cooperating in the counternarcotics efforts. Sanctions must be applied, we can no longer pay lipservice to the certification process.

And efforts must be stringent in the United States. Drug traffickers and drug-related violent criminals must serve their full sentence. Drug awareness programs must be accountable. Throwing money at the problem does not solve it.

All aspects of drug control strategy must be defined: ''public disapproval, information, law enforcement, interdiction, and treatment.'' While treatment is merely one component of the effort to combat the drug epidemic, it cannot be the sole solution. Alone, it will not work. One clear indication of the failure of treatment alone is the emergency room rate for cocaine and heroin-related cases, as studied by the Drug Abuse Warning Network. Heroin episodes in emergency rooms rose 66 percent in 1993. Evaluations should be conducted so that only effective programs will be maintained.

Ninety percent of the American public sees the drug problem as a top priority. It is time the administration does the same. This is our clear, undeniable message: If the administration refuses to be a leader on this issue, then we will. This report was our first step to put a tough drug strategy on the national agenda.●

CALIFORNIA YEAR OF THE ALUMNI

● Mrs. BOXER. Mr. President, on April 11, 1996, graduates of the California State University will gather in Washington, DC, to celebrate 1996 as ''California Year of the Alumni''. Today I wish to recognize the achievements and contributions of the more than 2.1 million alumni of that great institution.

The California State University is a vibrant, important part of California's public university system. Its graduates are an integral part of the many communities which comprise our great State. An estimated 10 percent of the workforce in the State of California are alumni of the California State University. Their contributions, both separate and collective, are evident in all aspects of life in my State.

CSU graduates are active in the arts, commerce, the professions, government, and elsewhere. Proud of an educational experience made possible by the foresight of Californians who came before them, CSU alumni are committed to maintaining first-rate educational institutions in California.

The alumni of the California State University promote and support campus environments where today the values of scholarship, citizenship, and self-development are shared and nurtured by more than 300,000 students and faculty on 21 campuses. Additionally, thousands of graduates volunteer their time, energy, and resources to myriad other causes, providing themselves daily as ambassadors and stewards of positive change.

It is my great pleasure to honor the alumni of the California State University on the floor of the U.S. Senate today as they celebrate the ''California Year of the Alumni.''●

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

● Mr. BOND. Mr. President, on March 19th by a vote of 100 to 0, the Senate passed S. 942, the Small Business Regulatory Enforcement Fairness Act, legislation to implement some of the most important recommendations of the White House Conference on Small Business. Yesterday, the House passed H.R. 3136, the Contract With America Advancement Act of 1996 which incorporates the Small Business Regulatory Enforcement Fairness Act as amended in the House by the Hyde amendment. The Senate has now approved H.R. 3136 by unanimous consent and Senator BUMPERS and I would like to take this opportunity to further explain the purpose of the act. On March 15, we gave a detailed explanation of the managers amendment adopted by the Senate prior to passage of S. 942. The amendment offered by Representative HYDE is substantially similar to S. 942 as passed by the Senate.

Three changes are worth noting. First, the amendments to the Equal Access to Justice Act were revised by the House to take into account some of the concerns raised by the administration in the Statement of Administration Position. The new language embodies the intent of our managers amendment but clarifies that attorneys fees would be awarded when there is an unreasonably large difference between an agency demand and the final outcome of the case. Second, the House dropped the second phase of the Small Business Advocacy Review Panels. Thus the panels now only apply at the proposal stage of EPA and OSHA rulemakings. Finally the time period for the congressional review of regulations, adopted as part of the Nickles-Reid amendment, was extended from 45 to 60 days. We expect the authors of the Nickles-Reid amendment will have a detailed explanation of the Congressional Review Subtitle.

In order to provide additional guidance for agencies to comply with the requirements of the Small Business Regulatory Enforcement Fairness Act, I ask to have printed in the RECORD a section-by-section analysis of the subtitles A through D of act as modified by the Hyde amendment. Since there will not be a conference report on the act, this statement and a companion statement in the House should serve as the best legislative history of the legislation as finally enacted.

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

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT—JOINT MANAGERS STATEMENT OF LEGISLATIVE HISTORY AND CONGRESSIONAL INTENT

I. SUMMARY OF THE LEGISLATION

The Hyde amendment to H.R. 3136 replaces Title III of the Contract with America Advancement Act of 1996 to incorporate a revised version of the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''). This legislation was originally passed by the Senate as S. 942. The Hyde amendment makes a number of changes to the Senate bill to better implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The amendment also provides for expedited procedures for Congress to review agency rules and to enact Resolutions of Disapproval voiding agency rules.

The goal of the legislation is to foster a more cooperative, less threatening regulatory environment among agencies, small businesses and other small entities. The legislation provides a framework to make federal regulators more accountable for their enforcement actions by providing small entities with an opportunity for redress of arbitrary enforcement actions. The centerpiece of the legislation is the RFA which requires a regulatory flexibility analysis of all rules that have a ''significant economic impact on a substantial number'' of small entities. Under the RFA, this term ''small entities'' includes small businesses, small non-profit organizations, and small governmental units.

II. SECTION-BY-SECTION ANALYSIS

Section 301

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

Section 302

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

Section 303

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

Subtitle A—Regulatory Compliance Simplification

Section 311

This section defines certain terms as used in the subtitle. The term ''small entity'' is currently defined in the RFA to include small business concerns, as defined by the Small Business Act, small nonprofit organizations and small governmental jurisdictions. The process of determining whether a given business qualifies as a small entity is straightforward, using thresholds established by the SBA for Standard Industrial Classification codes. The RFA also defines small organization and small governmental jurisdiction. Any definition established by an agency for purposes of implementing the RFA would also apply to this Act.

Section 312

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

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

Section 313

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

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

Section 314

The Act creates permissive authority for Small Business Development Centers (SBDC) to provide information to small entities regarding compliance with regulatory requirements. SBDC's would not become the single-point source of regulatory information, but would supplement agency efforts to make this information widely available. This section is not intended to grant an exclusive franchise to SBDC's for providing information on regulatory compliance.

There are small business information and technical assistance programs, both federal and state, in various forms in different states. Some of the manufacturing technology centers and other similar extension programs administered by the National Institute of Standards and Technology are providing environmental compliance assistance in addition to general technology assistance. The small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990 is also providing compliance assistance to small businesses. This section is designed to add to the currently available resources to small businesses.

Compliance assistance programs can save small businesses money, improve their environmental performance and increase their competitiveness. They can help small businesses learn about cost-saving pollution prevention programs and new environmental technologies. Most importantly, they can help small business owners avoid potentially costly regulatory citations and adjudications. Comments from small business representatives in a variety of fora support the need for expansion of technical assistance programs.

Section 315

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

Section 316

This section provides that the effective date for the subtitle is 90 days after the date of enactment. The requirement for agencies to publish compliance guides applies to final rules published after the effective date. Agencies have one year from the date of enactment to develop their programs for informal small entity guidance, but these programs should assist small entities with regulatory questions regardless of the date of publication of the regulation at issue.

Subtitle B—Regulatory Enforcement Reforms

Section 321

This section provides definitions for the terms as used in the subtitle.

Section 322

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

Concerns have arisen in the Inspector General community that those Ombudsmen might have new enforcement powers that would conflict with those currently held by the Inspector Generals. Nothing in the Act is intended to supersede or conflict with the provisions of the Inspector General Act of 1978, as amended, or to otherwise restrict or interfere with the activities of any Office of the Inspector General.

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

The Act 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.'' The SBA shall publicize the existence of the Ombudsman generally to the small business community and also work cooperatively with enforcement agencies to make small businesses aware of the program at the time of agency enforcement activity. The Ombudsman shall report annually to Congress based on substantiated comments received from small business concerns and the Boards, 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. The report to Congress shall in part be based on the findings and recommendation of the Boards as reported by the Ombudsman to affected agencies. While this language allows for comment on the enforcement activities of agency personnel in order to identify potential abuses of the regulatory process, it does not provide a mandate for the boards and the Ombudsman to create a public performance rating of individual agency employees.

The goal of this section is to reduce the instances of excessive and abusive enforcement actions. Those actions clearly originate in the acts of individual enforcement personnel. Sometimes the problem is with the policies of an agency, and the goal of this section is also to change the culture and policies of Federal regulatory agencies. At other times, the problem is not agency policy, but individuals who violate the agency's enforcement policy. To address this issue, the legislation includes a provision to allow the Ombudsman, where appropriate, to refer serious problems with individuals to the agency's Inspector General for proper action.

The intent of the Act 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. The purpose of the Ombudsman's reports is not to rate individual agency personnel, but to assess each program's or agency's performance as a whole. 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 Act also creates Regional Small Business Regulatory Fairness Boards at the SBA to coordinate with the Ombudsman and to provide small businesses a greater opportunity to track and comment on agency enforcement policies and practices. These boards provide an opportunity for representatives of small businesses to come together on a regional basis to assess the enforcement activities of the various federal regulatory agencies. The boards may meet to collect information about these activities, and report

and make recommendations to the Ombudsman about the impact of agency enforcement policies or practices on small businesses. The boards will consist of owners, operators or officers of small entities who are appointed by the Administrator of the Small Business Administration. Prior to appointing any board members, the Administrator must consult with the leadership of the Congressional Small Business Committees. There is nothing in the bill that would exempt the boards from the Federal Advisory Committee Act, which would apply according to its terms. The Boards may accept donations of services such as the use of a regional SBA office for conducting their meetings.

Section 323

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

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

In establishing their programs, it is up to each agency to develop the boundaries of their program and the specific circumstances for providing for a waiver or reduction of penalties, but once establish, an agency must implement its program in an evenhanded fashion. Agencies may distinguish among types of small entities and among classes of civil penalties. Some agencies have already established formal or informal policies or programs that would meet the requirements of this section. For example, the Environmental Protection Agency has adopted a small business enforcement policy that satisfies this section. While this legislation sets out a general requirement to establish penalty waiver and reduction programs, some agencies may be subject to other statutory requirements or limitations applicable to the agency or to a particular program. For example, this section is not intended to override, amend or affect provisions of the Occupational Health and Safety Act or the Mine Safety and Health Act that may impose specific limitations on the operation of penalty reduction or waiver programs.

Section 324

This section provides that the subtitle takes effect 90 days after the date of enactment.

Subtitle C—Equal Access to Justice Act Amendments

Sections 331 & 332

The Act amends the Equal Access to Justice Act to assist eligible small businesses in recovering their attorneys fees and expenses in certain instances when unreasonable agency demands for fines or civil penalties in enforcement actions are not sustained by the court or by an administrative law judge. While this is a significant change from current law, the legislation is not intended to result in the awarding of attorneys fees as a matter of course. Rather, the legislation is intended to assist in changing the culture among government regulators to increase the reasonableness and fairness of their enforcement practices. Past agency practice too often has been to treat small businesses like suspects. One goal of this bill is to encourage government regulatory agencies to treat small businesses as partners sharing in a common goal of informed regulatory compliance. Government enforcement attorneys often take the position that they must zealously advocate for their client, in this case a regulatory agency, to the maximum extent permitted by law, as if they were representing an individual or other private party. But in the new regulatory climate for small businesses under this legislation, government attorneys with the advantages and resources of the federal government behind them in dealing with small entities must adjust their actions accordingly and not routinely issue original penalties or other demands at the high end of the scale merely as a way of pressuring small entities to agree to quick settlements.

The Equal Access to Justice Act (EAJA) provides a means for prevailing parties to recover their attorneys fees in a wide variety of civil and administrative actions between eligible parties and the government. This bill amends the EAJA to create a new avenue for small entities to recover their attorneys fees where the government makes excessive demands in enforcing compliance with a statutory or regulatory requirement, either in an adversary adjudication or judicial review of the agency's enforcement action, or in a civil enforcement action. In these situations, the test for recovering attorneys fees is whether the agency or government demand that led to the administrative or civil action is substantially in excess of the final outcome of the case so as to be unreasonable when compared to the final outcome (whether a fine, injunctive relief or damages) under the facts and circumstances of the case.

The comparison called for in the Act is always between a ''demand'' by the government for injunctive and monetary relief taken as a whole and the final outcome of the case in terms of injunctive and monetary relief taken as a whole. As used in these amendments, the term ''demand'' means an express written demand that leads to an adversary adjudication or civil action. A written demand by the government for performance or payment qualifies under this section regardless of form, including an original fine, penalty notice, demand letter, citation or otherwise. In the case of an adversary adjudication, the demand would often be a statement of the ''Definitive Penalty Amount.'' In the case of a civil action brought by the United States, the demand could be in the form of a demand for settlement issued prior to commencement to the litigation. In a civil action to review the determination of an administrative proceeding, the demand could be the demand that led to such proceeding. However, the term ''demand'' should not be read to extend to a mere recitation of facts and law in a complaint. The bill's definition of the term ''demand'' expressly excludes a recitation of the maximum statutory penalty in the complaint or elsewhere when accompanied by an express demand for a lesser amount. This definition is not intended to suggest that a statement of the maximum statutory penalty somewhere other than the complaint, which is not accompanied by an express demand for a lesser amount, is per se a demand, but would depend on the circumstances.

This test should not be a simple mathematical comparison. The Committee intends for it to be applied in such a way that it identifies and corrects situations where the agency's demand is so far in excess of the true value of the case, as demonstrated by the final outcome, that it appears the agency's assessment or enforcement action did not represent a reasonable effort to match the penalty to the actual facts and circumstances of the case.

In addition, the bill excludes attorneys fee awards in connection with willful violations, bad faith actions and in special circumstances that would make such an award unjust. These additional factors are intended to provide a ''safety valve'' to ensure that the government is not unduly deterred from advancing its case in good faith. Special circumstances are intended to include both legal and factual considerations which may make it unjust to require the public to pay attorneys fees, even in situations where the ultimate award is significantly less than the amount demanded. Special circumstances could include instances where the party seeking fees engaged in a flagrant violation of the law, endangered the lives of others, or engaged in some other type of conduct that would make the award of the fees unjust. The actions covered by ''bad faith'' include the conduct of the party seeking fees both at the time of the underlying violation, and during the enforcement action. For example, if the party seeking fees attempted to elude government officials, cover up its conduct, or otherwise impede the Government's law enforcement activities, then attorney's fees should not be awarded.

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

Additional language is included in the Act to ensure that the legislation did not violate of the PAYGO requirements of the Budget Act. This language requires agencies to satisfy any award of attorneys fees or expenses arising from an agency enforcement action from their discretionary appropriated funds, but does not require that an agency seek or obtain an individual line item or earmarked appropriation for these amounts.

Section 333

The new provisions of the EAJA apply to civil actions and adversary adjudications commenced on or after the date 14 days after the date of enactment.

Subtitle D—Regulatory Flexibility Act Amendments

Section 341

The bill expands the coverage of the RFA to include IRS interpretive rules that provide for a ''collection of information'' from small entities. Many IRS rulemakings involve ''interpretative rules'' that IRS contends need not be promulgated pursuant to section 553 of the Administrative Procedures Act. However, these interpretative rules may have significant economic effects on small entities and should be covered by the RFA. The amendment applies to those IRS interpretative rulemakings that are published in the Federal Register for notice and comment and that will be codified in the Code of Federal Regulations. This limitation is intended

to exclude from the RFA other, less formal IRS publications such as revenue rulings, revenue procedures, announcements, publications or private letter rulings.

The requirement that IRS interpretative rules comply with the RFA is further limited to those involving a ''collection of information.'' The term ''collection of information'' is defined in the Act to include the obtaining, causing to be obtained, soliciting of facts or opinions by an agency through a variety of means that would include the use of written report forms, schedules, or reporting or other record keeping requirements. It would also include any requirements that require the disclosure to third parties of any information. The intent of this phrase ''collection of information'' in the context of the RFA is to include all IRS interpretive rules of general applicability that lead to or result in small entities making calculations, keeping records, filing reports or otherwise providing information to IRS or third parties.

While the term ''collection of information'' also is used in the Paperwork Reduction Act (Title 44 U.S.C. Section 3502(4)(''PRA''), the purpose of the term in the context of the RFA is different that the purpose of the term in the PRA. Thus, while some courts have interpreted the PRA to exempt from its requirements certain recordkeeping requirements that are explicitly required by statute, such an interpretation would be inappropriate in the context of the RFA. If a collection of information is explicitly required by the Code, the effect might be to limit the possible regulatory alternatives available to the IRS in the proposed rulemaking, but would not exempt the IRS from conducting a regulatory flexibility analysis.

Some IRS interpretative rules merely reiterate or restate the statutorily required tax liability. While a small entity's tax liability may be a burden, the RFA cannot act to supersede the statutorily required tax rate. However, most IRS interpretative rules involve some aspect of defining or establishing requirements for compliance with the Code, or otherwise require small entities to maintain records to comply with the Code, and would now be covered by the RFA. One of the primary purposes of the RFA is to reduce the compliance burdens on small entities whenever possible under the statute. To accomplish this purpose, the IRS should take an expansive approach in interpreting the phrase ''collection of information'' when considering whether to conduct a regulatory flexibility analysis.

The Act provides for judicial review of the RFA, and the courts generally are given broad discretion to formulate appropriate remedies under the facts and circumstances of each individual case. The rights of judicial review and remedial authority of the courts provided in the Act as to IRS interpretative rules should be applied in a manner consistent with the purposes of the Anti-Injunction Act (26 U.S.C. 7421), which may limit remedies available in particular circumstances. The RFA, as amended by the Act, permits the court to remand a rule to an Agency for further consideration of the rule's impact on small entities. The amendment also directs the court to consider the public interest in determining whether or not to delay enforcement of a rule against small entities pending agency compliance with the court's findings. In the context of IRS interpretative rulemakings, this language should be read to require the court to give appropriate deference to the legitimate public interest in the assessment and collection of taxes reflected by the Anti-Junction Act. The court should not exercise its discretion more broadly than necessary under the circumstances or in a way that might encourage excessive litigation.

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

Section 342

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

The amendment is not intended to encourage or allow spurious lawsuits which might hinder important governmental functions. The one-year limitation on seeking judicial review ensures that this legislation will not permit indefinite, retroactive application of judicial review. The bill does not subject all regulations issued since the enactment of the RFA to judicial review. After the effective date, if the court finds that a final agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court may set aside the rule or order the agency to take other corrective action. The court may also decide that the failure to comply with the RFA warrants remanding the rule to the agency or delaying the application of the rule to small entities pending completion of the court ordered corrective action. However, in some circumstances, the court may find that there is good cause to allow the rule to be enforced and to remain in effect pending the corrective action.

Section 343

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

Section 344

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

The agency promulgating the rule would consult with the SBA's Chief Counsel for Advocacy to identify individuals who are representative of affected small businesses. The Agency would designate a senior level official to be responsible for implementing this section and chairing an interagency review panel for the rule. 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. This 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 individuals' comments, which will become part of the rulemaking record. The review panel's report and related rulemaking information will be placed in the rulemaking record in a timely fashion so that others who are interested in the proposed rule may have an opportunity to review that information and submit their own responses for the record before the close of the agency's public comment period for the proposed rule. The legislation includes limits on the period during which the review panel conducts its review. It also creates a limited process allowing the Chief Counsel to waive certain requirements of the section after consultation with the Office of Information and Regulatory Affairs and small businesses.

Section 345

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

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

● Mr. BUMPERS. Mr. President, I want to associate myself with the remarks of the distinguished chairman of our committee and the principle author of S. 942. He and I, as well as our staffs, worked together on this bill in a true spirit of bipartisanship. The shortness of time between the markup of S. 942 and consideration on the floor did not permit the staff to prepare a full-blown report, as we usually do. Instead, we have offered this section-by-section analysis as a joint explanatory statement by the managers, even though there was not a formal conference on this bill. The House chose to amend S. 942 in several respects. The chairman and I were consulted about these changes, and we agree that they are helpful. It is our hope that anyone reading this statement will treat it exactly as they would a formal Senate committee report since it reflects the consensus views of many Senators on

both sides of the aisle who have participated in completion of S. 942, which is now title III, in H.R. 3136.●

THE SWISS BANKS, THE NAZIS, AND HOLOCAUST ASSETS

● Mr. D'AMATO. Mr. President, I rise today to discuss the issue that I spoke about yesterday, namely that of the return, by Swiss banks, of assets deposited by European Jews and others in the years preceding the Holocaust.

Today, I would like to discuss the revelations disclosed in newly discovered documents by my staff. These documents explain the connections of certain wartime Swiss bankers with Nazi Germany. The documents are disturbing to read, especially when one considers the history of the times and the horrors that took place because of the murderous actions of the Nazi regime with which these men dealt.

One such declassified document, dated August 2, 1945, from the American Embassy in London, from which made up the American Occupational project, ''Operation Safe Haven,'' details the membership of the board of directors of the I.G. Farben Co. I.G. Farben was, at the time, the largest chemical company in the world, and is known, quite infamously for the fact that one of its subsidiaries produced ''Zyklon B,'' the poison gas used in the gas chambers in the Nazi extermination camps in Europe. While voluminous, the document provides short biographies of the directors.

At this time, I would like to ask unanimous consent that a portion of this document be printed in the RECORD at the conclusion of my remarks.

It is in this document that several Swiss nationals are listed and some are listed as owners or directors of Swiss banks. Following are the names of the bankers:

August Germann: Described as the ''Director of the Bank Fuer Unternehmungen, Zurich.''

Carlo Mollwo: Described as ''A cover man for I.G. Farben formally holding 100 percent of the shares of the Swiss bank, Ed. Greutert & Cie. (Now H. Sturzenegger & Cie.).''

Hans Sturzenegger: Described as ''A Swiss and relative of Greutert, became Managing Director of the Swiss Bank, Ed. Greutert & Cie. * * * In 1942, Sturzenegger was listed as the unlimited partner of the bank and Industrie Bank A.G. of Zurich was listed as the limited partner.''

Theodor Wolfensperger: Described as the ''President of Industrie Bank, Zurich. Known as a member of the I.G. clique.''

Mr. President, I know that this is the stuff of history, but it serves to point out one vital factor in understanding how this controversy in Switzerland today, came about. Here we have Swiss owners, or directors of banks in Switzerland, which might well have been the place of deposit for funds of European Jews, and they are sitting on the board of I.G. Farben, clearly a notorious company, by any standard. These men, as you will see by the document, also headed companies which acted as fronts for the Nazis, and later perhaps helped get assets looted by the Nazis, out of Europe. My question is, if they would do all this for the Nazis, what would they do with the assets of Europe's Jews?

Mr. President, this is a disturbing question, and to one that I truly do not know the answer. Nevertheless, I fear the worst. Yet, when considering this question, it inevitably begs a further question. What role did the Swiss Government play in this regard?

To provide a possible answer to this question, I would like to introduce the now declassified report of Daniel J. Reagan, then Counselor of Legation for Economic Affairs at the U.S. legation in Bern, who wrote to the Secretary of State on October 4, 1945 concerning the lack of cooperation of the Swiss Government.

I would ask that the text of this report be inserted in the RECORD at this time.

Mr. President, this is a devastating indictment of the Swiss Government and it illustrates how the Swiss went out of their way to avoid cooperating with the Allies in breaking up the German war effort and its vast economic structure.

This is only the beginning of our inquiry. We are finding documents daily, and with each search, we find more evidence which, I hope will place us closer to the truth, namely the authoritative, accurate and final accounting of all assets that numerous Swiss banks continue to hold from this time period and to which the survivors and rightful heirs are entitled.

The report follows:

SECRET ATTACHMENT

Sponsor Agency: External Security Intelligence Coordinating Committee, Washington, D.C.

11. In Switzerland or Connected with the Swiss Business.

Fritz Fleiner—Member of the Board of I.G. Chemie.

Dr. Albert Gadow—I.G. Farbon's Swiss representative. Member of the Board of each chief figure in I.G.

Chemie, Basle. Brother-in-law of Hermann Schmitz.

August Gormann—Member of I.G. Chemie's Board of Directors, and Director of the Bank Fuer Unternehmungen, Zurich.

Paul Haefliger—(See IV. A.2.).

Anton Heinrich—(See IV. A.3.).

Ernst Huelsmann—(See IV. A.3.).

Felix Iselin—President of I.G. Chemie, Basle, replacing Hermann Schmitz in 1940. One of most important lawyers in eastern Switzerland, a colonel in the Swiss Army, and chief of its Intelligence Service. Also President of the Schweizerische Treuhand—Gesellschaft of Basle, the chartered accountant firm of the Swiss chemical concerns Ciba, Geigy, and Sandoz. A former colleague of Iselin's has stated that Iselin is a prominent representative of absolutely German interests, and that he goes to Berlin to take orders from Hermann Schmitz and then telephones them to New York from Basle, thus pretending to protect Swiss interests where he is really protecting the interests of I. G. Farben.

Gottfried Keller—Member of the Board of Directors of I.G. Chemie, Basle.

Carlo Mollwo—German by birth, married to a Swiss, Became a Swiss citizen. ''A cover man for I.G. Farben'' formerly, holding 100% of the shares of the Swiss bank, Ed. Greutert & Cie. (now H. Sturzenegger & Cie.). He was especially active for I.G. in the nitrogen cartel through Greutert & Cie. President of the Board of Administration of Societe Auxiliaire de Participations et de Depots S.A., and member of the Board of Directors of I.G. Chemie, Basle. Chief auditor for I.G. Chemie since 1929.

Karl Pfoiffer—(See IV. A.1.).

Hormann Schmitz—(See IV. A.2.) Resigned as President of I.G. Chemie in 1940 and was replaced by Felix Isolin.

Hans Sturzeneggor—A Swiss and relative of Groutort, became Managing Director of the Swiss bank, Ed. Greutert & Cio., upon the death of Greutort in 1939, and the name of the bank was changed to H. Sturzeneggor & Cio. He had been trained in the Frankfurt offices of Metallgesellschaft and in the Finance Dept. of I.G. In 1942 Sturzenogger was listed as the unlimited partner of the bank and Industrie Bank A.G. of Zurich was listed as the limited partner. He is a member of the Board of I.G. Chemie

Theordor Wolfensperger—President of Industrie Bank, Zurich, Switzerland. Known as a member of the I.G. clique. He has been used as a nominee for I.G. in other dummy holding companies, as for instance Mapro, an I.G. camouflaged holding company in the Dutch East Indies.

12. TURKEY

Widmann—Manger of Bayor; Turkey. His private funds and personal possessions insured for LT 85,000 are held by Dr. Feridun Frik, Istanbul, at the house of Salahettin Ozgen, Eskisohir.

13. LATIN AMERICAN

Johann Carl Ahrons—Nominal partner in A. Quimica.

Bayor Lda., Brazil, Probably a front for I.G. Farben.

Ernst Holmut Andreas—German radio engineer who operated a radio station, ''Radio Bayer'' in Managua, Nicaragua, from 1929 to 1940. It advertised Bayer products and in the later years its programs included Nazi propaganda. (In 1940 the station was sold to Joso Mondoza.) He was deported to the U.S. in 1942 and in 1945 was a soldier in the U.S. Army. Believed to be a Nazi and to have operated a secret transmission set in Managua.

BERN, *October 4, 1945*.

Subject: Transmission of statement from Swiss purporting to give an indication of results of census of German assets.

[Via air mail pouch—USA War Crimes Office, Oct. 26, 1945—Secret]

The HONORABLE
The SECRETARY OF STATE,
Washington.

SIR: I have the honor to refer to the Legation's telegram No. 4211 (Repeated to London as 1407 and to Paris as 692), September 25, 1945, wherein it was reported that despite repeated and joint efforts of the British, French and ourselves during the past six months to induce the Swiss to implement effectively the agreement of March 8, it now appears that the Swiss are failing to meet in certain respects their engagements under that agreement, indulging in procrastinating tactics and also undermining economic warfare measures. As evidence of this statement there is transmitted, in the original and in translation, a memorandum presented to the