United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol. 142 WASHINGTON, FRIDAY, MARCH 15, 1996 No. 36

House of Representatives

The House was not in session today. Its next meeting will be held on Monday, March 18, 1996, at 2 p.m.

Senate

FRIDAY, MARCH 15, 1996

The Senate met at 9:45 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

On Sunday, we will celebrate St. Patrick's Day, and, so, I feel today it is appropriate to give the Gaelic Blessing and then the prayer St. Patrick used each morning.

May the road rise up to meet you,
May the wind be always at your back
May the sun lie warm upon Your face,
The rain fall softly on your fields,
And until we meet again
May the Lord hold you
In the hollow of His hand.

Gracious Lord, we remember the words with which St. Patrick began his days. ''I arise today, through God's might to uphold me, God's wisdom to guide me, God's eye to look before me, God's ear to hear me, God's hand to guard me, God's way to lie before me and God's shield to protect me.'' In Your holy name, Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Wyoming is recognized.

SCHEDULE

Mr. THOMAS. Mr. President, for the information of my colleagues this morning, there will be a period for morning business until the hour of 10 o'clock. Following morning business, the Senate will begin consideration of S. 942, the small business regulatory relief bill, under the consent agreement reached yesterday. When the Senate concludes the debate on the small business bill, it will resume consideration of the continuing resolution. Senators should be reminded that any votes ordered on the small business regulatory relief bill or the continuing resolution will occur during Tuesday's session of the Senate. No rollcall votes will occur today or on Monday. However, Senators should be prepared to debate their amendments on these days in order to complete action on the continuing resolution appropriations bill on Tuesday, as is required under the consent agreement.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Minnesota.

THE NATIONAL DOMESTIC VIOLENCE HOTLINE

Mr. WELLSTONE. Mr. President, I thank my colleague for his graciousness in allowing me some time to announce the realization of another component of our initiative to prevent violence against women: the national domestic violence hotline. The hotline, which officially opened on February 24, signifies the realization of the key provision of the Violence Against Women Act passed by the Congress as part of the 1994 crime bill.

I urge my colleagues, as we go into appropriations, to continue to fully fund this. The toll-free number is 1–800–799–SAFE. This will provide immediate crisis assistance counseling and local shelter referrals to women across the country 24 hours a day. And for women that are watching right now on C–SPAN, again, I want to repeat this number: 1–800–799–SAFE. There is also a TDD number for the hearing impaired: 1–800–787–3224.

The hotline will help to ensure that any person suffering due to violence in their home will have immediate access to information and emergency assistance whenever they need it. This is an important part of our initiative to end the family violence that has such devastating consequences for women, children, and families in Minnesota and throughout the country.

Roughly 1 million women are victims of domestic violence each year, and battering may be the single most common cause of injury to women—more common than auto accidents, muggings, or rapes by a stranger.

According to the FBI, one out of every two women in America will be beaten at least once in the course of an intimate relationship—one out of every two women in America. The FBI also speculates that battering is the most underreported crime in the country.

It is estimated that the new hotline will receive close to 10,000 calls a day. And for all women that are watching, again, the number is 1–800–799–SAFE,

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper containing 100% post consumer waste

and the TDD number for the hearing impaired is 1–800–787–3224.

Mr. President, my wife, Sheila, speaks about domestic violence all around Minnesota. Sheila was speaking in southern Minnesota 2 days before the hotline opened. She spoke with a woman who had been living in New York with her abusive husband and 5-month-old child. Her husband had moved to New York following their marriage, and he kept his wife and child very isolated there. The husband was very controlling and made it impossible for his wife to socialize, make friends, or have a job. He checked on her all the time to make sure that she was at home with their baby. In addition to beating her routinely and savagely, he took out a life insurance policy on her. So she lived in constant fear of being killed.

This woman told Sheila that every time she opened the apartment door, she was sure someone would be on the other side with a shotgun. Her husband at one time had been out of town on a business deal. He left in the afternoon and planned on returning the following morning. After he left, she decided that it was her only chance to get away. Panicked and pressed for time, she called a local hotline number but found it was disconnected. She was devastated. She called the legal aid society in New York City and was initially told that they could not help her.

Out of sheer desperation, Mr. President, she persisted with legal aid and was finally given a local agency phone number. Calling the local agency, the woman informed them that she wanted to return home to Minnesota. They were able to access a computer and put her in touch with a battered women shelter in her hometown. She and her baby were on a plane the next morning before her husband got home.

Mr. President, this woman was lucky. She was able to find the information she needed. But how much better it would have been if the hotline had been up and running to give her the information immediately. Unfortunately, some women might not have the whole day to track down information.

I think this shows how crucial the national network like the hotline will be for keeping women and children safe—even, literally, saving their lives. When a woman calls the hotline, her call will be answered by a counselor who can provide crisis assistance and who can also access a nationwide data base and provide the caller with up-to-date information about shelters and other services in her community. If the caller wishes, the hotline counselor can even transfer her call to a local counselor.

Because the hotline is toll-free, women can call in complete privacy, never having to fear a long-distance number will appear on their telephone bill and, therefore, alert an abusive partner. Help is also available in Spanish and other languages.

I hope that the new national domestic violence hotline will help women and families find the support, the assistance, and the services they need to get out of homes where there is violence and abuse.

In addition to establishing networks between counselors, shelter workers, law enforcement officers, and service providers, the hotline will help make sure that anyone who is not safe in their home has access to their services.

Mr. President, once again, the toll free number from the floor of the U.S. Senate is 1–800–799–SAFE, and for those that are hearing impaired, the number is 1–800–787–3224.

What I wish to do with the indulgence of my colleagues is for the next several weeks come to the floor of the Senate at least once a day when I can find the time—and I will find the time because this is a priority—to read this number. It is important that as many women and as many children and as many families as possible understand this new initiative. It is very important to making sure that women and children have the protection they needed.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Rhode Island.

Mr. CHAFEE. I ask unanimous consent I may proceed for 10 minutes as in morning business.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

SUPERFUND REFORM

Mr. CHAFEE. Mr. President, for the past several years, we have been trying to pass legislation to fix the Superfund toxic waste cleanup program. Superfund is a program with a tortured history and certainly an uneven record of success that can only be described as truly uneven. We have accomplished some good things since the law was passed in 1980, but those accomplishments under Superfund have come at a tremendous cost.

Almost everyone agrees—and I will say, Mr. President, I do not think anyone disagrees—that Congress should enact a Superfund reform bill as soon as possible. Even President Clinton said recently that ''we have to repair the Superfund toxic waste cleanup program.''

I agree with the President about the need to fix Superfund. Unfortunately, in the speech that the President delivered last Monday, March 11, in New Jersey, he went on to attack the Superfund reauthorization process now underway in Congress. Using the old worn out rhetoric about ''making polluters pay,'' the President mischaracterized the proposals on which we are now working.

I believe it is just plain wrong to imply that the Superfund liability reform proposals we are considering would shift costs from the polluters to the taxpayers. That is the theme that is being sounded. The pending proposals we are considering in the Environment and Public Works Committee would do no such thing. What we seek to do in the committee is to use money that comes from the three Superfund taxes which are levied on the chemical industry, the oil industry, and manufacturing corporations, and use the money, which does not come from the ordinary taxpayer; it comes through those three entities: chemical industry, oil industry, and manufacturing corporations, for the cleanup. This is the money that is collected for cleanup. It is paid into a Superfund trust fund for the suspected polluting class.

That is the source of revenues to fund liability reform. No one is trying to shift the cost of cleanup to our constituents. Unless one is already paying any of the three Superfund taxes, there is no need to worry about being made to pay for Superfund. There is no talk about letting polluters off the hook and making taxpayers pay. The President's advisers know this so why do they continue to misinform him about our plans? The President's invocation of the tired old ''polluter pays'' rhetoric does not help us get the job done. Maybe some focus group somewhere has told the President's advisers that this is a winning issue for the administration, but the rhetoric does nothing to advance the Superfund policy debate.

Under Superfund, anyone can be tarred with the polluter stigma. If you disposed of something—think of this—legally and in accordance with the best practices of the day in the 1970's or the 1960's or the 1950's or even earlier, you can still be held liable under the Superfund law and be called a polluter. You can be held liable for a law that passed way after the so-called pollution was done.

On Monday, the President suggested that Congress should ''help small business and communities trapped in the liability net.'' In other words, the President said help those communities that dispose of these polluting substances before the enactment of Superfund. Let them off the hook. I agree with the President, but how can he ask us to let one or two groups of polluters off the hook and then complain that we are doing something wrong when we try to help others who may be trapped in the same liability net? I suppose the logic is that if you are small and a public entity—a public entity being a county or a town or city or municipality—and you are liable under Superfund, somehow that is not pollution. If you let that person off but you are something else, presumably if you are a larger business and you are a polluter, you cannot let that person off. This, it seems to me, is Superfund logic at its worst. It may be good politics, but it is irresponsible in the middle of a serious policy debate.

The timing of the President's remarks was also disappointing. We are

in the middle, as I say, of a serious policy debate about Superfund in the community. In 1993 and 1994, the Democratic administration with a Democratic House and a Democratic Senate had 2 years to put together and move its own Superfund bill. They came forward with a bill, and that excused or limited the liability of big and small polluters in a number of ways. Whatever the merits of the bill, Mr. President—and I voted for it in committee—it failed to pass either branch of the then Democratically controlled House and Democratically controlled Senate. Therefore, you had at that time a Democratic President, a Democratic House, and a Democratic Senate and they could not make reforms in Superfund, showing how difficult this problem is.

Now, in our committee, Senator SMITH has taken the lead and put forward a bill some 8 months after we took over the Congress, that is, the Republicans. Since introduction of that legislation in the subcommittee, Senator SMITH and others have met with the administration for countless hours to explain the bill, to make technical changes, and to clarify its intent where needed. We are in the middle of bipartisan negotiations. We are striving to understand the administration's concern with the bill and to accommodate it wherever possible. We are waiting for more information from the administration on cost concerns the administration has raised and the impact of these changes, how they affect the agency, for example, and its resources.

In short, the administration has a serious forum in the Environment and Public Works Committee where we are meeting every day to exchange views on Superfund. This is why I find it curious and disappointing that the administration would choose this particular time to launch a factually inaccurate and politically contrived attack on the negotiation process and product.

I have counseled colleagues on both sides of the aisle in the committee that I am fortunate enough to chair that we must have a bipartisan approach if we are going to solve these complex environmental problems. I believe Superfund could be a model for how we can reach agreement on a sensitive problem in this year, a difficult year because of the political implications of the Presidential campaign. I believe Superfund could be a model for how we reach agreement on these difficult matters. I fail to understand how the President's advisers on environmental issues, who surely understand that Superfund proposals cannot be reduced to simple solutions and slogans such as ''polluters must pay,'' can engage with us in serious negotiations while on the other hand they seek partisan advantage based on distortions.

Mr. President, it is time for the administration to choose. Does it want Superfund this year or is it willing to miss this chance and permit Superfund to continue to exact its hideous toll on our economy? If we are going to fix Superfund, the administration must tone down its rhetoric and work with us to fix this badly broken program.

I thank the Chair and yield the floor.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I ask unanimous consent to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The Senator may proceed.

Mr. THOMAS. I thank the Chair. I will be brief so the Senate can move on.

TAIWAN RESOLUTION

Mr. THOMAS. Mr. President, I wish to indicate how disappointed I was last evening that we were unable to take up the resolution on Taiwan and the Taiwan Straits. We had prepared a sense-of-the-Congress resolution early in the week, had distributed it and talked to many. It was agreed to by the administration. It was also sponsored by the chairman of the Foreign Relations Committee and the ranking member. In any event, the upshot was that its introduction was objected to on the minority side, I think largely by the staff, and therefore we did not do it. We do intend, however, to come back and do that next week.

Mr. President, as all of my colleagues know, over the last 8 months the People's Republic of China has held an increasing number of missile tests and military exercises.

Last year, starting in July, there were 21 to 26 missile tests; in July and August, troop movements in provinces bordering Taiwan. The purpose of these tests has obviously been to intimidate the Taiwanese. They have been accompanied by denunciations of President Li. They have been timed to coincide, of course, with the election that takes place there.

Now, unfortunately, the People's Republic of China has escalated the situation with these new tests, tests that are the closest ever to the main island and purposely, of course, timed to affect the election which will take place later this month. They have also been close to Taiwan's two ports, and that has been very worrisome. These are reckless, I think, and greatly disturbing to most people in this country.

We have a strong interest in the peaceful settlement of the Taiwan question. That interest of ours is central to the three communiques and the People's Republic of China joint communiques that we have entered into over the years, as well as the Taiwan Relations Act, which is to provide stability in that part of the world and which provides for a one-China policy and which provides for a peaceful movement toward that one-China policy.

I firmly believe we need to reexamine our relationship with China. I think we have to narrow the number of issues in which we become involved and not seek to run their country. But when we do have agreements, then we have to make sure that they are adhered to by both the Chinese and ourselves. Our relationship currently is filled with items that have not been consistent with these agreements—the intellectual property agreements, the nuclear proliferation in Pakistan and Iraq.

So, Mr. President, it is necessary that we do state our position; that we do insist on a peaceful direction and resolution of this issue; that we do clarify our one-China policy; that we do congratulate the Taiwanese in their movement toward democracy and open markets and urge that same open market approach take place in China.

So I commend the Taiwanese, their government, for reacting calmly to these provocations. They, I think, have shown considerable restraint, and I congratulate them on their long march toward democracy. I hope that continues during the election next week.

I yield the floor.

NATIONAL GOVERNORS' ASSOCIATION WELFARE AND MEDICAID PROPOSALS

Mr. ROTH. Mr. President, 3 months ago President Clinton vetoed the Balanced Budget Act of 1995. The failure to balance the Federal budget continues to hang like a dark cloud over American families and businesses. The heavy yoke of Federal budget deficits still threaten to choke off economic growth and future prosperity. Moreover, by vetoing this legislation, the President also preserved a welfare system which traps millions of children into a cycle of dependency.

A few weeks after the balanced budget veto, President Clinton stopped welfare reform again by vetoing H.R. 4, the Personal Responsibility and Work Opportunity Act of 1995. However, the President also pledged that, ''I am nevertheless determined to keep working with the Congress to enact real, bipartisan welfare reform.''

Mr. President, 1 month ago the men and women who serve as the chief executives of our 50 States presented the President, the Congress, and the American people with bold new proposals to restructure Medicaid and reform the welfare system. Gathering from across the country, the Governors set aside their own differences and found the common ground and bipartisan consensus which have been missing in Washington. The Governors have presented us with a fresh opportunity to bridge the differences which divide the Congress and the President.

The Committee on Finance has recently completed a series of hearings on the National Governors' Association proposals. On February 22, six Governors, four Democrats and two Republicans, urged the Congress to quickly pass both welfare and Medicaid reforms. We heard from Governors Carper, Chiles, Engler, Miller of Nevada,

Romer, and Thompson—who along with Gov. Mike Leavitt of Utah—created the welfare and Medicaid proposals at a time when few believed such a task would be possible.

It would have been easy for these Governors to allow politics and individual interests to divide them. Instead, they put their reputations on the line when it would have been safe to simply leave the task for someone else. This was an effort that was built on a genuine search for common ground and bipartisanship.

Indeed, the proposals were adopted unanimously with the support of the most conservative and most liberal Governors and everybody in between.

The Finance Committee heard additional testimony from the Secretary of Health and Human Services and two panels of experts on the Governors' proposals. Let me briefly summarize and highlight some of the most important provisions of the NGA proposal.

In welfare reform, the Governors agreed to build upon H.R. 4 which President Clinton vetoed, but they have responded favorably to many of the President's requests. The President called for additional child care funds. The Governors ask for $4 billion more in child care funds. The President insists he supports time limits on welfare benefits and the Governors agree.

The President called for protecting States in the event of an economic downturn, so the Governors propose another $1 billion for the contingency fund.

The President objected to certain Federal mandates and the Governors agree. The President and the Governors also agree on the concept of performance bonuses to reward States for moving families from welfare to work.

In ''Restructuring Medicaid,'' the Governors responded to many of the President's concerns outlined in his veto of the Balanced Budget Act. Perhaps most important, States would guarantee Medicaid coverage to nearly every current Medicaid recipient. The current mandatory services would all be guaranteed. The Governors increased funding for persons with disabilities. The Governors agreed to continue current nursing home laws and regulations.

These are all significant compromises for the Governors to make. These changes demonstrate that the Governors are firmly committed to this bipartisan effort.

In a speech to the National Conference of State Legislatures last July, President Clinton expressed doubts about whether block grants for Medicaid and food stamps would keep pace with changing economic conditions. Once again, the Governors responded to the President's concerns. Governor Romer has described the NGA Medicaid proposal as a ''true combination of a per capita cap and a block grant.'' Under the Governors' proposal, each State would receive a base allocation of funds. In addition, there would be a supplemental insurance umbrella to provide funding for unanticipated growth in the program.

In light of all of these changes, one might objectively expect an enthusiastic endorsement of the NGA proposals from the administration. The proposals moved significantly to the President's positions. They were constructed with the help of Democratic Governors, some who served with President Clinton in the National Governors' Association when he was a Governor.

To be candid, the administration's response to the Governors' proposal has been profoundly disappointing. Even with all of the modifications offered in the Governors' proposals, Secretary Shalala testified the administration opposes the NGA proposal in its present form. It is apparent that while the administration talks about comprehensive reform, it, in fact, prefers the status quo.

At this year's State of the Union Address, President Clinton told the Congress and the American people that, ''the era of big government is over.'' I guess the folks at HHS did not get the message.

In describing the current welfare system, the Governors and the administration would seem to be talking about two different worlds. The current welfare system is a masterpiece of mediocrity at best. But time and again, the administration talks about protecting children as if the current system were good for children. In contrast, the Governors have told Congress that the current welfare policies ''punish parents who work too much, they punish mothers and fathers that want to stay together, they punish working families who save money, and they reward teenagers who have babies out of wedlock.'' This is not a legacy to leave for our children.

The family is the cell of society and Washington has proven it does not know how to build strong families, only bureaucracies. And now the bureaucracy threatens to stop bipartisan welfare reform.

The Governors are looking forward while the Federal bureaucracy clings to the past. While the administration talks about a commitment to the present system, Governor Thompson talks about being trapped in a failed system. The bureaucracy would have us believe that States are poised to callously reduce health care coverage for the poor. In contrast, Governor Thompson believes he would be able to expand health coverage to an additional 30,000 children who are not covered today if reforms are made. He would add hospital coverage for 32,000 indigent adults.

While the Governors tell us that immediate action is necessary, the administration wants to appoint a commission to study the current Medicaid formula.

While Democratic and Republican Governors alike sharply criticize the current waiver process and the heavy hand of the Health Care Financing Administration, Secretary Shalala defends keeping the power in the hands of the Federal bureaucracy. The very idea that the Federal Government must protect children and the elderly from the Governors and State legislatures is not only wrong. It is insulting.

President Clinton had it exactly right when he told the National Conference of State Legislatures last July that ''we couldn't have done all this without a strong commitment to changing the way the government does the people's business here in Washington, because the old federal ways and the old federal bureaucracy were not going to permit the kind of changes we have to make to get to the 21st century.''

How prophetic and how ironic. The old Federal ways and the old Federal bureaucracy are alive and well and are now standing in the way of authentic welfare reform. How predictable but disappointing.

Well, Mr. President, the Chief Executive cannot escape the blame for this result.

President Clinton went on to say that, ''reinventing government means reinventing the way the Federal Government does business with you as well. We have worked very hard to forge a genuine partnership between the States and the National Government.''

Mr. President, at the current rate of spending, the welfare system is driving both partners into bankruptcy. Who then will be left to serve the needy?

Over the next 7 years, the Federal, State, and local governments will spend more than $2.4 trillion on the current welfare and Medicaid programs. That is equal to all State and local government expenditures between 1992 and 1994. In 1994, for $2.4 trillion, you could have purchased:

Every farm, including the value of all land and buildings in the United States;

All livestock;

Every new house sold in the United States;

All household equipment sold in the United States, including all furniture, every television, all dishes, every kitchen appliance, and home computer;

Every piece of clothing and all shoes sold;

All nonresidential buildings, that is, every office building, hospital, and school purchased in 1994.

All nonresidential information processing equipment including all office computers and photocopying equipment.

These are some of the things you could have bought in 1994 and there would still have been enough money to fund the entire Medicaid Program in 1994. It is simply outrageous for the administration to scare the American people about slowing the rate of growth in these programs.

We need to talk about what happens if we do nothing. The plain fact remains that if we do nothing to the current welfare system, more children will

be on welfare in the coming years. It is time the administration stopped hiding behind children.

the NGA proposals have sparked an important debate not only about the future of these programs, but the future of the relationship between the States and the Federal Government as well. Despite Secretary Shalala's opposition to every fundamental change to the current welfare system, we should move forward on the Governors' welfare and Medicaid proposals. It is time to dispell the false choices conjured up by the bureaucracy and give the States the opportunity to change the future.

Mr. President, 37 months ago, President Clinton promised the Nation's Governors that he would work with them to ''remove the incentive for staying in poverty.'' He told the Governors that ''many people stay on welfare not because of the checks * * * they do it solely because they do not want to put their children at risk of losing health care or because they do not have the money to pay for child care * * *.''

As President Clinton has indicated, Medicaid must be part of the solution for returning families to work. Separating Medicaid from the rest of the welfare reform package simply will not work. Medicaid reform is welfare reform. If the President genuinely wants bipartisan welfare reform, his administration cannot pitch the NGA proposal out as just so much straw.

At that NGA meeting 3 years ago, President Clinton also told the Governors that the American people ''don't want our process divided by partisanship or dominated by special interest, or driven by short-term advantage.''

Mr. President, the Governors have given us the opportunity to meet this expectation. it is my hope that the President will join with us and embrace this opportunity.

If the administration rejects this last best chance for bipartisanship in the next few weeks and welfare reform fails for a third time, the American people should clearly understand that Governors they elected were defeated by the Federal bureaucracy and the special interests it serves. The American people should then judge the administration not by its words but by its deeds.

THE RUSSIAN POULTRY DISPUTE

Mr. ROTH. Mr. President, I want to say a few words about recent developments in the United States-Russian trade relationship. In February, Russian Prime Minister Chernomyrdin announced a ban effective tomorrow—March 16—against imports of American-produced poultry to protect Russian farmers. This proposed ban is of great concern to American agriculture and, if imposed, would be a terrible blow to the American poultry industry.

Our poultry sales to Russia have been one of our great exporting success stories. In 5 short years, Russia has become the largest foreign market for United States-produced chicken and turkey—worth over $500 million a year The tremendous growth in popularity of American poultry with Russian consumers is due, in no small part, to its recognized quality and reasonable price.

On March first, I sent a letter and spoke to our trade representative, Mickey Kantor, expressing my concerns over the proposed Russian ban and Moscow's increasing protectionism against foreign imports. I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, March 1, 1996.

Hon. MICHAEL KANTOR,
U.S. Trade Representative, Washington, DC.

DEAR MR. AMBASSADOR: I am writing in reference to our two conversations on the Russian Government's recent ban on imports of United States-produced poultry. Apparently, this ban is part of a broader projectionist plan by the Russian Government to block agricultural imports into Russia. As I told you, these actions will severely hurt the U.S. poultry and agribusiness industries.

If the Russian Government does not act swiftly to end the ban on poultry imports, I strongly urge the Administration to take forceful retaliatory measures. Immediate action should include: Trade retaliation under Section 301 against imports of Russian products—in particular on imports of aluminum and other ferrous and non-ferrous metals.

An across-the-board freeze on Export-Import Bank loans and credits to Russia, including the recently approved $1 billion assistance package for the Russian aircraft industry.

Suspension of U.S. assistance programs to Russia, including those from the U.S. Department of Agriculture and the United States Agency for International Development, which focus on assisting the global competitiveness of the Russian economy.

Should these measures not result in a satisfactory response from Moscow, the Administration should also reconsider its support for the International Monetary fund's recently concluded $10 billion economic-assistance package for Russia.

Let me reiterate that I am particularly shocked by these protectionist actions by the Russian Government, given the generous assistance the U.S. has provided in helping Russia to enter the global economy.

I greatly appreciate your support on this issue, which is of utmost importance to the U.S. poultry and agribusiness industries.

Sincerely,

WILLIAM V. ROTH, Jr.

Mr. ROTH. Shortly after I sent that letter, Russian Prime Minister Chernomyrdin told Vice President GORE that the ban was off and that American poultry exports to Russia could continue uninterrupted. Based on press reports, I understand Russia's chief veterinarian still threatens to block imports of United States poultry.

Mr. President, due to these conflicting signals from Moscow, it is unclear what action the Russian Government will take. I hope that Prime Minister Chernomyrdin is good on his word. We will have to see what the Russians do after tomorrow.

However, if the ban is imposed, I strongly urge the administration to take the forceful and immediate responses I outlined in my letter to Ambassador Kantor—including retaliation against Russian imports into the United States, a freeze on Export-Import Bank loans and credits, and suspension of American foreign assistance programs to Russia.

If these measures should prove to be insufficient, then I would urge the administration to reconsider United States support for a $10 billion assistance package the International Monetary Fund has promised Russia.

Mr. President, if we do not send a strong message to the Russians, it will only encourage them to take further protectionist measures that will only hurt United States exporters, Russian consumers, and Russia's economic development as a full partner in the world economy.

Russia's apparent swing to protectionism is particularly disturbing given the high level of American aid to Russia. Since the end of the cold war, the United States has given over $1.5 billion in foreign assistance to Russia, not including several billion dollars we have provided to promote Russian trade. In light of U.S. generosity, Moscow's protectionist bent against American products is simply astonishing.

I trust that the Russian Prime Minister's word will be good, the poultry ban will not go into effect, and that Russia's commitment to free trade will not weaken, but will grow stronger.

JOHN P. CAPELLUPO

Mr. BOND. Mr. President, I rise at this time to recognize a fellow citizen for the achievements and contributions he has made to this Nation and industry in which he has worked for three decades.

John P. Capellupo, president of McDonnell Douglas Aerospace, will step down from his position and retire from this leading U.S. producer of military aircraft on March 31.

As a member of the Senate Appropriations Committee Subcommittee on Defense, I am intimately aware of the contributions that John Capellupo has made to aerospace and the national security of the United States.

Mr. Capellupo, or Cap as he is widely known, began his aerospace career in 1957 working as a technical analyst on the F–101B aircraft and super Talos missile programs at what was then the McDonnell Aircraft Co. in St. Louis. He rose steadily through the engineering ranks, into program management, and ultimately, to the company's highest leadership positions. In February 1989, he was named president of McDonnell Douglas Missile Systems Co. In January 1990, he left St. Louis for Long Beach, CA, to become deputy president of Douglas Aircraft, the company's commercial and military transport division. In May 1991, he returned to St. Louis as president of what is now McDonnell Douglas Aerospace.

Throughout his distinguished career, Mr. Capellupo served as a driving force

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

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

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

RECOGNITION OF THE REPUBLIC OF CHINA PRESIDENTIAL ELECTION

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

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

Now in 1996, Taiwan is indeed a success story with a strong, growing economy and open democratic elections. Over the last 8 years, the People of the Republic of China have participated in the free election of the National Assembly, three elections of the Legislative Yuan, the election of the Governor of Taipei Province, and mayoral elections in Taipei and Kaohsiung.

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

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

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

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

MEASURE PLACED ON THE CALENDAR—S. 161

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

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

The legislative clerk read as follows:

A bill (S. 161) to provide uniform standards for the award of punitive damages for volunteer services.

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

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

CONCLUSION OF MORNING BUSINESS

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

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

SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1995

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

The clerk will report.

The legislative clerk read as follows:

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

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

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

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

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

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

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

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

SEC. 3. PURPOSES.

The purposes of this Act are—

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

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

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

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

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

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

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

SEC. 4. EFFECTIVE DATE.

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

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

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

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

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

SEC. 102. COMPLIANCE GUIDES.

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

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

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

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

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

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

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

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

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

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

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

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

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

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

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.

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

TITLE II—REGULATORY ENFORCEMENT REFORMS

SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

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

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

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

''SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

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

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

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

''(b) SBA ENFORCEMENT OMBUDSMAN.—

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

''(2) The Ombudsman shall—

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

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

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

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

''(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

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

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

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

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

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

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

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

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

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

''(d) POWERS OF THE BOARDS.—

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

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

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

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

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

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

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

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

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

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

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

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

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

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

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

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

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

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

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

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

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

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

SEC. 302. JUDICIAL PROCEEDINGS.

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

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

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

(3) by striking ''; and'' subparagraph (G) and inserting ''.'';

(4) in subparagraph (H)—

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

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

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

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

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

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

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

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

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

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

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

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

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

''(3) a description of, and an estimate of the number of, small entities to which the rule will apply or an explanation of why no such estimate is available;

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

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

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

SEC. 402. JUDICIAL REVIEW.

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

''§ 611. Judicial review

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

''(2) Each court having jurisdiction to review such rule for compliance with section 553 of this title or under any other provision of law shall have jurisdiction to review any claims of 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 such one year period, such lesser period shall apply to a petition for judicial review under this section.

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

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

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

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

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

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

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

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

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

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

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

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

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

''(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rule making for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.''.

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

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

(2) in subsection (b), by striking ''his views with respect to the'' and inserting in lieu thereof, ''his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record 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—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Missouri.

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

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

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

As most of my colleagues know, last June almost 2,000 delegates to the White House Conference on Small Business came to Washington to vote on an agenda of top concerns for small business. The top 60 recommendations were published by the conference last September as a report to the President and Congress entitled, ''Foundation for a New Century.'' Three of the top recommendations in the White House conference call for reforms in the way that Government regulations are developed, the way they are enforced, and reforms in Government paperwork requirements.

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

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

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

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

There is a problem with that. Congress said we are not going to have any judicial enforcement of regulatory flexibility. With that, too many Federal agencies took that as a sign to say we are not going to pay any attention to it. When small businesses said, ''Have you paid attention to regulatory flexibility,'' they said, ''No, it did not apply.'' Even the advocacy council, the Small Business Administration, has been totally stiffed by many Federal agencies when it has gone before them and said, ''Look, we serve small business and believe there is a problem. It is not a reg-flex-compliant, small-entity regulation that you have issued.''

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

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

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

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

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

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

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

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

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

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

Strengthening the Regulatory Flexibility Act

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

Updating the Equal Access to Justice Act.

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

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

Sincerely,

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

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

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

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

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

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

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

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

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

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

Sincerely,

GARY F. PETTY,
Chairman of the Board.

Enclosure.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance for American Innovation.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Equine Practitioners.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Gear Manufacturers Association.
American Machine Tool Distributors association.
American Road & Transportation Builders Association.
American Society of Interior Designers.
American Society of Travel Agents, Inc.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association international.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Franchise Association.
International Television Association.
Machinery Dealers National Association.
Mail Advertising Service Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Chimney Sweep Guild.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Wood Flooring Association.
NATSO, Inc.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Lawn Car Association of America.
Promotional Products Association International.
The Retailer's Bakery Association.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC Business Councils.
Society of American Florists.
Turfgrass Producers International.

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

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

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

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

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

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

Sincerely,

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

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

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

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

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

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

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

Thank you for considering our views.

Sincerely,

RANDALL L. SMITH,
President.

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

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

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

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

In particular, the legislation would strengthen enforcement of the Regulatory Flexibility Act. It would grant judicial review to ensure regulatory flexibility requirements are carried out by allowing small businesses to challenge certain agency actions or inactions in court. This will help enforce the Regulatory Flexibility Act, which was intended to require that federal agencies ''fit regulatory and informational requirements to the scale of the businesses.'' It is critical that Congress enact this judicial ''hammer'' to enforce agencies to address regulatory impacts on small businesses.

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

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

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

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

Sincerely,

CHARLOTTE W. HERBERT,
Vice President,
Government Affairs.

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

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

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

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

NATaT has long recognized the failings of the RFA and has fought to strengthen it over the years. We have concluded that the only way to get federal agencies to take notice of their responsibilities under the RFA is to allow small entities to take an agency to court for failure to follow the provisions of the RFA. Strong judicial review language would do just that. NATaT strongly supports the judicial review language and would oppose any efforts to weaken it.

TOM HALICKI,
Executive Director.

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

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

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

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

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

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

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

Sincerely,

JERRY J. JASINOWSKI,
President.

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

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

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

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

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

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

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

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

There is another measure which is included in this bill, one which was introduced by Senator DOMENICI as a result of hearings we had in New Mexico, to provide, on a pilot basis, in OSHA and EPA for the involvement of small businesses and small entities in the early stages of regulatory development, so you can have somebody sitting at the table as you look at the statute and you try to determine how best to carry it out. Somebody can say, ''Well, to do this in the small entities, it will be easier to go this way to get the job done than to go that way.''

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

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

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

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

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

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

PRIVILEGE OF THE FLOOR

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

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

Mr. BOND. I thank the Chair.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are several specific provisions of this bill which deserve mention. First, however, I want to compliment the chairman for the way he has handled this bill in our committee and since it was reported. Although the administration did not testify on the bill before the Small Business Committee, in subsequent days the chairman, the staff and I have held literally dozens of consultations with various agency officials about the bill. More importantly, we have worked very hard to accommodate the views and suggestions of the Clinton administration. Without exception, the suggestions and requests both from the administration and from Senators on and off the committee have been constructive and helpful. The staffs of the Finance Committee and the Governmental Affairs Committee have been especially helpful in crafting this far-reaching bill.

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

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

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

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

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

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

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

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

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

The Equal Access to Justice Act [EAJA] which this bill amends deserves special mention. This important law allows individuals of small firms who have been sued by Government to recover their attorneys fees if they prevailed in the suit. This law has often failed of its purpose because it contained a two-part test which court decisions made nearly impossible to achieve. Under existing law, the small company must first show that he or she is a prevailing party. So, if the Government alleged 10 or 100 violations, and then only proved one minor one, the company was not a prevailing party.

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

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

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

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

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

The Justice Department is still not entirely satisfied with this language, as the statement of administration policy indicates. But the administration has my assurance, and that of Senator BOND, that we will continue to work with them to improve upon this language in conference with the House.

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

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

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

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

Now, Mr. President, there are some cases in which offenses can be waived, penalties can be waived, under a certain set of conditions. If you really want, sometimes, to enforce a regulation, no exception, cross every ''t'' and dot every ''i'', you can still make things a little tough for some small business people.

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

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

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

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

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

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

It turned out, as a personal note, that Betty and I were getting ready to take our daughter to Boston to Children's Hospital for what we knew was going to be a tremendous expense and we did not know how to pay for it, and I collected on that judgment 3 days before we left. It saved my life.

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

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

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

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

Mr. BUMPERS. I yield the floor.

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

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

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

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

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

COMMITTEE LEGISLATIVE HISTORY FOR S. 942

I. SUMMARY OF THE LEGISLATION

The final version of the bill, embodied in a managers amendment, makes a series of technical and other amendments to S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. The amendment resolves many of the questions raised by the Administration with the bill as reported by the Small Business Committee. The amendment also makes changes for better implementation of certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of agency actions under the Regulatory Flexibility Act (RFA). The scope of the RFA requires a regulatory flexibility analysis of all rules that have a ''significant economic impact on a substantial number'' of small entities. Under the RFA, this term ''small entities'' includes small businesses, small non-profit organizations, and small governmental units.

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

II. SECTION-BY-SECTION ANALYSIS

Section 1

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

Section 2

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

Section 3

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

Section 4

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

TITLE ONE

Section 101

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

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

Section 102

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

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

Section 103

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

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

Section 104

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

Section 105

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

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

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

Section 106

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

TITLE TWO

Section 201

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

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

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

Section 202

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

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

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

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

TITLE THREE

Sections 301 & 302

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

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

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

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

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

TITLE FOUR

Section 401

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

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

Section 402

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

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

Section 403

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

Section 404

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

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

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

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

Mr. BOND. I ask the Chair that question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I am really happy that our good friend from Oklahoma is pursuing the way we write our regulations, the way we write our administrative rules, after the piece of legislation has been introduced. I have been preaching on that for a long time. Those rules and regulations should come back to the committee of jurisdiction, if nothing else, to be reviewed so that they do reflect the intent of the law and the intent that we had.

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

I yield the floor.

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

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

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

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

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

AMENDMENT NO. 3534

(Purpose: To provide for a substitute.)

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

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

The bill clerk read as follows:

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

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

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

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

AMENDMENT NO. 3535 TO AMENDMENT NO. 3534

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

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

I see the occupant of the chair. I know of his profession prior to coming to the Senate as a physician. And I can think of one law that passed—the Clinical Laboratory Improvement Act. It had very good intentions. But the net result was that in a lot of areas it was very expensive. As a matter of fact, I had physicians in my State telling me, ''Wait a minute. We cannot do lab tests in our own office. We have been doing it for 20 years. And I have to give blood tests. I have to give results to my patients, and quickly, if I am going to give quality health care. And now I have a rule implementing the Clinical Laboratory Improvement Act which says that I cannot do that in my office. I have to send it off to a pathologist in Nashville, TN, or Oklahoma City, or Maine. Their office is 200 miles away, and it may take 24 hours or 48 hours to turn that around.'' That is dangerous medicine. Maybe that rule implementing the legislative act went too far.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

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

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

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

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

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

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

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

This amendment is one that Members on both sides of the aisle can vote for because when we first offered it, it passed 98 to 0. And, second, it takes a commonsense approach to an issue that we all agree is a significant problem, that is, complex and burdensome regulations.

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

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

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

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

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

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

The amendment (No. 3535) was agreed to.

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

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

The motion to lay on the table was agreed to.

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

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

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

I yield the Senator 5 minutes.

The PRESIDING OFFICER. The Senator from Virginia.

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

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

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

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

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

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

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

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

Regulating in a cost-effective fashion simply makes sense. If we can achieve the same environmental benefit for less money, or, even better, achieve more environmental benefit for the same money, then we simply ought to do it. I will continue to work with our colleagues to try to make that happen. Senator JOHNSTON of Louisiana and I are circulating today a discussion draft which I believe meets the dual and not mutually exclusive goals of eliminating unnecessary costs while safeguarding our environment and ourselves.

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

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

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. Who yields time?

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

Mrs. HUTCHISON. Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I took a slightly different approach in my own legislation, by explicitly prohibiting agency personnel practices that reward employees based on the number of violations they can find or the fines they can levy.

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

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

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

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

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

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

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

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

I yield the floor.

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

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

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

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

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

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

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

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

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

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

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

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

Rules like these drive Montanans crazy, with good reason.

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

Three aspects of the bill are particularly important.

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

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

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

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

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

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

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

The second is strengthening the Regulatory Flexibility Act.

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

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

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

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

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

This review will inject an important check into the system. We in Congress can be a backstop for common sense. We can help sort out the good rules from the bad.

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

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

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

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

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

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

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

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

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

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

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

This bill will change that.

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

The bill will also create an atmosphere of cooperation between job providers and regulatory agencies, by giving job providers the opportunity to participate in the rulemaking process and by allowing agencies to wave penalties for first-time rule infractions.

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

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

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

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

The PRESIDING OFFICER. Who yields time?

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

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

Mr. BOND. Six minutes.

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

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

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

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

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

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

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

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

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

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

I yield back whatever time is remaining to the chairman.

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

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

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

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

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

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

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

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

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

I yield.

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

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

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

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

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

Mr. President, let me briefly illustrate this problem in more personal terms. Last year, Chairman BOND joined me in Memphis for a Small Business Committee field hearing where we listened directly to the regulatory problems of small business owners. Ron Coleman, an auto parts manufacturer in Memphis, told us about the unique regulatory burdens that he faces. He said ''Government regulation is the single most time-consuming aspect of my business. Small businesses must deal with the same rules and regulations as large businesses, only we are unable to call the human resource director, the vice president of governmental affairs, the corporate legal department, or the OSHA coordinator for help.'' The legislation before us today will help hard-working entrepreneurs like Ron.

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

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

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

The PRESIDING OFFICER. Who yields time?

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

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

or such comments as the Senator from Arkansas might have.

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

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

I am prepared to go forward with final passage.

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

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

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

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

The motion to lay on the table was agreed to.

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

The committee amendment, as amended, was agreed to.

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The bill is set aside.

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

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

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

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

These three staffers have had a very interesting several weeks. They have had an opportunity to meet more people in this administration. We have had the support from the elected officials in the Federal Government for regulatory reform, but we have certainly had a tremendous amount of interest and attention and full-time, around-the-clock work for our staff members dealing with the members of the agencies who will be affected.

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET DOWNPAYMENT ACT, II

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:.

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

The Senate resumed consideration of the bill.

Pending:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that would terminate taxicab service reciprocity agreements with the States of Virginia and Maryland.

Murkowski/Stevens amendment No. 3524 (to amendment No. 3466), to reconcile seafood inspection requirements for agricultural commodity programs with those in use for general public consumers.

Murkowski amendment No. 3525 (to amendment No. 3466), to provide for the approval of an exchange of lands within Admiralty Island National Monument.

Warner (for Thurmond) amendment No. 3526 (to amendment No. 3466), to delay the exercise of authority to enter into multiyear procurement contracts for C–17 aircraft.

Burns amendment No. 3528 (to amendment No. 3466), to allow the refurbishment and continued operation of a small hydroelectric facility in central Montana by adjusting the amount of charges to be paid to the United States under the Federal Power Act.

Burns amendment No. 3529 (to amendment No. 3466), to provide for Impact Aid school construction funding.

Burns amendment No. 3530 (to amendment No. 3466), to establish a Commission on restructuring the circuits of the United States Courts of Appeals.

Coats (for Dole/Lieberman) amendment No. 3531 (to amendment No. 3466), to provide for low-income scholarships in the District of Columbia.

Coverdell amendment No. 3532 (to amendment No. 3466), to provide funds for employment-related activities of the 1996 Paralympic Games.

Bond/Mikulski amendment No. 3533 (to amendment No. 3482), to increase appropriations for EPA water infrastructure financing, Superfund toxic waste site cleanups, operating programs, and to increase funding for the Corporation for National and Community Service (AmeriCorps).

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 3532 TO AMENDMENT NO. 3466

Mr. COVERDELL. Mr. President, I call up my amendment numbered 3532.

The PRESIDING OFFICER. The amendment is now before the Senate.

Mr. COVERDELL. Mr. President, it is my understanding that this amendment has been cleared on both sides.

Mr. President, I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

So the amendment (No. 3532) was agreed to.

Mr. COVERDELL. Mr. President, I thank the chairman of the Appropriations Committee, the senior Senator from Oregon, and the ranking member, the new Senator from Oregon, for their cooperation on this important amendment.

Let me say that many people do not realize that immediately following the 1996 Olympics will occur the World Paralympics for which the amendment is addressed.

I deeply appreciate the cooperation and assistance.

Mr. HATFIELD. I thank the Senator.

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

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I have a unanimous-consent request that has been agreed to on both sides that I would like to propound at this time.

I ask unanimous consent that it be in order for me to send an amendment to the desk at this time; further, that it not count as one of the managers' amendments under the consent agreement.

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

AMENDMENT NO. 3536 TO AMENDMENT NO. 3466

Mr. HATFIELD. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] proposes an amendment numbered 3536 to amendment No. 3466.

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

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

The amendment is as follows:

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

Mr. HATFIELD. Mr. President, my amendment strikes a portion of this bill related to Oregon's request for a welfare waiver. I am striking this language because the Secretary of Health and Human Services has now assured me that the administration will complete its commitment to my State.

I should like to read the letter to the Senate that I have just received from Secretary Shalala.

Mr. President, I offer this amendment on behalf of my colleague, Senator WYDEN, as well, because he has been deeply involved and interested and concerned about this issue as well.

The letter is addressed to me as chairman of the Appropriations Committee.

DEAR MR. CHAIRMAN: I am pleased to inform you that an agreement has been reached between the Department of Health and Human Services officials and the State of Oregon on the key issues that would allow the State to implement the Oregon Option welfare reform demonstration for AFDC, JOBS, and related HHS programs, including issues pertaining to federal funding. The uniqueness of Oregon's proposal in the context of the Administration's Memorandum of Understanding with the State warrants a special approach, to be applied only in Oregon, to carrying out this demonstration. You have my commitment that I officially will grant the waiver as soon as HHS staff and State staff can finalize the details of an agreement.

Oregon and HHS staff together have crafted an agreement that demonstrates a solid partnership for testing new approaches to welfare reform. This agreement focuses on achieving important outcome-based benchmarks for helping families move from welfare to work and reducing child poverty.

DONNA SHALALA.

Mr. President, let me just give a brief background to this amendment and the process leading up to it.

I wish to also amend her letter that I have just read on a verbal understanding that we had this morning, and that is relating to the timing of this waiver in the language ''as soon as HHS and State staff can finalize the details of an agreement.'' She committed herself this morning to me that this would not take longer than 2 weeks. And the Governor of our State, in conversation with him this morning as well, indicated that this would be a satisfactory time period.

This action delivers the final and most critical piece of what we call the Oregon Option. Oregon's situation is unique. There is not another State in the Union that has achieved this particular status.

In September 1994, 40 members of Federal agencies, most based in Washington, DC, visited Oregon to talk about doing business differently. In December 1994, nine Cabinet members including the Vice President of the United States signed a memorandum of understanding with Oregon's Governor in a coast-to-coast satellite televised ceremony.

At this point, Mr. President, I ask unanimous consent to insert in the RECORD a copy of the memorandum of understanding reached between my State and the Federal Government.

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

MEMORANDUM OF UNDERSTANDING REGARDING ''THE OREGON OPTION''

I. PURPOSE

The purpose of this Memorandum of Understanding is to encourage and facilitate cooperation among Federal, State and local entities to redesign and test an outcomes oriented approach to intergovernmental service delivery. This special partnership and long-range commitment will serve as demonstration of principles and practices which may serve as a model for improvements nationwide.

II. BACKGROUND

In July 1994, Oregon proposed a multi-year demonstration with the Federal Government to redesign intergovernmental service delivery, structured and operated to achieve measurable results that will improve the lives of Oregonians.

Oregon is uniquely suited for an experimental demonstration to develop an outcomes oriented approach to intergovernmental services. The State and many local governments have begun using an outcomes model for establishing long-range vision, setting public priorities, allocating resources, designing services, and measuring results. The Oregon Legislature has endorsed the Oregon ''Benchmarks.'' Further, many nonprofit organizations, businesses, and civic groups in Oregon are aligned to a benchmark process with State, county and local jurisdictions.

III. PRINCIPLES TO GUIDE COOPERATION

The following principles should guide the parties cooperation in this undertaking:

A re-designed system would be:

Structured, managed, and evaluated on the basis of results (i.e., progress in achieving benchmarks).

Oriented to customer needs and satisfaction, especially through integration of services.

Biased toward prevention rather than remediation of problems.

Simplified and integrated as much as possible, delegating responsibilities for service,

design, delivery, and results to front-line, local-level providers, whether they are local agencies or local offices of state agencies.

IV. RESPONSIBILITIES OF THE PARTIES

The parties to this memorandum will work together as partners to (1) identify benchmarks, strategies, and measures that provide a framework for improved intergovernmental service delivery and (2) undertake efforts to identify and eliminate barriers to achieving program results.

V. AUTHORITIES

The principles and responsibilities covered in this memorandum are intended to improve the coordinated delivery of intergovernmental programs. This memorandum does not commit any of the parties to a particular level of resources; nor is it intended to create any right or benefit or diminish any existing right or benefit, substantive or procedural, enforceable at law by a party against the United States, State of Oregon, any state or federal agency, any state or federal official, any party of this agreement, or any person. While significant changes to the intergovernmental service delivery system are anticipated as result of this effort, this is not a legally binding or enforceable agreement. Nothing in this memorandum alters the responsibilities or statutory authorities of the Federal agencies, or State or local governments.

SIGNATURES OF MEMORANDUM OF UNDERSTANDING REGARDING ''THE OREGON OPTION''

Vice President Al Gore.
Secretary Labor HHS Donna E. Shalala.
Secretary of Housing Henry G. Cisneros.
Director, Office of National Drug Control Policy Lee P. Brown.
Secretary of Labor Robert B. Reich.
Secretary of Education Richard W. Riley.
Attorney General Janet Reno.
Secretary of Agriculture Mike Espy.
Secretary of Commerce Ronald H. Brown.
Dir. of the White House Office of Management and Budget Alice M. Rivlin.
Asst. to President for Domestic Policy Carol H. Pasco.

Oregon

Governor, Barbara Roberts.
Senate President, John Kitzhaber.
Mayor PDX, Vera Katz.
Commission, Salem, Randall Franke.
Mayor of Corvallis, Charles Vars.
Mayor, City of Gresham, Gussie McRobert.
Mayor of Ashland, Katherine Golden.
Mayor of Independence, Marion Rossie.
Commissioner LaGrande, John Howard.
Commissioner Lane, Steve Cornacchia.
Multnomah County, Beverly Stein.

Mr. HATFIELD. With the understanding that we had the blessings of all levels of Government, the Oregon Legislature passed a comprehensive welfare reform bill that became the basis for the Oregon option welfare reform waiver request. Oregon's JOBS Plus Program gives parents the opportunity to find substantive work with above-minimum wage pay and includes employer involvement. Employees earn a livable wage while learning valuable work skills.

Oregon's attempt to reform welfare is designed to allow people the opportunity to work, thereby taking them off the welfare rolls. Through innovative program planning, Oregon has seen a decline in its welfare casework the last 2 years while facing increases in population. And I wish to repeat this. Oregon has had a decline with this experimental program in its welfare caseload the past 2 years while facing increases in population. With this waiver, we will be able to move further into that program of reform.

On July 3, 1995, 9 months ago, Oregon submitted its waiver request to the Department of Health and Human Services and Department of Agriculture. We then fell into the abyss. With Congressional welfare reform appearing possible, including changes that would allow Oregon to implement most of the options without waivers, action slowed down on all sides. I became very concerned that the rhetoric and the reality were incongruent. I inserted language in this omnibus appropriations bill to force the administration to act on our request one way or the other. This is not the way I like to do business, Mr. President, but I had no other recourse. I am very pleased that today the administration has delivered on their promises. The idea behind the Oregon option is that outcomes and results govern the expenditure of funds, not direction from Washington. Today, the administration, and in particular Secretary Shalala, has sent a clear and unequivocal message of a commitment to results.

I thank the administration for allowing us to go forward. Their commitment is well placed. The Vice President referred to the Oregon option in December 1994, as quoted in the Oregonian, ''This is all about going from red-tape to results.'' The Vice President's senior policy adviser was quoted in the August 6, 1995 Washington Post as saying,

> The Oregon option is probably the largest system of performance-based government in the United States that is actually up and running. We see it as a possible model for the future of Federal-State relations.

While I cannot guarantee that the approach Oregon wants to take on welfare reform will be successful because we do not live in a world of guarantees, we have seen positive strides with our programs thus far. We have a great track record of delivering on our promises. Our Governor, John Kitzhaber, and the head of our welfare department, Steve Minnich, deserve the gratitude of all Oregonians for the effort they have expended to make these programs work.

I should like to say parenthetically that our Governor was the president of the State senate, and he is a medical doctor. During his time as president of the State senate, he was the one who brought the parties together and crafted the Oregon Health Reform Act, and this is the record of a very dedicated public servant and one who has quietly and with great effectiveness brought about that change in our own health programs in Oregon, at least as far as we could go. And now he has undertaken the welfare program for reform. I am honored to be his messenger to the cause that he represents here in Washington.

My home State of Oregon has a pioneering spirit. We face obstacles armed with creative solutions and the perseverance to see them to conclusion. Each day Oregon proves itself willing to take on hard issues such as health and welfare reform, programs which serve as models for the rest of the country. Mr. President, today I am reminded of the words of Herbert Hoover. He said once, ''Words without actions are the assassins of idealism.'' The Secretary's action certainly maintains my idealism that innovative welfare reform is possible.

I am very pleased to again note that my new colleague, recently elected from my State, and a man who has brought great distinction to our State by his service in the House of Representatives and pursuing programs of this type throughout his political career, has now joined me as a full-fledged partner and I thank him for his continued effort and interest in this matter.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I first want to extend my appreciation to Senator HATFIELD. The chairman of the committee has done yeoman work on this and on so many issues for our State and for our country. He has honored me with the chance to work with him on the Oregon option in both the House and the Senate. I want him to know how much I appreciate his help and his counsel. I think it is clear that the administration looks to him for leadership on these issues and to a great extent it is because of Senator HATFIELD that the administration consistently comes to us for the opportunity to test these issues. I want the Senator to know how grateful I am to be able to work with him and in particular, to support his amendment today.

I think Senator HATFIELD has outlined quite well that the welfare system in America today does not work for anyone. It certainly does not work for taxpayers. In so many instances they watch as their tax dollars are frittered away. And I know that it does not work for many of those who are in the system. I have talked to them, and many of them have said they would very much like to break out of the system, but they get caught in a Catch-22. They may have a child at home and would like to work, but if they start working they lose their child care. So, to a great extent, the welfare system in America today does not work for much of anybody.

What I think Senator HATFIELD has outlined is that Oregon, with our unique Oregon option, a plan that is being tried literally nowhere in the country, is offering the Nation the chance to break out of the encrusted shell of the old welfare system. We are saying, in effect, that we would like to bust loose, like we did with the Oregon health plan, and focus most specifically on results.

Senator HATFIELD has made so many of the important points that I would

like to just touch on one or two others that I believe have great implications for the national debate about the delivery of services in our country, and particularly our human services. We know that many of our colleagues are now part of the debate that suggests either you ought to run everything from Washington, DC, that Washington, DC has the answers, or you should just give it back to the States and see what happens.

The Oregon option is a plan developed with the leadership of our Governor, John Kitzhaber, who has done outstanding work in the human services area, and with the help of the administration. The Oregon option offers an alternative approach that falls in between the two extremes of either running it all from Washington, DC, and saying Washington, DC, has the answers, or simply turning it over to the States and seeing what happens.

Oregon, in effect, with the Oregon option, is saying that if we are allowed to be free of some of the Federal shackles and some of the Federal red tape, we will guarantee we will focus on real accountability with respect to services. We will make sure that the focus is getting people off welfare into gainful employment in the private sector, and we will focus on results, we will focus on accountability.

I suggest to the Senate that the Oregon option does show real promise of getting to a creative third path between those who say ''run it all from Washington'' and those who just say ''turn it all over to the States and we will see what happens.'' Yes, let us give the States more freedom and more authority, but let us also require accountability. That is what the Oregon option is going to do.

I think it is worth focusing for a moment on how this is actually going to produce change in the system. In the future, with the Oregon option, a welfare office is going to be evaluated not by whether all of the boxes in every application get checked, but by how many individuals actually move into good, nonsubsidized jobs and whether we are reducing the number of children who live in poverty.

Right now, probably the best way to describe the system is that if you have somebody who is on welfare and at home, the system just goes forward. You do not have to adjust any benefits. You do not process any paperwork. There is no job training to account for, no assets that might accumulate. The system just goes on and on and on. Under the Oregon plan, those individuals who are running welfare services, are going to know the focus is on making sure there are results, making sure that you actually see people move into the private sector. This is what reform ought to be all about.

There are a number of specific features about the Oregon plan that I think make great sense for welfare reform generally. Under the Oregon option, the State is going to invest in what is known as transitional child care and preventive child care. As a Member of the other body, I saw repeatedly that there were individuals, particularly women who head households, who would be able to get off welfare. Sometimes they would get off a couple of times. They would be in the private sector, they would be making headway, then their child care would fall apart, and they would slide back onto public assistance.

The Oregon option, with its innovative approach toward child care is going to help prevent that in the future. The Oregon option allows welfare recipients to keep certain assets that can expedite the transition from welfare to work and make sure people do not fall back on welfare.

Finally, the focus with respect to the State's role is on real work situations, not these make-work kind of arrangements, but real employment opportunities where welfare recipients get trained on-site, by business people who have actual needs in the job markets in our State.

A lot of us see the welfare system as something that can be a ladder to a fresh start. It is not supposed to be a feather mattress. It is supposed to be a ladder. I am excited about the chance to change lives for the better in our State, excited about the fact that the Oregon option is going to allow taxpayer dollars to be used in a more effective way.

I want to commend both the administration and Secretary Shalala. I have had a chance to work with her on the Oregon option and the Oregon health plan. We think this is our one-two punch in reforming services that affect thousands of families. Secretary Shalala deserves great credit for that.

Finally, our Governor, as Senator HATFIELD has noted, is consistently out in front in trying to look at these issues. I think, when you write the history of health reform, and I know the President is particularly interested in this issue, the country is going to look at what Oregon has done in health care and the way Oregon has made tough choices and the way Oregon has focused on prevention and focused on medical effectiveness and focused on ways to build a new partnership with providers. Because of Dr. Kitzhaber's work, the Oregon health plan is going to make a difference in health reform across this country. It is going to be something that the rest of the Nation is going to look to. Now, with the Oregon option we have a chance, through welfare reform, to complement the work that has been done on the health care side.

So I urge the adoption of the Hatfield amendment. As you can tell, we are passionate, on a bipartisan basis, about this important cause. It is going to change lives across our State. I think it is going to make a difference across our Nation, and I am pleased and honored to be here with Senator HATFIELD to support his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I know of no other comments to be made at this time.

Mr. President, what is the parliamentary situation?

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 3536) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HATFIELD. I thank the Chair, and I thank my colleague for his very strong assistance on this.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 3496

Mr. GORTON. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is now before the Senate.

Mr. GORTON. Mr. President, in Walla Walla, WA, there is a general medical and surgical facility for the Veterans' Administration. That facility serves a wide range of veterans over a very considerable area.

The people of Walla Walla are proud of the facility. The various veterans organizations in the area have asked us to rename it in honor of Gen. Jonathan M. Wainwright. As you know, Mr. President, General Wainwright was a distinguished American military leader, having commanded American troops in the Philippines and Corregidor after the departure of General MacArthur. He was imprisoned for 4 years, released, and ultimately observed the surrender of the Japanese on the U.S.S. *Missouri* on V–J Day. He won the Congressional Medal of Honor. General Wainwright was born in Fort Walla Walla, while his family was there with the First Cavalry.

The people of Walla Walla are going to erect a statue in his honor, and they wish to rename the facility in honor of General Wainwright.

A bill introduced by the Congressman from the district, Mr. NETHERCUTT, passed the House of Representatives last year. It seems to be buried so deeply in the Veterans' Committee that it is not going to get out certainly in time for the Memorial Day ceremony by which time we hope to have caused this renaming to take place.

This is not a cleared amendment but, Mr. President, I think it should be noncontroversial. Senator MURRAY and I very much urge our colleagues to agree with us, to adopt it as a rider to this bill since it has already passed the House.

With those remarks, I think I need no more time of this body speaking about this amendment, about Walla Walla, or about General Wainwright. So I will yield the floor, but I am constrained at this point to ask for the yeas and nays on the amendment with the hope that will bring the whole subject to the attention of those who have objected to it to this point and that it will soon be cleared.

So, Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. GORTON. Thank you, Mr. President. I yield the floor.

Mr. HATFIELD. Mr. President, I do have a group of amendments that have been cleared on both sides. I will make a unanimous-consent request.

AMENDMENT NOS. 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3544, 3545, AND 3546 TO AMENDMENT NO. 3466

Mr. HATFIELD. Mr. President, I now send to the desk a number of amendments that have been cleared on both sides of the aisle. I ask unanimous consent that they be considered en bloc, agreed to en bloc, and that the motions to reconsider be laid upon the table. I withhold.

Mr. President, my unanimous consent request has been formally modified, but that has already been taken care of. I renew my unanimous-consent request.

The PRESIDING OFFICER (Mr. NICKLES). Without objection, the question is on agreeing to the amendments en bloc. The amendments (Nos. 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3544, 3545, and 3546) were agreed to, as follows:

AMENDMENT NO. 3537

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

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

Mr. BOND. Mr. President, I offer this amendment on behalf of myself, and Senators HARKIN, SIMON, GRASSLEY, and MOSELEY-BRAUN.

The purpose of the amendment is to allow surplus funds previously earmarked to be reprogrammed to the Upper Mississippi/Illinois Waterway Navigation Feasibility Study.

The navigation study in fiscal year 1996 is underfunded and, consequently, will be unable to meet the 6-year study deadline unless more funding is provided. This shortfall has been recognized by Secretary Lancaster who has persisted in reprogramming discretionary money to help make up the shortfall. This amendment provides the Secretary the authority to reprogram an additional sum of money currently earmarked for the St. Louis harbor study that the corps will not be able to spend this year.

Even with this potential transfer, we understand they remain $1.8 million underfunded which we will have to make up in fiscal year 1997.

The amendment does not increase the overall cost of the 6-year $43 million study to update the 50-year-old locks and dams on the Illinois Waterway and Upper Mississippi River.

Mr. President, this study is a priority item. Conference report language in the energy and water appropriations bill for fiscal year 1996 was included directing the corps to:

Expedite work on the study and ensure that the Division Engineer's public notice on the feasibility report is issued no later than December of 1999 . . . because of the need for a timely review of future navigation needs on the upper Mississippi River and Illinois Waterway.

According to the corps in 1992, tows at Upper Mississippi locals 22–25 were delayed a total of 87,000 hours. As river traffic grows over 4 percent per year, the corps estimates that delays at locals 22–25 would be in excess of a day early in the 21st century.

The president of Farmland Industries told us recently that they have 18 trains running round the clock to try to meet foreign demand. Even today, there is 12 million tons of grain on the ground in Iowa that cannot find a ride to markets abroad—what will it be like when freedom-to-farm takes effect and export demand continues to grow? The longer it takes to upgrade the 50-year-old system, the harder it will be for U.S. grain to continue to find a home in the world market at competitive prices.

The bottom line is that this is a trade, competitiveness, and jobs issue. Our farmers need this. This is one of our principal competitive advantages and the action taken now will be the basis of our competitive position 5, 10, and 20 years from now. If we have grain piling up now, what will it be like in 10 years? Who believes that we can remain a reliable exporter of grain if we let our system deteriorate at the same time the Department of Agriculture is projecting record $60 billion in agricultural exports and a record $30 billion trade surplus?

Mr. President, Senators who are concerned about competitiveness, promoting trade opportunities, protecting jobs, and growing the economy should be on board this effort. We know the corps is on board and we need to get the Office of Management and Budget on board. This is not a priority at OMB and it should be. Trying to capture the growing Asian market is not pork—it's the economy, stupid.

It is critical that the administration follow the Secretary for Civil Work's lead in pursuing this study. It is a project of national significance that deserves priority attention. It is necessary that the administration make a request for fiscal year 1997 appropriations which accurately reflects the funding necessary to keep this study on schedule. If this study can wait, we are telling farmers that exports can wait. They can't.

Other nations are aggressively emulating our inland waterway system—Brazil, China, and Germany, to name a few. The question is whether we will forsake that advantage to the detriment of our young farmers and nation balance of trade. This is our chief artery to the world market. Some foreign competitors can beat us on price until our grain hits our inland waterway system—which is the cheapest way to ship a ton of grain in the world.

I want to thank the chairman and ranking member of the subcommittee and full committee for accommodating us on this issue. In the coming months and years, the urgency for action will increase to address the lack of capacity on this critical corridor. This will be a priority issue, not just for carriers but for shippers who are farmers. Senators will hear from farmers and farm groups on this issue. This amendment is to promote and permit exports and job growth and I appreciate the support of the Senate.

AMENDMENT NO. 3538

(Purpose: This Amendment adds $1,000,000 to the Adolescent Family Life program for total funding of $7,698,000)

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

On page 572, line 16 of the pending amendment, strike ''$129,499,000'' and insert in lieu thereof ''$130,499,000''.

Mr. SPECTER. Mr. President, as we try to steer toward a growing economy and a balanced budget, there has been a growing consensus that all our goals must rest on a restored ethic of personal responsibility. There is an alarming teenage birth rate in the United States. The teen birthrate in the United States is double the rate in other industrialized societies such as Australia and the United Kingdom. Over 72 percent of teenage births in 1993 were to unwed mothers; 12,000 children were born to mothers under the age of 15. It is worth pausing to reflect on the enormous significance of these statistics regarding out-of-wedlock births. Adolescent pregnancy threatens the health of both the young mother and child. Teenage mothers are more likely to lack adequate prenatal care and to give birth to a low-birthweight baby.

We can reduce unintended teenage pregnancies by encouraging abstinence and personal responsibility. If you want to reduce the number of abortions performed in the United States, teaching children to say ''no'' to peer pressure is a good starting place. The Adolescent Family Life Program, known as the title XX program, is a worthwhile program which focuses on the issues of abstinence, adolescent sexuality, adoption alternatives, pregnancy, and parenting. The Adolescent Family Life Program has broad bipartisan support when it was originally enacted in 1981

and when it was reauthorized in 1984. Congress appropriated $6,698,000 for this program in fiscal year 1995; my amendment would increase its funding to $7,698,000 in fiscal year 1996.

AMENDMENT NO. 3539

On Page 590, after the word ''for'' on line 19, strike all up to the word ''payment'' on line 23.

On Page 590, after the word ''education'' on line 25, strike all up to the period on page 591, line 3.

AMENDMENT NO. 3540

(Purpose: To provide for a waiver of the enrollment composition rule under Medicaid for Chartered Health Plan of the District of Columbia)

At the end of title III, on page 771 after line 17, add the following new section:

SEC. . The Secretary of Health and Human Services shall grant a waiver of the requirements set forth in section 1903(m)(2)(A)(ii) of the Social Security Act to D.C. Chartered Health Plan, Inc. of the District of Columbia: *Provided*, That such waiver shall be deemed to have been in place for all contract periods from October 1, 1991 through the current contract period or October 1, 1999, whichever shall be later.

AMENDMENT NO. 3541

At the appropriate place insert the following:

SEC. . Of the funds appropriated by Public Law 104–37 or otherwise made available to the Food Safety and Inspection Service for Fiscal Year 1996, not less than $363,000,000 shall be available for salaries and benefits of in-plant personnel: *Provided*, That this limitation shall not apply if the Secretary of Agriculture certifies to the House and Senate Committees on Appropriations that a lesser amount will be adequate to fully meet in-plant inspection requirements for the fiscal year.

Mr. COCHRAN. Mr. President, the amendment I offer with my colleague from Arkansas will ensure that funds appropriated to the Food Safety and Inspection Service for fiscal year 1996 are used to cover in-plant inspector salaries and benefits requirements before being obligated for other purposes. The reason for this amendment is simple. The Food Safety and Inspection Service has chosen to purchase computers over paying the salaries of inspectors who ensure the safety of our Nation's meat and poultry supply.

Mr. President, this agency requested $594 million for fiscal year 1996, a 13-percent increase over the fiscal year 1995 appropriation. With a total allocation for discretionary spending below a freeze at fiscal year 1995 enacted levels, this subcommittee could not grant the requested increase. We appropriated $544 million to the agency. The President signed the fiscal year 1996 Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act on October 21, 1995. Apparently, the Food Safety and Inspection Service did not alter its spending plans for the year to live within the amount appropriated to it. Now, here we are, about half way through the fiscal year, with a request for a supplemental appropriation of $9.5 million for the Food Safety and Inspection Service, which includes $3.2 million for inspector positions, $3.5 million for training for the new hazard analysis and critical control point [or HACCP], inspection program, and $2.8 million for the animal production food safety initiative. This supplemental request from the President is offset in budget authority by a proposed rescission in funds appropriated to the Cooperative State Research, Education, and Extension Service buildings and facilities account, but not in outlays, as required by congressional budget rules. In investigating why the Agency faces a shortfall, we are told that the Agency decided to commit the $8.4 million it had requested for the Field Automation and Information Management initiative, of which between $4 and $5 million remain. FSIS chose computers over inspectors. When asked if inspector positions would be protected if the Agency ran short of funds at the end of the fiscal year, the answer was ''no.'' Rather than commit this money to an identified shortfall in inspector funding, it has come to us for more money.

Mr. President, this amendment will ensure that above all, there are adequate numbers of inspectors in the plants for the remainder of the fiscal year to ensure that the meat people put on their tables is safe and wholesome. At the same time, it will ensure that processing plants do not shut down, thereby increasing the cost of meat in the groceries, and reducing prices that farmers receive for their animals because they can't get them to market.

We agree with the Department that the modernization of the current inspection program is essential, and endorsed it in the Senate report accompanying the fiscal year 1996 Agriculture Appropriations Act. Where we disagree is that the current inspection system should suffer at the expense of expediting implementation of the new system or other Agency initiatives. It is essential that we maintain the existing system while efforts are underway to implement the new system. In fact, I believe that the No. 2 priority of the Food Safety and Inspection Service should be training to implement the new HACCP rule. Once the new inspection system is in place, then is the time to dismantle the current system.

I hope that my colleagues will join me in supporting this amendment to ensure that adequate funds are available to keep meat and poultry inspectors on the job.

AMENDMENT NO. 3542

On page 769, line 24, delete the word ''Of'' and insert ''Notwithstanding any other provisions of law, of'.

On page 770, line 4, after the word ''available'', insert the words ''for operating expenses''.

AMENDMENT NO. 3543

(Purpose: To amend the Federal Food, Drug, and Cosmetic Act to authorize the export of new drugs)

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

Mr. HATCH. Mr. President, yesterday morning I had the honor of addressing the National Medical Device Coalition, an association of far-thinking medical device manufacturing executives who have come to Washington to press for meaningful Food and Drug Administration reform.

In their visits with Senators and Representatives this week, NMDC members will be offering the most compelling case I know for FDA reform, and, specifically, reform of medical device regulation.

Indeed, they urge that reform of the medical device regulatory process should be a top priority of this Congress, and I couldn't agree more.

As the NMDC points out, there are severe problems facing the medical device industry in our country—problems which impede the ability of manufacturers to maintain our world class competitive edge and continue to produce products which have so many public health benefits.

I think that Wayne K. Barlow, president of the NMDC summed it up the best in his March 11 address to the American Institute for Medical and Biological Engineering. Mr. Barlow, who happens to also be president of Wescor, Inc., a small medical device manufacturer in Logan, UT, said:

> The U.S. Medical Device industry is severely challenged. Its survival beyond the 20th century has been case in doubt. The innovative fervor that once characterized our industry is evaporating. We are seeing an alarming exodus of companies, technologies, and jobs to other countries. Do not doubt that we are in a life-or-death struggle nor that its outcome will determine whether our industry has a future in this country.

Mr. Barlow went on to say:

> Powerful forces are reshaping health care delivery and the associated markets for health care products in America. The three major components are (1) dynamic restructuring of global markets, (2) Federal regulatory policies, and (3) the U.S. product liability climate. These forces in combination have debilitated the industry. In consequence, America is being pulled down toward second-rate status in medical technology.

I think that the NMDC has done us a valuable service in their concerted emphasis this week to educate the Congress on issues associated with medical devices.

As they point out, this diverse industry is comprised largely of small businesses, which manufacture a wide range of products all of which contribute positively to our U.S. trade balance.

A regulatory climate which threatens the health of these small businesses, threatens the health of our economy as well.

But it also threatens public health, because declining incentives for innovation force production overseas. And when that innovative edge moves offshore, Americans will be deprived of the latest medical products, products which could improve or even save lives.

One of the top priorities of the NMDC, eliminating FDA's involvement

in granting permission to export medical products, is also a top priority of mine, and is the subject of the amendment Senators GREGG, KASSEBAUM, KENNEDY, and I are offering here today.

Let me turn to a specific discussion of the amendment, which is a substitute for the FDA Export Reform and Enhancement Act (S. 593) approved unanimously by the Labor Committee last July.

I want to commend all of my colleagues who have worked on the FDA export issue in this Congress.

In the House, Congressman FRED UPTON has exhibited a great deal of leadership on this issue. The chairman of the Commerce Committee, Representative THOMAS BLILEY, and the ranking member, Representative JOHN DINGELL, must be credited for working closely together to fashion the House language on export contained in the continuing resolution under discussion today.

In this Chamber, I must recognize all of the original cosponsors of the Senate bill, S. 593: Senators GREGG, KASSEBAUM, ABRAHAM, FRIST, and COATS.

My good friend, Senator KENNEDY, was instrumental in fashioning the compromise language that was unanimously adopted by the Labor Committee in July and in the amendment we now consider.

In the interest of moving forward our important goal of increasing the export of medical products, I ask all of my colleagues to support this amendment.

I think that the amendment we offer today is a vast improvement over current law. It undoubtedly will allow a more free export of American medical products abroad.

However, I must also recognize that our original bill, and the bill approved by the House of Representatives, provides even greater opportunities for such exports, without the intrusive hand of the FDA in first approving those exports. I am hopeful we can work during the conference to get a compromise which will move toward that free-trade concept while still ensuring protection of the public health.

I was chairman of the Labor Committee in 1986 and worked very hard to get the provision in current law which relaxed our restrictive trade policies regarding pharmaceutical products not approved by the FDA.

At that time, the law did not go as far as I would have liked, but we did make some important strides such as permitting the export of drugs not approved by the FDA to 21 specified countries.

Section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act already contains extremely important principles, and sufficient safeguards, in the area of exports:

> A food, drug, device, or cosmetic intended for export shall not be deemed to be adulterated or misbranded under this Act if it—
>
> (A) accords to the specifications of the foreign purchaser,
>
> (B) is not in conflict with the laws of the country to which it is intended for export,
>
> (C) is labeled on the outside of the shipping package that is intended for export, and
>
> (D) is not sold or offered for sale in domestic commerce.

A very good argument can be made that this provision alone should constitute our national policy.

It is important to understand that this is essentially the policy of every country in the world, except for the United States.

While I think that it should be the primary responsibility of the government of each nation to protect its own citizens, I am also a realist and know that many believe that additional requirements must be imposed on our domestic manufacturers to ensure public health abroad.

I do not question that well-intentioned motivation. At the same time, I would point out that no other country in the world imposes such requirements.

As I have suggested previously, we should all take note of the perspective of Dr. John Petricciani, an official of the Massachusetts biotechnology firm, Genetics Institute, Inc.

Prior to joining the private sector, Dr. Petricciani spent over 20 years in the Public Health Service, including serving as Director of the FDA Center for Biologics, head of the World Health Organization's biologicals unit and Deputy Director of the Public Health Service National AIDS Program Office. As Dr. Petricciani has stated:

> The real issue here is one of benefit and risk. Do the benefits to foreign countries in the current law outweigh the risks imposed on the U.S. in terms of draining jobs and capital investment in research, development, and manufacturing? As has been pointed out by others, one of the results of that drain is the earlier availability of products in Europe and elsewhere than in the U.S. If we were discussing electronics or automobiles, I would not be as concerned because the American people are not being placed at a meaningful disadvantage by such delays.
>
> However, the issue here is medical products that can make a very big difference in the health of the American people. The current law is resulting in new products being introduced first in foreign countries where U.S. firms are forced to manufacture them. I believe that we are paying far too high a price in terms of delayed availability of new products in the U.S. for the theoretical benefit being provided to developing countries.
>
> I would also like to point out that if a U.S. company really wanted to export a product that would be acceptable in the U.S., all they would have to do is manufacture it outside the U.S. and export it to a developing country.

Now is the time to revise and reform the current export restrictions—both for public health and international trade considerations.

The question is not whether we should change current law, but how we should change the current law.

As I said earlier, I prefer the House language. But I am also a realist and recognize that to include a provision under unanimous consent today there will be some matters that will not be resolved to my satisfaction.

I would like to review briefly the history of the development of this legislation in the 104th Congress.

First, the companion bills, S.593/H.R. 1300 were introduced last March.

The theory behind this legislation was simple and direct.

Essentially, S. 593 and H.R. 1300 would harmonize the U.S. policy with the policy adopted by every major trading nation in the world.

This would allow U.S. producers to sell their products freely to World Trade Organization-member countries so long as such products were not violative of the laws of the importing country. This is a good law and good policy and is the rule by which the rest of the world lives by.

Because of concerns that such unfettered free trade might possibly subject citizens in Third-World countries to dangerous U.S. exports, a compromise was reached in the Labor Committee last July. The compromise would allow shipment of drugs to any country in the world if they were already approved by one of a list of some 20-odd countries deemed to have sophisticated drug approval and regulatory systems.

The purpose of this so-called bank shot was to decrease the possibility that some small Third World country might somehow unwisely allow, or be somehow coerced to allow, dangerous products into its borders.

In parallel with this bank shot, the Labor Committee compromise contemplated the creation of a so-called tier II list of countries with regulatory systems found adequate to protect the health and safety of their citizens. Drugs and devices could be shipped directly to those countries even in the absence of an approval of a Tier I country with a sophisticated drug approval system.

Subsequent to the markup, the GAO was requested to provide technical assistance to help the Senate formulate tier II country criteria as well as technical assistance in helping the Senate to select an initial list of tier II countries.

Understandably, and perhaps, unavoidably, the creation of these criteria and the initial list has presented contentious issues. Neither the GAO nor FDA are anxious to get involved in the middle of such an inherently complex issue.

I believe there is agreement among sponsors of our amendment today that we will examine this issue in more detail in conference. I feel very strongly that we must allow opportunities for export beyond the tier I realm. That is the future of exports for our country.

Where the GAO and FDA fear to tread, the Congress must, and should, march in.

In the end, I think it is the responsibility of each government to design laws to protect its own citizens so I have philosophical concerns about a system that would preclude a U.S. company to ship a product to another country—even a third world country—when that country has decided to allow the use of that product.

I know that some, including our colleague, Senator SIMON, have, for good

and legitimate reasons, raised concerns about the ability of small developing nations like Botswana to make these crucial regulatory decisions. I just question whether our Food and Drug Administration is as well-positioned as the public health authorities of another country, Botswana included, as to what products are suitable for its citizens.

I am even more skeptical of the wisdom of not providing a tier II mechanism to provide, in the absence of a tier I country approval, direct shipment to countries like Russia, China, India, Brazil, and Argentina.

Why should this Congress presume to forbid American manufacturers the opportunity to sell products in these countries after these governments have independently found that such products are legal to make and use? Can we not rely upon the Chinese and Russian governments to act in the best interests of its own citizens?

I don't think that FDA approval, or the approval of a select list of tier I countries, should be a necessary condition for other countries to decide to approve, or for that matter disapprove, the use of a certain medical product. Accordingly, I believe that, American manufacturers should be given the same opportunity to compete with manufacturers of products approved for use in tier II, but not tier I, countries. Deciding which medical products to allow into the stream of commerce is an important power for each sovereign nation to exercise.

In closing, I want to commend our colleagues in the House for developing a proposal which represents an improvement over the original version of S. 593/H.R. 1300. Frankly, I believe that the imminent hazard provisions of the House-passed bill grants sufficient authority to the Secretary of Health and Human Services to halt shipments of dangerous projects. As a practical matter, I don't think that the imminent hazard provisions of this new Senate amendment act much differently.

We have an opportunity in the 104th Congress to enact FDA export legislation. This legislation can advance the public health of the United States and internationally. This legislation can benefit employees and potential employees of American medical products manufacturers.

It is estimated by experts that each $1 billion in exports results in the creation of 20,000 new jobs for Americans. We in Congress have a unique opportunity and special responsibility to expand our trading markets for biomedical products.

This legislation is consistent with advancing the public health and with our international trade policy. I commend Senators GREGG, KASSEBAUM, and KENNEDY in moving this amendment and I look forward to working with my colleagues to see if we can resolve this issue in the conference committee.

Mr. KENNEDY. Mr. President, this amendment represents a great deal of effective work by Senator GREGG, Senator KASSEBAUM, and Senator HATCH, and I commend them for their efforts. The provisions are similar to those in the bill unanimously approved by the Senate Labor Committee last year.

This amendment will reform the export policy of the FDA and enhance the competitive position of U.S. manufacturers of drugs and medical devices in the international market. At the same time, it will protect consumers in the Third World from unapproved, unsafe and ineffective products that might be exported from the United States but that their governments lack the expertise to evaluate.

This amendment represents an appropriate balance between the needs of U.S.-based industries and the need to provide adequate safeguards for the distribution of U.S. medical products in other countries. Multinational pharmaceutical manufactures also recognize that this amendment will ease the major regulatory problems that have been a barrier to locating production facilities in the United States.

For many years, the United States was one of the few countries in the world with a well-developed procedure for approving drugs and medical devices. The FDA is still the gold standard throughout the world, but a number of other industrialized countries have now adopted sophisticated systems for safeguarding their citizens.

In recent decades, foreign markets have become increasingly important to U.S. manufacturers, and foreign competition has become increasingly strong. The United States still leads the world in biotechnology, in medical device development, and in drug development—but we cannot be complacent about maintaining our leadership.

The increasing internationalization of the production and distribution of medical products has been accompanied by a welcome improvement in international efforts to coordinate standards of ethical conduct and to monitor the use of these products in countries around the world. Nonetheless, serious abuses have occurred, and continue to occur.

This legislation recognizes these trends and responds to changing conditions in several ways. First, it recognizes countries whose approval methods have reached international standards of excellence. Exports of products that have not been approved in the United States to countries with such programs have been permitted since 1986. This bill streamlines that process.

In addition, the bill allows manufacturers to export products to any other country in the world, provided that the recipient country wants the product, and provided that the product has been approved by any of the countries specified in the legislation as having excellent drug approval processes. For established, responsible pharmaceutical companies, this requirement is not a burden. They routinely seek approval of a new drug in one of the countries named in the bill, before any broader exports are contemplated. But this requirement will assure that irresponsible companies do not try to use the label ''Made in the U.S.A'' to peddle unsafe drugs or medical devices to other nations.

Many of the worst abuses by drug companies have come in deceptive promotions in which approved drugs are promoted for inappropriate uses and without necessary safety warnings. To protect consumers in other countries, the legislation also requires that U.S. drugs marketed in these countries must be labeled in accordance with the requirements of the country that approved the safety of the products. Promotional activities must be consistent with indications and contra-indications on the label.

The bill also authorizes the Secretary of HHS to immediately suspend the export of any American-made drug that poses an imminent hazard to public health in an importing country.

American manufacturers must be free to compete effectively in world markets. But America also has a responsibility to assure that the label ''Made in America'' will not be used to promote unsafe or ineffective products. This bill strikes an appropriate balance between these two important goals.

Unfortunately, the companion provision in the House bill includes none of these safeguards to protect foreign consumers. Instead, it allows U.S. manufacturers to export any product, no matter how unsafe or ineffective, anywhere in the world. This kind of carte blanch is clearly unacceptable. It does not serve the commercial interests of responsible manufacturers. It makes a mockery of the quality standard that his always been associated with products labeled ''Made in the U.S.A.'' And it will endanger innocent foreign consumers, including Americans traveling or living abroad, who rely on that label.

I urge the Senate to adopt this amendment, and to insist on those safeguards in whatever bill is finally sent to the President.

Mr. GREGG. Mr. President, I would like to thank Senators HATCH, KASSEBAUM, and KENNEDY for their great assistance in the development of this amendment which will reform the laws governing the export of pharmaceutical products and medical devices. It is imperative that this Congress take action immediately to change the inappropriately restrictive laws that grossly limit the export of medical products that can be legally marketed in other countries but are not yet approved by the U.S. Federal Food and Drug Administration [FDA]. On August 2, 1995 the Senate Labor and Human Resources Committee unanimously reported S. 593, the FDA Export Reform and Enhancement Act of 1995. This bill made improvements in the area of free trade while retaining some important public health protections.

Prior to 1986, medical products, including drugs, biologicals, animal

drugs, and medical devices generally could not be exported unless they were approved by the FDA. With the passage of the export legislation authored by Senator HATCH in 1986, this inappropriate and paternalistic policy was somewhat corrected. The 1986 amendments allowed drug manufacturers to ship their products to a codified list of 21 specific countries. It is my understanding that there was no prohibition included in the law that would prevent the expansion of that list, yet in the 10 years this law has been in effect, no attempt has ever been made to modernize this limited list.

On July 13, 1995, I held a hearing before the Aging Subcommittee of the Labor and Human Resources Committee on the issue of whether additional changes in the export laws are needed. There we determined that it is critical that we eliminate unnecessary restrictions which serve to encourage American pharmaceutical and medical devices companies to maintain research, production and investment to conduct clinical research in foreign countries; build factories overseas; and send high paying high-tech jobs to foreign competitive markets. Our current FDA export regimen is causing us to relinquish our intellectual leadership in the health care field. Improvement to the export policy in this country will also free up limited resources at the FDA, better enabling the agency to focus on the mission of timely, efficient approval of new products that meet the needs of American patients in conjunction with comprehensive FDA reform.

In this hearing, we listened to both drug and medical device manufacturers testify as to how the U.S. laws—unparalleled anywhere in the world—are negatively impacting their business, investments, and the patient population they serve in the United States. For example, Steve Ferguson, chief operating officer of the Cook Group, Inc., testified that our consideration of the FDA as the ''gold standard'' is ''generally a joke that you hear throughout the world, the standard is that, FDA approved just means that it is outdated. You are already on to the second or third generations over there, unless you are in the business, it is hard to understand that.''

We also heard from Mr. Michael Collins, chief operating officer of Medtronic, who stated—

> Every week that the current policy continues to be implemented, more American jobs are lost through the relocation of manufacturing overseas and the loss of market share to foreign competitors.

Mr. Mark Knudson, a managing partner of Medical Innovation Partners, a venture capital firm, testified that: ''5 or 10 years ago the pace of innovation and the intensity of regulation were not as mismatched as they are today * * *. We can no longer consider a medical investment opportunity which does not have a European strategy * * * the capital required to reach market is so much greater in the United States today.''

I am concerned that if we don't change these laws soon that we will have sent so many of these high-technology businesses overseas, the trend will be irreversible. The domestic drug and device industries are two of the too few sectors of the economy in which the United States is the acknowledged world leader and the U.S. producers have a favorable balance of trade, but the negative turn in these statistics is frightening. The Labor Committee reported out a bill 16 to 0 that began to address this problem. That substitute version of S. 593, worked out between Senators KASSEBAUM, HATCH, KENNEDY, and myself, was clearly a positive expansion of current law.

The bill we are including as a manager's amendment today represents a further iteration of that legislation in an attempt to address issues that remained in the committee-passed bill. This bill allows export of human drugs, animal drugs, biologics or medical devices not approved by the FDA. U.S. products, under this bill, could be exported to any country in the world if a product was approved by at least one country from a list of countries we were able to agree have appropriately sophisticated regulatory systems. These countries consist of the 21 that have this status under current law: Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom, with the additions of Israel, South Africa, the body of the European Union, and member countries in the European Economic Area—countries in the European Union and the European Free Trade Association.

As under current law, the exported products must be permitted in the importing country and must comply with all of the relevant laws imposed by that country. Moreover, the following safeguards must be satisfied and a FDA-unapproved product may be exported only if the product is made in conformity of good manufacturing practices; the product is not adulterated; the product is labeled and advertised in accordance with the requirements of the approving country; the product is in accordance with the specifications of the foreign purchaser; and, the product is labeled for export and not sold or reimported into the United States.

Along with free export to the above countries with sophisticated regulatory systems, we have included a provision which ensures this list will not be static, a major problem now. The Secretary, manufacturers, countries, and individuals will have the opportunity to expand the list of countries with sign-off authority on products produced in the United States that have market potential outside of this country. It is our strong intent that this provision will be used to keep the list dynamic.

In addition, we have expanded the provisions in current law for tropical diseases to include other diseases that are not prevalent in the United States. We have done this as a compromise. I personally believe all countries should have complete autonomy over their trade and what products they allow to be marketed to their citizens. However, some of my colleagues disagree, feeling we should play watch-dog over the rest of the world's markets. So, as a middle ground, we have agreed that American companies should have the freedom to explore the development of therapies and cures which address diseases that may be common among the populations of other countries, even though the disease is not often seen in the U.S. There is no good reason why paternalistic United States regulatory policies should relegate citizens of other countries to poor health, particularly when our regulatory regime is so behind-the-times that the need to pass this bill is universally acknowledged. Any countries not designated by either provision can receive exports of products not approved by FDA if the product is approved by at least one country with regulatory sophistication.

During the course of our hearing, a concern was raised by Senator SIMON that altering the export laws under the original terms of S. 593 might result in the dumping of unsafe products into Third World countries. Dr. John Petricciani, vice president for regulatory affairs with Genetics Institute, a Boston biotechnology firm, and former Director of the FDA's Center for Biologics, and head of the World Health Organization's Biologicals Unit, with 20 years in the Commissioned Corps of the U.S. Public Health Service as Deputy Director of the National AIDS Program Office, responded to Senator SIMON in a letter that is included in the hearing record. I would like to include a portion of his letter for the RECORD here as well:

> The real issue here is one of benefit and risk. Do the benefits to foreign countries in the current law outweigh the risks imposed on the U.S. in terms of draining jobs and capital investment in research and development and manufacturing? As has been pointed out by others, one of the results of that drain is the earlier availability of products in Europe and elsewhere than in the U.S. If we were discussing electronics or automobiles, I would not be as concerned because the American people are not being placed at a meaningful disadvantage by such delays.
>
> However, the issue here is medical products that can make a very big difference in the health of the American people. The current law is resulting in new products being introduced first in foreign countries, where U.S. firms are forced to manufacture them. I believe that we are paying far too high a price in terms of delayed availability of new products in the U.S. for the theoretical benefit being provided to developing countries.
>
> I would also like to point out that if a U.S. company really wanted to export a product that would be unacceptable in the U.S., all they would have to do is manufacture it outside the U.S. and export it to a developing country.

American jobs are being sent abroad because of current laws which restrict

the export of drug and medical technology not approved in the United States. These laws not only waste scarce Food and Drug Administration resources—they ignore the sovereignty of our trading partners around the world. Today's world marketplace demands that these barriers to U.S. global competitiveness be reformed.

A 1995 survey of U.S. medical device inventors and manufacturers by the Wilkerson Group showed that more than 90 percent of the firms surveyed planned to market new products overseas first. Ninety-eight percent of medical device companies in the U.S. are small businesses—employing fewer than 500 employees. These companies need to generate sales quickly in order to make appropriate returns to their startup investors, finance their manufacturing operations, and be able to afford the approval process in the United States which costs them a great deal in both time and money.

Although the 1986 Drug Export Act represented a good step forward, it has led to the development of a patchwork quilt of bureaucracy that has forced U.S. manufacturers to establish and maintain facilities outside the United States. At the same time, the law imposes time-consuming requirements on FDA, whose resources should be reprioritized to the review of new, life-saving medicines and technologies for American patients. Offshore movement often begins with the relocation of clinical trials, closely followed by R&D, which is most efficient when done in conjunction with the medical professionals involved in the trials.

Within the device industry, 50 percent of established companies and 87 percent of startup ventures are moving their clinical trials to foreign countries. This means American patients not only are not receiving access to the most cutting-edge innovative medical products, but also are several generations behind in what products have been approved and are in common use. Clinical trials are also critical to the success of products developed by pharmaceutical companies, who generally expend millions of dollars on this phase of drug development.

In a time of unprecedented harmony in worldwide trade, as reflected by recent passage of GATT, our laws relating to the export of foods, drugs, medical devices, and cosmetics should reflect that comity as well. The rate of growth in the favorable balance of trade that the medical device industry in this country has historically seen is slowing dramatically. The average annual rate of growth in this industry was 26 percent in 1988–1992; it dropped to 11 percent in 1992–1994.

In addition, the increased competition from foreign competitors—as well as American firms who have moved part or all of their operations overseas, and are now foreign competitors as well—is being evidenced in patent activity. The United States has consistently held close to three-quarters of the medical device patents granted in the United States, but foreign growth in this industry means that foreign-owned companies now hold thousands of U.S. patents, not just hundreds.

The paternalistic approach evidenced in our current law is no longer compatible with today's world marketplace. In my view the original version of S. 593, which was introduced by Senator HATCH and co-sponsored by Senators KASSEBAUM, ABRAHAM, FRIST and COATS as well as myself, was a good approach. This would have allowed free export to any World Trade Organization [WTO] member nation, and export to non-WTO members with 30 days notice to the Secretary of HHS, who had the authority to stop exports destined to be imminent hazards to the public health of citizens overseas. Similar efforts were led by Representative FRED UPTON in the House; he introduced the companion bill H.R. 1300 with 24 cosponsors last summer.

However, in the spirit of bipartisanship, Senators HATCH, KASSEBAUM, and I, undertook an effort to try to work with Senator KENNEDY to create a revised bill. The version of this bill being considered here today embodies the resultant compromise. While I believe this legislation is still more restrictive than it should be, there is a real value to moving a good bill rather than gaining nothing. This export bill is good trade policy and is consistent with advancing the public health.

AMENDMENT NO. 3544

(Purpose: To provide for welfare reform in the State of Texas)

On page 577 line 14 of the committee substitute, insert:

''SEC. 213 If the Secretary fails to approve the application for waivers related to the Achieving Change for Texans, a comprehensive reform of the Texas Aid To Families With Dependent Children program designed to encourage work instead of welfare, a request under section 1115(a) of the social Security Act submitted by the Texas department of Human Services on September 30, 1995, by the date of enactment of this Act, notwithstanding the Secretary's authority to approve the applications under such section, the application shall be deemed approved.''

AMENDMENT NO. 3545

(Purpose: To remove regulatory impediments to community development)

Section 223B of the amendment is amended to read as follows:

''SEC. 223B. Section 415 of the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Public Law 100–202; 101 Stat. 1329–213) is repealed effective the date of enactment of Public Law 104–19. The Secretary is authorized to demolish the structures identified in such section. The Secretary is also authorized to compensate those local governments which, due to this provision, expended local revenues demolishing the developments identified in such provision.''.

AMENDMENT NO. 3546

To the amendment numbered 3466: On page 406, line 8, strike ''$567,152,000'' and insert in lieu thereof ''$567,753,000''.

Mr. HATFIELD. Mr. President, I further ask unanimous consent that any statements relating to the amendments be placed in the RECORD at the appropriate place.

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

Mr. HATFIELD. Mr. President, I ask for action on the adoption of the amendments en bloc.

The PRESIDING OFFICER. They have already been agreed to.

Mr. HATFIELD. I thank the Chair.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business. In making the request, I have spoken with the chairman of the Appropriations Committee. If someone comes to the floor with business on this piece of legislation, if they will simply signal me, I will relinquish the floor, because I think that should take precedence. If no one is on the floor to do business on the appropriations bill, I seek unanimous consent to speak for 15 minutes as in morning business.

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

Mr. DORGAN. Mr. President, I wanted to come to the floor and speak about two pieces of legislation, one which I introduced last week and one which I will introduce next week, simply to alert my colleagues about what I intend to do with them.

Before I do, let me suggest that I think it is time for us to ask the President and the majority leaders and minority leaders of the House and the Senate to restart the budget negotiations and work to try to reach another budget agreement.

As I was coming over here this morning, I was thinking about a young man from Jamestown, ND. I was thinking of this issue of the budget, and of trying and failing. We went through all of this last year. In fact, I was one of the two Senate Democratic negotiators, along with Senator EXON. We spent day after day in S–207, at the White House, in the Oval Office, in the Cabinet room. Those of us involved in the negotiations know we did not reach a conclusion. We did not settle on a plan to balance the budget in 7 years, but we should, we can, and we ought to.

I was thinking about the young man from Jamestown, ND, in this context as I came over this morning. He is a young man who attended a wonderful little grade school in Jamestown, and he dreamed of being an astronaut. He grew up to be a strapping, happy young man named Rick Hieb.

He joined the program to become an astronaut, went to NASA, became an astronaut, and flew up in the space shuttle. I recall seeing Rick in Jamestown not only before he went up in the space shuttle, but also on television, as I sat on my living room couch, watching him and two of his fellow astronauts, who had flown in this mission with him.

The mission was that they were to grab, I believe it was, an Intel satellite,

a 10,000-pound satellite that had malfunctioned. They were to grab this satellite in outer space and hold it with an arm they had constructed. They were going to repair this satellite—it had never been done before—traveling 16,000 miles an hour in weightlessness while trying to grab a 10,000-pound satellite.

Rick and his two colleagues went out. Something stuck on the apparatus, and they failed to grab the satellite. Do you know what the headlines were that night? The headlines were that ''NASA Failed.'' ''The Astronauts Failed.'' ''The Mission Failed.''

The next day, still orbiting in space, they tried again. They spent a couple of hours walking in space, trying to manipulate and maneuver to grab that satellite, and they failed again. And the second day the newspapers said, ''NASA Mission Fails.'' ''Astronauts Fail.''

Then they spent some time trying to figure out how they could fix this problem, and they spent a day doing that. The next day, they went back out for a third time, and that is when many of us watched them on live television, I think, for about 4 hours, as they orbited around the Earth working this mechanism to grab the Intel satellite and fix the satellite. And they did it.

What they did was something that they had never before rehearsed, they had never planned and they had never done before. But they went out a third time and risked failure because they wanted to succeed.

Rick came to my office some time later. I asked how tough it was to try to do something in space that they had never even practiced. He said, ''The shame would have been not to try.'' There is no shame in trying and failing. The shame is in failing to try, and they went out and failed twice and the world heard that they had failed. The third time they went out and did something no one expected they could do, and they succeeded.

It is not just astronauts in space with the courage and bravery of Rick Hieb and his colleagues who ought to understand the message that the shame is if you fail to try.

Last year, we did not get a budget agreement. The fact is, we ought not quit, we ought to try again. Now is the time for us to try to reach a budget agreement.

We have a circumstance in which the majority leader is running for President. The President is running for reelection. We have a very unique political circumstance in this country. It will probably make it a little difficult to deal with the budget issue. But that does not mean we should not continue to try. It is time to restart the budget negotiations, and it is time for us to succeed in developing a plan for a balanced budget in the interest of this country.

Mr. President, let me ask unanimous consent to proceed for as much time as I consume in morning business.

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

Mr. DORGAN. Mr. President, I was speaking about the negotiations to try to reach some kind of a balanced budget plan. I know there has been a lot of windmilling of the arms and gnashing of the teeth and wringing of the hands. There has been a lot of huffing and puffing on both sides of the aisle about the budget deficit and about who is at fault for not reaching a plan of some type to deal with the budget deficit. But the plain fact is, both sides, it seems to me, have something to contribute.

I have said on the floor that the Republicans, I think, need to be commended. The Republicans have said to us, this is something we must do. They have continued to apply pressure that we reach some kind of a solution. That, I think, serves this country's interests. The Democrats also serve this country's interests by saying, yes, let us do that, but let us do it the right way. Just doing it, if you do it the wrong way, can be terribly destructive to this country.

The choices on spending, which is what we are really talking about when we balance the budget, are critically important. Some came to the floor of the Senate and said, ''We have a deal for you. Let us cut Star Schools by 40 percent and let us increase spending on star wars by 100 percent.''

I do not know what air they breathe, but that does not seem like very clear thinking to me. So the method by which we balance the budget is critically important. How many people do you want to kick out of the Head Start Program? That is a program that really works and helps children. How many kids do you want to tell, ''You no longer have an entitlement to have a hot lunch at school. You come from a poor family, but we decide you have no longer an entitlement to have a hot lunch at school in the middle of the day.'' How many people want to tell poor children that in this country? Some do, because that has been the proposal.

My point is, we should balance the budget, but we should do it with the right priorities. But, most of all, I think it is time for the President and the Members of the Congress to understand now is the time to try again. If we simply take the lower of the figures on spending cuts offered during this negotiations, the lower of the figures from either party, it adds up to over $700 billion in spending cuts and adds up to the kind of spending cuts that will reach a balanced budget in the year 2002.

So, it is not a case of not having the will to get there. It is a case of not agreeing to the menu of the spending cuts. It is time to try again. It is time for the President and Members of Congress to sit down, restart the negotiations, and solve this problem.

As I said, before I relinquish the floor, we have a very unique circumstance facing us. We have a majority leader here in the Senate running for President. We have a President down at the other end of Pennsylvania Avenue who wants to keep his job. A lot of what is going to go on this year, I assume, will have a substantial amount of political overtones.

But there ought not be, it seems to me, a political judgment in this country that says balancing the budget is not important. It is important. It is the right thing to do, and it ought to be done the right way. I think the President and leaders of Congress have an obligation to restart these negotiations, restart them now, and continue budget negotiations until we finalize a plan and agree to a plan to reach a balanced budget. The American people deserve that and this country deserves that.

THE TRADE DEFICIT AND JOBS IN OUR COUNTRY

Mr. DORGAN. Mr. President, I want to just speak briefly about two issues. One is a jobs issue and the other is a crime issue. Both, I think, are important to this country. I introduced a bill on one subject last week, and I am going to introduce a bill on the other next week. I just talked about the budget deficit. That has been coming down some in recent years. It is still too high, but it has been coming down.

Nobody talks about the trade deficit. The trade deficit has been going up. Last year was a record. The fact is the trade deficit goes up because we are exporting manufacturing jobs out of this country. It means fewer jobs and fewer opportunities and less income for too many of the American people who need a good job with good income.

How do we deal with the jobs issue? I do not have all the answers. I know we have to deal with the trade deficit. Nobody here talks about it. The trade deficit is going to be repaid ultimately with a lower standard of living in this country. So we have to deal with that.

One thing we ought to do, just for starters, relates to a bill I introduced in the Senate last week. It is very simple. The bill simply says, let us stop providing tax loopholes or tax incentives for those people who move their plants and their jobs overseas. I bet there are not many people here who know that is what goes on in this country.

We have in our Tax Code in this country a provision that says, if you have a manufacturing plant in America, and you have 100 jobs or 1,000 jobs or 10,000 jobs in America, we will give you a deal, you close up that plant, fire those workers, move them overseas, and you get a tax break. You get a tax break.

You get two plants sitting side by side across the street from each other, and they make the same product, hire the same number of workers, and one of them closes up and moves overseas and the other one stays here. Guess

what the difference is? Our Tax Code says the one that moved overseas, you do not have to pay taxes to this country even though you manufacture the same product and ship it back to sell in Pittsburgh or Denver or Fargo. You do not have to pay taxes. The company in a State pays taxes out of its income, but you do not pay taxes out of your income because, as long as you move the company overseas, you can keep the income over there tax free until you are repatriated back. Most do not repatriate back, so they get a fat, juicy tax incentive for moving their plants overseas and closing their plants in this country.

It does not take smelling salts to get people clear-headed enough to understand that this is a fundamentally goofy provision in our tax law. If you cannot start with the first step in deciding that we are going to stop providing incentives for people to ship their jobs out of America and move their jobs overseas, then we do not have a ghost of a chance of solving our problem in this country with fewer jobs that pay well.

Why do I say that? People say there are more jobs in our country. Yes, there are more jobs. The fact is, there are also more people in our country, and the more jobs we are getting are not the kind of jobs that pay well. Too often they are service industry jobs that do not pay very well. Guess what kind of jobs are leaving? The manufacturing jobs that used to pay well with good benefits. What we need to do is shut the loophole that says move your jobs overseas and we will pay you to do it. Shut it and shut it immediately.

The piece of legislation I introduced last week, which I hope to have a number of votes on in the Congress, some hearings on, is very simple. There are two provisions in it. One says, shut the insidious loophole that says we will pay you if you move your jobs overseas. Just shut it down. End it. Just be done with it.

Second, you take the money from that, a little over $2 billion, and you use it to provide tax credits for those who create new net jobs in our country. Those who create new jobs, more jobs now than they did over the previous couple-year base of their employment, they get a 25-percent tax credit on their payroll taxes, 25-percent tax credit for 2 years for the new jobs they create.

Let us use the savings by closing the loophole that exists to move jobs overseas and use those savings to provide an incentive to create jobs over here.

What could be more sensible than that? It is very simple: Yes or no, do we want to close the loophole that exists to send jobs overseas? Of course we do. We ought to. I had a vote here on the Senate last year and 52 Members voted to keep the loophole open. I will give them a chance to redeem themselves a couple of times this year. Should we close the loophole? Of course we should. Should we provide incentive to keep jobs in this country? Of course we should.

This is a very simple proposition. This does not go into a big school to learn. This is not advanced math. You give people an incentive for moving their jobs, they will move them; provide people incentive to create jobs, you will have more jobs here.

Mr. President, S. 1597 is a piece of legislation—and I hope my colleagues will become acquainted with it because we will vote on it a number of times this year. I hope that enough colleagues will understand their constituents have an interest in it and will approve this. I would like to see one Member of the Senate go to one town meeting in one community in this country and stand up, and in the first sentence of the town meeting say, ''By the way, I have a new idea. My idea is this: We should put in our Tax Code a little incentive that will reward companies who shut down their plants in America and move their jobs overseas.'' I think they would get booed out of the room before they get to the second sentence. That is what our Tax Code does. I am determined that we will shut that perverse, insidious incentive down, and we will do it soon.

That relates to the issue of jobs. Will that fix our jobs problem? No, but it will help. At least doctors understand to save the patient the first thing you do is stop the bleeding. That is what this bill is about.

CRIME

Mr. DORGAN. Now, the issue of crime. People want good jobs in our country. They also want to feel safe, and ours is a country with a serious crime challenge. I have a crime clock which shows the problem we have. One murder every 23 minutes; one forcible rape every 5 minutes; one robbery every 51 seconds; one aggravated assault every 28 seconds. We have 23,000 murders in America every year, and 110,000 rapes.

This is a country with a serious crime problem. I have said on the floor many times, and I want to repeat it, that it does not take Dick Tracy to understand who is going to commit the next violent crime. It is someone who committed a previous violent crime, and, in most cases, someone who has been in prison and who has been released early.

Earlier this week, I mentioned two recent cases, both of them in the Washington, DC, area. But I could stand up here and tell 3,400 similar stories, because 3,400 people have been murdered by people who should have been in prison and unable to murder anybody, but they were let out early. They were told that, since they behaved in prison, they would be let out early.

Here are two of these cases. One involves a young woman named Bettina Pruckmayr from Washington, DC, a young attorney, 26 years old, just starting her career here in Washington, DC. She was allegedly abducted by a 38-year-old man named Leo Gonzales Wright on the evening of December 16. Mr. Wright abducted her and forced her to drive to an ATM machine. He has been linked to this crime through a bank security photo. He stabbed Bettina Pruckmayr, 38 times—7 times in the back, 3 times in the neck, and elsewhere in the body with sufficient force to break her bones. He killed her brutally.

Who is Leo Gonzales Wright, this man who allegedly killed Bettina Pruckmayr? This young attorney was killed by someone who should not have been able to kill an innocent person. He should have been in jail. He is a man who previously committed robbery, previously committed rape, previously committed murder, previously committed armed robbery. Despite rape, robbery, and murder, this man, at age 38, was walking around the streets of Washington, DC. In fact, after he was released early from prison, the police picked him up for selling drugs. But he was not put back in prison.

It does not take Sherlock Holmes to figure out who will commit the next crime. It is someone who should have been in prison, like this alleged killer—who had murdered before, robbed before, raped before—but who is walking the streets because someone in the criminal justice system said, ''We want to let you out of prison early''—and did. The result is a 26-year-old young attorney named Bettina is dead. It should not have happened.

The second case involves a 13-year-old boy named Jonathan Hall, from Fairfax County, VA. I do not know much about Jonathan Hall except what I have heard on the news. Jonathan Hall was a young boy who was stabbed 58 times and thrown in a pond for dead. When they found him, they found grass and dirt between his fingers because he apparently, with 58 stab wounds, had tried to pull himself out of the pond. He was not dead when he was thrown into the pond, but he died.

The alleged killer of Jonathan is a fellow names James ''Buck'' Murray. James ''Buck'' Murray was sent to prison for murdering a cab driver a number of years ago. While he was in prison he was put on work release and he kidnapped a woman. Then, he murdered a fellow inmate. That is two murders and a kidnaping. And guess what? A few months ago he was walking the streets of Virginia, a free person, because the criminal justice system apparently felt it was OK that he could get out early. And now a 13-year-old boy is dead because a person who should have been in prison was walking the streets.

There are 3,400 other murder stories just like these. I have had some arguments with the folks in my State about the criminal justice system's approach to letting people out early. Here are the early release policies of some States, which I bet most people do not know. I will not go through and name

all of the States. Here is a State near the top of the alphabet that says to a violent criminal, every year you serve in prison you get 540 days off for good time. In other words, for every year you serve, you get out almost 2 years early. Serve 10 years—people say it is a big deal that we now say to violent criminals you have to serve 85 percent of their sentences. They get sentenced 10 years, they serve 85 percent of that time, and a violent criminal is out early. The average violent offender is now sentenced to a 20-year term and serves less than half of that sentence. The average person serving time in prison for murder in America serves only 7 years.

The States say, ''If you are good in prison, we will let you out early.'' Then, people like Bettina and Jonathan and others get murdered because we decided we cannot afford to keep violent people in prison where they belong— 180 days a year, good time credits for every year you serve, half a year off. Here is 180 days, 120 days, 365 days, 400 days, 547 days. These are the number of days of good time that the States give to these people. ''If you are good in prison, no matter how violent you are, we let you out early.'' This has to stop. This sort of thing cannot continue in our country.

If we, as a country cannot assure the safety of innocent people by deciding that those who commit violent acts, those who commit murder, will go to prison and stay there until the end of their sentence, if we cannot assure people we will keep these folks off the street, then we, in my judgment, have not done our job. Most of this has to do with State government. In fact, all of this does.

Nobody is let out of the Federal system early. There is no automatic good time credit for being good in the Federal system. The last crime bill eliminated that because of my provision that said that we are going to get rid of good time. I want the States to do the same thing. If you are a violent criminal, no good time for good behavior. You are going to be sent to prison to be kept off the streets.

I am introducing legislation next week called the SAFER Act, the Stop Allowing Felons Early Release Act. I want to distinguish between the felons in prison who are violent versus those who are not. I want prisoners who committed violent crimes to know that when they go in prison, they are going to stay in prison until the end of their term. My bill provides an incentive through the Federal truth in sentencing grant program to eliminate parole and good time credits for violent offenders.

We have an amount of money under the truth in sentencing grant program for prison construction, and for other purposes, that is allocated to eligible States. I would reduce these grants by 25 percent for the States that have not decided to end early release for violent criminals. For those States who have decided they will end early release for violent criminals, they will participate fully in this grant program and receive an incentive payment.

If a State decides it does not want to do that, that it wants to keep moving violent prisoners back to the streets, then they will lose a portion of this incentive grant program.

My legislation is simple. It will not force the States to do anything, but it will say to them, with the amount of money that we are using here in the Congress, in the crime bill, we want to at least try to provide incentive to those States that do the right thing. The right thing is to start deciding all across this country, especially in the State criminal justice systems, that violent people sent to prison will stay in prison.

It is probably hard to know how some of these families feel, especially when they discover their loved one has been killed by somebody who should not have been in a position to kill anybody. My mother was killed in a manslaughter incident. It was not the kind of incident I have described with Jonathan Hall and Bettina Pruckmayr, but I understand getting a telephone call about having a loved one involved in this kind of a crime, having a loved one lose her life in a violent crime. I can only imagine how families feel when they hear that their daughter or their mother or their son has been killed, and then they discover that the perpetrator was someone who has murdered two other people and spent a fraction of the time they should have spent in jail, but who, because the State let them out early, was in their neighborhood threatening their lives and their children's lives.

This country has to do better than that. This country has to decide there are some criminals who, by their acts of violence, demonstrate that they deserve no good time, no early release. The American people deserve to have those people sentenced and put away in a prison cell until the end of their term.

I hope very much that, as we discuss a crime bill this year and continue to work through the questions that confront the American people about jobs and crime and health care and education, and the range of issues that people care about and want us to do something about, we will take a look at this issue. Do we not have an obligation, when we have a person who has committed a murder, a kidnapping, another murder, to decide that this person does not deserve to be on our streets? Do we not have that responsibility? If the State governments do not exercise that responsibility, do we not have the right to try to provide some incentive and initiative there? I think we do.

This issue of devolution that we are talking about now in the Congress is that the Federal Government cannot do anything right, so we should send it all back to the State and local governments. These cases I am talking about are all State cases. Nobody is getting out of the Federal prisons early to do this. We have determinate sentencing, and there is no good time because I saw to it.

In the State judicial systems, you can earn up to 2 years off of your sentence for every year served. All you have to do is be good. Half of our prison population in America are nonviolent prisoners. Half of them are convicted of violent crimes. I want us as a country to distinguish between the two. I want prison cells open and available for those who have committed violent acts. Jonathan Hall should not be dead today, nor should Bettina Pruckmayr, nor should 3,400 other Americans killed by people let out early, who should have still been in prison. I hope we will discuss this at some great length this year as we discuss the crime bill.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to address the Senate as in morning business for 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Iowa.

DRUG POLICY, DRUG TRENDS

Mr. GRASSLEY. Mr. President, recent information from a wide variety of sources make two things very clear about the issue of drug policy, drug trends and the problems it causes, and that is that teenage drug use is on the rise, a disturbingly fast rise, and also that the American public remains very concerned about the need for counter-drug policies that are effective.

We know from virtually every survey, every reporting mechanism on drug use that adolescent use is on a rocket ride into the upper atmosphere. We know from hospital data that emergency room admissions are on the increase and that many of these involve young people. Late last year, we had firm confirmation of just how bad things are and where they are headed.

The administration released the latest high school survey. These data make it abundantly clear that not only is use of drugs going up, but youthful attitude toward the dangers of drug use are changing and changing for the worst. The best spin that the administration could put on the data was somehow, ''Well, it's not as bad as it was in 1979.''

Just what sort of a comment does that say? It notes that since 1992, the proportion of 10th graders using illicit

drugs in the prior 12 months had risen by almost 75 percent. Marijuana use among 8th graders—those would be people as young as 13 years of age—has risen by 2½ times. Prevalence among 10th graders has doubled.

These figures are bad enough, but what is worse is that they come after decades of decline. If we had a chart, that chart would show from these very same surveys, because they have been annual over a long period of time, that from 1979 down through 1992, there was a dramatic drop in the number of teenagers experimenting with drugs.

Since 1992, as this recent report clearly states, something is wrong, and there is a dramatic rise in that downward trend of the years from 1979 to 1982.

But that is not all, Mr. President. The DAWN survey of emergency room admissions is up. The PRIDE survey, echoing the problems in our schools, shows that use is up. The household survey shows that use is up. So, clearly, something is wrong. But we can take heart: Things are not as bad as they were in 1979.

What these figures mean is that we are storing up trouble for the next decade. We are in the process today of creating a new wave of drug abuse and addiction that is going to create problems for tomorrow.

This trend, as I said, comes after years of decline in adolescent use and the creation of an understanding during that period of time among the young about the dangers of drug use that helped to insulate them from ever starting to experiment with drugs.

Over the last 4 years, with this trend going up, that attitude that drugs are dangerous among young people is changing. So I think it is legitimate to ask and look at reasons why it is changing.

One of the principal reasons is that we have lost a coherent public message that drug use is dangerous and wrong. One of the main reasons for this is the disappearing act performed by the President on the whole drug question. Simply put, the bully pulpit stands empty. There is no message and no moral authority.

That, hopefully, is changing with the appointment of the new drug czar. Hopefully that is changing with the President 10 days ago in Baltimore holding a nationwide meeting by satellite to young people on the dangers of drugs and the President's concern about it.

The President in his speech mentioned the problems that his family had with drugs, I guess a brother it was.

Hopefully, it is turning around just because the President feels comfortable talking about the problem. It seemed to me that for this whole first term of office, the President must not have talked about it because he did not feel comfortable talking about it.

But whether it is the President of the United States, whether it is the music stars that the younger generation looks to that are parading the legitimacy of drug use or movie stars, the movie industry not playing it down, or whether it is just a plain lack that we do not have on television anymore the ads that the industry used to put on that drug use was bad, the public service announcements that drug use was bad, whatever it is, it all adds up to this dramatic increase in the use of drugs, most important, the dangerous experimentation by young people and the fact that that portends danger 10 years down the road for other problems that come from enhancement of drug use, the crime and everything that goes with it.

So there is no message out there, and the people who used to have the moral authority to give that message are no longer giving it.

Daily, more Americans die from the consequences of drug use, more are maimed in drug-related violence than have died in many of our overseas ventures. Certainly, more lives are at risk than have been lost to date in Bosnia. Yet, what do we see? We see a commitment of manpower, resources and treasure bound for far-flung fields in dubious enterprises of peacekeeping, and meanwhile we have a major problem right here at home calling for action and leadership.

We send peacekeeping missions to Bosnia, but where is our antidrug mission in Detroit? Where are the prime time news events to sell a policy on drugs, that drugs are dangerous? As I have said, the President had this wonderful assembly in Baltimore to bring attention to it. He has appointed an outstanding person as drug czar. But until these things happen—where was the media attention from past action by our political leadership on the drug problem?

If you do not think there is a problem of leadership on the drug question, try to find a word in the newspapers at that time about the resignation of Dr. Brown when he resigned late last year. Try to find mention of recent Gallup polls on public opinion about drugs. Try to find honorable mention of the surveys, the other surveys that I mentioned in my comments this afternoon.

If you go back to this period of time when the political leadership of America during the 1980's was saying, ''Just say no to drugs,'' when our TV tubes were filled with stories and public service announcements about the dangers of drugs, when our respected leaders in entertainment were saying drugs are bad—Mr. President, I ask unanimous consent for 5 more minutes.

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

Mr. GRASSLEY. When we had Bill Bennett resign as drug czar during this period of time, it was front-page news. When Dr. Brown left 2 or 3 months ago, you may remember the story was buried someplace on page 12 in one of the newspapers I read. Dr. Brown's resignation there, the story of it was buried along with news about drugs or the public's concern.

That fact of how the media treat this very serious problem, versus how serious the public at the grassroots really feel it is, tells us something about the present state of our drug policy and how the media think. Since they do not care about the drug issue, since the media do not care about the drug issue, it ceases to be news. Never mind the public attitude or what these surveys show, just somehow it does not happen to be news.

It is clear, however, Mr. President, that the public is very, very concerned about this issue. A poll earlier this year showed that over 80 percent of the public saw stopping the flow of illegal drugs to the United States as their primary foreign policy concern. Just in the last few weeks, the Gallup poll organization released information on the public's attitude about drugs.

This poll makes it clear that, unlike with the administration or the press, the drug issue has not fallen off the public's agenda. According to this poll by Gallup, 94 percent—I want to repeat that—94 percent of the American public say the drug abuse problem is either a crisis or a serious problem. They rate drugs second only to crime, which often is linked to drugs as their main concern.

Indeed, according to the poll, Americans rate the drug problem as more serious than the problems of health care, welfare reform, or even the budget deficit. Since you would be hard pressed to find this concern reflected in our media, press, radio, and TV, I think we ought to state that again. The public rates the drug problem as more serious than health care, welfare, and the deficit. So I hope our national media leaders are going to take that to heart. Of course, I hope our policy leaders pay attention.

Congress is listening, probably because we are closer to the grassroots. We have a responsibility in the process of representative government to keep our ear to the grassroots. I think most do. And following up on that, Senator DOLE and Speaker GINGRICH declared a new initiative on drugs. This is in keeping with the past congressional efforts to make the drug issue a very serious policy concern. We created the drug czar's office to coordinate policy in the middle of the last decade. We gave the administration a variety of tools to improve our international efforts.

We have supported coherent programs when they have been explained and defended. Just this week, we gave $3.9 million, in this appropriations bill that we are on, to the Office of Drug Policy so our drug czar can have more equipment to do his work. We have acted in the past to encourage direction and purpose, and it is clear that we need to do this more often. So that is why the task force launched by our majority leader and the Speaker of the House will help us to do that. I happened to be named cochair of that task

force. I also have the position of Chairman of the Senate Caucus on International Narcotics Control.

In both of these efforts, every member of the task force and the caucus—we pledge to do everything we can to put this issue back on the right track, meaning that it is as important a policy concern for us in the Congress as it is for the 94 percent of the people at the grassroots who say it is a major concern, more so than balancing the budget or welfare reform or health care reform. I believe my colleagues will do that.

But there is no task force, there is no caucus, no law that we can pass that is the answer to this problem by itself or even a serious commitment by the administration to this—albeit that is very, very important as an answer. Hopefully, the new appointee as czar highlights that, and he will do that. I feel that he will. We also, though, need a more sweeping, renewed effort to get the word out to a new generation of young people about the harm and wrongs of using drugs.

But our efforts cannot stop or start with just Government action. It is going to take a public commitment to the effort. We have to see communities and families reengaged on the issue. We need parents talking to children. We need a strong, clear message coming from our cultural elite, from the media, and from our community leaders. It is a message that we must continually renew. It is not a sometime thing, Mr. President.

If we do not do this on a concerted basis, we put the next generation at risk. Most importantly, as political leaders, as just part of the element of our total society to accomplish this goal, we have ignored our responsibilities, but so have the other elements of society.

When mothers sell their sons for drugs, when our own military bases are not free of drug trafficking, we have a problem that touches home. While only one American has died in Bosnia, many Americans die from drug use and have their lives ruined by drugs every day. We have a clear interest in doing something meaningful on this issue. It strikes home. The public understands it. The American people support meaningful action. This is a problem that we cannot afford to ignore. It is an issue that can only grow worse if we do not act. That is why the initiative to establish a serious drug policy is critical for the future.

So, I call not just upon my colleagues to work to renew our effort or to renew Congress' leadership on an issue so essential to the health and welfare of the Nation's young, but I call upon all of society to respond accordingly.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with consideration of the bill.

AMENDMENT NO. 3547 TO AMENDMENT NO. 3466

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for himself, Mr. HOLLINGS, Mr. PELL, Mr. DASCHLE and Mr. KERRY, proposes an amendment numbered 3547 to No. 3466.

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

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

The amendment is as follows:

At the appropriate place, insert the following:

The appropriation for the Arms Control and Disarmament Agency in Public Law 103–317 (108 STAT. 1768) is amended by deleting after ''until expended'' the following: ''only for activities related to the implementation of the Chemical Weapons Convention'' : *Provided*, That amounts made available shall not be used to undertake new programs or to increase employment above levels on board at the time of enactment of this Act.

Mr. HOLLINGS. Mr. President, we have been working with the other side of the aisle to see if there was some way to get additional operating resources for the Arms Control and Disarmament Agency or ''ACDA'' as it is called. ACDA's appropriation in this bill has been reduced to $35,700,000, down from its current level of $50,378,000, and far below the President's request of $75,300,000.

This amendment frees up approximately $2,700,000 in prior year appropriations that are earmarked in the fiscal year 1995 Commerce, Justice, and State Appropriations Act for the Chemical Weapons Convention. It allows these resources to be used instead for ACDA salaries and expenses. The amendment stipulates that these funds not be used to increase ACDA's staff. However, given the current funding situation that I have outlined, adding staff does not appear to be a viable option for this agency.

Mr. President, we have tried to find an acceptable offset or list of offsets to provide ACDA with more than the $2,700,000 in this amendment. I know that was the wish of our distinguished minority leader, Senator DASCHLE, and Senator PELL, our former Foreign Relations Committee chairman. I believe that was the hope of the chairman of our committee, Senator HATFIELD. However, this has not proven to be possible and this amendment represents the best we can do at this time.

I urge adoption of the amendment.

Mr. HATFIELD. Mr. President, this amendment has been cleared on both sides of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3547) was agreed to.

Mr. HATFIELD. I move to reconsider the vote, and I move to lay it on the table.

The motion to lay on the table was agreed to.

BONNEVILLE POWER ADMINISTRATION REFINANCING

Mr. HATFIELD. Mr. President, I would like to speak briefly on section 3303 of the bill we are now considering. Section 3303, on Bonneville Power Administration refinancing, is bipartisan legislation which would resolve permanently past interest rate subsidy criticisms regarding the Federal Columbia River Power System [FCRPS] investments in a manner that benefits Federal taxpayers while minimizing the impact of the Bonneville Power Administration's [Bonneville] power and transmission rates.

Section 3303 is substantially equivalent to legislation transmitted to the Congress by the administration on September 15, 1994. Senator MURRAY and I introduced the administration's proposal as S. 92 on January 4, 1995. The Senate Committee on Energy and Natural Resources reported S. 92 on July 11, 1995. This legislation has already passed the Senate and the House as part of H.R. 2491, the 7-Year Balanced Budget Reconciliation Act of 1995. The administration continues to support this legislation and I urge the Senate to adopt it again.

This legislation is important to my region of the country because it will enhance the long-term electric rate stability of the Bonneville Power Administration and thereby better position Bonneville to retain market share and thereby be better able to fund all of its responsibilities, including the fish and wildlife duties under the Northwest Power Act and the repayment obligations to the U.S. Treasury. In exchange for providing enhanced certainty to Bonneville in terms of its Treasury repayment responsibilities, the U.S. Treasury would realize additional returns from Bonneville ratepayers and the Federal budget deficit would be reduced by about $89 million over the current 7-year budget window. In short, section 3303 would provide long-term rate stability benefits for Northwest ratepayers and increased revenues for the U.S. Treasury. The Congress should again pass this legislation and forward it to the President for final enactment.

Mr. President, Bonneville is at a crossroads. As a power marketer of abundant inexpensive hydroelectric power from the Columbia River and other river systems in the Pacific Northwest, Bonneville was for many years unhampered by serious competitive pressure. Free for the most part

from the constraints that normally attend close competition, Bonneville was able to use its economical resource mix to achieve revenues that enabled it to pursue the ambitious mandates of the Pacific Northwest Power Planning and Conservation Act of 1980, commonly referred to as the Northwest Power Act. Whatever their views of Bonneville's mandated programs, Bonneville's customers stayed because Bonneville was by a substantial margin the low-cost provider, with a reliable and stable bulk electric power system unequaled in the world. Indeed, low cost Federal hydroelectric power was the key assumption underpinning the Northwest Power Act.

That assumption must now yield to a new reality. The costs of Bonneville's required fish mitigation efforts under the Endangered Species Act and the Northwest Power Act, and Bonneville's resource acquisitions, primarily nuclear energy and electric power conservation, have driven Bonneville's price upward. At the same time, other factors have aligned to drive down the costs of alternative sources of electric power. New technology in the form of highly efficient combined cycle gas turbines, declining gas prices caused by open competition and the discovery and exploitation of huge gas deposits in Canada, and the presence of surplus gas generation in California have combined to lure long-term Bonneville customers away from Bonneville and Federal hydroelectric power.

First and foremost Bonneville is a business enterprise. It must meet the competition, and maintain a customer base sufficient to fund its statutory responsibilities and to protect the billions of dollars invested in the FCRPS by Federal taxpayers. To meet these responsibilities, Bonneville has cut and continues to cut costs dramatically through huge program deferrals, program elimination and staff reductions. These severe cuts are essential to maintain an adequately low product price. Nonetheless, the Congress has realized that these measures may not be enough. To maintain a long-term customer base, Bonneville must be rate stable, meaning it must be able to assure its customers that they are insulated from important risks of cost escalation.

For many years, several administrations have threatened to change fundamentally the terms upon which Bonneville satisfies its obligation to return the taxpayers' investment in the FCRPS. These proposals had varying facets but in general would have increased substantially the returns to the Treasury. The annual threats, elicited in Bonneville's customers a grave concern that steeply increased returns to the Treasury would ultimately be visited on them. Section 3303 will eliminate this risk. Yet at the same time it will exact from ratepayers a fair price for eliminating the uncertainty. Analogizing to a common transaction relating to mortgages or other financial contracts, the bill would have Bonneville and its ratepayers pay a charge to refinance the contract to obtain other favorable terms. At the same time, the bill acknowledges the new reality of the market-place and seeks to strengthen Bonneville so that it is positioned in the long-run to recoup the Federal investment in full.

The purpose of section 3303 is to assure power purchasers that Bonneville will not be forced to raise its wholesale electric rates to noncompetitive levels in order to satisfy possible future changes in law or practice relating to the requirements under which Bonneville presently repays the Federal capital investment funded by appropriations in the FCRPS. In exchange for providing enhanced certainty in the terms of Bonneville's repayment responsibilities, the U.S. Treasury would realize additional returns from Bonneville ratepayers because enactment of the bill would increase Bonneville's payments in respect of the affected investments by a net present value of $100 million.

Section 3303 would accomplish this by providing for reconstitution of the outstanding repayment obligations of Bonneville for the appropriated capital investments in the FCRPS. Section 3303 would reset Bonneville's repayment obligation on all outstanding appropriated Federal investments in the FCRPS, as of October 1, 1996. The interest rates to repay the FCRPS investments would thus increase from their relatively low imbedded levels, which average approximately 3.4 percent, to current Treasury interest rates. Treasury interest rates at the time of the resetting of the principal amount of the investments are expected to be substantially higher than the historically imbedded rates.

The total principal amount outstanding on the appropriated investment repayment responsibility, now approximately $6.7 billion, would be reset to equal the sum of the net present value of the payments Bonneville would be expected to make under current practice, plus an increment of $100 million. The present value would be determined using then current Treasury rates. The bill would lead Bonneville to recover for return to the Treasury an additional $100 million in net present value over that which would be returned under existing repayment conditions. This supplement to the present value of Bonneville's repayment obligation will cause a noticeable but tolerable increase in the costs to be recovered in Bonneville's rates. As I indicated previously, it would also result in favorable budget scoring effects.

Section 3303 would provide necessary certainty to Bonneville customers, by requiring that Bonneville offer certain contract terms in all future and existing contracts for the sale of electric power and the provision of transmission services. These contract terms would be intended to discourage a future Congress from amending law in a manner that would exact further returns with respect to an investment once the investment is repaid, or from taking returns on the investment in addition to the principal and interest provided under the section 3303.

Mr. President, in summary I emphasize that section 3303 is bipartisan legislation which passed the Congress in the 1995 reconciliation bill and continues to be supported by the administration. The proposal would satisfactorily resolve a longstanding disagreement in a manner that is fair and provides certainty to both Pacific Northwest electric ratepayers and Federal taxpayers. Section 3303 would also enhance the long-term rate stability of the Bonneville Power Administration, better position Bonneville to retain market share, and thereby improve Bonneville's ability to fund all of its responsibilities, including the fish and wildlife duties and Treasury repayment. I urge the Senate to again pass this legislation.

Mr. President, I ask unanimous consent that the section-by-section analysis that has been prepared to accompany section 3303 be printed in the RECORD.

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

SECTION 3303 BONNEVILLE POWER ADMINISTRATION SECTION-BY-SECTION ANALYSIS

INTRODUCTION

The Bonneville Power Administration (BPA) markets electric power produced by federal hydroelectric projects in the Pacific Northwest and provides electric power transmission services over certain federally-owned transmission facilities. Among other obligations, BPA establishes rates to repay to the U.S. Treasury the federal taxpayers' investments in these hydroelectric projects and transmission facilities made primarily through annual and no-year appropriations. Since the early 1980's, subsidy criticisms have been directed at the relatively low interest rates applicable to many of these Federal Columbia River Power System (FCRPS) investments. The purpose of Section 3303 is to resolve permanently the subsidy criticisms in a way that benefits the taxpayer while minimizing the impact on BPA's power and transmission rates.

The legislation accomplishes this purpose by resetting the principal of BPA's outstanding repayment obligations at an amount that is $100 million greater than the present value of the principal and interest BPA would have paid in the absence of this Section 3303 on the outstanding appropriated investments in the FCRPS. The interest rates applicable to the reset principal amounts are based on the U.S. Treasury's borrowing costs in effect at the time the principal is reset. The resetting of the repayment obligations is effective October 1, 1996, coincident with the beginning of BPA's next rate period.

While Section 3303 increases BPA's repayment obligations, and consequently will increase the rates BPA charges its ratepayers, it also provides assurance to BPA ratepayers that the Government will not further increase these obligations in the future. By eliminating the exposure to such increases, the legislation substantially improves the ability of BPA to maintain its customer base, and to make future payments to the U.S. Treasury on time and in full. Since Section 3303 will cause both BPA's rates and its

cash transfers to the U.S. Treasury to increase, it will aid in reducing the Federal budget deficit by an estimated $89 million over the current budget window.

SUBSECTION (A) DEFINITIONS

This subsection contains definitions that apply to this Section 3303.

Paragraph (1) is self-explanatory.

Paragraph (2) clarifies the repayment obligations to be affected under Section 3303 by defining ''capital investment'' to mean a capitalized cost funded by a Federal appropriation for a project, facility, or separable unit or feature of a project or facility, provided that the investment is one for which the Administrator of the Bonneville Power Administration (Administrator or BPA) is required by law to establish rates to repay to the U.S. Treasury. The definition excludes Federal irrigation investments required by law to be repaid by the Administrator through the sale of electric power, transmission or other services; and, investments financed either by BPA current revenues or by bonds issued and sold, or authorized to be issued and sold, under section 13 of the Federal Columbia River Transmission System Act.

Paragraph (3) defines new capital investments as those capital investments that are placed in service after September 30, 1996.

Paragraph (4) defines those capital investments whose principal amounts are reset by Section 3303. ''Old capital investments'' are capital investments whose capitalized costs were incurred but not repaid before October 1, 1996, provided that the related project, facility, or separable unit or feature was placed in service before October 1, 1996. Thus, the capital investments whose principal amounts are reset by Section 3303 do not include capital investments placed in service after September 30, 1996. The term ''capital investments'' is defined in subsection (a)(2).

Paragraph (5) defines ''repayment date'' as the end of the period that the Administrator is to establish rates to repay the principal amount of a capital investment.

Paragraph (6) defines the term ''Treasury rate.'' The term Treasury rate is used to establish both the discount rates for determining the present value of the old capital investments (subsection (b)(1)) and the interest rates that will apply to the new principal amounts of the old capital investments (subsection (c)). The term Treasury rate is also used under subsection (g) in determining the interest rates that apply to new capital investments, as that term is defined.

In the case of each old capital investment, Treasury rate means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields, during the month preceding October 1, 1996, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between October 1, 1996, and the repayment date for the old capital investment. Thus, the interest rates and discount rates for old capital investments reflect the Treasury yield curve proximate to October 1, 1996. Likewise, in the case of each new capital investment, the Treasury rate means a rate determined by the Secretary of the Treasury, taking into consideration prevailing market yields during the month preceding the beginning of the fiscal year in which the related facilities are placed in service, on outstanding interest-bearing obligations of the United States with periods to maturity comparable to the period between the beginning of the fiscal year in which the related facilities are placed in service and the repayment date for the new capital investment. Thus, the interest rates for new capital investments reflect the Treasury yield curve proximate to the beginning of the fiscal year in which the facilities the new capital investment concerns are placed in service.

The term Treasury rate is not to be confused with other interest rates that Section 3303 directs the Secretary of the Treasury to determine, specifically, the short-term (one-year) interest rates to be used in calculating interest during construction of new capital investments (subsection (f)) and the interest rates for determining the interest that would have been paid in the absence of Section 3303 on old capital investments that are placed in service after the date of enactment of Section 3303 but prior to October 1, 1996 (subsection (b)(3)(B)(ii)). These latter interest rates reflect rate methodologies very similar to those specified by the term Treasury rate, but apply to different features of Section 3303.

It is expected that the Secretary of the Treasury will use an interest rate formulation that the Secretary uses to determine rates for federal lending and borrowing programs generally.

SUBSECTION (b) NEW PRINCIPAL AMOUNTS

Subsection (b) establishes new principal amounts of the old capital investments, which the Administrator is obligated by law to establish rates to repay. These investments were made by Federal taxpayers primarily through annual appropriations and include investments financed by appropriations to the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and to BPA prior to implementation of the Federal Columbia River Transmission System Act. In general, the new principal amount associated with each such investment is determined (regardless of whether the obligation is for the transmission or generation function of the FCRPS) by (a) calculating the present value of the stream of principal and interest payments on the investment that the Administrator would have paid to the U.S. Treasury absent this Section 3303 and (b) adding to the principal of each investment a *pro rata* portion of $100 million. The new principal amount is established on a one-time-only basis. Although the new principal amounts become effective on October 1, 1996, the actual calculation of the reset principal will not occur until after October 1, 1996, because the discount rate will not be determined, and BPA's final audited financial statements will not become available, until later in that fiscal year.

As prescribed by the term ''old capital investment,'' the new principal amount is not set for appropriations-financed FCRPS investments the related facilities of which are placed in service in or after fiscal year 1997; for Federal irrigation investments required by law to be recovered by the Administrator from the sale of electric power, transmission or other services; or for investments financed by BPA current revenues or by bonds issued or sold, or authorized to be issued and sold, under section 13 of the Federal Columbia River Transmission System Act.

The discount rate used to determine the present value is the Treasury rate for the old capital investment and is identical to the interest rate that applies to the new principal amounts of the old capital investments. Thus, the Secretary of the Treasury is responsible for determining the interest rate and the discount rate assigned to each old capital investment.

The discount period for a principal amount begins on the date that the principal amount associated with an old capital investment is reset (October 1, 1996) and ends, for purposes of making the present value calculation, on the repayment dates provided in this section. The repayment dates for purposes of making the present value calculation are already assigned to almost all of the old capital investments. For old capital investments that will be placed in service after October 1, 1994, but before October 1, 1996, no such dates have been assigned. The Administrator will establish the dates for these latter investments in accordance with U.S. Department of Energy Order RA 6120.2—''Power Marketing Administration Financial Reporting,'' as in effect at the beginning of fiscal year 1995. These ideas are captured in the definition of the term ''old payment amounts.''

The interest portion of the old payment amounts is determined on the basis that the principal amount would bear interest annually until repaid at interest rates assigned by the Administrator. For almost all old capital investments, these interest rates were assigned to the capital investments prior to the effective date of Section 3303. (For old capital investments that are placed in service after September 30, 1994, the interest rates to be used in determining the old payment amounts will be a rate determined by the Secretary of the Treasury proximate to the beginning of the fiscal year in which the related project or facility, or the separable unit or feature of a project or facility, was placed in service. Subsection (b)(3)(B)(ii) provides the manner in which these interest rates are established.) Thus, for purposes of determining the present value of a given interest payment on a capital investment, the discount period for the payment is between October 1, 1996, and the date the interest payment would have been made.

The *pro rata* allocation of $100,000,000 is based on the ratio that the nominal principal amount of the old capital investment bears to the sum of the nominal principal amounts of all old capital investments. This added amount fulfills a key financial objective of Section 3303 to provide the U.S. Treasury and Federal taxpayers with a $100,000,000 increase in the present value of BPA's principal and interest payments with respect to the old capital investments. Since the $100,000,000 is a nominal amount that bears interest at a rate equal to the discount rate, the present value of the stream of payments is necessarily increased by $100,000,000.

Subsection (b)(2) provides that with the approval of the Secretary of the Treasury based solely on consistency with Section 3303, the Administrator shall determine the new principal amounts under subsection (b) and the assignment of interest rates to the new principal amounts under subsection (c). The Administrator will calculate the new principal amount of each old capital investment in accord with subsection (b) on the basis of (i) the outstanding principal amount, the interest rate and the repayment date of the related old capital investment, (ii) the discount rate provided by the Secretary of the Treasury, and (iii) for purposes of calculating the pro rata share of $100 million in each new principal amount under subsection (b)(2)(B), the total principal amount of all old capital investments. The Administrator will provide this data to the Secretary of the Treasury so that the Secretary can approve that the calculation of each new principal amount is consistent with this section and that the assignment of the interest rate to each new principal amount is consistent with subsection (c).

The approval by the Secretary of the Treasury will be completed as soon as practicable after the data on the new principal amounts and the interest rates are provided by the Administrator. It is expected that the approval by the Secretary will not require substantial time.

SUBSECTION (c) INTEREST RATES FOR NEW PRINCIPAL AMOUNTS

Subsection (c) provides that the unpaid balance of the new principal amount of each

old capital investment shall bear interest at the Treasury rate for the old capital investment, as determined by the Secretary of the Treasury under subsection (a)(6)(A). The unpaid balance of each new principal amount shall bear interest at that rate until the earlier of the date the principal is repaid or the repayment date for the investment.

SUBSECTION (d) REPAYMENT DATES

Subsection (d), in conjunction with the term ''repayment date'' as that term is defined in subsection (a)(5), provides that the end of the repayment period for each new principal amount for an old capital investment shall be no earlier than the repayment date used in making the present value calculations in subsection (b). Under existing law, the Administrator is obligated to establish rates to repay capital investments within a reasonable number of years. Subsection (d) confirms that the Administrator retains this obligation notwithstanding the enactment of Section 3303.

SUBSECTION (e) PREPAYMENT LIMITATIONS

Subsection (e) places a cap on the Administrator's authority to prepay the new principal amounts of old capital investments. During the period October 1, 1996 through September 30, 2001, the Administrator may pay the new principal amounts of old capital investments before their respective repayment dates provided that the total of the prepayments during the period does not exceed $100,000,000.

SUBSECTION (f) INTEREST RATES FOR NEW CAPITAL INVESTMENTS DURING CONSTRUCTION

Subsection (f) establishes in statute a key element of the repayment practices relating to new capital investments. Subsection (f) provides the interest rates for determining the interest during construction of these facilities. For each fiscal year of construction, the Secretary of the Treasury determines a short-term interest rate upon which that fiscal year's interest during construction is based. The short-term interest rate for a given fiscal year applies to the sum of (a) the cumulative construction expenditures made from the start of construction through the end of the subject fiscal year, and (b) interest during construction that has accrued prior to the end of the subject fiscal year. The short-term rate for the subject fiscal year is set by the Secretary of the Treasury taking into consideration the prevailing market yields on outstanding obligations of the United States with periods to maturity of approximately one year. These ideas are included in the definition of the term ''one-year rate.''

This method of calculating interest during construction equates to common construction financing practice. In this practice, construction is funded by rolling, short-term debt which, upon completion of construction, is finally rolled over into long-term debt that spans the expected useful life of the facility constructed. Accordingly, subsection (f) provides that amounts for interest during construction shall be included in the principal amount of a new capital investment. Thus, the Administrator's obligation with respect to the payment of this interest arises when construction is complete, at which point the interest during construction is included in the principal amount of the capital investment.

SUBSECTION (g) INTEREST RATES FOR NEW CAPITAL INVESTMENTS

Subsection (g) establishes in statute an important component of BPA's repayment practice, that is, the methodology for determining the interest rates for new capital investments. Heretofore, administrative policies and practice established the interest rates applicable to capital investments as a long-term Treasury interest rate in effect at the time construction commenced on the related facilities. By contrast, subsection (g) provides that the interest rate assigned to capital investments made in a project, facility, or separable unit or feature of a project or facility, provided it is placed in service after September 30, 1996, is a rate that more accurately reflects the repayment period for the capital investment and interest rates at the time the related facility is placed in service. The interest rate applicable to these capital investments is the Treasury rate, as defined in subsection (a)(6)(B). Each of these investments would bear interest at the rate so assigned until the earlier of the date it is repaid or the end of its repayment period.

SUBSECTION (h) CREDITS TO ADMINISTRATOR'S REPAYMENT TO THE UNITED STATES TREASURY

Subsection (h) provides that the Administrator shall continue to receive certain credits to annual cash transfers by the Administrator to the U.S. Treasury. The credits are related to annual payments by the Administrator under a settlement of certain claims against the United States by the Confederated Tribes of the Colville Reservation, which claims relate to the construction and operation of the Grand Coulee Dam. The credits, together, with a lump-sum payment by the United States to the Tribes, represent an equitable allocation of the costs of the settlement between BPA ratepayers and federal taxpayers.

The credits provided under this subsection (h) shall be applied against interest or other payments to be made by the Administrator to the U.S. Treasury. The payments to the U.S. Treasury available for crediting include, without limitation, interest and principal payments associated with capital investments as reset under this Section 3303, on bonds issued by BPA to the U.S. Treasury, and in connection with FCRPS investment that are placed in service after September 30, 1996.

Subsection (h) also provides that it will apply ''notwithstanding any other law.'' This clause assures that subsection (h) amends section 6 of the Confederated Tribe of the Colville Reservation Grand Coulee Dam Settlement Act, P.L. 103–436 (the ''Settlement Act''). Subsection (h) amends section 6 of the Settlement Act solely by reshaping over time the credits otherwise available to BPA under the Settlement Act.

BPA's obligation to make payments to the Tribes under the Settlement Agreement authorized in the Settlement Act would not in anyway change with the enactment of subsection (h). Likewise, BPA's payments to the Tribes under the Settlement Agreement authorized in the Settlement Act, would in no manner be conditioned on or subject to the availability or application of the credits.

The new schedule of credits provided in subsection (h) would also not affect the present value of the ratepayers' or taxpayers' respective shares of the costs of the Settlement Agreement. It does, however, enable the impacts of the refinancing on BPA's rates to be ameliorated in the near term.

SUBSECTION (i) CONTRACT PROVISIONS

Subsection (i) is intended to capture in contract the purpose of this legislation to permanently resolve issues relating to the repayment obligations of BPA's customers associated with an old capital investment. With regard to such investments, paragraph (1) of subsection (i) requires that the Administrator offer to include in power and transmission contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any return of the capital investments other than the interest payments or principal repayments authorized by Section 3303. Paragraph (1) of subsection (i) also provides assurance to ratepayers that outstanding principal and interest associated with each old capital investment, the principal of which is reset in this legislation, shall be credited in the amount of any payment in satisfaction thereof at the time the payment is tendered. This provision assures that payments of principal and interest will in fact satisfy principal and interest payable on these capital investments.

Whereas paragraph (1) of subsection (i) limits the return to the U.S. Treasury of the Federal investments in the designated projects and facilities, together with interest thereon, paragraph (2) of subsection (i) requires the Administrator to offer to include in contracts terms that prevent the Administrator from recovering and returning to the U.S. Treasury any additional return on those old capital investments. Thus, the Administrator may not impose a charge, rent or other fee for such investments, either while they are being repaid or after they have been repaid. Paragraph (2) of subsection (i) also contractually fixes the interest obligation on the new principal obligation at the amount determined pursuant to subsection (c) of Section 3303.

Paragraph (3) of subsection (i) is intended to assure BPA ratepayers that the contract provisions described in paragraphs (1) and (2) of subsection (i) are not indirectly circumvented by requiring BPA ratepayers to bear through BPA rates the cost of a judgment or settlement for breach of the contract provisions. The subsection also confirms that the judgment fund shall be available to pay, and shall be the sole source for payment of, a judgment against or settlement by the Administrator or the United States on a claim for a violation of the contract provisions required by subsection (i). Section 1304 of title 31, United States Code, is a continuing, indefinite appropriation to pay judgments rendered against the United States, provided that payment of the judgment is ''not otherwise provided for.'' Paragraph 3 of subsection (i) of Section 3303 assures both that the Bonneville fund, described in section 838 of title 16, United States Code, shall not be available to pay a judgment or settlement for breach by the United States of the contract provisions required by subsection (i) of Section 3303, and that no appropriation, other than the judgment fund, is available to pay such a judgment.

Paragraph (4)(A) of subsection (i) establishes that the contract protections required by subsection (i) of Section 3303 do not extend to Bonneville's recovering a tax that is generally applicable to electric utilities, whether the recovery by Bonneville is made through its rates or by other means.

Paragraph (4)(B) of subsection (i) makes clear that the contract terms described above are in no way intended to alter the Administrator's current rate design discretion or ratemaking authority to recover other costs or allocate costs and benefits. This Section 3303, including the contract provisions under subsection (i), does not preclude the Administrator from recovering any other costs such as general overhead, operations and maintenance, fish and wildlife, conservation, risk mitigation, modifications, additions, improvements, and replacements to facilities, and other costs properly allocable to a rate or resource.

SUBSECTION (j) SAVINGS PROVISIONS

Paragraph (1) of this section assures that the principal and interest payments by the Administrator as established in this Section 3303 shall be paid only from the Administrator's net proceeds.

Paragraph (2) confirms that the Administrator may repay all or a portion of the principal associated with a capital investment

before the end of its repayment period, except as limited by subsection (e) of Section 3303.

Mr. BOND. Mr. President, I would like to bring one item of concern to the attention of the chairman of the Appropriations Committee. Specifically, I am concerned about a provision contained in the House-passed version of this bill which would prohibit expenditure of any funds to expand our Embassy in Vietnam or open new facilities beyond those that were in place on July 11, 1995, unless the President makes a number of certifications relating to the efforts to account for soldiers missing in action from the Vietnam war.

Mr. President, this is an unnecessary provision which will do nothing to support our Government's active, successful, on-going efforts to resolve remaining MIA cases.

The Senate has not had the opportunity to speak on this particular provision. The Senate last fall did, however, consider a proposal to slow efforts to move forward on relations with Vietnam, and we rejected it by an overwhelming margin. That vote certainly indicates that the majority of the Senate supports moving forward in our relationship with Vietnam.

I urge the chairman to recognize that there is strong opposition to this provision in the Senate, and reject it in the House-Senate conference.

Mr. HATFIELD. Mr. President, I am aware of the concerns of the Senator from Missouri. I am further aware that those concerns are shared by a large number of our colleagues, and I will make an effort in conference to maintain the Senate position on this issue.

Mr. BOND. Mr. President, I thank the chairman and I assure him I will be a vocal supporter of that position in conference.

Mr. KERREY. Mr. President, I join the Senator from Missouri in expressing opposition to the provision contained in the House bill which will restrict our ability to move forward in Vietnam. I believe both the Senate and the President have clearly expressed their opposition to this provision in the past.

The inclusion of this provision in the fiscal year 1996 Commerce-State-Justice conference report was cited by the President as one of the reasons for his veto of that legislation. Furthermore the President has indicated that he intends to veto the Foreign Relations Authorization Act in part because of the inclusion of this provision that will limit his ability to further normalize relations with Vietnam. Specifically, he warns this provision ''could threaten the progress that has been made on POW/MIA issues * * *''

I strongly opposed this restriction last fall, and I will oppose it just as strongly in this conference.

Mr. KERRY. Mr. President, I would like to address this issue as well. The Senate has voted more than once on the question of how best to promote the full accounting of Americans missing in action in Vietnam and on the issue of moving forward in our relations with Vietnam. In each case, this body has voted to take reciprocal steps toward Vietnam as a means of achieving both these objectives. The provision contained in the House bill, if included in the conference report, would be contrary to the Senate's clear record and for that reason it should be rejected by the conferees.

That is not the only reason it should be rejected, however. Working with Vietnam, we have established an unprecedented process for resolving outstanding POW/MIA cases. American and Vietnamese teams are working together to conduct field exercises and to pursue other leads. Even as we speak, a high-level Presidential delegation is in Hanoi consulting with Vietnamese government officials on the progress of this effort. The legislation contained in the House bill could jeopardize this ongoing work and set back the progress we are making.

I think we should recognize this provision for what it is—a thinly veiled attempt to undermine the administration's decision to normalize relations with Vietnam. The majority of Members in this body was indicated they support normalization. We should not allow the House to put us on record otherwise.

Mr. McCAIN. Mr. President, I am very pleased that the Committee has seen fit to strike the provision of the House-passed omnibus appropriations bill which restricts the United States diplomatic presence in Vietnam. I would like to join my colleagues in opposition to the House provision.

The committee first dealt with this issue in response to a House amendment to the CJS bill which passed without a recorded vote. That amendment, as my colleagues may remember, prohibited funds for expanding diplomatic relations with Vietnam. When the conference report was approved by the Senate on December 7, 1995, it allowed for funding, but conditioned funding on a Presidential certification involving missing servicemen.

The President listed the Vietnam provision as one of his reasons for vetoing the CFS bill. In his estimation, the restriction ''unduly restricts his ability to pursue national interests in Vietnam.'' Nevertheless, the House has decided to revisit the issue. It has included language in its Omnibus appropriation bill virtually identical to the language which solicited to veto on CFS and just 2 days ago the threat of another on the State Department reorganization bill.

I couldn't agree with the President more in this regard. He has made a decision to normalize relations with Vietnam—a decision certainly consistent with this constitutional authority, and he should not be constrained in carrying it out. I commend the Senate committee for acting in a manner which will allow United States-Vietnam relations to move forward.

I am still hopeful that we can put this issue behind us. The Senate, after all, has demonstrated time and again its lack of support for any restrictions on our relations with Vietnam. It has done so once again by striking the House Vietnam language in the bill before us. I encourage the Senate conferees to honor the very clear sentiment of the Senate and to hold firm.

Mr. HATFIELD. Mr. President, I thank all senators for their comments. I look forward to working with my colleagues on the committee to try to resolve this issue in a way that meets their concerns.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The 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.

Mr. GRAMS. Mr. President, I also ask unanimous consent to speak as if in morning business for up to 15 minutes.

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

AN ENERGY DEPARTMENT IN SEARCH OF AN ENERGY MISSION

Mr. GRAMS. Mr. President, a great many businesses, nonprofit organizations, and even Government agencies have created their own mission statements.

Far from simply being slogans, mission statements can serve as a guiding force, setting out specific goals, principles, and objectives.

When I was elected to the Senate, I drafted a mission statement for my office which outlines the priorities of the Minnesotans I was sent here to represent, and offers a yardstick we can use to measure how well we are meeting their needs.

It works—a mission statement brings the mission into focus.

But what happens when a massive Federal agency, entrusted with billions of taxpayer dollars, is forced to operate without a definable mission? How can it remain accountable to the taxpayers when its mission is constantly shifting and evolving?

Without a well-defined mission to contain it, a bureaucracy can grow in one of two ways. It can spread as quickly as fire on a lake of gasoline, rapidly consuming every inch of available space. Or it might expand slowly, like water dripping into a bucket, gradually growing in volume until it finally spills over its borders.

Either way, the results can be disastrous.

Metaphors aside, if you need a concrete example that illustrates the kind of bureaucracy I'm describing, you need look no further than the Department of Energy.

Mr. President, let me take you back to 1977. Jimmy Carter was President, and the Nation was still grappling with the energy crisis which had paralyzed it earlier in the decade. With the OPEC oil embargo and the gas lines it created still vivid memories, 1977 was the year in which Congress took what it thought was a preemptive strike against future energy emergencies by establishing a Cabinet-level Department of Energy.

When he submitted legislation to Congress proposing a national energy agency, President Carter said:

> Nowhere is the need for reorganization and consolidation greater than in energy policy. All but two of the Executive Branch's Cabinet departments now have some responsibilities for energy policy—but no agency, anywhere in the Federal Government, has the broad authority needed to deal with our energy problems in a comprehensive way.

At the same time, however, some were questioning the need for yet another layer of Federal bureaucracy. In May of that year, Nobel Prize-winning economist Milton Friedman likened a national energy agency to a Trojan horse. ''[I]t enthrones a bureaucracy that would have a self-interest in expanding in size and power,'' he wrote, ''and would have the means to do so—both directly, through exercising price control and other powers, and indirectly, through propagandizing the public and the Congress for still broader powers.''

Fast forward to 1996. Decades of fiscal mismanagement in Washington have sapped America's Treasury and left a $5 trillion debt on the Nation's credit card.

Middle-class taxpayers have been called on repeatedly to bail out the Government through ever-higher taxes. Now they are frustrated, and they are demanding relief, and they are demanding that the Nation begin prioritizing its precious resources by balancing the Federal budget. In 1996, the Department of Energy is marking its nineteenth anniversary, but at an annual cost to the taxpayers of more than $15 billion, there is little to celebrate.

DOE has become a black hole for taxpayer dollars, a bureaucracy without equal, an energy agency without a clear or focused energy mission. Milton Friedman was right—the Trojan horse has arrived.

The question is, what went wrong? For one thing, the problems DOE was created to protect us against never materialized. Oil supplies eventually rose, while oil prices dropped. The need for a national energy agency became less apparent. Still, DOE has continued to grow, as bureaucrats seek to justify its existence by branching out into areas only marginally related to national energy policy. Our national energy agency has cost the taxpayers hundreds of billions of dollars in its ongoing quest for an energy mission.

The General Accounting Office published a troubling report last August entitled ''Department of Energy: A Framework for Restructuring DOE and Its Missions,'' which noted that DOE has been in transition almost from the time of its creation. In discussing DOE's changing missions and priorities, the GAO reported:

> For its first 3 years, DOE's programs emphasized research and initiatives to cope with a global energy crisis that disrupted U.S. and world markets and economies. By the mid-1980's, accelerating nuclear weapons production and expanding space-based defense research dominated DOE's budget resources.
>
> Since the late 1980's, DOE's budget has reflected a growing emphasis on solving a half-century's environmental and safety problems caused by the nuclear weapons and research activities of DOE and its predecessors.

To appreciate how far DOE has strayed from its original energy mandate, one must first understand that 85 percent of its budget today is spent on activities that have no direct relation to energy resources.

Let me say that again. Eighty-five percent of the budget of DOE today is spent on activities that have no direct relationship to energy resources.

An examination of where those nonenergy dollars are being directed is perhaps the best way to illustrate the enormous gap between the stated missions of DOE, and the results those missions have generated.

The bulk of DOE's nonenergy funds goes toward the cleanup of radioactive waste from nuclear weapons facilities and for overseeing storage of the Nation's nuclear waste. Unfortunately, the waste problem—which wasn't one of DOE's missions in 1977 but has since become one of its primary responsibilities—has also become its primary failure.

There are 26 nuclear power plants nationwide, including the Prairie Island facility in my home State of Minnesota, which will run out of storage space for their spent nuclear fuel beginning as early as 1998. That's the very year in which DOE is required by law to start accepting nuclear waste at an interim storage facility. DOE has known about the 1998 deadline for 14 years, since passage of the Nuclear Waste Policy Act. The Senate Energy Committee this week reaffirmed its intention to hold DOE to its legal obligation. And yet years of backpedaling, false starts, and feet-dragging by DOE have thrown that deadline in doubt.

Despite repeated warnings from Congress that the deadline is fast approaching, no temporary site has been selected and a permanent storage facility is no more than a pipe dream at this point.

Those 26 nuclear plants are left with the distasteful choice of either building more temporary storage or closing down and depriving millions of electric customers of cost-effective fuel.

Electric utility customers are paying the price for DOE's delay. Through a surcharge on their monthly energy bills, they have already contributed $11 billion of their hard-earned dollars to a nuclear waste trust fund established to finance creation of a permanent storage facility. DOE has raided the trust fund of $5 billion, with little to show for it.

I would suggest, Mr. President, that the failure of DOE to move forward with this most basic mission—over 14 years, at a cost to the taxpayers of $11 billion—should itself raise serious questions about DOE's ability to carry out any of its missions.

DOE is also responsible for national energy research, which includes the development of alternative sources of energy such as solar, wind, synthetic fuels, and clean coal.

DOE research has cost the American taxpayers more than $70 billion since 1977, but we have little to show for this tremendous investment. That $70 billion has bought plenty of pork, but few meaningful scientific breakthroughs.

In testimony last year before the House Subcommittee on Energy and Water Development, Jerry Taylor of the Cato Institute said,

> Energy R&D spending has cost the American taxpayer plenty without any real reform. . . . Virtually all economists who have looked at those programs agree that Federal energy R&D investments have proven to be a spectacular failure.

Another of DOE's missions has been to promote energy conservation in the aftermath of the OPEC oil embargo.

But unlike the days of the oil crisis, when the Federal Government predicted that supplies of fossil fuels would be depleted by the year 2000, U.S. oil reserves are 50 percent higher today than they were in the early 1970's. Coal and natural gas reserves have increased substantially. Energy prices are actually lower.

For most Americans, the energy crunch is just a vague memory—keeping a multimillion-dollar agency around just in case, at a time when we face a $5 trillion public debt, is hardly prudent Government management.

And what of DOE's mission to ensure affordable power, and access to it by consumers? Unfortunately, DOE has been ineffective in carrying out both of those functions.

The Department's ultimate goal of guiding the Nation toward independence from foreign energy sources has obviously never been achieved. Let me explain why.

DOE itself projects that crude oil production in the United States—which is already in decline—will continue to drop over the next decade. By the year 2005, the United States will be 68 percent dependent on imported oil, and natural gas imports are expected to increase as well.

Mr. President, 68 percent of our energy needs will come from outside of the United States. Back during the oil embargo it was only about 33 percent. You can see what problems we ran into when there was a squeeze on the oil from abroad at that time. By the year 2005, more than double that, 68 percent, will come from outside our borders. We

will become hostage to the world's energy. That is hardly energy independence. DOE has clearly strayed from its original missions.

At a time when Federal spending priorities are being re-examined, and agencies which are overgrown, obsolete, duplicative, or irrelevant—four counts on which DOE must plead guilty—are being dragged into the light, the Department of Energy demands scrutiny by Congress.

Mr. President, I believe there are three basic reasons DOE has been unable to achieve even its most basic missions:

First, DOE is too big. It takes 20,000 Federal bureaucrats to manage it and another 150,000 contract workers to carry out its far-reaching agenda.

Second, DOE is too expensive. It has an annual budget of $15.4 billion. Even in the absence of another energy crisis like that which led to its creation, DOE's budget has grown 235 percent since 1977.

And third, DOE has no real mission. By virtue of its massive size and annual cost, it has become inefficient and nearly impossible to manage. Due in part to its constant attempts at justifying its own existence, DOE has fallen victim to its own sprawling, tangled agenda.

DOE's long-documented management problems were highlighted in last summer's report by the GAO. As part of an ongoing management review of DOE, the GAO surveyed 37 experts on DOE, including former DOE Secretaries, President Carter, and representatives of the private, academic, and public sectors. GAO wanted to know whether DOE was meeting its mission goals, and whether those missions were still appropriate functions of the Federal Government in the post-cold war, budget-conscious 1990's.

Victor Rezendes of the GAO summed up their findings during a congressional hearing last year:

> DOE suffers from significant management problems, ranging from poor environmental management . . . to major internal inefficiencies. . .. Thus, this agency is ripe for change.

Although the GAO offered no recommendations as to DOE's future, not one of the experts surveyed thought that DOE should remain as it is today. And they raised many questions:

Why is the Nation's energy agency maintaining nuclear weapons stockpiles and managing the cleanup of weapons production facilities?

Why is the Nation's energy agency involved in nonenergy related research?

Why is DOE undertaking such activities as science education and industrial competitiveness?

As the GAO concluded in its report:

> It is not clear if the Department and its missions are still needed in their present form or could be implemented more effectively elsewhere in the public or private sectors.

Unlike the muddled missions offered up by the Department of Energy, the mission of my Senate office is concise and focused, and is precisely summed up in our mission statement. This is how it begins:

> As the Senator and staff of the State of Minnesota, we pledge to lead the fight to reaffirm Congress' oversight responsibilities. By doing so, we will evaluate programs to ensure the wisest use of taxpayer dollars and focus on future streamlining and downsizing of Federal Government.

Mr. President, that is the mission I was sent here to carry out by the taxpayers of Minnesota—taxpayers who are no longer willing to foot the bill for a bloated and cumbersome agency which is unable to meet its obligations and has outlived its usefulness.

The Department of Energy needs the immediate attention of Congress. It's time we put this Trojan horse out to pasture.

Mr. President, I yield the floor and 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. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with the consideration of the bill.

Mr. KYL. Mr. President, I would like to speak for a moment about the bill which is before us, the omnibus appropriations bill, which started out $1.8 billion over the spending levels that we considered just a few months ago in the balanced budget we sent to the President on November 17 and which he vetoed on December 6.

The previous versions of the Commerce, State, Justice, VA-HUD, Labor-HHS, and Education bills, all of which are part of the omnibus appropriations bill that we are considering now, were all within the limits of the budget at that time needed to get into balance by the year 2002. In other words, all three of those appropriations bills satisfied our requirement to meet each year for the next 7 years the objective of those years, the goal which, at the end of 7 years, would have us achieve a balanced budget.

During the consideration of this omnibus appropriations bill, in addition to the $1.8 billion that had started out above that level, we have added $2.4 billion as part of an amendment that was primarily for the purpose of more educational spending. That was not paid for by legitimate offsets, in my view, but rather by one-time asset sales which were already included as offsets in our balanced budget passed on November 17. In other words, in effect, we are trying to count savings twice.

I am on the Energy and Natural Resources Committee. The provisions of the offset were all developed by our committee as a means of achieving some savings for the next fiscal year or the year after that, depending upon when they took effect. They were asset sales, some of which would not realize benefits until 2 years hence.

But three of those particular asset sales were used as the offsets for this $2.4 billion increase in expenditure. There are a couple things wrong with it.

First, we have already used that money to achieve our balanced budget. So, in effect, it is a double counting.

Second, it is a one-time sale of an asset that we will never have again to use. The sales are a good idea, by the way, but these are ongoing authorizations for activities, educational expenditures, that will occur each year. To pay for them the first year out of an asset sale and leave undecided how we are going to pay for them in the future, in particular when it is in the context of a plan to try to balance the budget over 7 years, is not fiscally responsible.

Ongoing expenses, expenses that we know will occur each year, should be paid for out of an ongoing revenue source that we identify can meet those expenses each of those years.

If you have a one-time expense, then it makes sense to pay for it with a one-time sale. So, using asset sales to finance these ongoing job training and education programs, I think, is not good fiscal policy.

So, on one hand, we do not have legitimate offsets. On the other hand, we are adding another $2.4 billion on top of the $1.8 billion. In addition to that, we are considering right now an amendment that would add another $400 million-plus for a variety of programs, including the so-called volunteer AmeriCorps project.

AmeriCorps is a program that the GAO says is costing the taxpayer $26,654 per volunteer. Let me repeat that, Mr. President. President Clinton has sold this program to the American people on the basis we should have more volunteers to do worthy projects in our society. I wholeheartedly agree with that. We have a lot of volunteers, from grade school kids, high school kids, to people working in the community, working for charities, working for governmental programs, all kinds of volunteer programs.

They do this free of charge. But it costs the U.S. taxpayer $26,654 per AmeriCorps volunteer, according to the General Accounting Office. We are going to be increasing that program by, I have forgotten the amount of money, but it is over $100 million. The total cost of the amendment that is before us currently is over $400 million. We have other pending amendments that would also increase the cost of the bill. In addition to that, in addition to all of these things, the bill includes another $4.8 billion in so-called contingency appropriations, which represents more spending on several of the administration's pet projects.

It is true that this additional spending is conditioned on the President and

Congress reaching a broader budget agreement, but the fact of the matter is, such an agreement would not represent the tight, fiscally responsible budget requirements that we passed on November 17, but rather is beginning to rely, in my opinion, on the same kind of smoke and mirrors characterized by previous budget agreements.

How many times have we voted—either the House or the Senate—on agreements in the past that were going to result in a balanced budget? I can remember my colleagues, in 1990, coming to me in support of the Bush administration agreement that was reached at Andrews Air Force Base, saying, ''You have to do this for President Bush.'' And I said, ''I don't think this is going to result in a balanced budget. I don't like the tax-increase aspect of it.'' ''Oh, yes, it guarantees we're going to have a balanced budget.''

I remember the President's Chief of Staff and his budget officers all visiting with me about that subject—guaranteed to happen. Of course, it did not happen. It did not happen on any of the previous occasions, and it has not happened on the one subsequent occasion either.

The fact of the matter is, we get to a political point in these negotiations where we leave the fiscally responsible way of doing it, which is what we crafted and what we passed on November 17 and what the President vetoed on December 6. It becomes so hard to make that stick that we finally begin to compromise, and we reach an agreement which, in our heart of hearts, we realize will never really result in a balanced budget. It will make sense for a year or two, but it never gets us to the end. In 7 years who cares? That is somebody else's problem.

Under the Clinton proposal, which we are largely meeting here, if we spend this $4.8 billion-plus, the other billions, it adds up to almost $8 billion more. What we are getting is a commitment to make most of the discretionary savings in the last 2 years. And 95 percent of the discretionary savings in the President's proposal would have to be achieved in the last 2 years.

Mr. President, you and I both know that is an impossibility. We are having a hard enough time doing about one-tenth of it in the first year. That is about how much we would be trying to do here in the last years. It is not even one-seventh over 7 years. Even the Republican proposal puts more of it in the last 2 years than I think most of us would like.

The years 2001 and 2002, the sixth and seventh years, are after Bill Clinton will have left the Presidency, even if he is reelected to a second term. It is beyond the time when many of us would still be serving in the Congress. ''A problem deferred is a problem solved'' is the slogan of many. It is not the way to ensure a balanced budget.

Frankly, I am about to come to the conclusion that if we adopt this omnibus appropriations bill, we will be pretending to have achieved a balanced budget in 7 years. The President will pat himself on the back, we will pat ourselves on the back, and in 7 years we will look back on this and say, ''Well, we didn't quite get it done then, did we?'' It did not work out that way.

I am simply trying to make the point right now that is the way it will turn out. It may not be the popular thing to say, Mr. President, but I think that is the way it is going to turn out. So I am at this point not inclined to vote for this legislation.

The problem is that in making the compromise this first year, having the lack of courage to do what is right even in this first year, we will never have the courage to do what is right in those last couple of years when it will be much more difficult, the choices will be much harder to make, because there will be a lot more special interests who will be heard at that time or claim that they are being heard.

I believe this bill moves in the wrong direction. I think virtually all the amendments that added money move in the wrong direction. My own view is we should vote down these amendments that add more money to the program. The House of Representatives barely passed a bill which is much more narrow. In conference I do not think we can expect the House to accept any of the add-ons that we have done.

Yet, the President says he will veto a bill that does not include these add-ons or at least many of them. So it seems to me that we are still at the impasse that we were at shortly after Christmastime, Mr. President, and that is simply a philosophical difference between the President who wants to spend about $8 billion more than the Congress wants to spend.

We moved a long way in his direction during these budget negotiations. But I am not sure we can ever both satisfy him and also meet the requirement of a balanced budget. It may technically meet the balanced budget, but in reality, politically, we know we will never get there. I do not think that is being honest with the American people. So, as it stands right now, I am disinclined to vote for this appropriations package, especially if more of these amendments are adopted.

I guess my own prediction is that either we will have a responsible bill, which the President will inevitably veto, or further down the road we will not have a responsible bill in terms of achieving a balanced budget in the year 2002.

Mr. President, at this point, I ask unanimous consent to speak for no more than 10 minutes as in morning business.

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

THREAT OF MISSILE ATTACK ON THE UNITED STATES AND OUR ALLIES

Mr. KYL. Mr. President, the second subject I address today deals with the subject of defense and specifically the threat of missile attack on the United States or our allies or our troops deployed abroad.

Today, the Washington Times carried a story reporting on testimony that was given yesterday to the House National Security Committee, the equivalent to the Senate Committee on Armed Services. Yesterday, the former CIA Director, James Woolsey, according to this story, told a House committee that the recent intelligence estimate on the missile threat to the United States was flawed and it should not be used as the basis for defense policy.

James Woolsey is an extraordinarily qualified source to speak to this. He served as the CIA Director for 2 years under President Clinton, and missile defense proliferation of weapons of mass destruction were one of his primary interests while serving in that capacity.

What Mr. Woolsey said, according to this news report, is that the conclusions of this recent National Intelligence Estimate, called the NIE, that says that no long-range missiles could threaten the 48 contiguous United States for at least 15 years, would be a faulty basis upon which to base U.S. policy. He urged that the United States set up a special team of outside experts to explore just how we should develop ballistic missiles and defenses to ballistic missiles in response to this threat.

He said—and I am quoting from the article:

> I would bet that we would be shocked at what they could show us about available capabilities in ballistic missiles.

He also is reported to have said that if the President extrapolated a general conclusion from the very limited threat assessment of the NIE, ''I believe that this was a serious error.''

That is precisely what happened. Based on this NIE, which a lot of experts have now said appear to have been politically driven—at least is not based upon the best intelligence data, or is skewed in its conclusion because of the assumptions behind it based on that document—the administration has drastically revised the spending priorities of the Congress and has said simply that it is not going to spend money that we have appropriated pursuant to a defense authorization to develop two antiballistic missile systems on the schedule that we dictated.

We are not talking here even about a national missile system to protect the continental United States, but rather the theater systems called THAAD and the so-called Navy Upper-Tier Program. In both cases, the administration, through Secretary Perry, has said they are going to delay that spending. I submit that is an unconstitutional action on the part of the administration when the Congress has specifically

authorized and appropriated the money pursuant to a schedule which requires expenditures to meet certain goals at certain points in time.

The administration based that decision on faulty intelligence estimates. Why do we say faulty? Not only is CIA Director James Woolsey saying they are faulty, but previous administration spokesmen have disagreed with the assessment. You have to look at it carefully to see what they are saying. What the assessment may be saying is that no country is going to begin from scratch and totally indigenously develop an intercontinental ballistic missile system that could threaten the 48 contiguous States in less than 15 years. That may be true, but it is largely irrelevant because virtually no state today is attempting to indigenously develop a weapon.

They are not starting today. Iran, Iraq, North Korea, Syria, China, Russia, other countries in the world have used systems developed by others—except for the country of Russia—and have built on those systems by acquiring components from, I am sad to say, Western countries, including the United States. We know Saddam Hussein was within 18 months of having a nuclear weapon, or close, based on components he purchased from Germany, Italy, France, the United States, and others. He had the missiles which he had acquired from Russia, so-called Scuds. He had them modified to carry a payload, a longer range than the original Scud. That is how the countries do it.

So if you say no country is starting from scratch today, using a strictly indigenously developed program is going to have an intercontinental missile hit the 48 contiguous States may be right, but it is irrelevant. You should not change American defense policy based on that. The 48 contiguous States are not really the relevant factor. You have Alaska and Hawaii, both of which are going to be within range of missiles from North Korea in the relatively not-too-distant future.

How soon? Well, taking the testimony of Admiral Studeman, the Acting Director of the CIA in between Jim Woolsey and now John Deutch. Last April, he testified that his analysis indicated that the Taepo Dong I or Taepo Dong II—the missiles that North Korea is developing—were 3 to 5 years away, maybe less. John Deutch himself testified on August 11, 1994, that the Taepo Dong II may be able to strike U.S. military by the end of the decade. By U.S. territory, we mean including Hawaii or Alaska. We are talking now 4 years from now.

These statements, obviously, were based upon the U.S. intelligence community's 1995 missile threat assessment. I leave the point at this: Our intelligence community has said that these countries using components purchased elsewhere will have missiles that can reach U.S. territory, not necessarily the contiguous 48 States, in the not-too-distant future—3, 4, 5 years—meaning we have to get moving on a missile defense system.

None of the administration's actions will achieve that objective. That is why the Congress has said we should get moving with these programs. We focused on the theater threats initially because some of those theater threats could be deployed in such a way as to deal with the threats that are probably most timely, rather than the large intercontinental ballistic missile threat against the continental United States.

Navy upper-tier is a program which is deployed using existing missiles and existing radar on Navy Aegis cruisers by deploying the cruisers in the appropriate places in the Pacific, and in that vicinity of the world, we would be able to help defend against a North Korean missile threat, but not unless we get moving with the program as the Congress has directed. That is why the administration's holdup on that program, based upon a faulty intelligence estimate, is so dangerous, both to the United States, our people, our forces deployed abroad in places like South Korea and Japan, for example, and also to our allies who might want to depend on our help.

Mr. President, I ask unanimous consent an article from the Washington Times dated March 15, 1996, be made a part of the RECORD at the conclusion of the remarks.

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

(See exhibit 1.)

Mr. KYL. Mr. President, I think the Congress must be much more assertive in making certain we have basic policy on correct intelligence estimates, that the country proceed with the development of an adequate ballistic missile defense program, and that the administration abide by the law passed by the Congress and signed into law by the President of the United States—that it cannot ignore the law.

Statements based on the U.S. intelligence community's 1995 missile threat assessment concluded:

First, the proliferation of ballistic missiles is significant and growing, both in terms of numbers of missiles and in terms of the technical capabilities of those missiles;

Second, the trends in missile proliferation is toward longer range and more sophisticated ballistic missiles;

Third, a determined country can acquire an ICBM in the future, and with little warning, by means other than indigenous development; and,

Fourth, the North Koreans may deploy an ICBM capable of reaching the continental United States within 5 years.

The new CIA letter was apparently based on the most recent national intelligence estimate [NIE] for 1996 which concludes that, while several countries continue to seek longer range missiles, the North Korean ICBM system is now reassessed as having a ''very low'' probability of being operational by the year 2000. In addition, the NIE assumes it is extremely unlikely any nation with ICBMs will be willing to sell them. Finally, the NIE states that U.S. warning capabilities are sufficient to provide notice many years in advance of indigenous development of ICBM's.

You might wonder, as I did, what exactly has changed since the 1995 assessment? What has changed is, not the facts, but the interpretation of the data. Either the intelligence community has adopted a new methodology to determine the extent of a threat, or outside—maybe even political—influences are at play. In either case, I intend to pursue this matter through the Senate Intelligence Committee.

To conclude my first point, I believe that its failure to support a viable, sustainable, and sensible ballistic missile defense program will be recorded as one of the major mistakes of the Clinton administration national security strategy. A second major error is the failure to maintain a strong, coherent, nonproliferation policy.

I conclude on one other item, Mr. President. Within the last 3 weeks, Majority Leader BOB DOLE and other Members of this body sent a letter to the President complaining about this very matter and indicating to him that if the administration did not proceed with the development of these two missile systems as directed by the Congress and as signed into law, that the Congress would have to take whatever means it could to ensure that the law be complied with.

There are now mechanisms for forcing compliance with that law under consideration by people in this body. I suspect that we will have to take those actions very soon if the administration does not change its position. I hope that people from the administration will consider this offer to try to cooperate so that we do not have to take action that they will find unpalatable.

I ask unanimous consent to have printed in the RECORD the letter to the Secretary of Defense from Majority Leader BOB DOLE and other Members of the Senate on this subject.

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

U.S. SENATE,
OFFICE OF THE REPUBLICAN LEADER,
Washington, DC, March 5, 1996.

Hon. WILLIAM J. PERRY,
Secretary, Department of Defense, Washington, DC.

DEAR MR. SECRETARY: We are deeply troubled by your plans to disregard provisions of law related to ballistic missile defense contained in the Fiscal Year 1996 Department of Defense authorization bill. We find this course of action indefensible before the law and the American people.

On numerous occasions over the past year, members of the Republican majority have communicated their strong support for ballistic missile defense—most recently in letters sent to you on November 7, 1995 and December 22, 1995. In these letters, we emphasized our deep commitment to providing future funding for these programs identified in

sections 216 and 234 of Public Law 104–106, the Fiscal Year 1996 defense authorization bill which the President signed into law on February 10, 1996. In particular, we called your attention to the Space and Missile Tracking System, the Theater High Altitude Area Defense (THAAD) program, and the Navy Upper Tier program. Therefore, we were dismayed by your February 16 press conference, in which you announced your intention to disregard key provisions of Public Law 104–106 by failing to provide funding sufficient to comply with this law.

With each passing day, new facts emerge which highlight the escalating proliferation threat. Your announcement of a decreased ballistic missile defense effort can only serve to strengthen the determination of nations with interests inimical to our own to continue to pursue these weapons of mass destruction and delivery systems which endanger American lives and interests. Conversely, eliminating our vulnerability in this area can only significantly reduce the incentive of rogue nations to pursue nuclear, chemical and biological weapons, as well as ballistic missile delivery systems.

The funding level you announced on the 16th of February is insufficient for the THAAD and Navy Upper Tier programs, respectively. We will authorize and appropriate funding in the Fiscal Year 1997 defense bills for these programs—which we believe complement, but cannot replace each other—at the levels necessary to achieve operational capability by the dates now specified in law. While we hope to accommodate as much of your FY '97 budget request as possible, please understand that we will not hesitate to alter the budget request as necessary to bring it into compliance with section 234 of Public Law 104–106.

Sincerely,

John Warner; Richard Shelby; Ted Stevens; Kay Bailey Hutchinson; Jesse Helms; Spencer Abraham; Conrad Burns; Rick Santorum; Bob Smith; Mike DeWine; Paul Coverdell; Connie Mack; Don Nickles.

Jon Kyl; Thad Cochran; Jim Inhofe; Larry E. Craig; Chuck Grassley; John McCain; Rod Grams; John Ashcroft; Mitch McConnell; Orrin Hatch; Al Simpson; Trent Lott.

EXHIBIT 1

[From the Washington Times, Mar. 15, 1996]

REPORT ON MISSILE THREAT TO U.S. TOO OPTIMISTIC, WOOLSEY CHARGES

(By Bill Gertz)

Former CIA Director R. James Woolsey told Congress yesterday that a recent intelligence estimate on the missile threat to the United States was flawed and should not be used as a basis for defense policies.

Appearing before the House National Security Committee, Mr. Woolsey challenged the conclusions of a recent national intelligence estimate (NIE) that said no long-range missiles will threaten the 48 contiguous United States for at least 15 years.

Limiting the estimate's focus on the missile threat to the 48 states ''can lead to a badly distorted and minimized perception of very serious threats we face from ballistic missiles now and in the very near future—threats to our friends, our allies, our overseas bases and military forces—and some of the 50 states,'' he said.

Broad conclusions drawn by policy-makers from the estimate could be ''quite wrong,'' he said, noting that North Korean intermediate-range missiles could threaten Alaska and Hawaii with ''nuclear blackmail'' in ''well under 15 years.''

To make policy judgments on missile defense needs from the limited analysis is ''akin to saying that, because we believe that for the next number of years local criminals will not be able to blow up police headquarters in the District of Columbia, there is no serious threat to the safety and security of our police,'' Mr. Woolsey said.

The estimate, based on public testimony and statements about it, also is flawed because it underestimates the danger of long-range missiles or technology being acquired internationally by rogue states, or the possibility that friendly states with missiles could turn hostile, he said.

A CIA spokesman could not be reached for comment.

Mr. Woolsey called for setting up a special team of outside experts to explore how to develop ballistic missiles. ''I would bet that we would be shocked at what they could show us about available capabilities in ballistic missiles,'' he said.

Rep. Floyd D. Spence, South Carolina Republican and committee chairman, said that to say the United States is secure from foreign missile threats over the next 15 years is ''dangerously irresponsible'' because of the global turmoil.

Mr. Spence has asked the General Accounting Office to investigate whether the 1995 NIE on the missile threat was ''politicized'' to fit Clinton administration opposition to missile defenses.

The first statements about the NIE were made public by Senate Democrats during debate on the fiscal 1996 defense authorization bill, which President Clinton vetoed in December because he opposed its provisions requiring deployment of a national missile defense.

Mr. Clinton said at the time of the veto that U.S. intelligence did not foresee a missile threat to the United States within the next decade.

Mr. Woolsey said that, if the president extrapolated a general conclusion from the very limited threat assessed by the NIE, ''I believe that this was a serious error.''

In separate testimony, Richard Perle, assistant defense secretary during the Reagan administration, criticized the Clinton administration's effort to expand the Anti-Ballistic Missile (ABM) Treaty to cover short-range anti-missile defenses.

''To diminish our capacity to deal with these threats in the mistaken belief that it is more important to preserve the ABM treaty unchanged is utter nonsense,'' Mr. Perle said. ''Those who urge this course are hopelessly mired in the tar pits of the Cold War.''

Mr. KYL. Mr. President, I have several unanimous consent requests on behalf of the majority leader. Mr. President, all of these requests have been cleared by the Democratic side.

MORNING BUSINESS

Mr. KYL. Mr. President, I ask unanimous consent there be a period for the transaction of morning business, with Senators permitted to speak up to 5 minutes each.

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

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, March 14, 1996, the Federal debt stood at $5,035,165,720,616.33.

On a per capita basis, every man, woman, and child in America owes $19,111.91 as his or her share of that debt.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Banking, Housing, and Urban Affairs.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED JOINT RESOLUTION SIGNED

At 11:40 a.m., a message from the House of Representatives, delivered by one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 163. Joint resolution making further continuing appropriations for the fiscal year 1996, and for other purposes.

The enrolled joint resolution was signed subsequently by the President pro tempore (Mr. THURMOND).

At 12:57 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2854) to modify the operation of certain agricultural programs and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. ROBERTS, Mr. EMERSON, Mr. GUNDERSON, Mr. EWING, Mr. BARRETT of Nebraska, Mr. ALLARD, Mr. BOEHNER, Mr. POMBO, Mr. DE LA GARZA, Mr. ROSE, Mr. STENHOLM, Mr. VOLKMER, Mr. JOHNSON of South Dakota, and Mr. CONDIT as the managers of the conference on the part of the House.

The message also announced that the House has passed the bill (S. 735) to prevent and punish acts of terrorism, and for other purposes, insists upon its amendments, and asks a conference with the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. HYDE, Mr. MCCOLLUM, Mr. SCHIFF, Mr. BUYER, Mr. BARR of Georgia, Mr. CONYERS, Mr. SCHUMER, and Mr. BERMAN as the managers of the conference on the part of the House.

MEASURES REFERRED

The Committee on Energy and Natural Resources was discharged from further consideration of the following measure which was referred to the Committee on Environment and Public Works:

S. 1412. A bill to designate a portion of the Red River in Louisiana as the ''J. Bennett Johnston Waterway,'' and for other purposes.

The Committee on Environment and Public Works was discharged from further consideration of the following

measure which was referred to the Committee on the Judiciary:

H.R. 419. An act for the relief of Benchmark Rail Group, Inc.

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time by unanimous consent and placed on the calendar:

S. 1618. A bill to provide uniform standards for the award of punitive damages for volunteer services.

REPORT OF COMMITTEES

The following report of committee was submitted on March 14, 1996:

By Mr. MCCAIN, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 487: A bill to amend the Indian Gaming Regulatory Act, and for other purposes (Rept. No. 104–241).

The following reports of committees were submitted on March 15, 1996:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 1467. A bill to authorize the construction of the Fort Peck Rural County Water Supply System, to authorize assistance to the Fort Peck Rural County Water District, Inc., a nonprofit corporation, for the planning, design, and construction of the water supply system, and for other purposes (Rept. No. 104–242).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mrs. BOXER):

S. 1620. A bill to amend the Water Resources Development Act of 1986 to provide for the construction, operation, and maintenance of dredged material disposal facilities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG:

S. 1621. A bill to amend the Silvio O. Conte Fish and Wildlife Refuge Act to provide that the Secretary of the Interior may acquire lands for purposes of that Act only by donation or exchange, or otherwise with the consent of the owner of the lands, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HATCH:

S. 1622. A bill to amend the independent counsel statute to permit appointees of an independent counsel to receive travel reimbursements for successive 6-month peroids after 1 year of service; to the Committee on the Judiciary.

By Mr. WARNER:

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

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH:

S. 1619. A bill to amend the provisions of title 17, United States Code, to provide for an exemption of copyright infringement for the performance of nondramatic musical works in small commercial establishments, and for other purposes; to the Committee on the Judiciary.

THE MUSIC LICENSING REFORM ACT OF 1996

Mr. HATCH. Mr. President, today I am introducing the Music Licensing Reform Act of 1996: First, to clarify the ''home-style'' exemption provided by the Copyright Act for the public performance of nondramatic musical works; second, to regularize the commercial relations between the performing rights societies, which license such public performances, and their licensees, who are the proprietors of eating, drinking, and retail establishments, and third, to improve in general the oversight of the licensing practices of the two largest performing rights societies, the Association of Songwriters, Composers, Authors, and Publishers [ASCAP] and Broadcast Music, Inc. [BMI].

Music licensing has been a matter of discussion for many years. There are strongly held views among all of those involved. I am committed to trying to resolve this matter, and this bill is a good-faith effort to do so. It is my hope that it can serve as a basis for further discussion.

Commercial establishments, such as restaurants, bars, and retail stores, make money off of the public performance of musical works, whether it be from live performances, from sound recordings, or from radio and television. Commercial establishments play music or turn on radio and TV in order to make the eating, drinking, or shopping experience more pleasant. The ubiquity of these kinds of entertainment itself proves that businesses believe that it increases patronage.

Recognizing that commercial establishments make money off of the creative output of songwriters, the Copyright Act of 1976 provided songwriters with the exclusive right of public performance, so that creators might share in the added value that their product creates. In doing so, the Copyright Act carries out the philosophy of the copyright clause of the Constitution, which sees economic reward as an important incentive to artistic creation.

Mr. President, the Constitution was right. In 1993, the core copyright industries contributed approximately $238.6 billion to the U.S. economy, or 3.74 percent of the total GDP. These same core copyright industries contribute more to the U.S. economy and employ more people than any single manufacturing sector, and the growth rate of these industries continues to outpace the growth of the economy as a whole by a 2-to-1 ratio.

With domestic sales topping $10 billion each year and annual foreign sales totaling over $12 billion, the music industry by itself accounts for a huge percentage of the American economy, and its popularity abroad provides a healthy component of the U.S. balance of trade. It is really not an exaggeration to say that American music dominates the globe. In fact, it is estimated that U.S. recorded music accounts for some 60 percent of the world market. Indeed, the United States is second to none in musical creativity. The prosperity of the music industry and the creative output of American composers and songwriters must be encouraged.

At the same time, Mr. President, the Copyright Act recognizes that obtaining and paying for a license to play music should not be overly burdensome. Some of the burden of obtaining such a license is lessened by the performing rights societies, such as ASCAP, BMI, and SESAC. It would be intolerable for a restaurant, bar or store to monitor all the music that it performs and then search out the individual songwriter, composer, or publisher who owns the copyright in the music. Instead, a proprietor can go to the performing rights societies and purchase a blanket license and not worry about what music it plays, since ASCAP, BMI, and SESAC account for virtually all of the music that is normally played in the United States.

EXEMPTION FOR SMALSL COMMERCIAL ESTABLISHMENTS

The average cost to restaurants and retail establishments of a blanket license from ASCAP for all public performances, whether by radio and TV or live, is $575 per year. BMI charges on the average less than $300 per year for eating and drinking establishments for public performance by radio and TV, and its retail establishment license for these performances ranges from $60 to $480 per year. These are not large sums of money, but they still could be burdensome for some small commercial establishments. So the Copyright Act also provides for an exemption, freeing some proprietors from any obligation to compensate songwriters for the use of their music. This exemption is found in section 110(5) of the Copyright Act and it effectively applies to establishments that turn on radio and TV for their customers' enjoyment. It is known as the ''homestyle'' exemption, because it exempts ''the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes.'' Congress felt—and rightly so—that small commercial establishments that turned on ordinary radio and TV sets would have a de minimis impact on the incentive to create that music licensing fees encourage.

Unfortunately, a certain ambiguity was introduced into the exemption by the language of the House and conference reports of the Copyright Act of 1976, and this ambiguity has been exacerbated by the courts. Although the language of 110(5) only mentions sophistication of equipment, the courts

have also considered such factors as the size of the establishment, and ability to pay for a license.

Mr. President, the time has come to clarify the exemption regarding nondramatic musical works so that proprietors and performing rights societies can determine more precisely whether an establishment is exempt or not without having to engage in costly litigation.

My bill does this by exempting ''small commercial establishment[s].'' This change simply recognizes the existing state of the law. In effect, the courts have looked at a host of relevant factors in order to decide whether an establishment should have the benefit of the exemption. This new bill directs the Register of Copyrights to define ''small commercial establishment'' by regulation, and provides guidance by listing the factors that the courts have considered, as well as other factors that are relevant to the determination.

The register is not confined to these factors, however. In our rapidly changing technological environment, the expertise of the Copyright Office should not be hampered. The sound and video equipment that are common today may be obsolete in the not too distant future. The Copyright Office, unlike Congress, will be able to respond to these changes in the years ahead more quickly, with greater expertise, and with far less cost by engaging in other rulemaking proceedings. If Congress legislates specific equipment and area requirements, as some have suggested, it will have to revisit this issue time and time again.

Changing the language of 110(5) from ''homestyle'' equipment to the more general ''small commercial establishment'' may result in slightly expanding the exemption. The Copyright Office, therefore, must take care that it does not unduly upset the balance between the creative incentive on the one hand and concern for the burden on small businesses on the other.

Furthermore, the Copyright Office must bear in mind our international obligations, especially the Berne Convention. We cannot very well insist that our musical works be protected outside the United States if we cut too deeply into the protection that musical works enjoy within our borders.

Both the Register of Copyrights and the Commissioner of Patents and Trademarks have written to me that another bill dealing with the exemption, S. 1137, introduced by Senators THOMAS and BROWN, would violate the U.S. obligations under the Berne Convention. The bill that I am introducing today prevents this from happening by specifically prohibiting the Copyright Office from expanding the scope of the exemption beyond that permitted under the international treaty obligations of the United States.

COMMERCIAL RELATIONS BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES

Mr. President, this legislation addresses two areas of concern in the commercial relations between the proprietors of eating, drinking, and retail establishments who must acquire a license publicly to peform musical works and the peforming rights societies who grant such licenses as agents for composers, songwriters, and publishers.

First, in response to complaints from proprietors that the performing rights societies do not readily disclose information about their licensing fees and in response to complaints from the performing rights societies that proprietors do not readily disclose factual information about their establishments that is essential in charging them the appropriate fee, this bill directs the Register of Copyrights to promulgate regulations to establish a code of conduct, applicable to both sides, to govern their licensing negotiations and practices.

The Copyright Office is in a much better position than Congress is to study the business practices that prevail in order to identify improvements that would make these practices fairer and more efficient. The Copyright Office is also in a better position to modify these regulations as times change.

Second, my legislation directs the Copyright Office to promulgate regulations to ensure that a performing rights society provides reasonable access to its repertoire of songs and other musical compositions. The principle behind this part of the bill is easy to understand: If a person is going to be asked to pay a performing rights society in order to perform a work publicly, the payor should be able easily to verify whether the work is included in the society's repertoire. A buyer, after all, doesn't want to pay for goods that the seller has no right to sell.

Complications arise, however, in determining what is reasonable access. Both ASCAP and BMI, for example, have already made their repertoires available on line. Is this sufficient to meet the needs of their licensees or is some more conventional means also called for? Since the copyright owners of musical compositions can cancel their agency contracts with the performing rights societies, how up-to-date must the repertoire be? What happens when a song has two authors, each of which is represented by a different society?

Finally, what information needs to be supplied? Since almost all licenses are blanket licenses, giving the licensee the right to play all music in a society's repertoire, how important is detailed information on individual compositions? (Indeed, most persons engaged in the business of publicly performing copyrighted music routinely buy blanket licenses from ASCAP, BMI, and SESAC, thereby assuring that virtually all copyrighted music is covered.) It would be unwise to burden the performing rights societies with expensive obligations to provide information that is really not necessary.

Clearly, Mr. President, this problem needs the investigative tools and fine-tuning that Congress is ill-equipped to provide. That is why the Register of Copyrights needs to examine the problem and provide clear and up-to-date regulations, after input from the relevant parties.

GENERAL OVERSIGHT OF THE LICENSING PRACTICES OF ASCAP AND BMI

As I have already pointed out, Mr. President, a blanket license purchased from ASCAP and BMI will give the licensee the right publicly to perform virtually all the most popular music in the United States. For proprietors of eating, drinking, and retail establishments who play radio and TV for their customers, this is the easiest and most cost-effective way to go. This logic also applies to radio and TV broadcasters, who publicly perform countless musical works during their program days.

There are, however, other businesses for whom the blanket license is not as attractive. Religious broadcasters, for example, may play music for a few, select programs, while the rest of their programming is devoted to talk. For these and other broadcasters similarly situated, a per program license seems more attractive.

Now, a per program license is available from ASCAP and BMI; in fact, the antitrust consent decree under which ASCAP and BMI operate requires that they offer a per program license. The religious broadcasters, however, are dissatisfied with the price of the license, which, in some instances, costs more than a blanket license. ASCAP argues, however, that the administrative costs of the per program license are higher because it has to monitor the broadcasters to make sure that its music is used only for licensed programs.

The religious broadcasters would have Congress determine a pricing formula for the per program license and put it in the Copyright Act, as currently provided in S. 1137. But arriving at a formula requires a study of the pricing mechanisms and an inquiry into all the factors that go into them. Again, this is something that Congress is ill-equipped to do. Moreover, it would simply spark demands by other music licensees to do the same for them.

Fortunately, a forum for dealing with this issue already exists in the Rate Court of the U.S. District Court for the Southern District of New York. The Rate Court was set up pursuant to an antitrust consent decree that both ASCAP and BMI are party to, stemming from law suits against these performing rights societies that were brought many years ago.

Indeed, the religious broadcasters are currently arguing the per program license pricing issue before the Rate Court in a suit brought against ASCAP. A decision is expected this year. A previous case involving BMI and the TV broadcasters over the same issue resulted in a decision favorable to the broadcasters. The religious broadcasters, therefore, have a reasonable

expectation that their complaint will be decided in their favor and in the near future.

Mr. President, I question the wisdom of having Congress establish a pricing formula for per program licenses for radio broadcasters.

What Congress should be doing is looking at the overall structure and efficient functioning of the consent decree to make sure that it is working and that it is accessible to those, such as the religious broadcasters, who do not have the resources to engage in expensive, protracted litigation. This is precisely what the bill that I am introducing today proposes to do. It directs the Copyright Office to study the administration of the consent decree so that adjudication under the consent decree may be less time-consuming and more cost-effective, especially for parties with fewer resources. It may very well be, for example, that a system of local or regional arbitration may be more efficient and not too burdensome for the performing rights societies. The Judiciary Committee will consider very seriously the findings and recommendations of the Copyright Office.

Although I disagree with S. 1137, I want to thank my distinguished colleague from Colorado, Senator HANK BROWN, for his indefatigable attention to music licensing issues. Senator BROWN spent several hours trying to work out a compromise that would be acceptable to the proprietors and religious broadcasters on the one hand and to the performing rights societies and the hundreds of composers and songwriters that they represent on the other. I also want to thank my distinguished colleague from South Carolina, Senator STROM THURMOND, who brought the concerns of the religious broadcasters to my attention.

I urge them and all others interested in this issue to support the compromise legislation that I have introduced today, the Music Licensing Reform Act of 1996.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1619

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 ''Music Licensing Reform Act of 1996''.

SEC. 2. EXEMPTION OF COPYRIGHT INFRINGEMENT FOR PERFORMANCE OF NONDRAMATIC MUSICAL WORKS IN SMALL COMMERCIAL ESTABLISHMENTS.

(a) IN GENERAL.—Section 110 of title 17, United States Code, is amended—

(1) in the matter preceding paragraph (1) by inserting ''(a)'' before ''Notwithstanding'';

(2) by amending paragraph (5) to read as follows:

''(5)(A) communication of a transmission embodying a performance or display of a work (except a nondramatic musical work) by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

''(i) a direct charge is made to see or hear the transmission; or

''(ii) the transmission thus received is further transmitted to the public; or

''(B) communication of a transmission embodying a performance or display of a nondramatic musical work by the public reception of the transmission on the premises of a small commercial establishment, unless—

''(i) a direct charge is made to see or hear the transmission; or

''(ii) the transmission thus received is further transmitted to the public;''; and

(3) by adding at the end thereof the following new subsection:

''(b)(1) For purposes of subsection (a)(5)(B), the Register of Copyrights shall define the term 'small commercial establishment' by regulation, which shall include specific, verifiable criteria. Such criteria may relate to—

''(A) the area of the establishment, including whether the establishment is of sufficient size to justify, as a practical matter, a subscription to a commercial background music service;

''(B) the kind, number, and location of equipment used;

''(C) the gross revenue of the establishment;

''(D) the number of employees; and

''(E) other relevant factors.

''(2) The definition of small commercial establishment shall not result in an exemption to the right of public performance or to the right of public display the scope of which exceeds that permitted under the international treaty obligations of the United States.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 1 of title 17, United States Code, is amended—

(1) in section 111(a)(2) by striking out ''section 110'' and inserting in lieu thereof ''section 110(a)'';

(2) in section 112(d) by striking out ''section 110(8)'' each place such term appears and inserting in each such place ''section 110(a)(8)''; and

(3) in section 118(d)(3) by striking out ''section 110'' and inserting in lieu thereof ''section 110(a)''.

SEC. 3. NEGOTIATIONS AND LICENSING BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES.

(a) IN GENERAL.—The provisions of title 17, United States Code, are amended by adding after chapter 11 the following new chapter:

''CHAPTER 12—NEGOTIATIONS AND LICENSING BETWEEN PROPRIETORS AND PERFORMING RIGHTS SOCIETIES

''Sec.
''1201. Definitions.
''1202. Code of conduct.
''1203. Access to repertoire.

''§ 1201. Definitions

''For purposes of this chapter, the term—

''(1) 'performing rights society' means an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.; and

''(2) 'proprietor'—

''(A) means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business in which—

''(i) the public may assemble; and

''(ii) nondramatic musical works may be publicly performed; and

''(B) shall not include any owner or operator of—

''(i) a radio or television station licensed by the Federal Communications Commission;

''(ii) a cable system or satellite carrier;

''(iii) a cable or satellite carrier service or programmer;

''(iv) a commercial subscription music service; or

''(v) any other transmission service.

''§ 1202. Code of conduct

''(a) IN GENERAL.—The Register of Copyrights shall promulgate regulations to establish a code of conduct for the licensing negotiations and practices between a proprietor and a performing rights society. Such regulations shall include reasonable disclosure requirements for proprietors and performing rights societies and the content and form of licensing agreements.

''(b) GENERAL ENFORCEMENT.—(1) A proprietor or performing rights society may file a civil action in any United States district court of appropriate jurisdiction to enforce the code of conduct established under this section.

''(2) For purposes of an action filed under this subsection—

''(A) all parties shall be deemed to have exhausted all administrative remedies; and

''(B) the court shall conduct a trial de novo without an agency record.

''(c) ENFORCEMENT IN ACTIONS INVOLVING LICENSING AGREEMENTS.—(1) This subsection applies to any civil action filed under this section to enforce the code of conduct in which a proprietor and a performing rights society have a licensing agreement.

''(2) If a proprietor violates a provision of the code of conduct, the court shall assess a civil fine against the proprietor, payable to the performing rights society, equal to the cost of the applicable annual license fee.

''(3) If a performing rights society violates a provision of the code of conduct, the court shall order the society to grant a license to the proprietor for the nondramatic public performance of musical works in the repertoire of the society at no fee for a period of 1 year beginning on the date on which judgment is entered.

''§ 1203. Access to repertoire

''(a) IN GENERAL.—(1) The Register of Copyrights shall promulgate regulations to ensure that a performing rights society shall provide reasonable access to its repertoire so that a person engaged in the public performance of a nondramatic musical work may determine with reasonable certainty whether the public performance of a particular work may be licensed by a particular licensor.

''(2) Reasonable access to repertoire under this section shall not include access to works rarely publicly performed.

''(b) ENFORCEMENT.—(1) A proprietor or performing rights society may file a civil action in any United States district court of appropriate jurisdiction to enforce the regulations promulgated under this section.

''(2) For purposes of an action filed under this section—

''(A) all parties shall be deemed to have exhausted all administrative remedies; and

''(B) the court shall conduct a trial de novo without an agency record.

''(c) RESTRICTIONS ON PERFORMING RIGHTS SOCIETY NOT IN COMPLIANCE WITH REGULATIONS.—(1) A performing rights society may not—

''(A) file, be a party, or pay the costs of any party in any civil action alleging the infringement of the copyright in a work described under paragraph (2); or

''(B) charge a fee under any per programming period license for a work described under paragraph (2).

''(2) A work referred to under paragraph (1) is any work in such performing rights society's repertoire that is not identified and documented as required by the regulations promulgated under this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to chapter 11 the following:

"12. Negotiations and licensing between proprietors and performing rights societies ..... 1201".

SEC. 4. REPORT ON CONSENT DECREE.

(a) IN GENERAL.—No later than 1 year after the date of the enactment of this Act, the Register of Copyrights shall submit a report to the Senate Committee on the Judiciary and the House of Representatives Committee on the Judiciary on the administration by the United States District Court for the Southern District of New York of the consent decree of March 14, 1950, in *United States* v. *American Society of Composers, Authors, and Publishers*, 1950 Trade Cas. T62,595 (S.D.N.Y. 1950) and the consent decree of December 29, 1966, in *United States* v. *Broadcast Music, Inc.*, 1966 Trade Cas. T71,941 (S.D.N.Y. 1966).

(b) CONTENTS.—The report under this section shall include—

(1) any recommendation for improvements so that adjudication under the consent decree may be less time-consuming and more cost-effective, especially for parties with fewer resources; and

(2) a determination whether a system of local or regional arbitration should be implemented.

SEC. 5. STATE COPYRIGHT LICENSING LAWS PREEMPTED.

Section 301 of title 17, United States Code, is amended by adding at the end the following:

''(g)(1) Any law, statute, or regulation of any State or local government which requires a performing rights society to license copyrighted musical compositions to a proprietor in a particular manner not required by this title, or to conduct such society's business in any manner not applicable to all businesses as a general manner, shall be deemed to be preempted by subsection (a) and of no force or effect.

''(2) For purposes of this subsection, the terms 'proprietor' and 'performing rights society' have the same meanings as such terms are defined under section 1201.''.

SEC. 6. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to relieve any performing rights society of any obligation under any consent decree or other court order governing the operation of such society, as such decree or order—

(1) is in effect on the date of the enactment of this Act;

(2) may be amended after such date; or

(3) may be issued or agreed to after such date.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of the enactment of this Act.

By Mr. LAUTENBERG (for himself and Mrs. BOXER):

S. 1620. A bill to amend the Water Resources Development Act of 1986 to provide for the construction, operation, and maintenance of dredged material disposal facilities, and for other purposes; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL DREDGE DISPOSAL ACT OF 1996

Mr. LAUTENBERG. Mr. President, today I am joined by Senator BOXER in introducing the Environmental Dredge Disposal Act of 1996, a bill to establish a fair cost-sharing formula for the disposal of dredged material.

Mr. President, under existing law, the Federal Government helps assume the cost of the disposal or dumping at sea of dredged material associated with operation and maintenance of Federal channels. However, the Federal Government does not provide similar assistance for other methods of disposal, even when these other methods are more beneficial for the environment. This inconsistency makes no sense, and threatens the economic viability of large and small ports throughout the country.

My bill proposes to eliminate this inconsistency, and would ensure that the Federal cost-sharing formula related to disposal of dredged material applies regardless of where the dredged material is disposed. More technically, the bill amends the Water Resources Development Act of 1986 to make upland, aquatic, and confined aquatic dredged material disposal facilities associated with the construction, operation, and maintenance of a Federal navigation project for a harbor or inland harbor a general navigation feature of a project for the purpose of cost sharing. The bill includes safeguards to ensure that no single port receives a competitive advantage as a result of this bill.

Mr. President, in 1824, Congress assigned responsibility for improving navigation in the still-young Nation's waterways to the Federal Government. Federal maintenance of a channel system has always been important for interstate and foreign commerce, and for national security. That remains true today. Approximately 95 percent of the Nation's import-export cargo travels on ships through American ports.

Mr. President, dredging the channels of our Nation's ports, particularly the major load centers, or hubs, is not a discretionary item. It is essential. Similarly, it is essential that dredged materials be disposed of.

Unfortunately, many ports are experiencing serious problems with respect to disposal. These problems have plagued Federal channels and Federal facilities, such as military marine terminals, as well as local and private terminals. Ports that face immediate and near-term disposal problems include Boston, New Jersey-New York, Baltimore, Houston, and Oakland. Many more ports will face disposal problems in the next century.

Some ports, including New York Harbor, lack adequate disposal facilities, which has created great difficulty in obtaining Corps of Engineers and State dredging permits. The disposal capacity of many other ports is nearly full. This problem is likely to affect many more ports in the years ahead.

For many ports with inadequate disposal facilities, disposing dredged materials in the ocean is not a viable option, because of sediments that do not meet ocean disposal standards. Other methods of disposal will have to be pursued. Yet the costs associated with these alternatives often are high. Given the national interests at stake, the Federal Government needs to share in the costs of all viable alternatives.

Unfortunately, current law prevents such cost sharing in the case of facilities located on land. There is no real justification for this limitation. And without some modification of this law, many ports may well face a serious disposal crisis in the near future.

Mr. President, let me take a moment to comment on the environmental implications of this matter. Many ports are located in estuaries and coastal areas that represent significant natural resources. I recognize that some might believe that the protection and enhancement of those resources is inconsistent with the operation of a busy port. However, that is not true. In the New York metropolitan region and the bay area of northern California, for example, both ports and natural resources coexist, and provide important economic benefits. In my view, Federal policy should seek to promote both port commerce and environmental resources. This bill would help, by making possible the construction of confined disposal facilities that would support development in an environmentally constructive manner.

Mr. President, if commerce is to progress in this Nation, if import-export trade is to increase, if our Nation is to benefit from international trade agreements, our infrastructure must be prepared to make the transportation of goods efficient and cost effective. As Transportation Secretary Federico Peña has acknowledged, the port dredging problem is a national transportation problem. Secretary Peña organized the Interagency Working Group on the Dredging Process to determine how to improve Federal performance in several areas, including interagency coordination, the regulatory process, and disposal issues. The final report to the Secretary said:

> Over the past two decades, a number of factors have complicated the development, operation and maintenance of the nation's harbors, particularly in the area of dredged material management. These factors include increases in the demands of commerce, rapid evolution of shipping practices . . ., increasing environmental awareness and mounting environmental problems affecting coastal areas and ocean waters, heavy population shifts to coastal areas and a general increase in non-Federal responsibilities in the development and management of navigation projects. As a result, dredged material management has often become a contentious problem at all stages of harbor development and operation. . . . Left unattended, these problems could cause a crisis.

The report specifically discussed the problem of an inconsistent dredged material management policy, which would be addressed by this legislation.

I would note, Mr. President, that this legislation is supported by the American Association of Port Authorities, which represents more than 85 ports in 30 States.

Mr. President, I look forward to working with my colleagues and the corps to move this legislation forward.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD along with a letter signed by a number of organizations to Chairmen CHAFEE and SHUSTER expressing their support for equitable Federal cost sharing in the disposal of dredged material.

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

S. 1620

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 ''Environmental Dredge Disposal Act of 1996''.

SEC. 2. DREDGED MATERIAL DISPOSAL FACILITIES.

Section 101 of the Water Resources Development Act of 1986 (33 U.S.C. 2211) is amended by adding at the end the following:

''(f) DREDGED MATERIAL DISPOSAL FACILITIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, after the date of enactment of this subsection, the provision of upland, aquatic, and confined aquatic dredged material disposal facilities associated with the construction, operation, and maintenance of all Federal navigation projects for harbors and inland harbors (including diking and applying dredged material to beneficial use and other improvements necessary for the proper disposal of dredged material) shall be considered to be a general navigation feature of a project for the purpose of cost sharing under this section.

''(2) LIMITATIONS ON FEDERAL SHARE OF PROJECT COSTS.—

''(A) FUNDS NOT REQUIRED FOR OPERATION AND MAINTENANCE.—No funds comprising the Federal share of the costs associated with the construction of a dredged material disposal facility for the operation and maintenance of a Federal navigation project for a harbor or inland harbor in accordance with paragraph (1) that are eligible to be paid with sums appropriated out of the Harbor Maintenance Trust Fund under paragraph (3) shall be expended for construction until the Secretary, in the Secretary's discretion, determines that the funds are not required to cover eligible operation and maintenance costs assigned to commercial navigation.

''(B) MAXIMUM FEDERAL SHARE FOR OPERATION AND MAINTENANCE.—The Federal share of the costs of activities described in paragraph (3) for a project shall not exceed $25,000,000 for any fiscal year.

''(3) OPERATION AND MAINTENANCE COSTS.—For the purposes of section 210, eligible operation and maintenance costs shall include (in addition to eligible operation and maintenance costs assigned to commercial navigation)—

''(A) the Federal share of the costs of constructing dredged material disposal facilities associated with the operation and maintenance of all Federal navigation projects for harbors and inland harbors;

''(B) the costs of operating and maintaining dredged material disposal facilities associated with the construction, operation, and maintenance of all Federal navigation projects for harbors and inland harbors;

''(C) the Federal share of the costs of environmental dredging and disposal facilities for contaminated sediments that are in, or that affect the maintenance of, Federal navigation channels and the mitigation of environmental impacts resulting from Federal dredging activities; and

''(D) the Federal share of the costs of dredging, management, and disposal of in-place contaminated sediments and other environmental remediation in critical port and harbor areas to facilitate maritime commerce and navigation.

''(4) PREFERENCE.—In undertaking activities described in paragraph (3)(D), the Secretary shall give preference to port areas with respect to which, and in accordance with the extent that, annual payments of harbor maintenance fees exceed Federal expenditures for projects in the port area that are eligible for reimbursement out of the Harbor Maintenance Trust Fund.

''(5) APPLICABILITY.—This subsection applies to the provision of a dredged material disposal facility with respect to which, and to the extent that—

''(A) a contract for construction (or for construction of a usable portion of such a facility); or

''(B) a contract for construction of an associated navigation project (or usable portion of such a project);

has not been awarded on or before the date of enactment of this subsection.

''(6) AMENDMENT OF EXISTING AGREEMENTS.—

''(A) IN GENERAL.—Unless otherwise requested by the non-Federal interest within 30 days after the date of enactment of this subsection, each cooperative agreement entered into between the Secretary and a non-Federal interest under this section shall be amended, effective as of the date of enactment of this subsection, to conform to this subsection, including provisions relating to the Federal share of project costs for dredged material disposal facilities.

''(B) APPLICATION OF AMENDMENT.—An amendment to a cooperative agreement required by subparagraph (A) shall be applied prospectively.

''(7) EFFECT ON NON-FEDERAL COSTS OF OTHER DREDGED MATERIAL DISPOSAL FACILITIES.—Nothing in this subsection shall increase, or result in the increase of, the non-Federal share of the costs of any dredged material disposal facility required by the authorization for a project.''.

FEBRUARY 26, 1996.

Re action on a water resources development act.

Hon. JOHN CHAFEE,

Chairman, Senate Committee on Environment and Public Works, Dirksen Senate Office Building, Washington, DC.

Hon. BUD SHUSTER,

Chairman, House Transportation and Infrastructure Committee, Rayburn House Office Building, Washington, DC.

DEAR GENTLEMEN: Our nation's deep-draft commercial navigation system is essential to U.S. trade, economic development and national security objectives. It is critical that Congress enact a Water Resources Development Act (WRDA) in 1996 to ensure the continued capital investment in our ports and waterways which is essential to the safe and efficient movement of cargo in international and domestic trade.

Over 95% of U.S. international trade moves through U.S. ports, and trade volumes are expected to triple by the year 2010. Shippers increasingly rely on larger vessels and just in time delivery of goods while, at the same time, there is public concern for the safe transit of these vessels. U.S. navigation channels must be improved and maintained to meet these demands.

More than 90 percent of our ports require regular maintenance dredging. These ports are diverse—they include our largest container ports, as well as other ports that principally handle such products as petroleum, steel, automobiles and fruit. Because many U.S. export commodities—grain, coal, and forest products, to name a few—face tough competition around the world, even marginal transportation cost increases affect their marketability and consequently, the nation's balance of trade. It is clear that dredging, whether to maintain existing depths or to deepen channels to meet the demand of the next generation of ocean carriers, is as essential to our nation's commerce as maintaining and improving our highways and railroads.

However, for the first time since the passage of the Water Resources Development Act of 1986, Congress failed to enact a biennial water resource bill in 1994, and did not live up to its commitment to the federal/port partnership. If a navigation project is economically justified and supported financially by the local project sponsor throughout the arduous planning process, the sponsor must be able to rely on dependable water resource authorization legislation and annual appropriations levels.

In addition to project authorization, one important provision that should be included in any WRDA bill would clarify that the cost of dredged material disposal facilities should be cost-shared at the same rate as other navigation project elements. The Senate Environment and Public Works Committee has already approved a WRDA bill, S. 640. The Committee Report on S. 640 noted that: ''With respect to the construction of dredged material disposal facilities, it is apparent that cost-sharing inconsistencies do exist. Federal and non-Federal cost-sharing responsibilities for dredged material disposal vary from project to project, region to region, and port to port depending on when the project was authorized. In addition, current cost-sharing policies favor open water disposal * * * [T]he Committee urges the Administration to report possible solutions to the Congress for consideration.''

The Report of the Federal Interagency Working Group on the Dredging Process also recommended this clarification of federal cost sharing for disposal in order to level the playing field in selection of disposal alternatives and to facilitate the implementation of important navigation projects and appropriate disposal options. As the federal government mandates more restrictive environmental regulation of dredged material disposal, it is appropriate that the federal government, where it does not do so already, share the costs to assure compliance with those environmental mandates and to provide for sufficient and safe disposal capacity.

The undersigned organizations urge you to make water infrastructure a top priority for your Committees this year. Congress must enact a Water Resources Development Act in 1996 and continue the vital investment in our national water resources and navigation infrastructure. Thank you.

Sincerely,

American Association of Port Authorities, American Institute of Merchant Shipping, American Maritime Congress, American Petroleum Institute, American Pilots Association, American President Lines, Inc., American Waterways Operators, Inc., Bay Area Planning Coalition, Crowley Maritime Corp., Dredging Contractors of America, Intermodal Conference of the American Trucking Associations, International Longshoremen's Association, International Longshoremen's and Warehousemen's Union, International Council of Cruise Lines, Lake Carriers Association, Maersk Line, Inc., Maritime Institute for Research and Industrial Development, Matson Navigation Company, Inc., National

Association of Waterfront Employers, National Waterways Conference, Pacific Northwest Waterways Association, Propeller Club of the United States, Sea-Land Service, Inc., Transportation Institute.

Mrs. BOXER. Today I am joining with Senator FRANK R. LAUTENBERG in introducing legislation that will not only bring balance in the economic burden sharing between our Nation's ports and the Federal Government but also will provide real improvements to our marine environments. Or, as one local editorial headline called it: ''Turning mush to marsh.''

I am talking about providing real economic incentives to make upland disposal of dredged material feasible for our ports. In many cases, this disposal can be used to restore wetlands, particularly for the San Francisco Bay Delta system.

The San Francisco Bay-Delta Estuary is the largest and most significant estuary along the entire west coast of the Americas. Estuaries are one of the most productive types of ecosystems in the world. At the same time, they are one of the most degraded by human activities. Habitat losses, huge fresh water diversions, and pollution—more than 60 percent of the entire runoff from the entire State of California drains into the estuary—have significantly altered the ecosystem. Bay filling has vastly depleted this habitat resource.

The bay area is also the center of a $5.4 billion-a-year economic engine providing 100,000 jobs relating to its role as a center of international maritime commerce.

Concern over environmental degradation resulted in ''mudlock'' between our ports and the environmental community. Sensing the need to establish rational, affordable, and environmentally responsible dredging policies, in 1990 the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, the Bay Conservation and Development Commission joined with navigation and fishing interests, the environmental community, and the public at-large to establish a comprehensive long-term management strategy for bay area dredged material.

One of their successes was the establishment of the Sonoma baylands demonstration project, a congressional authorized dredged disposal site cost-shared between the Federal Government and local agencies. This former tidal wetlands was drained for agricultural use during the last century. The 325-acre site has helped restore needed wetlands in the region and reverse their decline. In addition, it provides habitat for two endangered species—the California clapper rail and the salt marsh harvest mouse.

But that was a one-time congressional demonstration project. We need to correct the underlying law that leaves local agencies with the full cost burden of establishing an upland site for disposal of dredge spoil.

Every year an average of 6 million cubic yards of sediments must be dredged from shipping channels and related navigation facilities throughout the bay area, which is the home of the ports of Oakland, Richmond, San Francisco, and Redwood City. The San Francisco Bay Conservation and Development Commission has concluded that in-bay disposal sites cannot accommodate future dredging and disposal needs.

The bay area's maritime industry is expected to need to dispose of about 300 million cubic yards of sediment over the next 50 years. Due to the growth of Pacific rim countries, export cargo moving through the west coast ports has doubled in the last 2 years. The entire maintenance dredging and channel deepening program provides the critical link for Pacific rim and world trade which contributes directly to our regional, State, and national economies.

In 1994, the Federal Government permitted an ocean disposal site nearly 60 miles off shore and included costly ocean floor monitoring procedures. Annual disposal capacity is limited at this site. Even if seemingly a viable option, in some instances weather and wave conditions impede access of the barges to this offshore site and increases the cost. Dredge material, some of which could be used to restore wetlands, is lost.

The creation of vital wetlands through the beneficial use of dredged material has proven to be highly popular in California.

Several bay area sites, both publicly and privately owned, studied in the course of the long term management strategy show clear development potential for both beneficial use and confined disposal. However, the process by which the Federal Government and local agencies share the costs and other responsibilities of dredging and disposal projects creates many barriers to completion, because it does not reflect real environmental and economic realities.

The Federal Government does not participate at all in upland disposal, while ocean disposal is cost shared by the Federal and State or local agencies. This inconsistency is prejudicial to those ports which have run out of aquatic disposal options and are forced to use upland disposal without any Federal financial assistance.

The availability of dredged disposal capacity is a growing concern in many areas of the country. We need consistent Federal-local sponsor cost sharing across all dredged material disposal methods. Uplands disposal that promotes environmental restoration should be given priority consideration.

That is why this bill is important. It would make the provision of upland, aquatic and confined aquatic, dredge material disposal facilities associated with the construction, operation, and maintenance of Federal navigation projects as a general navigation feature for the purpose of cost sharing.

A consistent Federal policy that provides for cost-sharing upland disposal facilities is a ''win-win'' for the environment and the economy of California. I urge my colleagues to support this legislation and demonstrate that we can save the environment and boost our local, regional, and national economies at the same time.

By Mr. HATCH:

S. 1622. A bill to amend the independent counsel statute to permit appointees of an independent counsel to receive travel reimbursements for successive 6-month periods after 1 year of service; to the Committee on the Judiciary.

AMENDMENTS TO THE INDEPENDENT COUNSEL REAUTHORIZATION ACT

Mr. HATCH. Mr. President, I rise to introduce an amendment to the Independent Counsel Reauthorization Act of 1994. My legislation would provide travel expense reimbursements to appointees of the Office of Independent Counsel for successive 6-month periods after 1 year of service.

This legislation is necessary because the Independent Counsel Reauthorization Act precludes attorneys and other staff fired by an independent counsel from receiving reimbursements for travel expenses they incur after they have worked for an independent counsel investigation for 18 months. Currently, the act authorizes only one 6-month extension for travel reimbursement purposes after 1 year of service.

As a result, employees of the Independent Counsel may be forced to resign as they approach their 18-month anniversaries in order to avoid incurring the additional expense of living away from home for an extended period of time. These employees must then be replaced with new personnel having less knowledge and experience, thereby causing harm and delay to the Independent Counsel's investigation.

The reimbursement limitation will begin to have full effect in the next 2 months, which is a critical time for the Independent Counsel's investigation. As the decision of the eighth circuit on March 15, 1996, reinstating the indictments against Gov. Jim Guy Tucker makes clear, the Independent Counsel's work has been effective in bringing to light public corruption at the highest levels. The trial of United States versus McDougal started on March 4, 1996. Seven employees, including four attorneys, will have reached their 18-month anniversaries by the end of the trial.

Mr. President, Congress included the 18 month limitation to control spending and fiscal irresponsibility. But we did not anticipate an investigation such as this one, in which many individuals have been temporarily relocated to a remote office. The Independent Counsel's ability to complete the investigation in a timely manner may be seriously hindered, and costs may actually increase, if we do not pass this legislation.

My legislation will remedy this problem by permitting Independent Counsel

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

By Mr. WARNER:

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

THE TRAVEL AND TOURISM PROMOTION ACT OF 1996

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

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

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

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

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

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

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

With the elimination of the U.S. Travel and Tourism Administration, the United States will become the only major developed nation without a Federal tourism office. We need a national strategy to maintain and increase our share of the global travel market. Other nations pour money into marketing attempting to lure tourists to their shores, and they are doing it at our expense. This legislation will provide the tools with which the United States can compete with any nation.

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

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

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

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

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

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

Together, through the collective talent of both the board and the organization, as well as the technical assistance provided by the Federal Government through its staff and data collection, it is my hope that America will once again launch itself into the international tourism market as the destination of choice—bringing more jobs as well as revenue to our States and local communities.●

ADDITIONAL COSPONSORS

S. 942

At the request of Mr. THOMPSON, his name was added as a cosponsor of S. 942, a bill to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes.

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

S. 1610

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

SENATE CONCURRENT RESOLUTION 43

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

SENATE RESOLUTION 215

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

SENATE RESOLUTION 226

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

AMENDMENT NO. 3526

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

AMENDMENTS SUBMITTED

THE SMALL BUSINESS REGULATORY FAIRNESS ACT OF 1996

BOND (AND OTHERS) AMENDMENT NO. 3534

Mr. BOND (for himself, Mr. BUMPERS, Mr. BAUCUS, Mr. FEINGOLD, Mr. MURKOWSKI, Ms. MOSELEY-BRAUN, and Mr. THOMPSON) proposed an amendment to the bill (S. 942) to promote increased understanding of Federal regulations and increased voluntary compliance with such regulations by small entities, to provide for the designation of regional ombudsmen and oversight boards to monitor the enforcement practices of certain Federal agencies with respect to small business concerns, to provide relief from excessive and arbitrary regulatory enforcement actions against small entities, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

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

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

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

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

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

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

SEC. 3. PURPOSES.

The purposes of this act are—

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

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

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

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

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

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

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

SEC. 4. EFFECTIVE DATE.

This Act shall become effective on the date 90 days after enactment, except that the amendments made by title four of this Act shall not apply to interpretive rules for which a notice of proposed rulemaking was published prior to the date of enactment.

TITLE I—REGULATORY COMPLIANCE SIMPLIFICATION

SEC. 101. DEFINITIONS.

For purposes of this Act—

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

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

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

SEC. 102. COMPLIANCE GUIDES.

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

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

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

SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

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

(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section, utilizing existing functions and personnel of the agency to the extent practicable.

SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

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

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

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

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

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

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

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

SEC. 105. MANUFACTURING TECHNOLOGY CENTERS AND PROGRAMS ESTABLISHED UNDER SECTION 507 OF THE CLEAN AIR ACT AMENDMENT OF 1990.

(a) GENERAL.—The Manufacturing Technology Centers and other similar extension centers administered by the National Institute of Standards and Technology of the Department of Commerce shall, as appropriate, provide the assistance regarding regulatory requirements, develop and distribute information and guides and develop the programs to provide confidential onsite assessments and recommendations regarding regulatory compliance to the same extent as provided for in Section 104 of this Act with respect to Small Business Development Centers.

(b) SECTION 507 PROGRAMS.—Nothing in the Act in any way limits the authority and operation of the small business stationary source technical and environmental compliance assistance programs established under section 507 of the Clean Air Act Amendments of 1990.

SEC. 106. COOPERATION ON GUIDANCE.

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

TITLE II—REGULATORY ENFORCEMENT REFORMS

SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

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

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

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

''SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITION.—For purposes of this section, the term—

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

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

''(b) SBA ENFORCEMENT OMBUDSMAN.—

''(1) Not later than 180 days after the date of enactment of this section, the Administration shall designate a Small Business and

Agriculture Regulatory Enforcement Ombudsman utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

''(2) The Ombudsman shall—

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

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

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

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

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

''(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

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

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

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

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

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

''(3) Each Board shall consist of five members appointed by the Administration, who are owners or operators of small entities, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate.

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

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

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

''(d) POWERS OF THE BOARDS.

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

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

''(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

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

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

(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

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

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

''(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a state;

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

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

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

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

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

TITLE III—EQUAL ACCESS TO JUSTICE ACT AMENDMENTS

SEC. 301. ADMINISTRATIVE PROCEEDINGS.

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

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

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

''(4) In an adversary adjudication brought by an agency, an adjudicative officer of the agency shall award attorneys fees and other expenses to a party or a small entity, as defined in Section 601, if the decision of the adjudicative officer is disproportionately less favorable to the agency than an express demand by the agency, unless the party or small entity has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award of attorneys fees unjust. For purposes of this paragraph, an ''express demand'' shall not include a recitation by the agency of the maximum statutory penalty (A) in the administrative complaint, or (B) elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

SEC. 302. JUDICIAL PROCEEDINGS.

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

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

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

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

TITLE IV—REGULATORY FLEXIBILITY ACT AMENDMENTS

SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

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

(1) by inserting after ''proposed rule'', the phrase '', or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States''; and

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

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

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

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

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

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

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

''(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

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

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

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

SEC. 402. JUDICIAL REVIEW.

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

''§ 611. Judicial review

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

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

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

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

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

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

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

''(A) remanding the rule to the agency, and

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

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

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

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

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

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

SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.

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

''(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual and legal reasons for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.''.

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

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

(2) in subsection (b), by striking ''his views with respect to the'' and inserting in lieu thereof, ''his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the''.

SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) SMALL BUSINESS OUTREACH AND 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 full time federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NICKLES (AND OTHERS) AMENDMENT NO. 3535

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

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

TITLE V—CONGRESSIONAL REVIEW

SEC. 501. SHORT TITLE.

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

SEC. 502. FINDING.

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

SEC. 503. MORATORIUM ON REGULATIONS; CONGRESSIONAL REVIEW.

(a) REPORTING AND REVIEW OF REGULATIONS.—

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

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

(i) a copy of the rule;

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

(iii) the proposed effective date of the rule.

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

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

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

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

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

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

(2) REPORTING BY THE COMPTROLLER GENERAL.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) PRESIDENTIAL WAIVER AUTHORITY.—

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

(2) 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.

THE 1996 BALANCED BUDGET DOWN PAYMENT ACT, II

HATFIELD (AND WYDEN) AMENDMENT NO. 3536

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

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

BOND (AND HARKIN) AMENDMENT NO. 3537

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

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

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

SPECTER AMENDMENTS NOS. 3538–3539

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

AMENDMENT NO. 3538

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

On page 572, line 16 of the pending amendment, strike ''$129,499,000'' and insert in lieu thereof ''$130,499,000''.

AMENDMENT NO. 3539

On page 590, after the word ''for'' on line 19, strike all up to the word ''payment'' on line 23.

On page 590, after the word ''education'' on line 25, strike all up to the period on page 591, line 3.

JEFFORDS AMENDMENT NO. 3540

Mr. HATFIELD (for Mr. JEFFORDS) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the end of title III, on page 771 after line 17, add the following new section:

SEC. . The Secretary of Health and Human Services shall grant a waiver of the requirements set forth in section 1903(m)(2)(A)(ii) of the Social Security Act to D.C. Chartered Health Plan, Inc. of the District of Columbia: *Provided,* That such waiver shall be deemed to have been in place for all contract periods from October 1, 1991 through the current contract period or October 1, 1999, whichever shall be later.

COCHRAN (AND BUMPERS) AMENDMENT NO. 3541

Mr. HATFIELD (for Mr. COCHRAN, for himself and Mr. BUMPERS) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the appropriate place insert the following:

Sec. . Of the funds appropriated by Public Law 104–37 or otherwise made available to the Food Safety and Inspection Service for Fiscal Year 1996, not less than $363,000,000 shall be available for salaries and benefits of in-plant personnel: *Provided,* That this limitation shall not apply if the Secretary of Agriculture certifies to the House and Senate Committees on Appropriations that a lesser amount will be adequate to fully meet in-plant inspection requirements for the fiscal year.

LAUTENBERG AMENDMENT NO. 3542

Mr. HATFIELD (for Mr. LAUTENBERG) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

On page 769, line 24, delete the word ''Of'' and insert ''Notwithstanding any other provision of law, of''

On page 770, line 4, after the word ''available'', insert the words ''for operating expenses''.

GREGG (AND OTHERS) AMENDMENT NO. 3543

Mr. HATFIELD (for Mr. GREGG, for himself, Mr. KENNEDY, Mr. HATCH, and Mrs. KASSEBAUM) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the appropriate place in the bill, insert the following:

TITLE —FOOD AND DRUG EXPORT REFORM

SEC. 01. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This title may be cited as the ''FDA Export Reform and Enhancement Act of 1996''.

(b) REFERENCE.—Wherever in this title (other than in section 04) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food. Drug, and Cosmetic Act. (21 U.S.C. 321 et seq.)

SEC. 02. EXPORT OF DRUGS AND DEVICES.

(a) EXPORT AND IMPORTS.—Section 801 (21 U.S.C. 381) is amended—

(1) In subsection (d), by adding at the end thereof the following new paragraphs:

''(3) No component, part, or accessory of a drug, biological product, or device, including a drug in bulk inform, shall be excluded from importation into the United States under subsection (a) if—

''(A) the importer affirms at the time of initial importation that such component, part, or accessory is intended to be incorporated by the initial owner or consignee into a drug, biological product, or device that will be exported by such owner or consignee from the United States in accordance with subsection 801(e) or section 802 of this Act or section 351(h) of the Public Health Service Act;

''(B) the initial owner or consignee responsible for such imported articles maintains records that identify the use of such imported articles and upon request of the Secretary submits a report that provides an accounting of the exportation or the disposition of the imported articles, including portions that have been destroyed, and the manner in which such person complied with the requirements of this paragraph; and

''(C) any imported component, part or accessory not so incorporated is destroyed or exported by the owner or consignee.''

''(4) The importation into the United States of blood, blood components, source plasma, and source leukocytes, is not permitted pursuant to paragraph (3) unless the importation complies with section 351(a) of the Public Health Service Act. The importation of tissue is not permitted pursuant to paragraph (3) unless the importation complies with section 361 of the Public Health Service Act.'';

''(2) in subsection (e)(1), by striking the second sentence;

''(3) in subsection (e)(2)—

''(A) by striking ''the Secretary'' and inserting ''either (i) the Secretary''; and

''(B) by inserting before the period at the end thereof the following: ''or (ii) the device is eligible for export under section 802''; and

''(4) in subsection (e), by adding at the end thereof the following new paragraph:;

''(3) A new animal drug that requires approval under section 512 shall not be exported pursuant to paragraph (1) if such drug has been banned in the United States.''.

''(b) EXPORT OF CERTAIN UNAPPROVED DRUGS AND DEVICES.—Section 802 (21 U.S.C. 382) is amended to read as follows:

''EXPORTS OF CERTAIN UNAPPROVED PRODUCTS

''SEC. 802. (a) A drug (including a biological product) intended for human use or a device for human use—

''(1) which, in the case of a drug—

''(A)(i) requires approval by the Secretary under section 505 before such drug may be introduced or delivered for introduction into interstate commerce; or

''(ii) requires licensing by the Secretary under section 351 of the Public Health Service Act or by the Secretary of Agriculture under the Act of March 4, 1913 (known as the Virus-Serum Toxin Act) before it may be introduced or delivered for introduction into interstate commerce; and

''(B) does not have such approval or license, is not exempt from such sections or Act, and is introduced or delivered for introduction into interstate commerce; or

''(2) which, in the case of a device—

''(A) does not comply with an applicable requirement under section 514 or 515;

''(B) under section 520(g) is exempt from either such section; or

''(C) is a banned device under section 516,

is adulterated, misbranded, and in violation of such sections or Act unless the export of the drug or device is authorized under subsection (b), (c), (d), or (e), or under section 801(e)(2). If a drug (including a biological product) or device described in paragraphs (1) and (2) may be exported under subsection (b) and if an application for such drug or device under section 505 or 514 or section 351 of the Public Health Service Act was disapproved, the Secretary shall notify the appropriate public health official of the country to which such drug will be exported of such disapproval.

''(b)(1) Except as otherwise provided in this section, a drug (including a biological product) or device may be exported to any country, if the drug or device complies with the laws of that country and has valid marketing authorization by the appropriate approval authority—

''(A) in Australia, Canada, Israel, Japan, New Zealand, Switzerland, or South Africa; or

''(B) in the European Union or a country in the European Economic Area (the countries in the European Union and the European Free Trade Association) if the drug or device is marketed in that country or the drug or device is authorized for general marketing in the European Economic Area.

''(2) The Secretary may designate an additional country or countries to be included in the list of countries described in subparagraphs (A) and (B) of paragraph (1). The Secretary shall not delegate the authority granted under this paragraph.

''(3) An appropriate country official, manufacturer, or exporter may request the Secretary to designate an additional country or countries to be included in the list of countries described in subparagraphs (A) and (B) of paragraph (1) by submitting documentation to the Secretary in support of such designation. Any person other than a country requesting such designation shall include along with the request a letter from the country indicating the desire of such country to be designated.

''(4) The Secretary shall designate a country or countries to be included in the list of countries described in subparagraphs (A) and (B) of paragraph (1) of the Secretary finds that the valid marketing authorization system in such country or countries is equivalent to the systems in the countries described in subparagraphs (A) and (B) of paragraph (1).

''(c) A drug or device intended for investigational use in any country described in subsection (b) may be exported in accordance with the laws of that country and shall be exempt from regulation under section 505(i) or 520(g).

''(d) A drug or device intended for formulation, filling, packaging, labeling, or further processing in anticipation of market authorization in any country described in paragraph (1)(A) or (B) of subsection (b) may be exported to those countries for use in accordance with the laws of that country.

''(e)(1) A drug (including a biological product) or device which is to be used in the prevention or treatment of a tropical disease or other disease not prevalent in the United States and which does not otherwise qualify for export under this section may, upon approval of an application submitted under paragraph (2), be exported if—

''(A) the Secretary finds, based on credible scientific evidence, including clinical investigations, that the drug or device is safe and effective in the country to which the drug or device is to be exported in the prevention or treatment of a tropical disease or other disease not prevalent in the United States in such country.

''(B) the drug or device is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and is not adulterated under subsection (a)(1), (a)(2)(A), (a)(3), (c), or (d) of section 501;

''(C) the outside of the shipping package is labeled with the following statement: 'This drug or device may be sold or offered for sale only in the following countries: _____', the blank space being filled with a list of the countries to which export of the drug or device is authorized under this subsection;

''(D) the drug or device is not the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the manufacture of the drug or device in the United States for export to a country is contrary to the public health and safety of the United States; and

''(E) the requirements of subparagraphs (A) through (D) of section 801(e)(1) have been met.

''(2) Any person may apply to have a drug or device exported under paragraph (1). The application shall—

''(A) describe the drug or device to be exported;

''(B) list each country to which the drug or device is to be exported;

''(C) contain a certification by the applicant that the drug or device will not be exported to a country for which the Secretary cannot make a finding described in paragraph (1)(A);

''(D) identify the establishments in which the drug or device is manufactured; and

''(E) demonstrate to the Secretary that the drug or device meets the requirements of paragraph (1).

''(3) The holder of an approved application for the export of a drug or device under this subsection shall report to the Secretary—

''(A) the receipt of any information indicating that the drug or device is being or may have been exported from a country for which the Secretary made a finding under paragraph (1)(A) to a country for which the Secretary cannot make such a finding; and

''(B) the receipt of any information indicating any adverse reactions to such drug.

''(4)(A) If the Secretary determines that—

''(i) a drug or device for which an application is approved under paragraph (2) does not continue to meet the requirements of paragraph (1);

''(ii) the holder of such application has not made the report required by paragraph (3); or

''(iii) the manufacture of such drug or device in the United States for export is contrary to the public health and safety of the United States and an application for the export of such drug or device has been approved under paragraph (2).

then before taking action against the holder of an application for which a determination was made under clause (i), (ii), or (iii), the Secretary shall notify the holder in writing of the determination and provide the holder 30 days to take such action as may be required to prevent the Secretary from taking action against the holder under this subparagraph. If the Secretary takes action against such holder because of such a determination, the Secretary shall provide the holder a written statement specifying the reasons for such determination and provide the holder, on request, an opportunity for an informal hearing with respect to such determination.

''(B) If at any time the Secretary, or in the absence of the Secretary, the official designated to act on behalf of the Secretary, determines that—

''(i) the holder of an approved application under paragraph (2) is exporting a drug or device from the United States to an importer;

''(ii) such importer is exporting the drug or device to a country for which the Secretary cannot make a finding under paragraph (1)(A); and

''(iii) such export presents an imminent hazard to the public health in such country, the Secretary shall immediately prohibit the export of the drug or device to such importer, provide the person exporting the drug or device from the United States prompt notice of the determination, and afford such person an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph shall not be delegated by the Secretary.

''(C) If the Secretary, or in the absence of the Secretary, the official designated to act on behalf of the Secretary, determines that the holder of an approved application under paragraph (2) is exporting a drug or device to a country for which the Secretary cannot make a finding under paragraph (1)(A), and that the export of the drug or device presents an imminent hazard, the Secretary shall immediately prohibit the export of the drug or device to such country, give the holder prompt notice of the determination, and afford the holder an opportunity for an expedited hearing. A determination by the Secretary under this subparagraph may not be stayed pending final action by a reviewing court. The authority conferred by this subparagraph shall not be delegated by the Secretary.

''(D) If the Secretary receives credible evidence that the holder of an application approved under paragraph (2) is exporting a drug or device to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall give the holder 60 days to provide information to the Secretary respecting such evidence and shall provide the holder an opportunity for an informal hearing on such evidence. Upon the expiration of such 60 days, the Secretary shall prohibit the export of such drug or device to such country if the Secretary determines the holder is exporting the drug or device to a country for which the Secretary cannot make a finding under paragraph (1)(A).

''(E) If the Secretary receives credible evidence that an importer is exporting a drug or device to a country for which the Secretary cannot make a finding under paragraph (1)(A), the Secretary shall notify the holder of the application authorizing the export of such drug or device of such evidence and shall require the holder to investigate the export by such importer and to report to the Secretary within 14 days of the receipt of such notice the findings of the holder. If the Secretary determines that the importer has exported a drug or device to such a country, the Secretary shall prohibit such holder from exporting such drug or device to the importer unless the Secretary determines that the export by the importer was unintentional.

''(f) A drug or device may not be exported under this section if—

''(1) the drug or device is not manufactured, processed, packaged, and held in conformity with current good manufacturing practice or is adulterated under paragraph (1), (2)(A), or (3) of section 501(a) or subsection (c) or (d) of section 501;

''(2) the requirements of subparagraphs (A) through (d) of section 801(e)(1) have not been met;

''(3)(A) the drug or device is the subject of a notice by the Secretary or the Secretary of Agriculture of a determination that the possibility of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States and the only means of limiting the hazard is to prohibit the export of the drug or device;

''(B) the drug or device presents an imminent hazard to the public health of the country to which the drug or device would be exported; or

''(4) the drug or device is not lableld or promoted—

''(A) in accordance with the requirements and conditions for use in—

''(i) the country in which the drug or device received a valid marketing authorization under subsection (b)(2); and

''(ii) the country to which the drug or device would be exported; and

''(B) in the language of the country or designated by the country to which the drug or device would be exported.

''In making a finding under paragraph (37)(B), the Secretary shall, to the maximum extent possible, consult with the appropriate public health official in the affected country.

''(g) The exporter of a drug or device exported under this section shall provide a simple notification to the Secretary when the exporter first begins to export such drug or device to a country and shall maintain records of all products exported pursuant to this section.

''(h) For purposes of this section—

''(1) a reference to the Secretary shall in the case of a biological product which is required to be licensed under the Act of March 4, 1913 (37 Stat. (832–833) (commonly known as the Virus-Serum Toxin Act) be considered to be a reference to the Secretary of Agriculture, and

''(2) the term ''drug'' includes drugs for human use as well as biological under section 351 of the Public Health Service Act or the Act of March 4, 1913 (37 Stat. 832–833) (commonly known as the Virus-Serum Toxin Act).''

SEC. 03. PROHIBITED ACT.

Section 301 (21 U.S.C. 331) is amended—

(1) by redesignating the second subsection (u) as subsection (v); and

(2) by adding at the end thereof the following new subsection:

''(w)(1) The failure to maintain records as required by section 801(d)(3), the making of a knowing false statement in any record or report required or requested under section 801(d)(3), the release into interstate commerce of any article imported into the United States under section 801(d)(3) or any finished product made from such article (except for export in accordance with subsection 801(e) or section 802 of the Act or section 351(h) of the Public Health Service Act), or the failure to export or destroy any component, part or accessory not incorporated into a drug, biological product or device that will be exported in accordance with subsection 801(e) or section 802 of this Act or section 351(h) of the Public Health Service Act.''

SEC. 04. PARTIALLY PROCESSED BIOLOGICAL PRODUCTS.

Subsection (h) of section 351 of the Public Health Service Act (42 U.S.C. 262) is amended to read as follows:

''(h) A partially processed biological product which—

''(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

''(2) is not intended for sale in the United States; and

''(3) is intended for further manufacture into final dosage form outside the United States,

shall be subject to no restriction on the export of the product under this Act or the Federal Food, Drug, and cosmetic Act (21 U.S.C. 321 et seq.) if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and meets the requirements in section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e)).''.

GRAMM (AND HUTCHISON) AMENDMENTS NOS. 3544–3545

Mr. HATFIELD (for Mr. GRAMM, for himself and Mrs. HUTCHISON) proposed two amendments to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

AMENDMENT NO. 3544

On page 577, line 14 of the committee substitute, insert:

''SEC. 213. If the Secretary fails to approve the application for waivers related to the Achieving Change for Texans, a comprehensive reform of the Texas Aid To Families With Dependent Children program designed to encourage work instead of welfare, a request under section 1115(a) of the Social Security Act submitted by the Texas Department of Human Services on September 30, 1995, by the date of enactment of this Act, notwithstanding the Secretary's authority to approve the applications under such section, the applications shall be deemed approved.''

AMENDMENT NO. 3545

Section 223B of the amendment is amended to read as follows:

''SEC. 223B. Section 415 of the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (Public Law 100–202; 101 Stat. 1329–213) is repealed effective the date of enactment of Public Law 104–19. The Secretary is authorized to demolish the structures identified in such section. The Secretary is also authorized to compensate those local governments which, due to this provision, expended local revenues demolishing the developments identified in such provision.''.

GORTON AMENDMENT NO. 3546

Mr. HATFIELD (for Mr. GORTON) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

To the amendment numbered 3466: On page 406, line 8, strike ''$567,152,000'' and insert in lieu thereof ''$567,753,000''.

HATFIELD (AND OTHERS) AMENDMENT NO. 3547

Mr. HATFIELD (for himself, Mr. HOLLINGS, Mr. PELL, Mr. DASCHLE, and Mr. KERRY) proposed an amendment to amendment No. 3466 proposed by Mr. HATFIELD to the bill H.R. 3019, supra; as follows:

At the appropriate place, insert the following:

The appropriation for the Arms Control and Disarmament Agency in Public Law 103–317 (108 STAT. 1768) is amended by deleting after ''until expended'' the following: ''only for activities related to the implementation of the Chemical Weapons Convention'' : *Provided,* That amounts made available shall not be used to undertake new programs or to increase employment above levels on board at the time of enactment of this Act.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, March 28 at 9:30 a.m. in the Russell Caucus Room (SR–325) in Washington, DC.

The purpose of this hearing is to receive testimony on the issue of competitive change in the electric power industry. It will focus on what State public utility commissions are doing to make electric utilities more competitive. Although an oversight hearing, witnesses are asked to provide comment on S. 1526 as it relates to this issue.

Those who wish to testify or to submit written testimony should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. Presentation of oral testimony is by committee invitation. For further information, please contact Shawn Taylor or Howard Useem at (202) 224–6567.

AUTHORITY FOR COMMITTEE TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to hold a meeting during the session of the Senate on Friday, March 15, 1996, at 9:30 a.m. in room 430 of the Dirksen Senate Office Building. The committee will hold a hearing regarding S. 581, the National Right-to-Work Act.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. KYL. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces be authorized to meet at 9:30 a.m. on Friday, March 15, 1996, to receive testimony on tactical aviation issues in review of the defense authorization request for fiscal year 1997 and the future years defense program.

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

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. KYL. Mr. President, I ask unanimous consent that the Acquisition and Technology Subcommittee of the Committee on Armed Services be authorized to meet at 10 a.m. on Friday, March 15, in open session, to receive testimony on emerging battlefield concepts for the 21st century and the implications of these concepts for technology investment decisions in the defense authorization request for fiscal year 1997 and the future.

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

ADDITIONAL STATEMENTS

TRIBUTE TO GEORGE WHITTINGTON

● Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a civic leader, decorated veteran, adventurer, and extraordinary Kentuckian. George P. Whittington, who passed away January 27, was all of these things, and more.

Mr. Whittington, born October 5, 1913, served his country in both World War II and the Korean war. A graduate of the New Mexico Military Institute, Whittington was awarded the Silver Star, Bronze Star, and Purple Heart for service in both the Army and the Marine Corps. During the D-day invasion on June 6, 1944, Whittington commanded Company B of the Fifth Ranger Battalion which landed on Omaha Beach. According to an account of the attack, Whittington led a detachment that punched through obstacles on the beach, scaled a 100-foot cliff and then crawled under machinegun fire to destroy an enemy position. For his leadership, Mr. Whittington was awarded the Distinguished Service Cross.

After the war, Whittington earned a bachelor's degree in journalism from the University of Missouri. He then returned to active duty to serve as a major and battalion commander in the Army during the Korean war. After military service, Whittington returned to Kentucky where he served for more than 25 years on the Henderson City-County Air Board and was a member of the Henderson Community College Foundation board. During the 1970's and 1980's Whittington owned a 1,000-acre cattle ranch in Costa Rica. He also hunted big game in Africa and was an avid private pilot.

Walt Dear, president of the Gleaner-Journal Publishing Co., said Whittington ''was an absolute original. George Whittington was the kind of guy you meet once in a lifetime. He was definitely interesting—a great conversationalist and a great reader.''

Survivors include his wife of 40 years, Agnes; two daughters, Janet and Elizabeth Whittington; two sons, Charles and Richard Whittington; and two grandsons. I would ask that my colleagues join me in honoring this heroic and extraordinary Kentuckian.●

CENTENNIAL OF THE JEWISH WAR VETERANS OF THE U.S.A.

● Mr. LIEBERMAN. Mr. President, today, March 15, 1996, marks the 100th anniversary of the founding of the oldest veterans organization in this country—the Jewish War Veterans of the U.S.A. Most people think that the American Legion is the oldest veterans group but, in fact, it is not.

On March 15, 1896, 63 Jewish Civil War veterans gathered in New York City to form the Hebrew Union Veterans as a response to allegations that Jews in 19th century America were not

inclined ''to stand by the flag as soldiers.'' From this group of 63 has developed the current organization of over 100,000 members.

The Jewish War Veterans of the U.S.A. is proud of the history of its individual members in all of America's wars and conflicts. It is also proud of its own history as an organization. All of us share in that pride for it is well-earned. JWV led the effort to end the pogroms against Eastern European Jews at the beginning of this century. They led the national boycott of German goods in the 1930's. And they have supported the state of Israel since its birth in 1948. Moreover, the JWV actively supported the civil rights movement of the 1960's and was the only veterans group to support the 1963 march on Washington. It also was the first group to call for the withdrawal of United States military forces from Vietnam in 1971.

The JWV's 100-year history has kept it in the forefront of groups which support America's military personnel and our veterans. It has supported educational, veterans, and community projects and has done so regardless of religion, race, or gender.

America is proud of all its veterans. Today, we should stop and pay tribute to this outstanding veterans organization. America congratulates the Jewish War Veterans of the U.S.A. on its centennial anniversary.●

TELECOMMUNICATIONS ACT

● Mr. PRESSLER. Mr. President, on February 8, the President signed into law the Telecommunications Act of 1996. This act has been my highest legislative priority for the 104th Congress. I am very pleased with the great strides we are making in deregulating and fostering competition in this critical field. But our work is not over. I ask to have printed in the RECORD the article I wrote for Roll Call detailing what lies ahead for telecommunications reform.

The article follows:

[From Roll Call, Mar. 11, 1996]

TELECOM REFORM: IT AIN'T OVER 'TIL IT'S OVER

(By Senator Larry Pressler)

Historic. Massive. Landmark. Sweeping. Adjectives such as these were often used by journalists and lobbyists alike to describe the recently passed Telecommunications Act of 1996. So often, in fact, I think that some began to wonder if we had placed them in the bill's formal title.

The truth is such adjectives got a lot of ink because they captured the scope and direction of the bill. As well they should. Congress had been so long about the business of updating the nation's antiquated communications laws that, when we were finally able to get a bill moving, it had no choice but to be ''historic, massive, and sweeping'' if we were to have any chance of keeping up with the pace of technological development.

Passage of the Telecommunications Act of 1996 was my highest legislative priority in the first session of the 104th Congress. On Feb. 8, that priority became law.

Thanks to my bill, the communications industry will see an explosion in new investment and development. Who are the winners? The consumers. There will be more services and new products at lower costs. All of this economic activity will mean new jobs.

Competition is the key for this development. My bill unlocked the regulatory handcuffs restricting the communications industry—now, competition will bring everything from lower costs and new products to better education opportunities to the public.

But we are not done. Passage of the act does not mean Congress can now wait another 62 years before looking at telecommunications issues again.

On the contrary, we must regard telecommunications reform as a work in progress. Although our legislative calendar may be somewhat attenuated this election year, the list of telecommunications priorities facing the second session of the 104th Congress is as impressive as it is imperative.

Among the priorities for the Commerce Committee this year are ensuring that the Federal Communications Commission carries out Congress's intent when it sets the rules to implement the Telecommunications Act; determining federal use and allocation of the full spectrum; and re-examining the rule barring foreign investment in US telecommunications firms.

TELECOMMUNICATIONS ACT OVERSIGHT

First and foremost, Congress needs to make sure that what the American consumer won on the legislative battlefield isn't lost on the regulatory drawing board. In other words, we need to make sure that the FCC carries out the intent of Congress as it implements the tenets of the Telecommunications Act.

This is no small task. Nor is it frivolous. There were many hard-fought battles by various segments of the industry during the drafting of the Telecommunications Act. Now that the scene shifts from the legislative to the regulatory venue, the temptation to refight lost battles beckons many an interest group.

Congress must be vigilant and hold fast against the possibility of regulatory revisionism as the FCC proceeds with its rulemaking processes.

The battle flags already are flying. For instance, the FCC, in initiating a rule-making intended to accelerate the ability of Regional Bell Operating Companies (RBOCs) to offer long-distance service outside their monopoly operating areas, is proposing to require the RBOCs to set up separate subsidiaries to provide such services.

As I pointed out in a recent letter to FCC Chairman Reed Hundt, this is totally contrary to provisions in the Telecommunications Act that specifically exempt the RBOCs from having to provide out-of-region, long-distance services under a separate subsidiary.

In another potential regulatory overreach, the FCC is considering requiring broadcasters to increase the amount of air time dedicated to public interest programming, as well as possibly requiring more children's programming. Such government-mandated content control would be enforced through the station license renewal process.

The issue here is not whether more children's and public interest programming is desirable, but whether these goals should be mandated by the FCC as part of the broadcast license renewal process.

In fact, Congress was quite clear about its intentions in the license renewal provisions of the Telecommunications Act. The act requires license simplification, not license complication. The FCC's direction in carrying out this provision seems to be headed in the direction of re-regulation instead of deregulation. It is the latter approach Congress clearly intended.

As to the issue of program content, I think the best public policy is to keep the government's involvement to a minimum and let the industry and the public determine the content of programming. I support providing parents with the necessary technological weapons, such as the ''V-chip,'' to help them control what their children see on television. Of course, the ultimate ''V-chip'' already exists on every television set in America—the on/off switch.

Currently, a plethora of flexible, quickly evolving, and market-driven parental blocking technologies are available. Some are already incorporated into many televisions and VCR's. Other are sold as separate add-on devices. We must be mindful that government does not dry up the market for such devices by mandating one technology over all others.

FCC REFORM

Another major focus for the committee this year will be to examine the overall performance and needs of the FCC as it carries out its duties. We will look closely at the agency's repeated requests for additional money to implement the Telecommunications Act.

As I have told Chairman Hundt, I am concerned about the FCC's alarms over possible budget shortfalls and calls for more personnel and other resources to carry out its mission.

The FCC has requested a budget of approximately $224 million for fiscal 1996, supporting some 2,300 employees. This is roughly two-thirds more than the FCC's budget in 1993 ($134 million) and includes an additional 600 employees over the 1993 staffing level (1,700).

In fact, since 1992, FCC expenditures have risen at a compounded average annual rate of 15.2 percent, compared with an average of 10.4 percent for the communications industry itself.

Should the growth of a federal agency outstrip the very industry it regulates by a margin of three to two? No. Particularly in an era of federal budget austerity in which the watchwords for most other federal agencies are ''smaller but smarter'' government.

Clearly, Congress will have to look closely at the FCC during this second session and see what efficiencies can be realized in its operations.

OVERVIEW OF FEDERAL SPECTRUM POLICIES

Another major task facing Congress this year is a thorough examination of federal policies regarding the use and allocation of the electromagnetic spectrum. The electromagnetic spectrum, generally defined as the range of electromagnetic frequencies between three kilohertz and 300 gigahertz, is one of the nation's most valuable resources.

I believe the federal government has a responsibility to ensure that the efficient management of this resource provides adequately for the national defense, the protection of the taxpayer, and the continued maintenance of America's technological leadership.

The full committee on Commerce, Science, and Transportation is planning to hold hearings on this complex subject, beginning in March.

During these hearings, we will examine the government's management and allocation of the entire spectrum, not just that small portion of it used for radio and television broadcasting. This includes supporting: civilian emergency services; scientific and satellite uses; merchant marine emergency and navigation uses; aviation uses; truck and railroad uses; cellular phone and personal communications services; military and intelligence uses; and specialized data-transmission uses, such as telemedicine services.

Much of the focus of this spectrum review naturally will gravitate toward the issue of

digital television and how portions of the finite spectrum should be allocated to broadcasters for the development of digital transmission.

I have long been a supporter of protecting the taxpayers in allocations of the spectrum by the FCC. In fact, I proposed an auction earlier in the year as part of the budget reconciliation process.

While I believe the Telecommunications Act of 1996 was clear in that it did not mandate any giveaway of the digital spectrum, it is important that Congress revisit this issue this year and establish a clear national policy on spectrum assignments to the private sector.

OTHER ISSUES

There are a number of other telecommunications issues that will occupy the committee's attention this year, including a look at whether current rules restricting foreign investment in US broadcasting are good for the nation.

It may well be that we should allow more foreign investment in US broadcasting, provided US broadcasters have the same investment rights overseas. This could open more foreign markets to US telecommunications products and services. The committee may hold hearings this year on this issue.

The committee also will consider reforming the Communications Satellite Act of 1962. When that act was passed, no one thought private companies would launch and operate satellites. Today, we have private companies competing with the international government-owned satellite systems, INTELSAT and INMARSAT. We need to reevaluate how competition should operate in the international satellite market.

The Telecommunications Act of 1996 was a major legislative step forward in modernizing America's ancient telecommunications laws. But we cannot rest on our legislative laurels if Congress is to provide a regulatory infrastructure that helps, rather than hinders, America's telecommunications industry. Our work has just begun.●

TRIBUTE TO THE CREW OF SPECIAL AIR MISSION 3311 TO HAITI IN SEPTEMBER 1994

● Mr. NUNN. Mr. President, I would like to recognize the outstanding service of the crew of Special Air Mission 3311, which transported former President Jimmy Carter, retired U.S. Army Gen. Colin Powell, and myself to and from Haiti in September 1994. This mission was a last chance attempt to achieve a peaceful return to power of Haiti's democratically elected government. Although the successful outcome of the United States negotiating effort is well known, I want to reflect for a moment on the bravery and high level of professionalism exhibited by the air crew that gave our mission of peace the opportunity it needed to succeed.

Recently, I had the opportunity to speak with one of the members of this aircrew and I recalled the extraordinarily difficult conditions under which the aircrew members were forced to operate. On the evening of September 16, 1994, this aircrew was given less than 8 hours to prepare for a 6 a.m. departure for the following day in which neither the destination, nor the passengers of the flight, were known. Only 3 hours before the flight's scheduled departure did the aircrew learn of its orders to transport General Powell from Andrews Air Force Base to Robins Air Force Base in Georgia, where they would pick up former President Carter and myself, and continue its flight to Port-au-Prince, Haiti. Intelligence sources at that time indicated that the runway at the Port-au-Prince airport was unusable. There were large amounts of debris littering the runway, including nails and 8-foot-high metal containers. Only minutes prior to the landing, as much debris as possible was moved to the sides of the runway. Miraculously, and with no margin for error, the crew was able to land the aircraft with only 20 feet of wing-tip clearance. However, the crew's ordeal did not end at that point in the mission.

On September 18, the aircraft returned for our mission's departure from Haiti. Delays in our negotiations resulted in the crew having to wait for more than ten hours in the plane for the return of our delegation. The crew members endured heat in excess of 120 degrees while maintaining the aircraft's readiness for an instant departure with minimal support facilities. The crew had to function under the additional stress of knowing that the negotiations were not proceeding very well. When our negotiating team arrived at the aircraft for departure, the crew had no knowledge concerning the final outcome of our discussions or the current status of a United States invasion force that was enroute from Pope Air Force Base to Haiti. Only after a successful takeoff under these tense conditions did the crew learn that the negotiations had concluded successfully.

Mr. President, the courage, dedication, and professionalism of the aircrew of Special Air Mission 3311 to Haiti represent the finest qualities of the men and women serving in our Nation's Armed Forces. For their dedication, each member of the aircrew was awarded the Air Medal. In addition, this extraordinary unit received the 21st Air Force Aircrew Excellence Award for the third quarter 1994 and was nominated for the Lt. Gen. William H. Tunner Award for Outstanding Air Mobility Command Aircrew. They made a major contribution to our mission to Haiti. Today, I want to pay tribute to the excellent job that they performed and I ask that a list of the names of those outstanding individuals who served in Special Air Mission 3311 be printed in the RECORD.

The list follows:

THE CREW OF SPECIAL AIR MISSION 3311

Major Loail M. Sims, Jr.
Lieutenant Colonel William F. Dea
Captain Peter M. Lenio
Major David B. Ingersoil
Captain Steven A. Burgess
Master Sergeant Mark L. Buchner
Staff Sergeant Kenneth K. McNamara
Master Sergeant David A. Nelson
Staff Sergeant Kimberly M. Herd
Master Sergeant Brian D. Smith
Master Sergeant Karen G. Kron
Staff Sergeant Sheila L. Bradley
Staff Sergeant Darryl O. Walizer
Staff Sergeant Lennard C. Edwards
Master Sergeant John M. Piva
Staff Sergeant John C. Bergquist
Staff Sergeant John Bresnahan
Technical Sergeant Victor N. Gobe'r
Technical Sergeant Roy L. Tatum.●

CBO ANALYSIS OF UNFUNDED MANDATES

● Mr. MURKOWSKI. Mr. President, pursuant to Public Law 104–4, I am submitting for the information of the Senate a CBO analysis of unfunded mandates of bills reported by the Senate Energy and Natural Resources Committee currently on the Senate Calendar. As further information is available, it will also be provided to the Senate.

The analysis follows:

BILLS THAT DO NOT CONTAIN MANDATES

S. 115 Colonial National Historical Park Amendments.

S. 127 Women's Rights National Historical Park Amendments.

S. 134 Franklin D. Roosevelt Family Lands.

S. 188 Great Falls Preservation and Redevelopment Act.

S. 197 Carl Garner Federal Lands Cleanup Day.

S. 223 Sterling Forest Protection Act of 1995.

S. 225 FERC Voluntary Licensing of Hydroelectric Projects on Fresh Waters in the State of Hawaii.

S. 283 A bill to extend the deadlines under the Federal Power Act for two hydroelectric projects in Pennsylvania.

S. 333 Department of Energy Risk Management Act of 1995.

S. 342 Cache La Poudre River National Water Heritage Area Act of 1995.

S. 357 Na Hoa Pili Kaloko-Honokohau Reestablishment Act of 1995.

S. 359 Extension of construction deadline for certain hydroelectric projects located in the State of West Virginia.

S. 378 Columbia Basin Land Exchange.

S. 392 Dayton Aviation Heritage Commission.

S. 421 Extension of construction deadline for a hydroelectric project located in the State of Kentucky.

S. 461 Extension of construction deadline for a hydroelectric project located in the State of Washington.

S. 468 A bill to extend the deadline under the Federal Power Act for the construction of a hydroelectric project in Ohio.

S. 509 A bill to allow the town of Grand Lake, Colorado to maintain permanently a cemetery in the Rocky Mountain National Park.

S. 522 Limited exemption to licensing provisions for facilities associated with the El Vado Hydroelectric Project, New Mexico.

S. 538 Extension of construction deadline for a hydroelectric project located in the State of Oregon.

S. 543 A bill to extend the deadline under the Federal Power Act for the construction of a hydroelectric project in Oregon.

S. 547 A bill to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act.

S. 549 Extension of construction deadline for certain hydroelectric projects located in the State of Arkansas.

S. 551 Idaho National Monument Boundary Revision Act of 1995. .

S. 552 Hydroelectric Facility in Montana.

S. 595 Extension of a hydroelectric project located in the State of West Virginia.

S. 601 Blackstone River Valley National Heritage Corridor Amendments Act of 1995.
S. 610 Corinth, Mississippi, Battlefield Act of 1995.
S. 611 Extension of time limitation for a FERC related hydroelectric issue.
S. 719 Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995.
S. 737 Federal Power Act Amendments of 1995.
S. 755 USEC Privatization Act.
S. 801 A bill to extend the deadline under the Federal Power Act for construction of two hydroelectric projects in North Carolina.
S. 1012 Construction time of FERC licensed hydro projects.
S. 1196 Cuprum Townsite Relief Act of 1995.
S. 1371 Snowbasin Land Exchange Act of 1995.
H.J. Res. 50 A joint resolution to designate the visitor center at the Channel Islands National Park, California, as the ''Robert J. Lagomarsino Visitor Center''.
H.R. 101 An act to transfer land to the Taos Pueblo Indians of New Mexico.
H.R. 440 An act to provide for the conveyance of lands in Butte County, California.
H.R. 529 Targhee National Forest Land Exchange.
H.R. 562 Walnut Canyon National Monument Boundary Modification Act of 1995.
H.R. 629 An act to authorize the Secretary of the Interior to participate in the operation of certain visitor facilities associated with, but outside the boundaries of, Rocky Mountain National Park in the State of Colorado.
H.R. 694 Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995.
H.R. 1266 Greens Creek Land Exchange Act of 1995.
H.R. 1296 A bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.
H.R. 2437 A bill to provide for the exchange of certain lands in Gilpin County, Colorado.

BILLS THAT REQUIRE FURTHER REVIEW

S. 92 Bonneville Power Administration Appropriations Refinancing Act .
S. 363 Rio Puerco Watershed Act of 1995.
S. 444 An act to amend the Alaska Native Claims Settlement Act to authorize purchase of common stock of Cook Inlet region.
S. 587 An act to amend the National Trails System Act to designate the Old Spanish Trail for inclusion in the National Trails System.
S. 852 Public Rangelands Management Act of 1995.
S. 884 Utah Public Lands Management Act of 1995.
S. 907 A bill to amend the National Forest Ski Area Permit Act of 1986.
S. 1459 A bill to provide for uniform management of livestock grazing on federal land.
H.R. 536 An act to prohibit the use of highway 209 within the Delware Water Gap National Recreation Area by certain commercial vehicles.

CONGRESSIONAL BUDGET OFFICE, INTERGOVERNMENTAL MANDATE STATEMENT FOR BILLS ON THE SENATE CALENDAR AS OF JANUARY 23, 1996

ENERGY AND NATURAL RESOURCES

BILLS THAT DO NOT CONTAIN MANDATES

S. 115 Colonial National Historical Park Amendments.
S. 127 Women's Rights National Historical Park Amendments.
S. 134 Franklin D. Roosevelt Family Lands.
S. 188 Great Falls Preservation and Redevelopment Act.
S. 197 Carl Garner Federal Lands Cleanup Day.
S. 223 Sterling Forest Protection Act of 1995.
S. 225 FERC Voluntary Licensing of Hydroelectric Projects on Fresh Waters in the State of Hawaii.
S. 283 A bill to extend the deadlines under the Federal Power Act for two hydroelectric projects in Pennsylvania.
S. 333 Department of Energy Risk Management Act of 1995.
S. 342 Cache La Poudre River National Water Heritage Area Act of 1995.
S. 357 Na Hoa Pili Kaloko-Honolohau Reestablishment Act of 1995.
S. 359 Extension of construction deadline for certain hydroelectric projects located in the State of West Virginia.
S. 363 Rio Puerco Watershed Act of 1995.
S. 378 Columbia Basin Land Exchange.
S. 392 Dayton Aviation Heritage Commission.
S. 421 Extension of construction deadline for a hydroelectric project located in the State of Kentucky.
S. 444 An act to amend the Alaska Native Claims Settlement Act to authorize purchase of common stock of Cook Inlet region.
S. 461 Extension of construction deadline for a hydroelectric project located in the State of Washington.
S. 468 A bill to extend the deadline under the Federal Power Act for the construction of a hydroelectric project in Ohio.
S. 509 A bill to allow the town of Grand Lake, Colorado to maintain permanently a cemetery in the Rocky Mountain National Park.
S. 522 Limited exemption to licensing provisions for facilities associated with the El Vado Hydroelectric Project, New Mexico.
S. 538 Extension of construction deadline for a hydroelectric project located in the State of Oregon.
S. 543 A bill to extend the deadline under the Federal Power Act for the construction of a hydroelectric project in Oregon.
S. 547 A bill to extend the deadlines applicable to certain hydroelectric projects under the Federal Power Act.
S. 549 Extension of construction deadline for certain hydroelectric projects located in the State of Arkansas.
S. 551 Idaho National Monument Boundary Revision Act of 1995.
S. 552 Hydroelectric Facility in Montana.
S. 587 An act to amend the National Trails System Act to designate the Old Spanish Trail for inclusion in the National Trails System.
S. 595 Extension of a hydroelectric project located in the State of West Virginia.
S. 601 Blackstone River Valley National Heritage Corridor Amendments Act of 1995.
S. 610 Corinth, Mississippi, Battlefield Act of 1995.
S. 611 Extension of time limitation for a FERC related hydroelectric issue.
S. 719 Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995.
S. 737 Federal Power Act Amendments of 1995.
S. 755 USEC Privatization Act.
S. 801 A bill to extend the deadline under the Federal Power Act for construction of two hydroelectric projects in North Carolina.
S. 852 Public Rangelands Management Act of 1995.
S. 884 Utah Public Lands Management Act of 1995.
S. 907 A bill to amend the National Forest Ski Area Permit Act of 1986.
S. 1012 Construction time of FERC licensed hydro projects.
S. 1196 Cuprum Townsite Relief Act of 1995.
S. 1371 Snowbasin Land Exchange Act of 1995.
S. 1459 A bill to provide for uniform management of livestock grazing on federal land.
H.J. Res. 50 A joint resolution to designate the visitor center at the Channel Islands National Park, California, as the ''Robert J. Lagomarsino Visitor Center''.
H.R. 101 An act to transfer land to the Taos Pueblo Indians of New Mexico.
H.R. 440 An act to provide for the conveyance of lands in Butte County, California.
H.R. 529 Targhee National Forest Land Exchange.
H.R. 536 An act to prohibit the use of highway 209 within the Delaware Water Gap National Recreation Area by certain commercial vehicles.
H.R. 562 Walnut Canyon National Monument Boundary Modification Act of 1995.
H.R. 629 An act to authorize the Secretary of the Interior to participate in the operation of certain visitor facilities associated with, but outside the boundaries of, Rocky Mountain National Park in the State of Colorado.
H.R. 694 Minor Boundary Adjustments and Miscellaneous Park Amendments Act of 1995.
H.R. 1266 Greens Creek Land Exchange Act of 1995.
H.R. 1296 A bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer.
H.R. 2437 A bill to provide for the exchange of certain lands in Gilpin County, Colorado.

BILLS THAT CONTAIN MANDATES, BUT AGGREGATE NET COSTS ARE BELOW $50 MILLION

None.

BILLS THAT REQUIRE FURTHER REVIEW

S. 92 Bonneville Power Administration Appropriations Refinancing Act.●

SALUTE TO GOV. DON SUNDQUIST ON HIS 60TH BIRTHDAY

● Mr. FRIST. Mr. President, in this increasingly hectic world, we often don't take the time to recognize the people who make such a difference in our communities and in our lives. But today, on the occasion of Tennessee Governor Don Sundquist's 60th birthday, I would like to pause and recognize his lifelong service to the people of the great State of Tennessee.

Fifteen years ago, he announced that he was running against Bob Clement for the Seventh District Congressional seat. Though many people said it was a waste of his time to run against one of the biggest political families in Tennessee, he was determined and his message was strong. When election day rolled around, he had defied the odds and had won. For more than 10 years he kept his word with his constituents in Congress, and consistently fought against tax increases and fought to reduce the size and scope of the Federal Government.

In 1994, he brought that message and the commitment to the entire State. That election year, he and I crossed paths many, many times. As two Republican candidates seeking statewide offices in the biggest year so far for Republicans in Tennessee, we were constantly running into each other on the campaign trail as we discussed our visions for Tennessee. During these

times, I was always impressed with his graciousness and composure under fire. His vision led him to the Governor's office, and mine led me to the U.S. Senate.

Since that historic day when he was elected Governor, he has continued to practice what he preached for so many years—getting government out of the people's business and putting people back into the business of government. Public input is vital to him in drafting his major legislative proposals, and it shows when he invites members of the private sector to review his legislative initiatives and solicits their advice on how bills will impact Tennessee communities, businesses, and citizens. He also consults with citizens, business leaders, and State employees to find ways for State government to save money and abolish waste. The bottom line is that he welcomes innovation and he's not afraid to lead.

I want to join with the Governor's family and friends today in wishing him a happy birthday and let him know that his efforts and his commitment to the people of Tennessee have not gone unrecognized. Governor Sundquist, I wish you the very best, and I thank you for your dedication and service to our great State. Happy birthday.●

TRIBUTE TO THE SOUTHEAST OUTLOOK

● Mr. MCCONNELL. Mr. President, I rise today to congratulate the members of Southeast Christian Church on the success of their first newspaper, the Southeast Outlook. The Outlook was created because the church's newsletter could no longer communicate sufficiently to the 10,000 members of Southeast Christian.

The first issue of the paper was published September 1, 1995, and averages about 20 to 28 pages a week. The Outlook lets people who are part of the congregation get to know each other—which is not easy in a church that is, as an elder of the church put it, ''larger than most towns in Kentucky.'' The paper focuses on church events, ministries, and members of the congregation, as well as issues of State, local, and national interest.

The Outlook has profiled everyone from its elders to the chief custodian to a church member who turned to God after a suicide attempt. Church members can also keep informed about the congregation's wall-to-wall activities. Publisher and editor Ninie O'Hara has said, ''Now that we have a product, our phone rings off the hook. We have 10,000 people at Southeast, and they're all out in the world doing things.''

O'Hara has been a newspaper publisher and editor in Kentucky since 1979. Steve Lowery, who hired O'Hara for her first job in journalism, said of her, ''She is in my opinion the best writer that we had at our company and one of the best writers in the State of Kentucky.'' O'Hara turned down a better paying job from the Lexington Herald-Leader to take the job at Southeast last summer.

O'Hara said of the Outlook:

> [The paper] lets the outside world look into Southeast Christian Church and see hey, these people . . . have the same pressures and stresses as us. But they're dealing with it differently because of the presence of God. If they like what they see . . . maybe they'll come and join us.

Mr. President, I ask you and my colleagues to join me in paying tribute to the congregation of Southeast Christian Church and congratulating them on the success of their newspaper.●

CHANGE OF REFERRAL—S. 1412

Mr. KYL. Mr. President, I ask unanimous consent the Energy Committee be discharged from further consideration of S. 1412 regarding the Red River Waterway and the J. Bennett Johnston Waterway, and be referred to the Committee on Environment and Public Works.

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

CHANGE OF REFERRAL—H.R. 419

Mr. KYL. Mr. President, I ask unanimous consent that H.R. 419 be discharged from the Committee on Environment and Public Works and be referred to the Judiciary Committee.

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

THE BI-STATE DEVELOPMENT AGENCY

Mr. KYL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 78, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> A joint resolution (H.J. Res. 78) to grant the consent of the Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Ms. MOSELEY-BRAUN. Mr. President, the joint resolution before us today confers additional authority upon the Bi-State Development Agency, a compact created by the States of Illinois and Missouri. The Bi-State Agency operates a mass transit system in the St. Louis metropolitan area, which includes Belleville and other areas of southwestern Illinois.

In 1950, Congress approved a joint request from the State of Illinois and Missouri to create this Bi-State authority to operate an interstate bus system. The Bi-State Development Agency has expanded, and now operates a successful light rail system, known as the MetroLink.

The original compact, however, that was approved by Congress in 1950, did not empower the Bi-State Development Agency to appoint or employ a security force, or to enact rules and regulations governing fare evasion and other misconduct on the light rail system. As a result, MetroLink passengers currently pay fares through a barrier-free, self-service, proof-of-payment system. this system, while successful, needs an enforcement policy and mechanism to ensure compliance.

The States of Illinois and Missouri have acted to confer such authority upon the Bi-State Development Agency. As you know, Mr. President, the Constitution requires that we then approve this request, and that is exactly the purpose of the joint resolution before us today. The House of Representatives approved this joint resolution yesterday without objection.

Because these two States have asked us, and because local, State, and Federal officials from these States support this joint resolution, I would urge all of my colleagues to vote in favor of its passage.

Mr. KYL. Mr. President, I ask unanimous consent that the joint resolution be deemed read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the joint resolution appear at the appropriate place in the RECORD.

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

So the joint resolution (H.J. Res. 78) was deemed read the third time and passed.

The preamble was agreed to.

WHITEWATER DEVELOPMENT CORP. AND RELATED MATTERS—MOTION TO PROCEED

CLOTURE MOTION

Mr. KYL. Mr. President, I now move to proceed to Senate Resolution 227, the Whitewater legislation and send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Senate Resolution 227, regarding the Whitewater extension:

> Alfonse D'Amato, Dan Coats, Phil Gramm, Bob Smith, Mike DeWine, Bill Roth, Bill Cohen, Jim Jeffords, R.F. Bennett, John Warner, Larry Pressler, Spencer Abraham, Conrad Burns, Al Simpson, John H. Chafee, Frank H. Murkowski.

Mr. KYL. Mr. President, I now withdraw the motion.

COMMONSENSE PRODUCT LIABILITY LEGAL REFORM ACT OF 1996—CONFERENCE REPORT

Mr. KYL. Mr. President, I now ask unanimous consent that the Senate

proceed to the conference report to accompany H.R. 956, the product liability bill.

THE PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 956), a bill to establish legal standards and procedures for product liability litigation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

THE PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of March 14, 1996.)

CLOTURE MOTION

Mr. KYL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 956, the Product Liability Fairness Act:

Slade Gorton, Trent Lott, Strom Thurmond, Rod Grams, Jim Jeffords, Bob Smith, Dan Coats, Judd Gregg, Jay Rockefeller, Craig Thomas, Don Nickles, Conrad Burns, Phil Gramm, John McCain, Larry Pressler, Pete V. Domenici.

Mr. KYL. Mr. President, I ask unanimous consent that the cloture vote on the conference report occur on Tuesday, March 19, at a time to be determined by the two leaders.

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

ORDERS FOR MONDAY, MARCH 18, 1996

Mr. KYL. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11 a.m. on Monday, March 18; further, that immediately following the prayer, the Journal of the proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and there then be a period for morning business until the hour of 12 p.m., with Senators permitted to speak for up to 5 minutes each, and further that at 12 noon the Senate resume consideration of H.R. 3019, the omnibus appropriations bill, as under the previous order.

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

PROGRAM

Mr. KYL. Mr. President, for the information of all Senators, the Senate will debate amendments that are in order under the unanimous-consent agreement in place with respect to the omnibus appropriations bill on Monday. There will be no rollcall votes on Monday. Any votes ordered in relation to that bill will occur on Tuesday, March 19, at 2:15 p.m. Senators with amendments in order to the omnibus appropriations bill should be prepared to offer those amendments on Monday in that there will be very limited time for debate on Tuesday.

Senators are also reminded that at some point on Tuesday, the Senate will also be voting on passage of the Small Business Regulatory Enforcement Fairness Act as well as a cloture vote on the motion to proceed to the Whitewater Committee resolution.

In addition, Senators should be aware that a rollcall vote will occur on Tuesday on the motion to invoke cloture on the conference report to accompany H.R. 956, the product liability bill, unless a consent agreement can be reached otherwise.

ADJOURNMENT UNTIL 11 A.M. MONDAY, MARCH 18, 1996

Mr. KYL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:13 p.m., adjourned until Monday, March 18, 1996, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate March 15, 1996:

FEDERAL RESERVE SYSTEM

ALAN GREENSPAN, OF NEW YORK, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF 4 YEARS. (REAPPOINTMENT)

LAURENCE H. MEYER, OF MISSOURI, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF 14 YEARS FROM FEBRUARY 1, 1988, VICE JOHN P. LAWARE, RESIGNED.

ALICE M. RIVLIN, OF PENNSYLVANIA, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF 14 YEARS FROM FEBRUARY 1, 1996, VICE ALAN S. BLINDER, RESIGNED.

ALICE M. RIVLIN, OF PENNSYLVANIA, TO BE A VICE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF 4 YEARS, VICE ALAN S. BLINDER, RESIGNED.