes, and through the House if they have a majority vote, and send it to the President. If he feels very strongly that that rule does not need to be rewritten or reviewed, he can veto it. And we can try to override his veto. So we still have checks and balances. We do not suspend all rules for the 45 days, but only those rules that have significant economic impact as defined by the administration.

We made a few changes—which are different in the legislation that we passed last year in March. We changed

the name of the legislation to the Congressional Review Act. We put in an exemption for hunting and fishing rules. The 45-day delay provision was changed to a complete exemption—which is different in the legislation the Senate passed last March. That was sought by Senator STEVENS. And I appreciate his input.

Also, final rules that were issued pursuant to the Telecommunications Act of 1996 are made exempt from the automatic 45-day delay provision to ensure that short deadlines recently given the FCC under Telecommunications Act can better be met.

Also, the look-back provision that was provided to permit congressional review of significant final rules issued between November 20, 1994 and date of enactment was modified by replacing "November 20, 1994" with "March 1, 1996." In other words, we say that this law will be effective for congressional review beginning March 1, 1996.

Again, I thank my colleagues—most of all, Senator REID because I have worked with him on many issues over the years, and regulatory reform has been in the forefront of our efforts. We know that we need to reduce—if not eliminate—unnecessary, burdensome, and excessively costly regulations. Adoption of our amendment is an important step in putting Congress back to the table.

This bill that we will pass shortly—finally I guess next Tuesday—in the Senate is going to make Congress be more responsible. Then if the regulatory agency passes a bad rule and we do not review it, that is our fault. Congress needs to step up. Committee chairs need to step up and monitor what the regulatory agencies are doing. And, if they do a bad job, we need to hold them accountable.

So it puts more responsibility on the Congress. We just cannot blame the agencies and wash our hands. If we pass a good bill—and say, "I cannot believe those regulatory agencies interpreted it that way. I cannot believe they did it"—now we have a chance to say, "Wait, agencies. You went too far. Rewrite your rules. Change it. Take into account what people are saying in rural Tennessee, or rural Missouri, or whatever that impact is in Arkansas."

So I think it is vitally important. This is good legislation. This will help.

Again, I thank my colleagues from Missouri and Arkansas for their legislation both on reg flex, and for their cooperation and support on congressional review.

I yield the floor.

Mr. REID. Mr. President, last year, this same amendment passed this body unanimously by a vote of 98 to 0. I remain convinced that this legislation, offered by my good friend, the senior Senator from Oklahoma, and myself, is a good solution to the problem of excessive bureaucratic regulation. This amendment, like this bill, will do a lot to put common sense back into our regulations.

As I visit the communities around Nevada, big and small, I see many small businesses trying to compete in these evolving markets. I know of many local shops and enterprises that cater to small towns just trying to remain solvent. It is the same in our big cities, Mr. President. Government should not be an obstacle to commerce and competition. I am afraid that in too many cases it is.

The U.S. Chamber of Commerce has estimated the cost of complying with regulations is \$510 billion a year, approximately 9 percent of our gross domestic product.

The amount of time spent filling out paperwork has also been estimated at about \$7 billion. I think that is too low. I think it is much higher than that. Now, not all regulations are bad. Some regulations are valuable and serve important purposes, but because of the regulatory efforts that we have made, we have made great progress. Our workplaces are generally safer. We have much cleaner water than we used to have, both in our rivers and streams and in our drinking water. Air quality standards are better than they used to be. The problem, though, is that many times we pass laws and then the bureaucrats step in and make very complicated regulations that go beyond the intent of our law, beyond our sound policy.

These complex regulations, as I have stated, go way beyond the intent of Congress and fail to recognize the practical implications and impact of these regulations. Under the current regulatory environment, small business owners must hire entire legal departments to comply with these countless regulations. This reality has led Americans to become frustrated and skeptical of Government, and that is not the way it should be. According to polls, more than half the American public believe that regulations affecting businesses do more harm than good. That is certainly too bad.

This amendment will allow the Congress to look at these major rules before they go into effect. We are going to pass some more laws, but when the regulations are promulgated, we are going to have the opportunity to look at them. If we do not like these regulations, we can veto them, in effect. That is the way it should be.

This amendment will allow Congress to look at these major rules. This amendment enables Congress to examine the regulations that are being promulgated and decide whether they achieve the purposes they were supposed to achieve in a rationale, economic, and least burdensome way. Congress is intended to be more than just a roadblock for regulators, but a voice representing the many segments of society to put democracy back in public policy.

This amendment is one that Members on both sides of the aisle can vote for because when we first offered it, it passed 98 to 0. And, second, it takes a

commonsense approach to an issue that we all agree is a significant problem, that is, complex and burdensome regulations.

Mr. President, Americans want Congress to work together to get Government working for them, not against them. This amendment is one of those that will probably not receive a single line of print in a newspaper. Why? Because it is going to be accepted unambiguously, probably, unless someone makes a mistake and votes against it. But it will pass overwhelmingly. It is being offered by the chairman of the Democratic Policy Committee and the chairman of the Republican Policy Committee—Senators REID and NICKLES. We need to do more stuff together. We need to set an example to the American public that we can work together in a bipartisan fashion to solve burdensome problems.

The way regulations are promulgated is a burdensome problem, and this amendment will do a lot to alleviate a problem that faces all Americans.

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

Mr. BOND. Mr. President, I yield myself 1 minute. As I have already said, I believe that this is an excellent amendment. We have reviewed it on both sides. I commend Senator NICKLES, Senator REID, and the others for it. We are prepared to accept it.

Mr. BUMBERS. Mr. President, I compliment the Senator from Oklahoma for offering the amendment. I think it is an excellent amendment. We certainly are prepared to accept it.

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

The amendment (No. 3535) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BUMBERS. Mr. President, at this point I ask unanimous consent that Senators BAUCUS and FEINGOLD be added as cosponsors.

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

Mr. BUMBERS. How much time does the Senator from Virginia wish? Five minutes?

I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Thank you, Mr. President. I thank my colleagues from Arkansas and from Missouri.

Mr. President, I rise today as a cosponsor of S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996 as reported from the Small Business Committee.

As our colleagues know, several of us—actually quite a number of us—have been working for many months to try to develop a responsible comprehensive regulatory reform package which can achieve bipartisan support.

The bill that we are debating this morning and will vote on on Tuesday contains elements that were included in that broader package, and I am very pleased to see those provisions move forward now with very significant support on both sides of the aisle.

Specifically, this bill on which I have had a chance to work with Senator BOND, the National Federation of Independent Businesses, and others, allows judicial review of the Regulatory Flexibility Act.

We passed the Regulatory Flexibility Act in 1980 to guarantee that the special concerns of small businesses were addressed by agencies when issuing rules, but the provisions of that act were not reviewable in court. Unfortunately, the fact that the act was therefore, in effect, unenforceable led many agencies to simply disregard its provisions. Needless to say, this has created enormous frustrations for small businesses. Not only were agencies failing to consider the impact of regulations on small businesses, but some agencies were actually flouting the law by that failure. Because of agency failure to take small business concerns into account as the law required, small businesses in many instances were forced to comply with rules that were more onerous than necessary simply because the agencies were refusing to follow the law because no courts were looking over their shoulders to make sure that they complied.

In order to make the Regulatory Flexibility Act work as intended, it has become necessary to make it judicially enforceable. Agencies will now be required to explain how a rule likely to have significant impact on small businesses has been crafted to minimize that impact on those businesses or else risk court action.

While I am pleased that the regulatory flexibility provision is moving swiftly toward becoming law, I hope—and I ask my colleagues to join in this effort—that it will not divert our effort to continue to work on a more comprehensive bill. I still believe that we can develop legislation requiring agencies to regulate in a more cost-effective fashion without undermining the ability to protect our environment, our workers or our public health. As I have stated in the past, if we can maintain the level of protections and increase the efficiency in how we attain it, consumers will ultimately reap the benefits. Of course, every dollar that business spends beyond what is necessary to protect us in our environment is one less dollar that can be used to hire an employee or fund a pay raise or pay for plant expansion. Not only will consumers benefit but so will the economy.

Regulating in a cost-effective fashion simply makes sense. If we can achieve the same environmental benefit for less money, or, even better, achieve more environmental benefit for the same money, then we simply ought to do it. I will continue to work with our colleagues to try to make that happen.

Senator JOHNSTON of Louisiana and I are circulating today a discussion draft which I believe meets the dual and not mutually exclusive goals of eliminating unnecessary costs while safeguarding our environment and ourselves.

Again, Mr. President, I commend our colleagues, particularly the chairman and ranking members of the Small Business Committee, Senators BOND and BUMPERS, for taking the first steps in moving responsible regulatory reform. I look forward to continuing to work with all of our colleagues as we try to craft a responsible comprehensive regulatory reform bill.

With that, Mr. President, I yield the floor.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I will be happy to yield the Senator such time as she may require.

Mrs. HUTCHISON. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I want to take this opportunity to say how much I appreciate the leadership that the Senator from Missouri, Senator BOND, the Senator from Arkansas, Senator BUMPERS, have provided for the small business people of our country.

We have been working together in the Small Business Committee for over a year to try to get regulatory relief for those who cannot afford the excesses to spend money, frankly, on things that do not help the bottom line, that do not help the ability to create jobs, that do not help the ability to create new capital, and that is our small business people.

They are the ones that just do not have that margin to be able to fight excessive regulations that sometimes do not make sense. I think all of us have come together in a very bipartisan spirit, under the leadership of Senator BUMPERS and Senator BOND, to say, let us give relief at least to the small business people of our country so that they will be able to grow and prosper because what will make this country economically viable once again is strong small businesses.

That is what this bill does. This bill will give some relief where it is so needed. I especially appreciate the willingness of Senator BOND and Senator BUMPERS to work with Senator NICKLES and myself on the amendment that will allow congressional review. Of course, that bill has passed the Senate by an overwhelming margin. That would allow Congress to be able to review regulations that come through.

I think that is going to be a very important first step for accountability in our regulatory agencies. It is really a matter of Congress taking responsibility for the laws it passes and the delegation that it gives to our regulators.

Mr. President, I ask unanimous consent to be listed as a cosponsor of the Nickles amendment.

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

Mrs. HUTCHISON. Mr. President, I applaud the efforts of Senator BOND and Senator BUMPERS once again. I hope that we can pass this regulatory bill, regulatory relief bill for our small businesses with a 100-percent vote. I cannot imagine anyone not wanting to do this on a very timely basis. The small business owners of our country deserve this relief. It will help our economy because once we free small businesses to be able to grow and prosper, what will happen is more jobs will be available for the working people of our country. That is in all of our best interests.

So I applaud the sponsors of the bill. I appreciate the time, and yield back my time. Thank you.

Mr. BUMPERS. Mr. President, I yield myself such time as I may consume. I compliment Senator HUTCHISON on a very fine statement. She is also one of the faithful attendants at the Small Business Committee. Sometimes we have difficulty getting a quorum. She is dedicated to the small business community and manifests that dedication by being a good steward on that committee.

Ms. SNOWE. Mr. President, the legislation that is before us today—S. 942, the Small Business Regulatory Enforcement Fairness Act, addresses what I believe is one of the most significant problems facing America's entrepreneurs and small business people, and that is the burden of excessive Federal regulations. These overreaching regulations prevent the birth and stunt the growth of small businesses all across the country. As part of our continuing efforts on this committee to stimulate business activity and increase job opportunities, this legislation acts as a Heimlich maneuver for the small businesses community that is choking on gobs of Federal redtape.

I would first like to thank the chairman of the Small Business Committee, Senator BOND, for crafting the legislation that is before us—and for working to develop the strong bipartisan consensus that now exists for its passage. Although many often speak of their support for relieving the regulatory burden shouldered by our Nation's small entrepreneurs, Senator BOND has taken action in the offering of this legislation.

Using the recommendations of the White House Conference on Small Business, S. 942 provides fundamental regulatory reform in the small business sector. This legislation contains several important measures essential to the future of small business in America.

It requires that regulators provide for a cooperative and consultative regulatory environment, no longer viewing small business as the enemy.

It establishes a Small Business and Agriculture Enforcement Ombudsman at the Small Business Administration [SBA] that will allow small businesses

to express their concerns and complaints concerning the enforcement actions of agencies without fear of reprisal or retaliation.

It requires agencies to simplify language and to use forms that can actually be read and understood. I don't know how many of my colleagues have attempted to read the thousands of pages of regulations that are issued by Federal agencies, but as the small business owners in my State can attest, finding the time to read the regulations is only one one-hundredth of the battle—actually understanding them is the rest of the war.

And perhaps most importantly, it allows small businesses to finally be able to enforce a law that was enacted to fundamentally change the process by which Federal regulations are written and considered with respect to small businesses: the Regulatory Flexibility Act of 1980.

I believe the Regulatory Flexibility Act remains an excellent tool for serving the needs of the Nation's small business community. But I also believe it must be strengthened if it is to ever fulfill its objective of forcing agencies to consider the impact of their regulations on small businesses and giving small business owners a louder voice in the regulatory process.

For years, the call for judicial enforcement of Reg Flex has been clearly sounded by our Nation's small businesses. Indeed the annual report of the Chief Counsel for Advocacy in the Small Business Administration even concludes that "the only solution is to subject agency decisions * * * to judicial scrutiny." Therefore, by providing for judicial enforcement of the Regulatory Flexibility Act, the legislation we are now considering will at last provide small businesses with the fundamental right to enforce a law that has been on the books for over 16 years.

Small businesses play a critical role in the long-term growth and prosperity of our Nation by providing stable, permanent jobs. My home State of Maine is particularly reliant on small businesses for economic growth and job creation. Of the 29,920 firms with employees in Maine, all but 700 are small businesses. In addition, 61.4 percent of Maine's private nonfarm workers were employed by small businesses in 1991—far exceeding the national average of 54 percent.

Nationwide, the number of small businesses has increased by 49 percent since 1982. These entrepreneurs are responsible for 52 percent of all sales in the country, and for 50 percent of private GDP. As these numbers show, small business truly is the backbone of the U.S. economy.

This legislation recognizes that the health of the small business community has far-reaching implications for the future, and that the excessive regulatory climate facing today's small businesses is a threat to the overall strength of the entire American economy.

This legislation represents a significant step toward our goal of releasing the American entrepreneurial spirit from the bonds of excessive Federal regulation, and I urge my colleagues to join me in supporting it.

Mr. FEINGOLD. Mr. President, I rise to support this legislation, the committee substitute amendment to S. 942, and I want to commend the distinguished chairman of the Small Business Committee, Mr. BOND, for his leadership on this bill.

The measure before us contains several provisions that will afford regulatory relief to our Nation's small businesses, and will also help begin to change the attitude of Government regulators who are often viewed by small business as adversaries rather than as sources of help and guidance.

I am pleased that S. 942 contains many of the provisions that are also in bills I have introduced, S. 1350, the Small Business Fair Treatment Act of 1995, and S. 554, a bill I introduced about a year ago that strengthens the Equal Access to Justice Act.

Mr. President, the regulatory structure that has developed over the years performs important safety, health, and consumer protection functions. At the same time, few would dispute that the current regulatory system needs meaningful reform.

Mr. President, I have held nearly 250 listening sessions in my home State of Wisconsin during the past 3 years at which many of my constituents have expressed their tremendous frustration and anger with certain aspects of the regulatory process that sometimes is impractical, impersonal, and needlessly burdensome.

This body debated a regulatory reform proposal last summer that sought to respond to this widespread frustration and anger. But, in large part, that debate focused more on changes in the actual rulemaking process, and featured solutions that, if not entirely Washington-centered, at best took a Washington perspective in addressing the issue.

The measure before us takes a different approach—focusing on the day-to-day, practical problems of regulation with which small businesses must contend. I want to point to just a few of the bill's provisions in which I have had a special interest, and let me begin with the language strengthening the Equal Access to Justice Act.

That 1980 law that was intended to help small businesses and individuals who get into the ring with the Federal Government over enforcement of regulations by allowing them to recover their legal fees and certain other expenses if they prevail.

In general, I oppose the so-called loser pays or English rule under which the loser in civil litigation must pay the costs of the prevailing party. The additional risk of those costs can act as a barrier to the courts for those who are most vulnerable. That is not true, however, for the Government.

In cases where the Government brings an action against a small business or an individual, the potential cost of losing poses no such barrier to Government with its vast resources. In fact, the opposite is true.

The costs confronting a small business or an individual that is the target of a Government action may become a barrier to a just outcome, possibly forcing them to concede a violation, even when none existed, just to avoid costly litigation.

When I was elected to the Wisconsin State Senate, I authored our State Equal Access to Justice Act, and have been working to strengthen the Federal protections since coming to this body, introducing S. 554 to update and streamline the law.

The language in this bill raises the rate at which attorney's fees may be awarded from \$75 to \$125 an hour.

Further, it modifies the present standard by easing the requirement that a successful claimant, in addition to prevailing on the merits, show that the Government's actions were unreasonable.

To its credit, this bill makes that standard easier to attain, and in turn helps small businesses and individuals to recover their attorney's fees. I am pleased they were included.

Frankly, I believe that the substantial justification defense by Federal agencies should be deleted entirely and proposed doing so in my own legislation, S. 554.

While I look forward to pursuing the additional reforms found in my bill in the future, I applaud the authors for the improvements they have included in this legislation.

We all know how difficult it can be on a small business owner to overcome what is sometimes overbearing Government regulation.

I believe that the Equal Access to Justice Act helps ease that burden and that the improvements offered in S. 942 will make the act work better in the future.

Mr. President, as I noted earlier, there are a number of provisions in this bill that were the basis of many of the provisions in my own small business regulatory reform initiative, S. 1350, the Small Business Fair Treatment Act.

And I was glad to see the committee retained a number of those provisions, including a modified version of the sections requiring agencies to publish compliance guides describing regulations in straightforward, understandable language, and then holding agencies to that description when they are enforcing the regulation.

Beyond the obvious help these guides could provide to businesses affected by a Government regulation, requiring an agency to think out and describe a new regulation in a clear and understandable way will only enhance the ability of that agency to administer the regulation.

Another provision common to S. 942 and my proposal relates to so-called No-action Letters.

Again, though the provision is slightly different from the approach I took, it represents a real step forward in helping small businesses needing clarification of a law or regulation in a particular instance.

I was also pleased to see the section in S. 942 requiring agencies to establish procedures under which, in some circumstances, they will waive penalties on small businesses.

I had included a number of provisions in my own bill that included similar features, because it is far better to allow small firms that want to comply with laws and regulations to devote their limited resources to correcting problems rather than paying fines.

Mr. President, this provision will also help improve and enhance the relationship between small businesses and Government agencies.

In listening to small businessmen and women in Wisconsin, one of the most troubling complaints that is raised with respect to Government regulation is the feeling that Government agencies too often take a confrontational or adversarial approach in dealing with the business.

Whether or not this feeling is justified in every instance, in many instances, or in only a few, it is honestly felt and reveals a problem that needs fixing.

In one instance, the owner of a small contracting company that does construction on older houses contacted my office expressing concern that certain OSHA regulations being applied to his business were probably originally created for larger construction companies dealing with different types of structures and should be modified for companies engaged in his kind of business.

He cited requirements that he prepare a safety program for every job he does—even though the homes on which he works are much the same—as being inappropriate and time-consuming, and he outlined various other concerns.

After my office contacted the agency and asked its views on his suggestions, OSHA showed up at his work site to conduct a surprise inspection.

Mr. President, a small business ought to be able to raise concerns about an agency's regulations without fear of triggering an enforcement action.

When the relationship between those who oversee and enforce regulations and those who must observe them deteriorates in this manner, it only hinders compliance.

By requiring agencies to establish procedures to waive penalties under certain circumstances, the bill can help shape the regulatory structure in a way that will begin to change the attitude of regulators to encourage cooperation rather than confrontation.

The provisions establishing a Small Business and Agriculture ombudsman to review agency enforcement activities will also help in changing agency attitudes.

I took a slightly different approach in my own legislation, by explicitly

prohibiting agency personnel practices that reward employees based on the number of violations they can find or the fines they can levy.

I included this provision in response to comments made to my office by small business people who have reported that agency personnel have felt compelled to find something wrong, even if it is small, in order to justify their visit to the firm.

Again, though the provision in my own legislation differs from the bill before us, the language in S. 942 is headed in the right direction, and I commend the chairman for his leadership in advocating the kinds of structural changes that I believe will help change the relationship between regulators and small business.

Mr. President, the current system is not acceptable; the need for reform is clear and imperative.

And though the larger regulatory reform legislation has bogged down, I very much hope a compromise can be worked out and a meaningful reform package can be enacted into law.

But, even if a compromise on the larger regulatory reform measure can be hammered out, it is likely to reflect a process-oriented approach that may provide large corporate interests with avenues for relief, but does little to address the day-to-day problems facing small business.

Nor does such legislation address the very real feeling of small businesses that Government regulators too often act as adversaries rather than to provide guidance in helping firms to comply with the law.

By contrast, the provisions outlined in this measure both provide some practical regulatory relief and can improve the relationship between businesses and agencies.

Mr. President, I again congratulate the senior Senator from Missouri for his leadership on this measure, and I urge my colleagues to support the bill.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, I am proud to support the Small Business Regulatory Fairness Act as a cosponsor.

Before I was elected to the Senate in 1992, I spent more than 40 years in the private sector as a farmer and a businessman. I know firsthand how hard it is to run a small business successfully, and how much harder it has become due to burdensome Government regulations.

It is only fair that we recognize the limited resources of small businesses, and the need to provide the small business community with greater access to the regulatory process. This bill contains important provisions that encourage comment from small business on proposed regulations; promote easier compliance with regulatory requirements; provide that regulations be explained in a way that they can be understood by small businessmen, not just by bureaucrats; and offer improved protection for small business from pu-

nitive or capricious actions by regulators.

It is encouraging that this effort to provide greater consideration for small business in the regulatory process is a bipartisan effort. Many of the provisions in this bill are based on recommendations from last year's White House Conference on Small Business. The staging of this conference is a noteworthy exception to the hostility that the Clinton administration has otherwise shown to small business.

Hillary Clinton built her health care plan around an employer mandate that would have devastated small business. And the President vetoed increased deductibility for health insurance purchased by the self-employed. Also, President Clinton's vocal support for a higher minimum wage demonstrates his indifference to the precarious conditions that are the norm for most small businesses.

Mr. President, I think it is ironic that President Clinton would like to take credit for creating more than 8 million jobs over the past 3 years, when he has done so much to cripple the largest producer of new jobs, small business.

I hope that we can pass the Small Business Regulatory Fairness Act as the first of several bills that would provide much needed relief for small business. In particular, product liability reform, and broader regulatory reform are desperately needed. Also, I believe that we should not ignore small business when we take up health care reform. We should include the deductibility provisions for the self-employed, as well as provisions like medical savings accounts that would make health care more affordable for small businessmen and their employees.

I commend the Senator from Missouri for his work on behalf of the small business community. The provisions of his bill add some badly needed common sense to the regulatory process. I urge my colleagues to support it.

Mr. BAUCUS. Mr. President, I rise in very strong support of the Small Business Regulatory Enforcement Fairness Act. This bill is regulatory reform in the very best sense. It will make a practical difference in the daily lives of men and women who operate small businesses and create jobs in Montana and all across the country. It will do so without undermining the environmental and health and safety laws that protect our families and our communities.

Mr. President, we need to cut back the Federal bureaucracy. I do not think there is anybody who disagrees with that. There is too much redtape. People know that. They tell Congress that. They are correct. Already the administration has eliminated some 16,000 pages of Federal rules and redtape. Think of that. The administration has already eliminated 16,000 pages. It is a good start but we can do more.

Moreover, some Federal regulations just do not make sense like the rule

that required loggers in northwest Montana to buy steel toed boots even though they work on slippery frozen slopes where those kinds of boots can actually create a hazard, or the rule that would have banned the use of common bear sprays that hikers need to protect themselves.

Rules like these drive Montanans crazy, with good reason.

We got those rules withdrawn. But we need a more comprehensive solution, so we do not have to react to every stupid rule that comes along. And, in large measure, this bill provides it.

Three aspects of the bill are particularly important.

The first is making it simpler for business to comply with the law.

We need strong health and safety laws. And we need them enforced. But, when it comes to small businesses, regulators need to start with an attitude of cooperation rather than confrontation.

Montana small businesses want to comply with the law. After all, they live in the community. They want it to be clean and safe.

But, in too many cases, the laws and regulations are written in such gobbledy-gook that average folks cannot figure out what they are supposed to do.

This bill helps. For example, it requires agencies to issue guidebooks, written in plain English, explaining what steps a small business must take to comply with new rules.

And it requires agencies to give decent answers to small businesses that have specific questions about how a new rule applies to them.

Now, these requirements may be bad news for lawyers, but they are good news for small businesses.

The second is strengthening the Regulatory Flexibility Act.

Reg flex, as it is called, is designed to make sure that as they write new rules, the bureaucrats pay specific attention to how small businesses and towns will be affected. Unfortunately, this requirement has been ignored to often.

So the bill allows a small business to go to court to require an agency to comply with the law.

During last year's debate on regulatory reform, I was concerned about creating dozens of new opportunities for lawsuits, especially from large corporations, that would clog the courts and bring things to a halt.

But I think the provision in this bill makes good sense. It will not have that same defect. It is focused on small business. And it just assures that agencies have taken a reasonable look at the impact their rules will have on small businesses.

The third is the Nickles-Reid amendment. This provision requires agencies to submit major new rules to Congress for review before they become effective.

This review will inject an important check into the system. We in Congress

can be a backstop for common sense. We can help sort out the good rules from the bad.

If an agency goes haywire, like OSHA did with its logging rule, Congress can reject the rule. But if an agency is doing a good job, protecting public health and safety, things will stay right on track.

All told, Mr. President, this is a solid bill. It will cut redtape and make the bureaucracy more responsive to the concerns of small businesses.

Moreover, it is a bipartisan bill. It is a model of how we should be legislating around here.

I compliment the chairman of the Small Business Committee, Senator BOND, and the ranking member, Senator BUMPERS, for their hard work drafting this bill, developing a consensus, and bringing the bill to the floor. I am proud to cosponsor it and hope it will pass with overwhelming support.

Mr. GRAMS. Mr. President, as a former small businessman, I understand the need for regulatory relief and flexibility for small businesses.

Recent estimates indicate that regulations cost employees more than \$5,000, with much of the cost wrapped into an unbelievable 1.9 billion hours filling out forms, each year.

In addition to killing jobs, the cost of this red tape is passed directly to consumers through higher prices on goods and services. The workers are tired of Washington bureaucrats eating up their wage increases.

Over the last 3 years I have met with hundreds of workers who have detailed the tremendous burdens of Government rules and regulations.

I also met with many job providers at last year's White House Conference on Small Business. Delegates from every State came together to discuss the problems that job providers face and to suggest ways in which Congress could help.

The bill before us today is a direct result of their efforts. Although it addresses just a few of their suggestions, I am here to lend my support to this first step in providing small business with some real regulatory relief.

In 1980, Congress passed the Regulatory Flexibility Act. This bill required that Federal agencies consider the impact of proposed regulations on job. Unfortunately, that law didn't give job providers much of an enforcement mechanism.

This bill will change that.

At the suggestion of the White House Conference, this legislation will reduce the impact of Federal regulations on job providers by authorizing judicial review of the Regulatory Flexibility Act. A court could set aside a rule, or order an agency to take corrective action if it finds an action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

The bill will also create an atmosphere of cooperation between job providers and regulatory agencies, by giving job providers the opportunity to

participate in the rulemaking process and by allowing agencies to wave penalties for first-time rule infractions.

This bill allows job providers to conduct their work on a level playing field by providing an opportunity to correct arbitrary enforcement actions and require Federal agencies to be less punitive and more solution oriented.

Most importantly, the Small Business Regulatory Enforcement Fairness Act will require Federal agencies to examine the need for regulations and weigh them against the Nation's need for job creation.

In closing, Mr. President, regulatory reform is absolutely essential if job providers and workers are going to grow and continue to create the jobs that propel the economy and promote prosperity.

I encourage my colleagues to support this bill. It is a first step in changing Federal agencies policies that kill jobs, and a first step toward removing the shackles of unnecessary Government rules and regulation from American workers.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 6 minutes and 20 seconds.

Mr. BOND. Six minutes.

The PRESIDING OFFICER. Six minutes, twenty-four seconds, and twenty-four minutes on the other side.

Mr. BOND. I yield the Senator from Georgia 3 minutes.

Mr. COVERDELL. I thank my distinguished colleague from Missouri.

I rise in support of his extended efforts to reduce and relieve American business of the enormous regulatory burdens that we have put on the sector of our economy that generates the vast majority of the new jobs.

We just held a field hearing of the Small Business Committee in Georgia, and this quote was most alarming. One businessman came before the committee, and he said:

The Federal Government of the United States of America has become the No. 1 enemy of small business.

It was astounding to hear the presentations of these business people as they pointed time and time again to the onerous burdens that are being put on them and their inability to match them. Sixty percent of America's businesses have four employees or less. How in the world can they possibly keep up with the staggering requirements coming year after year on these small businesses? The result is they do not hire another employee.

The Lord's prayer has 66 words; the Gettysburg Address 286 words. There are 1,322 words in the Declaration of Independence, Mr. President. But Government regulations on the sale of cabbage has a total of 26,911 words—on the sale of cabbage. According to the Georgia NFIB, there are 168,000 businesses in Georgia, and 53 percent have four or less employees.

I wish to reiterate again and again, there is absolutely no way for these very small businesses to match the enormous regulatory burden that has built up over the last 20 years. This is where we are creating new jobs. We have to take steps, as this bill does, to make it more possible for small businesses to expand and to hire new employees.

The greatest thing we can do for that person standing in line trying to find a new job is to make a healthier climate for small business in America.

I yield back whatever time is remaining to the chairman.

Mr. BOND. Mr. President, I might say to my colleague from Georgia that we have been graciously offered additional time from the minority side. If the Senator has additional comments, we would be happy to yield, speaking on behalf of the minority, 3 minutes.

Mr. COVERDELL. I thank the Senator. I appreciate the extension of the time from the minority. I do have a few more things to say about the hearing that was held in Georgia.

The Georgia Public Policy Foundation conducted a survey on behalf of my own small business advisory task force and found the following: The estimated cost of regulation as a percentage of sales was approximately 1.5 percent; 24 percent of these businesses have been involved in regulation-related lawsuits. That means that one in four companies, one in four small businesses in our State has had to be involved in a lawsuit, a lawsuit and all the expenses associated with that, over regulation; 53 percent of the respondents indicated—and this is the most important fact—53 percent, over half, responded that they would hire additional employees in the last 3 years if it had not been for the costs of regulation.

So, once again, as I said a moment ago, regulation itself and the extent of it and the size of it and scope of it is causing people to not get hired because the money is going to manage the regulations and not to pay the salary of a person who is looking for a job.

Prof. Gerald Gay, chairman of the department of finance at Georgia State University, strongly endorsed the concept of strengthening the Regulatory Flexibility Act, which is what we are doing today, specifically calling for judicial review, which is what we are doing today.

He went on to note that regulations are of concern to large and small businesses. The difference is that small business cannot absorb the excessive regulatory compliance costs that larger businesses can. This puts them at a competitive disadvantage. As I said, it keeps them from hiring another employee, and keeps them from starting a business in the first place.

Professor Gay, in his testimony, had an interesting quote from one of our early Presidents and writers of the Declaration of Independence, Thomas Jefferson. I have often used this quote:

A wise and frugal government which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and which shall not take from the mouth of labor the bread it has earned.

This is the sum of good government. It is that very salient point that American Government has forgotten in the last 20 or 30 years. We are denying the people the ability to be entrepreneurial, we are denying people the opportunity to focus on their work, and we have turned the Government from being a good partner into being a bully boss. This legislation remembers that the Government is supposed to be a partner first.

I yield.

Mr. BOND. Mr. President, I ask unanimous consent that the Senator from Tennessee be granted 4 minutes from the minority side on the bill.

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

Mr. FRIST. Mr. President, I rise today to speak in strong support of S. 942, the Small Business Regulatory Enforcement Fairness Act. First, I want to commend the distinguished managers of this legislation, Senator BOND and Senator BUMPERS, for their tireless, bipartisan efforts to bring this legislation to the floor of the Senate. Today, I am proud to join them and my colleagues on the Small Business Committee in providing regulatory relief for our Nation's job creation engine—small business.

Mr. President, the high cost of Federal regulations is restricting economic growth in this country. Regulations are really hidden taxes; they drive up the cost of doing business. As this chart shows, the cost of regulations has risen rapidly over the last 10 years. Today, regulatory costs exceed \$600 billion a year, a 30-percent increase over a decade ago. That's \$600 billion in lost job creation, lost productivity, and lost economic growth. By the year 2000, regulatory costs are expected to continue growing.

However, this chart does not show that regulatory burdens fall disproportionately on small business. Recent research by the SBA found that small businesses bear over 60 percent of total business regulatory costs. Specifically, the average annual cost of regulatory, paperwork, and tax compliance for small business is \$5,000 per employee while the cost for large businesses is only \$3,400 per employee. This is no way to treat our Nation's No. 1 job creators who employ more than half of our entire work force.

Mr. President, let me briefly illustrate this problem in more personal terms. Last year, Chairman BOND joined me in Memphis for a Small Business Committee field hearing where we listened directly to the regulatory problems of small business owners. Ron Coleman, an auto parts manufacturer in Memphis, told us about the unique regulatory burdens that he faces. He

said "Government regulation is the single most time-consuming aspect of my business. Small businesses must deal with the same rules and regulations as large businesses, only we are unable to call the human resource director, the vice president of governmental affairs, the corporate legal department, or the OSHA coordinator for help." The legislation before us today will help hard-working entrepreneurs like Ron.

S. 942 includes many provisions that will reform the regulatory process, but I want to highlight the enforcement reforms in particular. One of the stated purposes of this bill is "to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented."

Senator SHELBY and I have worked very hard over the last year to enact a small business regulatory bill of rights to change the confrontational nature of regulatory enforcement. We believe that small businesses should be able to participate in voluntary compliance audit and compliance assistance programs that protect them from excessive fines and penalties. We also believe that agencies should factor ability to pay into their penalty assessments so that small firms are not driven out of business by an excessive fine. Section 202 begins to address these concerns, but it can be strengthened. I thank Senators BOND and BUMPERS for working with me and Senator SHELBY on this section. I look forward to working with both of you in further hearings on this issue.

Mr. President, I would like to close today with this thought. For years, business owners and their employees on the front lines have been delivering the same clear and concise message to Congress: the Federal Government is strangling us with regulations, compliance, burdens, and aggressive enforcement, and we need relief. If Congress passes the bill before us today and the President signs it into law, we at last can reply to them with an equally clear message: we have heard you, and we are taking action. I strongly urge my colleagues to support this legislation that will foster a new era of entrepreneurial growth in America.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I want to take a minute to say how much we appreciate the contributions of the Senator from Tennessee. He organized a very productive field hearing for us. It was most informative. He has been an active participant in the work of the Small Business Committee, and we certainly appreciate his efforts. I thank him for his remarks today as well as his contributions in making this a better bill.

Mr. President, we have no other business on this side and not much time. If the ranking member agrees, I think we might proceed to a voice vote on the adoption of the substitute amendment

or such comments as the Senator from Arkansas might have.

Mr. BUMPERS. Mr. President, I just want to close my part of the program by complimenting my very able and long-time assistant, John Ball, who has been with the Small Business Committee as both staff director and director for the ranking member now for many, many years. He has performed yeoman service on this.

I also hasten to say that the work of Keith Cole and Louis Taylor has been truly outstanding. Between these three people, and Senator BOND and myself, but especially the staff members, we think we have crafted a pretty good bill. I want to pay my special thanks publicly to these staffers who have labored very hard to make this possible.

I am prepared to go forward with final passage.

The PRESIDING OFFICER (Mr. FRIST). The question is on agreeing to the substitute amendment, as amended.

The amendment (No. 3534), as amended, was agreed to.

Mr. BOND. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. BOND. Mr. President, I ask that this measure be set aside pursuant to the previous agreement.

The PRESIDING OFFICER. The bill is set aside.

Mr. BOND. Mr. President, pursuant to a previous agreement between the leaders, the vote will be set aside until Tuesday.

Mr. President, I ask unanimous consent that Senator MURKOWSKI be added as a cosponsor.

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

Mr. BOND. Mr. President, I join with my ranking member in complimenting the staff. John Ball I have worked with for several years. We are very pleased with the leadership of Louis Taylor on the Small Business Committee and Keith Cole who has had previous experience on the other side in Congress, and we are delighted that he has come to be with us on the Senate side.

These three staffers have had a very interesting several weeks. They have had an opportunity to meet more people in this administration. We have had

the support from the elected officials in the Federal Government for regulatory reform, but we have certainly had a tremendous amount of interest and attention and full-time, around-the-clock work for our staff members dealing with the members of the agencies who will be affected.

I can say to all of our friends in small businesses and small entities around the country that it is quite apparent that this measure will have an impact on the way that agencies deal with small entities and small businesses.

I believe that we have, with the help of many useful comments from the agencies themselves, crafted a workable but significant change in the culture of the Federal agencies in regard to small entities and small businesses.

Mr. BUMPERS. Mr. President, I have nothing further to add. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET DOWNPAYMENT ACT, II

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hatfield modified amendment No. 3466, in the nature of a substitute.

Lautenberg amendment No. 3482 (to amendment No. 3466), to provide funding for programs necessary to maintain essential environmental protection.

Hatch amendment No. 3499 (to amendment No. 3466), to provide funds to the District of Columbia Metropolitan Police Department.

Boxer/Murray amendment No. 3508 (to amendment No. 3466), to permit the District of Columbia to use local funds for certain activities.

Gorton amendment No. 3496 (to amendment No. 3466), to designate the "Jonathan M. Wainwright Memorial VA Medical Center", located in Walla Walla, Washington.

Simon amendment No. 3510 (to amendment No. 3466), to revise the authority relating to employment requirements for recipients of scholarships or fellowships from the National Security Education Trust Fund.

Simon amendment No. 3511 (to amendment No. 3466), to provide funding to carry out title VI of the National Literary Act of 1991, title VI of the Library Services and Construction Act, and section 109 of the Domestic Volunteer Service Act of 1973.

Coats amendment No. 3513 (to amendment No. 3466), to amend the Public Health Service Act to prohibit governmental discrimination in the training and licensing of health professionals on the basis of the refusal to

undergo or provide training in the performance of induced abortions.

Bond (for Pressler) amendment No. 3514 (to amendment No. 3466), to provide funding for a Radar Satellite project at NASA.

Bond amendment No. 3515 (to amendment No. 3466), to clarify rent setting requirements of law regarding housing assisted under section 236 of the National Housing Act to limit rents charged moderate income families to that charged for comparable, nonassisted housing, and clarify permissible uses of rental income in such projects, in excess of operating costs and debt service.

Bond amendment No. 3516 (to amendment No. 3466), to increase in amount available under the HUD Drug Elimination Grant Program for drug elimination activities in and around federally-assisted low-income housing developments by \$30 million, to be derived from carry-over HOPE program balances.

Bond amendment No. 3517 (to amendment No. 3466), to establish a special fund dedicated to enable the Department of Housing and Urban Development to meet crucial milestones in restructuring its administrative organization and more effectively address housing and community development needs of States and local units of government and to clarify and reaffirm provisions of current law with respect to the disbursement of HOME and CDBG funds allocated to the State of New York.

Lautenberg amendment No. 3518 (to amendment No. 3466), relating to labor-management relations.

Santorum amendment No. 3484 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of Federal disaster assistance.

Santorum amendment No. 3485 (to amendment No. 3466), expressing the Sense of the Senate regarding the budget treatment of Federal disaster assistance.

Santorum amendment No. 3486 (to amendment No. 3466), to require that disaster relief provided under this Act be funded through amounts previously made available to the Federal Emergency Management Agency, to be reimbursed through regular annual appropriations Acts.

Santorum amendment No. 3487 (to amendment No. 3466), to reduce all Title I discretionary spending by the appropriate percentage (.367%) to offset Federal disaster assistance.

Santorum amendment No. 3488 (to amendment No. 3466), to reduce all Title I "Salary and Expense" and "Administrative Expense" accounts by the appropriate percentage (3.5%) to offset Federal disaster assistance.

Gramm amendment No. 3519 (to amendment No. 3466), to make the availability of obligations and expenditures contingent upon the enactment of a subsequent act incorporating an agreement between the President and Congress relative to Federal expenditures.

Wellstone amendment No. 3520 (to amendment No. 3466), to urge the President to release already-appropriated fiscal year 1996 emergency funding for home heating and other energy assistance, and to express the sense of the Senate on advance-appropriated funding for FY 1997.

Bond (for McCain) amendment No. 3521 (to amendment No. 3466), to require that disaster funds made available to certain agencies be allocated in accordance with the established prioritization processes of the agencies.

Bond (for McCain) amendment No. 3522 (to amendment No. 3466), to require the Secretary of Veterans Affairs to develop a plan for the allocation of health care resources of the Department of Veterans Affairs.

Warner amendment No. 3523 (to amendment No. 3466), to prohibit the District of Columbia from enforcing any rule or ordinance