

employees to receive travel reimbursements for successive 6-month periods after their first year of service, provided that such payment is certified at the beginning of each 6-month period as being in the public interest to carry out the purposes of the 1994 act. While some of us may have reservations about the constitutionality of an Independent Counsel or the current matters being investigated, we should all agree that if we are going to have an Independent Counsel, it must be given the necessary resources to do a thorough, complete job.

By Mr. WARNER:

S. 1623. A bill to establish a National Tourism Board and a National Tourism Organization, and for other purposes.

THE TRAVEL AND TOURISM PROMOTION ACT OF 1996

• Mr. WARNER. Mr. President, many of us do not focus on the impact that the travel and tourism industry has on our economy. Tourism means jobs in all of our States and tax revenue for our Federal, State, and local treasuries.

Whether it be our hotels, airlines, restaurants, campgrounds, amusement parks, or historically significant sights, tourism works for America.

The U.S. travel and tourism industry is the second leading provider of jobs in this Nation and the third largest retail industry giving the United States a \$21.6 billion trade surplus.

Just last year, visitors from abroad brought approximately \$80 billion to our economy which is one-fifth of the total \$400 billion provided to the economy by the travel and tourism industry. It should be an economic powerhouse.

However, our lead is slipping. For the past several years the U.S. share of the international travel market has declined. Last year, 2 million fewer foreign visitors came to the United States, representing a 19-percent decline. This translated into 177,000 fewer travel-related jobs.

Mr. President, we must reverse this decline. We need to attract more international tourists and enhance the travel experience for both domestic and international travelers. The United States must remain the destination of choice for world travelers.

I am therefore introducing legislation today to create a public-private partnership between the travel and tourism industry and the Federal Government to aggressively market the promotion of international travel to the United States.

With the elimination of the U.S. Travel and Tourism Administration, the United States will become the only major developed nation without a Federal tourism office. We need a national strategy to maintain and increase our share of the global travel market. Other nations pour money into marketing attempting to lure tourists to

their shores, and they are doing it at our expense. This legislation will provide the tools with which the United States can compete with any nation.

We can counter these foreign promotion dollars with a combination of technical assistance from the Federal Government and financial assistance from the private sector. This legislation will create a true public-private partnership between the travel and tourism industry and the public sector to effectively promote international travel to the United States. It supplants the big-government, top-down bureaucracy which was eliminated with the U.S. Travel and Tourism Administration.

The bill establishes a Federal charter for a National Tourism Board and a National Tourism Organization, which will act as a not-for-profit corporation. Members of the National Tourism Board will be appointed by the President with the input of the travel and tourism industry to advise the President and Congress on policies to improve the competitiveness of the U.S. travel and tourism industry in the global marketplace.

The National Tourism Organization will be charged with implementing the tourism promotion strategy proposed by the National Tourism Board. The president of the National Tourism Organization will also serve as a member of the Trade Promotion Coordinating Committee, which is the agency that develops our U.S. export trade promotion and financing programs, thereby further promoting the economic importance of the travel and tourism industry.

A primary task of the National Tourism Organization will be the establishment of a travel-tourism data bank to collect international market data for dissemination to the travel and tourism industry and to promote tourism to the United States at international trade shows.

No later than 1 year upon enactment of this legislation, the officers of the organization will meet to make recommendations for the long-term financing of the organization. However, no Federal funding is associated with this legislation. This is an industry-funded and industry-directed initiative.

Travel industry leaders from around the Nation enthusiastically endorsed the plan embodied in this bill when it was introduced at the just-completed White House conference on travel and tourism. In addition, this bill has the support of the White House, the House leadership, and 189 House Members.

Together, through the collective talent of both the board and the organization, as well as the technical assistance provided by the Federal Government through its staff and data collection, it is my hope that America will once again launch itself into the international tourism market as the des-

tinuation of choice—bringing more jobs as well as revenue to our States and local communities.●

#### ADDITIONAL COSPONSORS

S. 942

At the request of Mr. THOMPSON, his name was added as a cosponsor of S. 942, a bill 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.

At the request of Mr. MURKOWSKI, his name was added as a cosponsor of S. 942, *supra*.

S. 1610

At the request of Mr. BOND, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

#### SENATE CONCURRENT RESOLUTION 43

At the request of Mr. THOMAS, the names of the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Delaware [Mr. ROTH], the Senator from Oklahoma [Mr. NICKLES], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Concurrent Resolution 43, a concurrent resolution expressing the sense of the Congress regarding proposed missile tests by the People's Republic of China.

#### SENATE RESOLUTION 215

At the request of Mr. LAUTENBERG, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Resolution 215, a resolution to designate June 19, 1996, as "National Baseball Day."

#### SENATE RESOLUTION 226

At the request of Mr. DOMENICI, the names of the Senator from Washington [Mrs. MURRAY], the Senator from North Dakota [Mr. CONRAD], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Resolution 226, a resolution to proclaim the week of October 13 through October 19, 1996, as "National Character Counts Week."

#### AMENDMENT NO. 3526

At the request of Mr. THURMOND the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of amendment No. 3526 proposed to H.R. 3019, a bill making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

## AMENDMENTS SUBMITTED

## THE SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1996

## BOND (AND OTHERS) AMENDMENT NO. 3534

Mr. BOND (for himself, Mr. BUMPERS, Mr. BAUCUS, Mr. FEINGOLD, Mr. MURKOWSKI, Ms. MOSELEY-BRAUN, and Mr. THOMPSON) proposed an amendment to the 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; as follows:

Strike all after the enacting clause and insert the following:

**SEC. 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, except that the amendments made by title four of this Act shall not apply to interpretive rules for which a notice of proposed rulemaking was published prior to the date of 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; and

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

(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, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely 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 association of small entities to develop and distribute such guides.

(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources if information, the small entity compliance guides and all other available information on statutory and regulatory requirement affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—Any agency's small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of small entity compliance 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) 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 given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding 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 AND PROGRAMS ESTABLISHED UNDER SECTION 507 OF THE CLEAN AIR ACT AMENDMENT OF 1990.**

(a) GENERAL.—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 to the same extent as provided for in Section 104 of this Act with respect to Small Business Development Centers.

(b) SECTION 507 PROGRAMS.—Nothing in the Act in any 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.

**SEC. 106. COOPERATION ON GUIDANCE.**

Agencies may, to the extent resources are available and where appropriate, in cooperation with the states, develop guides that fully integrate requirements of both federal and state regulations where regulations within an agency's area of interest at the federal and state levels impact small businesses. Where regulations vary among the states, separate guides may be created for separate states in cooperation with state agencies.

## 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) DEFINITION.—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 personnel of the Small Business Administration 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 means to comment on the enforcement activity conducted by such personnel;

"(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

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

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

"(E) provide the affected agency with an opportunity to comment on draft reports prepared under paragraph (C) and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

"(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 substantiated 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, who are owners or operators of small entities, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the 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, provided that the donations and their sources are disclosed by the Board.

"(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 within 1 year of enactment of this section 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. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

"(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;

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

"(4) excluding violations involving willful or criminal conduct;

"(5) excluding violations that pose serious health, safety or environmental threats; and

"(6) requiring a good faith effort to comply with the law.

(c) REPORTING.—Agencies shall report to Congress no later than 2 years from the effective date on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

#### TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

##### SEC. 301. ADMINISTRATIVE PROCEEDINGS.

Section 504 of title 5, United States Code, is amended—

(1) in subsection (b), by striking "\$75" in subparagraph (b)(1) and inserting "\$125"; and

(2) in subsection (a) by adding the following new paragraph:

"(4) In an adversary adjudication brought by an agency, an adjudicative officer of the agency shall award attorneys fees and other expenses to a party or a small entity, as defined in Section 601, if the decision of the adjudicative officer is disproportionately less favorable to the agency than an express demand by the agency, unless the party or small entity has committed a willful viola-

tion of law or otherwise acted in bad faith, or special circumstances make an award of attorneys fees unjust. For purposes of this paragraph, an "express demand" shall not include a recitation by the agency of the maximum statutory penalty (A) in the administrative complaint, or (B) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31."

##### SEC. 302. JUDICIAL PROCEEDINGS.

Section 2412 of title 28, United States Code, is amended—

(1) in paragraph (d), by striking "\$75" in subparagraph (2)(A) and inserting "\$125"; and

(2) in paragraph (d)(1) by adding the following new subparagraph:

"(D) In a civil action brought by the United States, a court shall award attorneys fees and other expenses to a party or a small entity, as defined in Section 601 of title 5 United States Code, if the judgment finally obtained by the United States is disproportionately less favorable to the United States than an express demand by the United States, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorneys fees unjust. For purposes of this subparagraph, an "express demand" shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this subparagraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31."

#### 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 proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States"; and

(2) by inserting at the end of the subsection, the following new sentence:

"In the case of an interpretive rule involving the internal revenue laws of the United States, this chapter applies to interpretive rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretive rules impose on small entities a collection of information requirement, as defined in the Paperwork Reduction Act of 1995."

(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 is otherwise required to publish 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 significant 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 which affect the impact of small business 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 to 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 final 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 noncompliance 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 one year, 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 final 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, and

"(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 rulemaking 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 rulemaking record with respect to small entities 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 which a covered agency is required to conduct by this chapter—

"(1) a covered 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) not later than 15 days after the date of receipt of the materials described in paragraph (1), 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, including any draft proposed rule, collect advice and recommendations of the small entity representatives identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

"(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

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

"(c) Prior to publication of a final regulatory flexibility analysis that a covered agency is required by this chapter to conduct—

"(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, including any draft rule, 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) not later than 15 days after the date a covered agency convenes a review panel pursuant to paragraph (1), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 604(a), paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rulemaking record; and

"(4) where appropriate, the agency shall modify the final rule, the final regulatory flexibility analysis 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.

"(e) For purposes of this section, the term covered agency means the Environmental Protection Agency and the Occupational Health and Safety Administration of the Department of Labor.

"(f) the Chief Counsel for Advocacy, in consultation with the individuals identified in paragraph (b)(2) and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of paragraphs (b)(3), (b)(4), and (b)(5), and subsection (c) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

“(1) in developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration; or in developing a final rule, the extent to which the covered agency took into consideration the comments filed by the individuals identified in paragraph (b)(2);

“(2) special circumstances requiring prompt issuance of the rule; and

“(3) whether the requirements of subsections (b) or (c) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other 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.

#### NICKLES (AND OTHERS) AMENDMENT NO. 3535

Mr. NICKLES (for himself, Mr. REID, Mrs. HUTCHISON, and Mr. DOLE) proposed an amendment to the bill S. 942, supra; as follows:

At the end of the bill, add the following new title:

#### TITLE V—CONGRESSIONAL REVIEW

##### SEC. 501. SHORT TITLE.

This title may be cited as the “Congressional Review Act of 1996”.

##### SEC. 502. FINDING.

The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the effectiveness of certain significant final rules is imposed in order to provide Congress an opportunity for review.

##### SEC. 503. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) **REPORTING AND REVIEW OF REGULATIONS.**—

(1) **REPORTING TO CONGRESS AND THE COMPTROLLER GENERAL.**—

(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule; and

(iii) the proposed effective date of the rule.

(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to section 603, section 604, section 605, section 607, and section 609 of Public Law 96-354;

(iii) the agency's actions relevant to title II, section 202, section 203, section 204, and section 205 of Public Law 104-4; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive Orders, such as Executive Order 12866.

(C) Upon receipt, each House shall provide copies to the Chairman and Ranking Member of each committee with jurisdiction.

(2) **REPORTING BY THE COMPTROLLER GENERAL.**—

(A) The Comptroller General shall provide a report on each significant rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 504(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by subparagraph (B) (i) through (iv).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under paragraph (2)(A) of this section.

(3) **EFFECTIVE DATE OF SIGNIFICANT RULES.**—A significant rule relating to a report submitted under paragraph (1) shall take effect as a final rule, the latest of—

(A) the later of the date occurring 45 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register;

(B) if the Congress passes a joint resolution of disapproval described under section 504 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 504 is enacted).

(4) **EFFECTIVE DATE FOR OTHER RULES.**—Except for a significant rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) **FAILURE OF JOINT RESOLUTION OF DISAPPROVAL.**—Notwithstanding the provisions of paragraph (3), the effective date of a rule shall not be delayed by operation of this title beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 504.

(b) **TERMINATION OF DISAPPROVED RULEMAKING.**—A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 504.

(c) **PRESIDENTIAL WAIVER AUTHORITY.**—

(1) **PRESIDENTIAL DETERMINATIONS.**—Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of this title may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) **GROUND FOR DETERMINATIONS.**—Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws; or

(C) necessary for national security.

(3) **WAIVER NOT TO AFFECT CONGRESSIONAL DISAPPROVALS.**—An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 504 or the effect of a joint resolution of disapproval under this section.

(d) **TREATMENT OF RULES ISSUED AT END OF CONGRESS.**—

(1) **ADDITIONAL OPPORTUNITY FOR REVIEW.**—In addition to the opportunity for review otherwise provided under this title, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning

on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 504 shall apply to such rule in the succeeding Congress.

(2) **TREATMENT UNDER SECTION 504.**—

(A) In applying section 504 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the 15th session day after the succeeding Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report must be submitted to Congress before a final rule can take effect.

(3) **ACTUAL EFFECTIVE DATE NOT AFFECTED.**—A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

(e) **TREATMENT OF RULES ISSUED BEFORE THIS TITLE.**—

(1) **OPPORTUNITY FOR CONGRESSIONAL REVIEW.**—The provisions of section 504 shall apply to any significant rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on March 1, 1996, through the date on which this title takes effect.

(2) **TREATMENT UNDER SECTION 504.**—In applying section 504 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of the enactment of this Act; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) **ACTUAL EFFECTIVE DATE NOT AFFECTED.**—The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 504.

(f) **NULLIFICATION OF RULES DISAPPROVED BY CONGRESS.**—Any rule that takes effect and later is made of no force or effect by the enactment of a joint resolution under section 504 shall be treated as though such rule had never taken effect.

(g) **NO INFERENCE TO BE DRAWN WHERE RULES NOT DISAPPROVED.**—If the Congress does not enact a joint resolution of disapproval under section 504, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

##### SEC. 504. CONGRESSIONAL DISAPPROVAL PROCEDURE.

(a) **JOINT RESOLUTION DEFINED.**—For purposes of this section, the term “joint resolution” means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 503(a) is received by Congress and ending 45 days thereafter, the matter after the resolving clause of which is as follows: “That Congress disapproves the rule submitted by the \_\_\_ relating to \_\_\_, and such rule shall have no force or effect.”. (The blank spaces being appropriately filled in.)

(b) **REFERRAL.**—

(1) **IN GENERAL.**—A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

(2) **SUBMISSION DATE.**—For purposes of this subsection the term "submission or publication date" means the later of the date on which—

(A) the Congress receives the report submitted under section 503(a)(1); or

(B) the rule is published in the Federal Register.

(c) **DISCHARGE.**—If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) **FLOOR CONSIDERATION.**—

(1) **IN GENERAL.**—When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) **DEBATE.**—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(3) **FINAL PASSAGE.**—Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) **APPEALS.**—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) **TREATMENT IF OTHER HOUSE HAS ACTED.**—If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(1) **NONREFERRAL.**—The resolution of the other House shall not be referred to a committee.

(2) **FINAL PASSAGE.**—With respect to a resolution described in subsection (a) of the House receiving the resolution—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

(f) **CONSTITUTIONAL AUTHORITY.**—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

#### **SEC. 505. SPECIAL RULE ON STATUTORY, REGULATORY AND JUDICIAL DEADLINES.**

(a) **IN GENERAL.**—In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 504, that deadline is extended until the date 12 months after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 503(a).

(b) **DEADLINE DEFINED.**—The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

#### **SEC. 506. DEFINITIONS.**

For purposes of this title—

(1) **FEDERAL AGENCY.**—The term "Federal agency" means any "agency" as that term is defined in section 551(l) of title 5, United States Code (relating to administrative procedure).

(2) **SIGNIFICANT RULE.**—The term "significant rule"—

(A) means any final rule that the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget finds—

(i) has an annual effect on the economy of \$100,000,000 or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(ii) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(iii) materially alters the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(iv) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866; and

(B) shall not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by such Act.

(3) **FINAL RULE.**—The term "final rule" means any final rule or interim final rule. As used in this paragraph, "rule" has the meaning given such term by section 551 of title 5, United States Code, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

#### **SEC. 507. JUDICIAL REVIEW.**

No determination, finding, action, or omission under this title shall be subject to judicial review.

#### **SEC. 508. APPLICABILITY; SEVERABILITY.**

(a) **APPLICABILITY.**—This title shall apply notwithstanding any other provision of law.

(b) **SEVERABILITY.**—If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this title, shall not be affected thereby.

#### **SEC. 509. EXEMPTION FOR MONETARY POLICY.**

Nothing in this title shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

#### **SEC. 510. EXEMPTION FOR HUNTING AND FISHING.**

Nothing in this title shall apply to rules that establish, modify, open, close, or conduct a regulatory program for a commercial, recreational, or subsistence activity relating to hunting, fishing, or camping.

#### **SEC. 511. EFFECTIVE DATE.**

This title shall take effect on the date of the enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

### THE 1996 BALANCED BUDGET DOWN PAYMENT ACT, II

#### HATFIELD (AND WYDEN) AMENDMENT NO. 3536

Mr. HATFIELD (for himself and Mr. WYDEN) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill (H.R. 3019) making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes; as follows:

On page 577 of the pending amendment, strike lines 14 through the period on line 23.

#### BOND (AND HARKIN) AMENDMENT NO. 3537

Mr. HATFIELD (for Mr. BOND, for himself, Mr. SIMON, Mr. GRASSLEY, Ms. MOSELEY-BRAUN, and Mr. HARKIN) proposed an amendment to amendment No. 3466 proposed by him to the bill H.R. 3019, supra; as follows:

Insert the following at the appropriate place under Title III of the Committee amendment:

"SEC. . Any funds heretofore appropriated and made available in Public Law 102-104 and Public Law 102-377 to carry out the provisions for the project for navigation, St. Louis Harbor, Missouri and Illinois; may be utilized by the Secretary of the Army in carrying out the Upper Mississippi and Illinois Waterway System Navigation Study, Iowa, Illinois, Missouri, Wisconsin, Minnesota, in Fiscal Year 1996 or until expended."

#### SPECTER AMENDMENTS NOS. 3538– 3539

Mr. HATFIELD (for Mr. SPECTER) proposed two amendments to amendment No. 3466 proposed by him to the bill H.R. 3019, supra; as follows:

#### AMENDMENT NO. 3538

On page 546, line 21 of the pending amendment, increase the rescission amount by \$1,000,000.