crime—in the first 6 months of 1995 compared to the first 6 months of 1994: murder is down by 30 percent; robbery is down by 22 percent; burglary is down by 18 percent; and car theft is down by 25 percent.

In the face of that success in fighting America's crime epidemic, it would be folly to go back on our commitment to adding 100,000 cops. ''If it ain't broke, don't fix it''—as a former President used to say.

That, unfortunately, is exactly what the latest continuing resolution proposes to do—instead of fully funding the President's request for the 100,000 cops program, this latest proposal would slash the 1996 request for the cops program to $975 million—about one-half the $1.9 billion request.

Not only is the 100,000 cops program subject to extreme cuts—but the latest continuing resolution also takes nearly $813 million that was supposed to go to the 100,000 cops program to fund a so-called law enforcement block grant program.

What is wrong with this approach?

First, this so-called law enforcement block grant is written so broadly that the money could be spent on everything from prosecutors to probation officers to traffic lights or parking meters—and not a single new cop.

Second, this block grant has never been authorized by the Senate. So, let's be clear on what is being done here. What this continuing resolution does is take a crime bill that has been passed only by the House, whose funds have been authorized only by the House, whose block grant idea has already been rejected by the Senate, and incorporate it into an appropriations bill so it is passed and funded—all in one fell swoop.

Mr. President, if we are going to legislate by fiat like this, then we might as well do away with committees, with hearings, with subcommittee markups, with full committee markups, and with careful consideration of authorizing legislation. We could simply do all the Senate's business on appropriations bills or continuing resolutions.

I, for one, happen to believe that's a terrible way to proceed and I believe that's reason enough to oppose this bill.

If the Republicans want to change the crime bill, they have the right to try—but let's do it the right way and then let's vote on it. Wiping out major pieces of the most significant anti-crime legislation ever passed by the Congress on an appropriations bill makes a mockery of our Senate process. The importance of the programs we are considering, not to mention the perception of our institution, demands better.

Thank you, Mr. President.

VOTE ON AMENDMENT NO. 3466, AS AMENDED

The PRESIDING OFFICER. The question now is on agreeing to the substitute amendment, as amended.

The amendment (No. 3466), as amended, was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the substitute was adopted. 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 the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Oregon.

ORDER OF PROCEDURE

Mr. HATFIELD. Mr. President, I ask unanimous consent that following the passage of H.R. 3019, the Senate proceed to vote passage of the small business regulation bill.

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

Mr. HATFIELD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 79, nays 21, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—79

Abraham	Exon	McConnell
Akaka	Feinstein	Mikulski
Baucus	Ford	Moynihan
Bennett	Frist	Murkowski
Bingaman	Glenn	Murray
Bond	Gorton	Nunn
Bradley	Graham	Pell
Breaux	Gregg	Pressler
Bryan	Harkin	Pryor
Bumpers	Hatch	Reid
Burns	Hatfield	Robb
Byrd	Heflin	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inouye	Santorum
Coats	Jeffords	Sarbanes
Cochran	Johnston	Shelby
Cohen	Kassebaum	Simon
Conrad	Kempthorne	Simpson
Coverdell	Kennedy	Snowe
Craig	Kerrey	Specter
D'Amato	Kohl	Stevens
Daschle	Leahy	Thompson
DeWine	Levin	Thurmond
Dodd	Lieberman	Wellstone
Dole	Lott	Wyden
Domenici	Lugar	
Dorgan	Mack	

NAYS—21

Ashcroft	Grams	Lautenberg
Biden	Grassley	McCain
Boxer	Helms	Moseley-Braun
Brown	Hollings	Nickles
Faircloth	Inhofe	Smith
Feingold	Kerry	Thomas
Gramm	Kyl	Warner

So the bill (H.R. 3019), as amended, was passed.

(The text of the bill was not available for printing. It will appear in the RECORD of March 20, 1996.)

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oregon.

The Senate will please come to order so the Senator from Oregon may proceed.

Mr. HATFIELD. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House of Representatives on the disagreeing votes thereon of the two Houses, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. ABRAHAM) appointed Mr. HATFIELD, Mr. STEVENS, Mr. COCHRAN, Mr. SPECTER, Mr. DOMENICI, Mr. BOND, Mr. GORTON, Mr. MCCONNELL, Mr. MACK, Mr. BURNS, Mr. SHELBY, Mr. JEFFORDS, Mr. GREGG, Mr. BENNETT, Mr. CAMPBELL, Mr. BYRD, Mr. INOUYE, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LEAHY, Mr. BUMPERS, Mr. LAUTENBERG, Mr. HARKIN, Ms. MIKULSKI, Mr. REID, Mr. KERREY of Nebraska, Mr. KOHL, Mrs. MURRAY, conferees on the part of the Senate.

Mr. HATFIELD. Mr. President, I would like to take a very brief moment to acknowledge the input of many people to make this possible. I need not, Mr. President, indicate further this has been a very difficult and intricate package to craft; and this could not have happened without the cooperation of Senator BYRD, the ranking member, and the ranking members of our committee, as well as our own Republican members. I want to commend particularly the leadership that has been so important in getting us to this particular point. I hope that all of you will say your prayers, and include the Appropriations Committee, as it now goes to conference with the House of Representatives.

SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 942.

The assistant 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 resumed the consideration of the bill.

Mr. BINGAMAN. Mr. President, I intend to support the small business regulatory fairness bill, S. 942, as modified by the managers' amendment.

This bill is a testament to the good work that occurred at the White House Conference on Small Business organized here in Washington last June. This national conference was the final step in a grassroots public discourse about small business needs and concerns that involved more than 21,000 small business people participating in 59 State conferences across the country. Starting with more than 3,000 issue recommendations at the State level, regional groups shaved the list to a set of 293 concerns. And finally, the White House Conference focused on 60 specific recommendations that might substantially improve the environment for the growth and success of small business activity.

I think that the work of the White House Conference has given us a good roadmap of items to debate and discuss which directly impact our Nation's economic health. One of the major concerns of small business owners today is simply complying with Federal regulations, being able to understand the regulations—which are often extraordinarily complex, and not falling subject to arbitrary enforcement and penalties. It is important that our Government be accountable to those it governs and must avoid arbitrary and ad hoc enforcement.

Mr. President, this legislation requires that Federal agencies produce small entity-compliance guides that outline in simple, understandable language what is required from small businesses. This is a commonsense adjustment in which both Federal regulators and small firms win. Furthermore, this act creates five-person regional citizen small business review boards in each of the 10 Government regions covered by the Small Business Administration. This measure gives small business a voice at the table when Federal guidelines are discussed, and this is as it should be.

Also central to this act is the creation of more cooperative and less punitive regulatory environment between agencies and small business that is less threatening and more solution-oriented than we have achieved in the past. And equally important are provisions in this legislation making Federal regulators more accountable for enforcement actions by providing small businesses a meaningful opportunity for redress of excessive or arbitrary enforcement activities.

As our Nation's larger firms continue a process of downsizing, restructuring, and outsourcing, our small business sector will continue to grow rapidly and will continue to be the major jobs generator for the country. It is crucial that the Federal Government do what it can to help small businesses thrive in a regulatory environment that is well defined and user friendly rather than to suffer because of uncertainty and unclear codes.

I am frequently visited by small business people and groups from my own State of New Mexico and am very much pleased by their attention to the debates that occur in Washington about legislation that might impact them and their companies. These firms typically don't have a staff section designed to study the tax implications of everything we do here in this Chamber; nor do they have the time and personnel to devote to close monitoring of our legislative activities. But still, tens of thousands of small business people in the Nation do invest time and become personally involved with the legislative process and have committed themselves to improving the interaction between Government and the small business sector.

I would like to mention one example from New Mexico, a person who demonstrates well a combination of entrepreneurial excellence, community concern and strong civic involvement. Ioana McNamara, the president and founder of an Albuquerque-based small business called Wall-Write, was one of those who participated from New Mexico in the White House Conference on Small Business. I want to publicly commend her for getting involved and working on these issues. She and others from the New Mexico small business delegation, including another small business person—Diane Denish—who served as the delegation chair for the White House Conference—have done a great deal to make sure that small firms in New Mexico do their part to achieve a more productive relationship between Government and business.

Clearly, people like Ioana McNamara and Diane Denish have more than enough to do in growing their businesses without paying attention to whether this Chamber is about to do something that harms or helps their businesses—but they have decided to do what they can to help implement the measures decided on at the White House Conference. I think our Nation should express its gratitude to these people and the thousands of others who participate in the making of good policy.

Mr. KERRY. Mr. President, the Small Business Regulatory Enforcement Fairness Act, represents an opportunity to change not only the regulatory burden on small business, but more importantly, to begin to change the way all Federal agencies, including the Internal Revenue Service [IRS], deal with small business. I am pleased to be a cosponsor of the bill.

In far too many cases, the Federal Government has acted as the judge, jury, and executioner for small businesses. Testimony before the Small Business Committee indicated many small businesses fear agencies like the IRS will levy huge fines on them for failure to comply with minor rules and regulations—of which they may be entirely ignorant. The Federal Government must become a partner in the growth and development of small businesses, not an adversary.

While not perfect, this legislation includes a number of provisions which will ease regulatory burdens and give small businesses some recourse when Federal bureaucrats are over zealous in the exercise of their power.

The bill requires agencies to publish in plain English a guide to assist small business in complying with regulations. Federal regulations are often too difficult for anyone to understand, let alone a small businessperson who is trying to run his or her business. It will also allow Small Business Development Centers to offer assistance to small businesses in complying with Federal regulations.

The bill would also establish an ombudsman to help small businesses get fair and legal treatment from the Government if they have been treated unfairly. The ombudsman would also assist small businesses in recovering legal fees as a result of unfair Government actions.

Under the bill, Federal agencies would be required to waive civil penalties for first violations by small businesses that do not constitute a serious threat to public health, safety, or the environment.

The bill provides that small business representatives are to be consulted in Federal agency rulemaking decisions that would have a significant impact on small businesses so that small business interests would be considered at the outset in the development of regulations.

While these reforms will not end the difficulties many small businesses face in complying with Federal regulations, they should help ease the burden. I hope this legislation will mark the beginning of a new era of better relations between Government and small business. The Federal Government should be working in partnership with small businesses—not at cross-purposes with them.

I am proud to support this legislation and would like to thank the chairman of the Small Business Committee, Senator BOND, and the ranking member Senator BUMPERS along with their staffs for their effort in producing this legislation.

Mrs. MURRAY. Mr. President, I would like to take this opportunity to commend Senator BOND for his leadership on small business issues, and lend my support to the Small Business Regulatory Fairness Act, which will lessen regulatory burdens imposed on small businesses by Federal agencies.

Mr. President, I have talked with many small business owners in my home State and one thing they all tell me is how difficult and costly it has become to comply with many of the Federal regulations imposed upon the. Among other things, this legislation will require agencies to publish materials in plain language to help small businesses comply with regulations.

The bill will also enhance the small business communities' voice with the Small Business Administration by providing them a role in determining future regulations.

When I was growing up, my father ran a small business in Bothell, WA. I know the time and energy small business people put into their companies. And, throughout my term, I have worked to reform a Government that continues to hamper small business owners.

I was a cosponsor of the S-Corporation Reform Act of 1993, and returned as a cosponsor of S. 758 last year, which would remove obsolete provisions from the tax code, making it easier for small businesses to raise capital. I cosponsored the Family Health Insurance Protection Act which would provide health insurance market reform for small businesses and families. And, on the first full day of this Congress, I introduced the American Family Business Preservation Act which would reduce the rate of estate tax imposed on a family owned business, encouraging families to keep their businesses intact. And, as many of my colleagues will remember, last Congress, we fixed a problem that has been plaguing small businesses that wanted to refinance their SBA 503 loans. Now, many small businesses in Washington State and across the country will be able to refinance their 503 loans.

Mr. President, I strongly believe Government cannot solve every problem in this country, but it can foster a healthy economic environment in which all businesses may prosper. I encourage each of my colleagues to support S. 942. The Small Business Regulatory Fairness Act continues our work by reducing redtape and making it easier for our small businesses to comply with often burdensome Federal regulations. I believe this is the type of reform our small businesses want and deserve.

Mr. GLENN. Mr. President, I support the managers' amendment to S. 942, the Small Business Regulatory Enforcement Fairness Act. I have been a long supporter of regulatory reform, and I believe this legislation provides significant regulatory relief to small businesses, small governments, and other small entities.

I congratulate the managers of this bill—Senator BOND, chairman of the Small Business Committee, and Senator BUMPERS, Ranking Democrat on the committee—for their efforts to craft a workable bill. I know they have consulted frequently with other members, the small business community, and the administration to address concerns and improve the legislation. In the midst of contentious debate about other regulatory reform issues, Senator BOND and Senator BUMPERS have put together a regulatory reform bill that will provide significant relief to small business. This legislation should get broad bipartisan support in both the Senate and House, and I am sure will soon be signed into law.

The purposes of this legislation are important and I support them. Some of the details, however, still concern me. For example, the bill provides for judicial review of Regulatory Flexibility Act decisions. This will put needed teeth into the Reg Flex Act and ensure that agencies prepare required regulatory impact analyses and pay more attention to the special impact of their rules on small business and other small entities, such as local governments. I am concerned, however, that these judicial review provisions may be overly broad and will lead to unnecessary litigation. Only time will tell whether my concern is well founded. At this point, I am prepared to give the new provisions the benefit of some doubt.

The bill also establishes a small business ombudsman process to help improve cooperation between regulatory agencies and regulated businesses. I support this idea. But, I am concerned that the implementation process, with its Small Business Fairness Boards, will end up creating a one-sided record of complaints that will distort the broad public mission of our agencies. Our agencies should not be viewed as the enemy when they carry out the laws passed by the people's representatives in Congress. I am happy, at least, that in the final version of the bill before us, the Ombudsman will focus on general agency enforcement activity and not attempt to evaluate or rate the performance of individual agency personnel.

Finally, the legislation creates small business review panels to ensure that small business perspectives are fully considered by agencies during rulemaking. Again, I support the important purpose of ensuring that agencies hear the voices of the little guys who do not always get through the maze of agency process and the larger more organized commenters. It is, however, important to ensure that this opportunity for comment does not create a precedent of giving special leverage to one segment of the public. I am, at least, heartened by the fact that review panel comments on an agency proposed rule will go into the public record, and that other interested parties will have an opportunity to respond to those comments before the agency makes its rulemaking decision. The fact that these review panels, as well as the Fairness Boards, will be subject to the Federal Advisory Committee Act [FACA] and the Government in the Sunshine Act will also help ensure that the new process will be open to the public.

On balance, I believe the managers' amendment should be supported. Again, I commend Senator BOND and Senator BUMPERS for their openness to concerns about the bill. Since we first saw drafts a week or so ago, significant changes and improvements have been made. Given these changes, I will vote for the managers amendment. But given my concerns, let me also say that these provisions should not be modified by the House. If they are made more onerous, then they should not be supported. If House action leads to changes in conference, then the Senate should say no to the conference report.

Let me clear up one fact about this legislation. A week and a half ago, on Thursday, March 7, 1996, Senator BOND stood here on the floor and described his hopes for a bipartisan agreement on this legislation. Our Minority Leader, Senator DASCHLE, agreed, saying that Democrats hoped to provide broad, if not unanimous, support for the final bill. Unfortunately, several other of our colleagues on the other side of the aisle then went on to accuse Democrats of delaying the bill and even of engaging in a filibuster. That could not be further from the truth.

When the Small Business Committee considered the legislation on Wednesday, March 6, there was general agreement that a managers' amendment would be prepared for the bill. On the 7th, as we waited to see the proposed amendment, we were surprised to hear our Republican colleagues accusing Democrats of holding up the bill. As it turned out, I did not see the final proposed manager's amendment for another whole week—March 14, an entire week after Thursday the 7th. Far from Democrats holding up this legislation, the fact is that the managers of this bill were not ready to bring the bill to the floor until at least a full week after we were being accused of delay. I am definitely not criticizing the managers. Their careful deliberations are to be commended. But certainly, other Senators should not be falsely accused of delaying the bill, when they were only waiting to see the results of those deliberations.

I hope I have set the record straight. There was never a filibuster on this legislation. We are happy there is finally an agreement on the managers' amendment. We are pleased that we now have it and can move forward and quickly pass the legislation.

I must say though, that once again, I am very disappointed in the rhetorical excesses of my colleagues on the other side of the aisle. Rather than even admit to working cooperatively, which is the case with the bipartisan bill before us, they tried to mislead the public about the status of this legislation. There certainly are enough instances where we honestly disagree, but here where we are working together, there is nothing to disagree about.

We need more of the bipartisan cooperation seen in the work of Senators BOND and BUMPERS and the other members of the Small Business Committee on this legislation. We need much less of partisan sniping.

THE NICKLES-REID CONGRESSIONAL REVIEW AMENDMENT

S. 942 comes to the floor with an agreement to consider one other amendment. This is the Nickles-Reid Congressional Review legislation and I urge my colleagues to support this

amendment. We passed this legislation last year, as a substitute to the Regulatory Moratorium. Congressional Review will create more work for us, but its expedited legislative veto process will ensure congressional accountability for Federal agency rules. I believe we need this process so that we can do our part for regulatory reform.

I have always been struck when in hearings, agency officials—under successive administrations—have pointed out that most agency regulations are strictly required by laws passed by Congress. The Nickles-Reid Congressional Review process will close the loop, so that when an agency issues a rule that some may oppose, we will have an opportunity to consider it in the context of the law and determine its reasonableness. This will not only help with accountability for individual rules, but will also help us identify specific statutory provisions that need revision. For these reasons, I am happy to support the Nickles-Reid amendment, and urge my colleagues to do so, as well.

CONCLUSION

With the combination of Small Business Regulatory Fairness and Congressional Review, we have significant bipartisan regulatory reform legislation. It should be passed by the House and be signed into law by the President.

Our job as legislators is to create laws that can work and can improve conditions in our country. Some have wanted to bull through and legislate now on a larger regulatory reform package. The truth is that there is simply too much there that is unsettled and about which too many do not agree. Now is the time to move legislation that can work and that will improve the regulatory process.

If in the quiet of committee we can return to the other regulatory reform issues of cost-benefit analysis and risk assessment, I think we should. But for now, let us work together on bills such as the legislation before us today that can pass and should pass.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 942, the Small Business Regulatory Enforcement Fairness Act.

Mr. President, America's small businesses badly need relief from excessive and unnecessary regulations. For years, those of us on the Small Business Committee have heard first hand from men and women in small businesses about the disproportionate regulatory burden they face. This burden was confirmed late last year in a report by the Small Business Administration's Office of Advocacy. Among other things, the report found that while small businesses employ 53 percent of the workforce, they bear 63 percent of total business regulatory costs.

The annual average cost of regulation, paperwork, and tax compliance for small businesses is about $5,000 per employee. By contrast, the comparable burden for businesses with over 500 workers is $3,400 per employee. This difference is significant. Big businesses already enjoy a competitive advantage over their smaller counterparts because of economies of scale. The Federal Government should not further disadvantage small businesses by imposing uniform regulations where tiering the regulation to account for business size would be just as effective.

Mr. President, the bill before us will give teeth to the Regulatory Flexibility Act Congress passed in 1980. That act, known as the Reg Flex Act, requires agencies to assess the effects of their proposed rules on small entities. Based on this assessment, agencies either have to conduct a regulatory flexibility analysis describing the impact on small entities, or they must certify that their rule will not have a significant economic impact on a substantial number of small entities.

Despite Congress's best intentions, agencies all too often have refused to comply with the Reg Flex Act. Unfortunately, there is nothing small businesses can do currently to enforce compliance. S. 942 would correct this problem. The bill would enable small businesses to take agencies to court to challenge an agency's determination. This should provide the spur necessary to ensure much greater compliance in the future.

In addition, this bill will require agencies to publish compliance guides for small businesses. In the study commissioned by SBA, 94 percent of small businesses said that it was unclear what they had to do to be in compliance with regulations. By providing easily understood explanations of regulations, agencies will ensure greater compliance. In addition, the bill directs agencies to provide informal guidance to small businesses about what is required of them to be in compliance.

In the case of regulations for which a regulatory flexibility analysis is required, small businesses will now be part of the rulemaking process by providing advice and recommendations to agencies before proposed and final rules are issued. To further help small businesses make their way through complicated regulations, the bill permits Small Business Development Centers and Manufacturing Technology Centers to offer regulatory compliance assistance and onsite assessments for small businesses.

Finally, Mr. President, S. 942 makes it easier, in certain instances, for small businesses to obtain attorneys fees from the government for claims upon which they prevail. I had serious concerns about the language we considered in the Small Business Committee mark up, which modified the so-called Equal Access to Justice Act. I did, however, have the assurance of the Senator from Missouri that our offices would change these provisions so that we would not be rewarding companies with attorneys fees when they violated the law, because, for example, they prevailed on 1 of 10 claims. I believe the new language contained in sections 301 and 302 accomplishes the goal of aiding firms that had to fight the Government on meritless suits, while protecting taxpayers from paying the attorneys fees for companies that have broken the law.

Mr. President, I want to commend Senator BOND and his staff for their willingness to adopt recommended changes suggested by myself and other members of the Small Business Committee. Most Members of this body express their desire to work with their colleagues across the aisle, but those expressions often prove hollow. In this case, however, I am happy to say that S. 942 is truly a bipartisan bill and I hope we will have many more such bills before the end of the 104th Congress.

I also want to acknowledge the work of the Clinton Administration's ''Reinventing Government'' initiative and last year's White House Conference on Small Business. Their efforts laid the groundwork for the legislation we are considering today.

Again, I want to thank Senator BOND and Small Business Committee staffers Keith Cole and John Ball for their assistance on this legislation, and I hope my colleagues will join me in supporting S. 942.

Mr. MURKOWSKI. Mr. President, no one more strongly supports the goals sought by the statutes and regulations of this country than I do.

I come from a beautiful State blessed with resources that I have worked to see used productively and conserved wisely, I myself enjoy the great outdoors in Alaska, along with my family, and intend to have these same kinds of experiences enjoyed by my children and grandchildren; I have been a banker, where it has been my privilege to see individuals succeed in small business; I have seen first hand how issues like safety and worker protection go hand in hand with ensuring that success, but there is no doubt that achieving better protection of human health and the environment can only happen if we regulate smarter.

Individuals and businesses, big and small, spend too much time trying to comply with too much paperwork, and too much regulation from too many Washington bureaucrats. For example: above-ground storage tanks must comply with five different regulations that each require a separate spill prevention plan; this means that a business with tanks files five different sets of plans—one to the State, and two each to the EPA and the Coast Guard.

If you buy a business that was once registered to produce pesticides, even if you don't produce pesticides, or never have, the EPA will still want you to send in annual production reports with zeros filled in. If you don't, you can be sued and potentially fined. For just one statute, the Resource Conservation and Recovery Act, EPA has issued 17,000 pages of regulations and proposed regulations. The volume I'm holding has over 1,000 pages, and on any one of

them is a place where a small business can get tripped up. By the way, this is one volume of title 40 of the Code of Federal Regulations. Title 40 deals with environmental protection. Title 40 has 20 more volumes like this one. And its only title 40.

The Code of Federal Regulations occupies an entire 4 foot by 8 foot bookcase in the Senate library. A copy of the code costs almost $1,000, and is updated four times a year. Even if a small business could afford to buy it, it would be impossible to read it all. Why do we want to force every business in America to have to keep a battery of lawyers around just to advise about the overwhelming details in the Code of Federal Regulations?

Now, usually when I describe these examples, I talk about Anchorage, AK. There, fish guts were added to the waste water to comply with regulations that require a certain amount of organic waste removed during sewage treatment. The water was too clean, so material had to be added just to comply with the requirement to get a minimum amount out. But I am happy to say that today I am no longer using that example. It seems that in response to a lawsuit, EPA announced its intention to lift some of the restrictions on sewage treatment plants such as the one in Anchorage.

EPA states, ''This change would provide the affected municipalities with additional flexibility and, in some cases, cost savings without compromising environmental quality.''

If we are to move forward to a safer, cleaner, healthier future, we have to change the way Washington regulates. This bill is a positive and helpful step in that direction. S. 942 will ensure small business participates in rulemaking. This in turn will mean that rules will take small business needs into consideration before a rule is enacted. The bill also allows judicial review of regulations for compliance with the 16-year-old Regulatory Flexibility Act. A court can now examine whether agencies considered adverse impacts to Small Business when it writes regulations, and determine if an agency acted in an arbitrary manner. Penalty waivers and reductions when appropriate for small business violations. Recovery of attorney's fees when small business is forced into defensive litigation due to enforcement excesses. Comprehensive regulatory reform will continue to be a high priority for this Senator.

As science and technology continue to change, we must have a Federal Government that can be responsive to such changes. We need to plan for the future, not just for today, and that means a regulatory system that can keep up with improvements.

Four fundamental changes to the regulatory system will have to occur to ensure those improvements in the future. First, we must do a thorough review of existing regulations in place, decide what we need and what we don't, and avoid adding any more we don't need; second, Washington should be required to disclose the expected cost of current and new regulations. The public has a right to know what laws and regulations cost; third, when making regulatory decisions, the Government should use best estimates and realistic assumptions rather than worst case scenarios advanced by extremists; and fourth, new regulations should be based on the most advanced and credible scientific knowledge available.

Common sense must be returned to regulating. I applaud Senators BOND and BUMPERS, and all those who worked to bring this bill to the floor. It is an important first step toward a safer, cleaner, healthier future.

Mr. WELLSTONE. Mr. President, I am very pleased to vote for this bill, reported out of the Small Business Committee 2 weeks ago. I commend Chairman BOND for moving the bill through our Committee, as well as ranking member Senator BUMPERS. I appreciate the cooperation of both in working with me and my staff to help ensure that the easing of regulatory burden accomplished in this bill, which is needed and desirable, will not turn back the clock in the area of necessary enforcement of worker safety laws and regulations when there are serious violations.

The bill provides judicial review for agency actions under the Regulatory Flexibility Act. And it would require agencies to publish plain-English compliance guides to help small business meet Government rules. I appreciate that the Senate is taking this positive, bipartisan action in the area of regulatory reform policy with a bill that came from the Small Business Committee. It brings badly needed common sense to regulations affecting small businesses.

Mr. President, it is important that we take this step on a key item from the agenda of the White House Conference on Small Business. Minnesota delegates to the White House Conference selected this issue, as expressed in a Conference resolution, to be one of their top priorities.

Mr. STEVENS. Mr. President, I strongly support the Small Business Regulatory Enforcement Fairness Act. Small business is overloaded with unreasonable regulatory requirements and paperwork. We are long overdue in doing something about it.

This legislation will help small business in several major ways. First, it provides judicial review of the Regulatory Flexibility Act to ensure that agencies will consider the impact of regulations on small businesses, small towns, and nonprofit organizations. The Reg-Flex Act has been on the books for 16 years, but agencies have ignored it because it could not be enforced in court. We are putting an end to that.

Second, this legislation helps small business to participate in the federal regulatory process. Third, it provides an opportunity for small businesses to redress arbitrary Government enforcement actions.

In addition, Senator NICKLES is adding a provision that would allow Congress to review new rules under expedited procedures. This can provide redress for both big and small business, governments, and non-profit organizations. If a rule is unreasonable, Congress will have an opportunity to veto it.

Mr. President, small business is critical to the well-being of the country and my home State of Alaska. Over 99 percent of Alaska's businesses are small businesses. They are the largest employers of minorities, women, and youth in Alaska. Alaska boasts a higher percentage of women-owned businesses than any State. Small business creates new jobs, is a crucial source of entrepreneurial innovation, and makes the American dream a reality for countless Americans.

Federal bureaucrats must be more sensitive to the devastating impact that overregulation can have on small business. About 65 percent of Alaska's small businesses employ one to four employees. Many could drown unless we stem the rising tide of federal rules and redtape. I congratulate Senator BOND and my other colleagues who have promoted this important legislation.

SMALL BUSINESS REVIEW PANELS

Mr. GLENN. Let me make sure I understand how the Small Business Review Panels will work. Before the publication of an initial regulatory flexibility analysis for a proposed EPA or OSHA rule, the SBA's Chief Counsel for Advocacy will gather information from individual representatives of small businesses, and other small entities such as small local governments, about the potential impacts of that proposed rule. That information will then be reviewed by a panel composed of members from EPA or OSHA, OIRA, and the Chief Counsel. The panel will then issue a report on those individual's comments, which will become part of the rulemaking record. Then, after the proposed rule is published in the Federal Register and prior to the publication of a final regulatory flexibility analysis, a second review panel will be convened, and again it will review and report on the individual's comments on the proposed rule. Is this correct?

Mr. BOND. Yes; my colleague from Ohio has correctly summarized the review panel process.

Mr. GLENN. Good, now let me ask specifically with regard to the first review panel stage: I trust that it is the managers' intention that the review panel's report and related information be placed in the rulemaking record in a timely fashion so that others interested in the proposed rule may have a reasonable opportunity to review that information and submit their own responses to it before the close of the agency's public comment period for the proposed rule.

Mr. BOND. That is correct.

Mr. GLENN. Good. Now, let me ask about the second review panel stage: I trust that it is the managers' intention that should an agency decide to significantly modify a proposed final rule on the basis of the panel's report, the agency will reopen the rulemaking proceeding and allow public comment on the newly revised proposal. I believe that not to do so would be to overturn longstanding rules against ex parte communications. Again, securing meaningful input from small entities should not be at the price of undercutting the openness and fairness of the Government decisionmaking process.

Mr. BOND. I agree. Again, our purpose is to ensure that the concerns of small business and other small entities be fully and carefully considered by rulemaking agencies. If those concerns lead to a significant change in the regulatory proposal, the process should be reopened to allow all interested parties to comment on the revised proposal.

Mr. GLENN. I thank the Senator very much. I am glad that we agree on how this process will work.

Mr. LEVIN. Mr. President, one of the proposals we have before us, in S. 942, would establish an ombudsman in the Small Business Administration. That ombudsman would solicit information from small businesses on Federal regulatory enforcement practices and develop ratings of how well Federal agencies perform their enforcement duties. The ombudsman would have the ability to refer serious cases of abuse to an agency's inspector general.

This provision seeks to make regulatory agencies more responsive to the concerns of small businesses by giving small businesses a means to respond to excessive regulatory enforcement practices. While I firmly believe that we need to fight for fundamental change in the culture of small business regulation, I question whether this proposal, although well-intentioned, is the best catalyst for affecting that change.

I am concerend that the Small Business Committee did not fully consider other options that could provide a better mechanism for giving small businesses a stronger voice within agencies that regulate them. In particular, I think the committee should have taken more time to look at the pros and cons of placing an ombudsman in each regulatory agency, rather than relying on a lone ombudsman in the Small Business Administration to cover all agencies.

I have been working for the past several months on a proposal that would create an office of ombudsman in each major regulatory agency. My proposal would give the ombudsman sufficient authority within the agency to solve problems and sufficient independence from the regulatory structure to act fairly. The ombudsman would be the mediator or honest broker between the small business who is the subject of an inspection or enforcement action and the regulatory apparatus of the agency.

This was a recommendation of the Administrative Conference of the United States back in 1990, and I think it makes a lot of sense. I believe that much of the dissatisfaction of the regulated public with regulations is not only with the content of some of our regulations but also with the way in which they are enforced. Agencies often view a small business as a violator to be caught instead of as a company to be helped into compliance. And that's a big difference. The ombudsman would be there to put a friendly place—the spirit of cooperation—on the implementation of regulatory requirements.

I agree that we need to give small businesses a stronger voice in the agencies that regulate them, but we must make sure that agencies are ready and willing to listen. That's why we need to consider placing an ombudsman in each agency and not just rely on a single ombudsman in the Small Business Administration.

Mr. President, I have a number of concerns about placing a lone ombudsman in the Small Business Administration.

First, the ombudsman would be responsible for soliciting comments about and developing ratings of programs and offices in each Federal agency that regulates the small business community. Carrying out this responsibility would require the ombudsman to become familiar with the operations of hundreds of programs in dozens of agencies. That's just not a reasonable expectation.

Second, ombudsmen have traditionally been neutral officials who field complaints and recommend solutions to individual disputes between the Government and the regulated public. The broad jurisdiction of the office proposed in this bill would prohibit the ombudsman from focusing on the day-to-day problems small businesses face in dealing with agency regulators. The EPA Small Business ombudsman fields thousands of such inquiries every year, and that's just for one agency. Rather than investigating and mediating individual disputes himself or herself, the ombudsman would have to refer alleged cases of agency misconduct to the inspector general of the relevant agency.

In other words, the ombudsman wouldn't receive information for the purpose of mediating disputes, solving problems, and fostering collaboration between agencies and regulated parties. Instead the ombudsman would receive information primarily for assessing agency performance. That doesn't help get immediate and specific problems solved.

At the hearing on S. 942 in the Small Business Committee, several representatives of the small business community said that they would prefer to have a single ombudsman in the Small Business Administration rather than an ombudsman in each individual regulatory agency. They argued that agency ombudsmen could be influenced by internal agency politics and that, because of this, small businesses would be susceptible to intimidation by regulators if they came forward with complaints. While I understand the reluctance of small businesses to complain directly to an agency official about inappropriate regulatory practices, I believe that ombudsmen in regulatory agencies can be given sufficient independence from the regulatory structure to act fairly and to assure regulated parties that their inquiries will not be used against them.

One witness, Wendy Lechner from the Printing Industries of America, made a point of praising the work of the Small Business Ombudsman at the Environmental Protection Agency and recommended that such ombudsman programs should be replicated throughout the regulatory agencies. The EPA office is one of approximately half a dozen ombudsman offices operating throughout the Federal Government that address disputes between agencies and the regulated public. By and large, these ombudsmen have improved communications between the agencies and regulated parties, uncovered systemic problems and chronic abuses in the regulatory process, and saved valuable resources through informal dispute resolution that otherwise would have been wasted on the costs of formal legal proceedings.

Mr. President, I do not think the ombudsman provision in S. 942 solves the enforcement problem for small businesses. I will continue to work on legislation that would place an ombudsman in each regulatory agency. I think such an approach would foster collaboration between small businesses and the agencies that regulate them and achieve better results.

I commend the chairman and ranking Democrat on the Small Business Committee for their hard work on this bill and look forward to working with them as my ombudsman proposal is developed.

THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

Mr. DOMENICI. Mr. President, I know I do not have to tell you that small businesses create most of the jobs in America. Small businesses are the engine that keep the American economy running. I know that in my State small businesses make up 85 to 90 percent of private employers. In that regard, I have created a New Mexico small business advisory board.

I have also participated in Small Business Committee field hearings throughout my State. Indeed, I was privileged to have had the chairman of the Small Business Committee, Senator BOND, come out to New Mexico and hear from those New Mexico small businesses firsthand at a Small Business Committee field hearing in Albuquerque.

Mr. President, what we found was that almost all of the small business owners we talked to—who are the people who create almost all of the private sector jobs in my State—told us just

how smothering the explosion in Federal regulations has become.

In particular, those small business owners identified the Occupational Safety and Health Administration [OSHA] and the Environmental Protection Agency [EPA] as the two Federal agencies which promulgate the most unreasonable and burdensome regulations. Mr. President, these small business painted a picture of the Federal bureaucracy at its worst: arrogant, unresponsive, inefficient, and unaccountable.

Further, Mr. President, because a great number of new businesses are being started by women, some of the most vocal critics of EPA's and OSHA's unreasonable regulations are women-owned businesses.

I believe one of the biggest reasons for these bureaucratic problems is that small businesses are just not adequately consulted when regulations affecting them are being proposed and promulgated. I am not alone in this belief. In 1994 five agencies—including the Small Business Administration, EPA, and OSHA—held a small business forum on regulatory reform, and they came up with some conclusions about the problems with the current regulatory process.

Let me quote from the administration's own report summarizing the principal concerns identified at the forum:

Concern: ''The inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant;''

Concern: ''The need for agency regulatory officials to understand the nuances of the regulated industry and the compliance constraints of small business;''

Concern: ''The perceived existence of an adversarial relationship between small business owners and federal agencies;''

And finally, Mr. President, and I think most important:

Concern: ''The need for more small business involvement in the regulatory development process, particularly during the analytic, risk assessment and preliminary drafting stages.''

Mr. President, this is the agencies' own report on the problems with the regulatory process.

During the floor debate on last year's regulatory reform bill, Chairman BOND and I successfully added an amendment that would have squarely addressed those concerns. That amendment had the support of the National Federation of Independent Business, and was accepted by the Senate. As we all know, however, the broader regulatory bill did pass.

That is why I am so happy to have worked with Chairman BOND to ensure that my small business advocacy panel initiative was included as a section of the bill we are about to vote on today, the Small Business Regulatory Enforcement Fairness Act of 1996. The small business community has no greater champion than my good friend from Missouri, and I am proud to be associated with his outstanding bill.

Mr. President, the structure and process of these advocacy panels is as follows:

First, prior to publication of an initial regulatory flexibility—reg flex—analysis, an agency would notify the Chief Counsel for Advocacy of the Small Business Administration of potential impacts of a proposed rule on small business.

Second, the Chief Counsel would identify individual representatives of small business for advice and recommendations about the proposed rule.

Third, the agency would convene a review panel consisting of representatives of the agency, the Office of Information and Regulatory Affairs, and the Chief Counsel, to review the information collected on the impact of the proposed rule on small business.

Pursuant to the information obtained at the review panels, and where appropriate, the agency shall modify its proposed rule.

Finally, the findings and comments of the review panel shall be included as part of the rulemaking record.

This process shall be repeated prior to the final publication of a reg flex analysis.

Remember, Mr. President, the agencies themselves have recognized that small businesses are underrepresented during rulemakings. I believe that these review panels, convened before the initial and the final reg flex analyses, will ensure that small businesses finally have an adequate voice in the regulatory process. In addition, these panels, working together so all viewpoints are represented, will be the crux of reasonable, consistent, and understandable rulemaking. Finally, Mr. President, and perhaps most important, these panels will help reduce counterproductive, unreasonable Federal regulations at the same time they are helping to foster the nonadversarial, cooperative relationships that most agree are long overdue between small businesses and Federal agencies.

Mr. HELMS. Mr. President, the pending bill, S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996, deserves the support of all Senators—and the able chairman of the Small Business Committee, our good friend from Missouri, Mr. BOND, is to be commended for his persistence.

This legislation is badly needed. In North Carolina literally hundreds of small businesses are struggling under the heavy regulatory burdens imposed by the Washington bureaucracy. These businesses are seeing their profit margins gobbled up by oppressive Federal regulations.

Mr. President, S. 942, will go a long way toward leveling the playing field and giving small businesses some long overdue relief from a portion of existing burdensome regulations. Small businesses now will be better able to challenge burdensome regulations in the courts.

Federal agencies hereafter will be required to obtain the views and opinions of small businesses before regulations are drafted, making small businesses players before regulations are drafted and imposed.

Mr. President, Mary McCarthy in the October 18, 1958, New Yorker Magazine observed, ''Bureaucracy, the rule of no one, has become the modern form of despotism.''

How true, and I'm hopeful that both the Senate and the House will pass this legislation, and that the President will sign it, because no bureaucracy or bureaucrat should be permitted to be a despot over the people they are supposed to be serving.

DUTIES AND FUNCTIONS OF THE OMBUDSMAN

Mr. LEVIN. One of the proposals put forward in S. 942 would establish an ombudsman position in the Small Business Administration. The proposal of the Senator from Missouri would provide a way to gather and publicize information about how agencies across the board treat small businesses in the regulatory enforcement process. I have concerns about the language the bill uses to describe the duties and functions of the ombudsman.

Specifically, I would like to ask the Senator from Missouri about title II, section 30(b)(2) (A) and (C). In an earlier version of the bill, these sections, which outline the duties of the ombudsman, stated that the ombudsman shall

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 and rate the performance of such personnel],

and,

based on substantiated 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].

This language appeared to direct small businesses and the ombudsman to publish employment ratings of specific agency employees who carry out regulatory enforcement actions. While the boards and the ombudsman are specifically directed to report on substantiated actions of agency personnel, I am concerned that this provision would have focused attention inappropriately on public ratings of individuals rather than on rating the performance of the agencies and agency offices. Such an individual rating system could interfere with the employment relationship between agencies and their employees.

The language of the bill before us today is somewhat different from the earlier version. The current version of the bill states that the ombudsman shall

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],

and

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].

While the current language still allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it appears to remove the mandate for the boards and the ombudsman to create a public performance rating of individual agency employees. Senator BOND, is this interpretation correct and, if so, was the change in language made in order to focus the reports of the boards and the ombudsman on rating overall agency performance rather than on rating individual regulators?

Mr. BOND. The Senator's interpretation of the change in language is correct. My goal is to reduce the instances of excessive and abusive enforcement actions. Those actions obviously originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and we are very definitely trying to change the culture and policies of Federal regulatory agencies. At other times, the problem is really that there are some bad apples at these agencies. It is for that reason that we specifically included a provision to allow the ombudsman, where appropriate, to refer serious problems with individuals to the agency's inspector general for proper action. The ombudsman's report to Congress should not single out individual agency employees by name or assign an individual evaluation or rating that might interfere with agency management and personnel policies. The intent of the bill is to give small businesses a voice in evaluating the overall performances of agencies and agency offices in their dealings with the small business community.

Mr. LEVIN. I thank the chairman of the Small Business Committee. This is an important change and clarifies that the purpose of the ombudsman's report is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole.

Mr. DASCHLE. Mr. President, passage of the Small Business Regulatory Fairness Act will mark an important milestone in our efforts to provide American business with reasonable, common sense regulatory relief. It is a bill that should be passed by Congress and sent to the President with dispatch.

This legislation, which was approved unanimously by the Senate Small Business Committee, and which I expect will pass the Senate with overwhelming bipartisan support, will provide much needed change in the way Federal agencies deal with American small business. It acknowledges that the Federal bureaucracy often chokes small business in red tape, and institutes a number of reforms that will unleash their productive energy without diminishing the Federal responsibility to protect the public health and safety. Passage of this bill will send an important message to small business owners across the country that their voice is being heard in Washington, DC.

Small businesses already face a daunting array of challenges, from the uncertain economic climate to the myriad daily paperwork burdens of accounting, bookkeeping, and bill paying. The further burden of keeping up with, and complying with, Federal regulations can discourage even the most stalwart business men and women from striving to achieve their dream of entrepreneurship.

The Federal Government has a responsibility to protect worker health and safety, public health, and the environment. In that effort, agencies issue regulations, but experience shows that many of those regulations look good on paper, but don't work in the real world. This bill acknowledges that fact and demonstrates our determination to both confront and correct mistakes.

Federal agencies should be as sensitive as possible to the challenges faced by small businesses in America, and I expect this bill will help achieve that goal. Many of this bill's provisions were developed by small business owners from South Dakota and across the country during the White House Conference on Small Business last summer. No one knows more about the risks and pitfalls associated with owning a small business than businesspeople themselves. The White House conference gave them a forum in which to discuss how the regulatory process could be improved, and I am glad that Congress has taken to heart what they had to say on this subject.

One of the most frequent criticisms I hear from small business owners is that Federal agencies bring harsh enforcement actions against businesses for relatively insignificant and unintentional violations of Federal rules. This legislation responds to that concern by requiring agencies to develop policies to waive fines for first-time, nonserious violations.

The legislation also requires Federal agencies to publish easy-to-read guidance for small business to comply with Federal rules and creates a small business and agricultural ombudsman at the Small Business Administration to provide a means to comment on agency enforcement personnel and to develop a customer satisfaction rating of Federal agencies. It assists small businesses in recovering attorneys' fees if they have been subject to excessive and unsustainable enforcement actions, and subjects final agency actions under the Regulatory Flexibility Act to judicial review. Small businesses will now be able to hold the feet of Federal agencies to the fire and ensure that they comply with the letter and spirit of the Regulatory Flexibility Act

Finally, I am very pleased that the congressional veto legislation developed by Senators Reid and NICKLES and passed by the Senate last year has been added to the Small Business Regulatory Fairness Act. The REID/NICKLES provision establishes a process through which Congress can review major regulations before they are issued, thereby ensuring that the agencies developing these rules adhere to the intent of Congress and develop reasonable requirements for American business.

Mr. President, the Small Business Regulatory Fairness Act was written with advice from the small business community and will pass the Senate with strong bipartisan support. It reaffirms Congress' belief in the essential role that small business plays in the American economy and sends a clear signal that the public and private sectors are ready to work together in promoting the economic growth and expansion we will need to compete in the 21st century. I urge all my colleagues to support this important bill.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—100

Abraham	Feinstein	Mack
Akaka	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Glenn	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Pell
Brown	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Dole	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Levin	Wellstone
Exon	Lieberman	Wyden
Faircloth	Lott	
Feingold	Lugar	

The bill (S. 942) was passed, as follows:

S. 942

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

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''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 IV 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;

(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, 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 associations 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 requirements affecting small entities.

(c) LIMITATION ON JUDICIAL REVIEW.—An 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 the 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 AMENDMENTS 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 this 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) 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 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, onsite 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 attorney's 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 violation of law or otherwise acted in bad faith, or special circumstances make an award of attorney's 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, United States Code.''.

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 attorney's 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 attorney's 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, United States Code.''.

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 requirements, 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 on 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 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 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 rulemaking.

''(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 INTERAGENCY 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 fulltime 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 subsection 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 subsection (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.

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) GROUNDS 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(1) 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.

Mr. BOND. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. BOND. Mr. President, I would like to express my appreciation to my colleagues for the overwhelming endorsement of this small business regulatory relief measure. Particularly, I want to thank my ranking member, Senator BUMPERS. He and all the members of the committee worked very hard on this bill.

The purpose of the bill is to provide targeted relief to small businesses, small entities such as townships, counties, and cities, and not-for-profit organizations who feel overwhelmed by Government regulation.

This is a measure providing judicial enforcement and therefore, putting teeth into the requirements of the measure that Congress adopted in 1980 saying that regulations affecting small business and small entities must have an analysis to make sure that flexibility for these small entities was included and was a No. 3 priority for small business. At the White House Conference on Small Business held in Washington last year, 2,000 delegates from all across the country said this was the third most important item on their agenda.

We took that message from the small businesses, from small entities, from people who attended our hearings across the country and in Washington, and people who contacted us in our States, and we crafted a measure that had the strongest bipartisan support. Our staffs worked with a wide variety of groups. We had the full support of the President and the Administrator of the Small Business Administration. But lots of people had lots of concerns and lots of little issues that needed to be addressed in this bill. As a result, we made significant numbers of minor changes to make sure that the bill did what it accomplishes.

I believe that while the project is not perfect, it is an excellent measure. I hope we will see quick action on it in the House so that we may come to conference and agree, and send to the President something at least very close to this measure.

I wish to extend a very special thanks to the counsel for the minority, John Ball, to the director of the Small Business Committee, Louis Taylor, and to Keith Cole. Among them, they listened to many, many hours of telephone calls and concerns from people who had a little fix here and a little fix there. The end product, I think, reflected much good advice and some advice that could not be taken. But I express appreciation, first, to the members of the Small Business Committee themselves who worked hard on this, to all of their staffs, and to the representatives of small business who showed the strength and the resolve to keep us focused on this, a measure designed to provide regulatory relief to an area which has experienced tremendous burdens from Government regulations.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as if in morning business for 8 minutes.

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

THE VOID IN MORAL LEADERSHIP

Mr. GRASSLEY. Mr. President, last week, a new book hit the stands titled ''Blood Sport.'' It is written by Mr. James B. Stewart.

The book is an account of the Whitewater issue. Many of us have had trouble understanding the issue. Reading this book helps. It makes a complicated financial scandal read more like a story.

Mr. Stewart was given access to sources by the White House. In part, it was because he is ideologically compatible with the Clintons. Those are Mr. Stewart's bona fides for the book he writes about the President and the First Lady.

In his own words, Mr. Stewart paints the character of the first couple this way:

> [T]he Clintons themselves proved no different from their recent predecessors in the White House, deeply enmeshed in a Washington culture so accustomed to partisan distortion and ''spin'' that truth is the most frightening prospect of all.

Let me repeat that last phrase, Mr. President: ''* * * that truth is the most frightening prospect of all.''

Mr. Stewart's observation seems to substantiate those of columnist Charles Krauthammer. On January 12, Mr. Krauthammer's column appeared in the Washington Post under the title, ''Why Whitewater Now?'' In it, he calls Whitewater ''a scandal that appears to be all coverup and no crime.'' He then asks the logical question: Why would there be a coverup if there's no crime? He asks the question of both Whitewater and Travelgate.

Here is his conclusion: ''Because the vanity of the Clintons is not that they are merely law abiding * * * but that they are morally superior.''

In Whitewater, the Clintons certainly are vulnerable. In October 1991, bill Clinton said: ''Let's not forget that the most irresponsible people of all in the 1980s were * * * those who sold out our savings and loans with bogus deals.''

Meanwhile, we now find that Mrs. Clinton drafted the option papers for Castle Grande on behalf of Madison Guaranty Savings & Loan. Federal regulators have called Castle Grande a sham operation. Isn't it fair, then, to lump the Clintons into the same category of, using Clinton's words, ''the most irresponsible people of all in the 1980s?''

In Travelgate, the Clintons are once again vulnerable. Using Mr. Krauthammer's words, the ''morally superior'' Clintons, had an interest in covering up their nonillegal actions. After all, just how morally superior can one be when sacking seven innocent employees for a relative and a rich Hollywood crony, who, both, by the way, advised the action and stood to profit from it?

And finally, there's Cattlegate. During the 1992 campaign, the Clintons railed against Wall Street's high rollers. We later learn that the First Lady's luck had turned $1,000 into $100,000. Once again, the target of the Clintons' railing might well have included the Clintons themselves.

Mr. Krauthammer sums this all up in a phrase: ''Political duplicity.'' He says: ''[T]he offense is hypocrisy of a high order. Having posed as our moral betters, they had to cover up. At stake is their image * * *''

Mr. President, it is my view that there's a serious lack of moral leadership in the White House. By moral, I mean basic values such as honesty, trust, forthrightness. It is the quality most needed in the Presidency—in a President. The governed expect that their elected officials, their leaders, will be role models.

Franklin Roosevelt is a more credible source than I on this point. He once said: ''The Presidency is not merely an administrative office * * * It is more than an engineering job * * * It is preeminently a place of moral leadership.''

Clearly, FDR understood the importance of the First Family setting an exemplary standard for the governed.

I feel obliged to share these observations, Mr. President. Having long been a student of politics and history, I adopted a view held by another Roosevelt—Teddy Roosevelt. He commented on how important it is to criticize the President when warranted:

> [I]t is absolutely necessary that there should be full liberty to tell the truth about his acts * * * Any other attitude in an American citizen is both base and servile. To announce that there must be no criticism of the President * * * is not only unpatriotic and servile, but is morally treasonable to the American public * * * It is even more important to tell the truth, pleasant or unpleasant, about him than about any one else.

Mr. President, I feel the same obligation felt by Teddy Roosevelt—to tell the truth about the President. Pleasant or unpleasant. And the crucial issue is the same one proclaimed by Franklin Roosevelt—moral leadership.

In my view, there is a void in this White House of moral leadership. As we approach a new era, a new millenium, and a new world, this is not desirable. How can we be leaders of the free world without strong leadership at home?

I yield the floor.

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

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

A BOOK THAT BRINGS NEW UNDERSTANDING TO A TRAGIC ILLNESS

Mr. HOLLINGS. Mr. President, I would like to take a moment to talk about a book I recently read, and to recommend it to anyone who seeks to learn more about Alhzeimer's Disease. The book is called ''He Used To Be Somebody'' and it is a poignant, soul-searching account of one couple's struggle with the disease as told through the eyes of the wife and caregiver. The author is an extraordinary woman, Beverly Bigtree Murphy.

What made this story particularly moving for me is that I knew the man about whom the book is written. Tom Murphy was a good friend of mine. Even if you did not know Tom personally, however, you come to know him over the course of the book. And it is by watching the loss of his great spirit and personality little by little to this disease that the reader comes closer to understanding the reality of Alzheimer's.

The book is made up of episodes that illustrate the process by which Alzheimer's disease takes away a loved one. Through her personal anecdotes and history, Beverly Bigtree Murphy conveys a larger picture of what life with an Alzheimer's sufferer is like in a way that no clinical account can. She manages to incorporate in the book her whole ordeal, describing problems caused by lack of understanding from family and loved ones, discouragement from doctors, legal battles and the financial strain.

What other people would describe as a nightmare scenario—what is in fact a nightmare, the author accepts as real and shows how she has worked through it. In order to fight the fear, anger and sadness, she uses her strong resolve and her love for her husband.

There is a lot to be learned in this book about the effects of grief and the emotional toll of the disease. In addition to being a love story and a very personal account, ''He Used To Be Somebody'' also addresses the larger social issue of Alzheimer's disease. It seeks to disabuse the public of the misconceptions and distortions in the media and in society that stem from a fundamental lack of understanding. In this way, Beverly Bigtree Murphy acts as an advocate for Alzheimer patients and their families.

She asserts the power of positive thinking, and describes her realization that even in the face of a hopeless, unchangeable situation, people still have choices. They can choose how to respond. In ''He Used To Be Somebody,'' we see Beverly Murphy choose love over anger. Through her description of isolation, loneliness and feelings of being trapped, she achieves what she describes as: ''a mission to increase awareness of caregiver needs, and to work as an activist to improve the care of and attitudes towards the frail elderly in this country.''