dynamic society, it does place a strain on the judicial branch to respond in a timely manner.

H.R. 7779 also eliminates the current prohibition on initially appointing an individual to the Tax Court after he has attained age 65. I believe this change will allow the Tax Court to attract highly qualified, mature persons for service on the bench.

Mr. Speaker, H.R. 7779 is a good bill. It will help the Tax Court discharge its responsibilities in a timely manner and will open Tax Court service to citizens of all ages.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. ULLMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN) that the House suspend the rules and pass the bill, H.R. 7779, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Internal Revenue Code of 1954 to authorize 3 additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court.".

A motion to reconsider was laid on the table.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

Mr. HARRIS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 299) to amend title 5, United States Code, to improve Federal rulemaking creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

The Clerk read the Senate bill as follows:

S. 299

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regulatory Flexibility Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediate after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"§ 601. Definitions

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

"§ 602. Regulatory agenda

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their repersentatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

"§ 603. Initial regulatory flexibility analysis

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to

the Chief Counsel for Advocacy of the Small Business Administration.

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed 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;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis

"(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, 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 the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a sumary 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; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

§ 605. Avoidance of duplicative or unnecessary analyses

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(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 succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604, and 610 of this title.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

"§ 608. Procedure for waiver or delay of completion

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

"(b) An agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be promulgated until a final regulatory flexibility analysis has been completed by the agency.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

"§ 610. Periodic review of rules

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) 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 provided by law.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chap-

ter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

The SPEAKER pro tempore. Is a second demanded?

Mr. KINDNESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. KINDNESS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. HARRIS).

Mr. HARRIS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HARRIS asked and was given permission to revise and extend his remarks.)

Mr. HARRIS. Mr. Speaker, the bill before us represents, I think, a great deal of work in both the other body and in this body with respect to trying to get regulation off the back of small business. The Small Business Committee, chaired by the distinguished Member from Iowa (Mr. SMITH), has had extensive hearings on this and has, in fact, reported out legislation.

The Judiciary Committee, and specifically the Administrative Law Subcommittee chaired by Mr. DANIELSON, of California, has also had extensive hearings and extensive markup with respect to a more comprehensive regulatory reform bill. What we have here is a bill that has been passed by the other body and does a number of important things with respect to alleviating the burden on small business of our regulatory procedure. It requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have any substantive economic impact on a substantial number of small entities.

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It requires an initial and final regulatory analysis of their rules to assess the impact on small entities. The analysis may be done in conjunction with any other required analysis. The analysis need not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, and the analysis may be waived or delayed in the event of emergency but for not more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on a rule's effectiveness. Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities. There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance, and it is the Office of Advocacy of the Small Business Administration that will in fact conduct a review.

Mr. Speaker, I would like to yield to my colleague, the gentleman from Iowa (Mr. SMITH), who is the one Member who has done so much to bring this matter into focus and bring to the attention of this House the problems of small business and the need for this sort of regulatory reform.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this bill which gives clear recognition to the different impact which Federal rules and regulations have on small business as compared to big business. This bill, S. 299, would require Federal agencies and departments to consider the impact of proposed rules and where appropriate to exempt or adopt different and less burdensome regulations for small businesses, small nonprofit businesses and small cities, towns, and other political subdivisions. An exemption or simplified regulation would be required where the purposes of the law could be obtained while doing so.

Similar legislation (H.R. 4660) was extensively considered by the House Small Business Committee. The Subcommittee on Special Small Business Problems held hearings in 1977 and 1978 and developed the approach in the bill. The Small Business Committee members unanimously support that bill and each of them are cosponsoring it. I want to note that the House bill (H.R. 4660) was unanimously favorably reported by the Small Business Committee last October and the bill was then referred to the Judiciary Committee which was discharged from further consideration on May 28 of this year. Meanwhile, the Senate substituted this approach for the provisions in a bill they had held hearings on and passed the bill.

Overregulation of small entities is one of the ways big business has gained advantages over small businesses. The cost per unit for a big business to comply may be small due to a large volume. Small businesses cannot cope with the maze of Federal regulations and they cannot afford the hiring of lawyers, accountants, engineers, and consultants which are employed by large companies. Nor can they afford their own time needed to comply with existing regulations and reporting requirements.

As a result of overregulation, productivity and innovation have been curtailed and inflation has increased and in some cases competition from smaller businesses eliminated. Our committee's files are replete with documentation of these burdensome requirements which range from one company with three small shops receiving Federal forms weighing 45 pounds to another company which paid a $500 fine rather than fill out a Federal form which was 63-feet long.

I also want to point out that some laws and agencies currently use flexible regulatory strategies such as the Internal Revenue Code's provisions permitting salaried persons earning less than $20,000 per year to file a short form income tax form while other taxpayers are required to file the long form.

I believe that the provisions of this bill now under consideration (S. 299) will substantially reduce the burden imposed by Federal regulation upon small business and yet at the same time allow Federal departments and agencies to carry out their duties and functions. Although the Senate-passed bill differs in some respects from the bill favorably reported by the House Small Business Committee, it is designed to accomplish the same purpose and I hope that all Members will strongly support it today so that it may be sent to the White House without further delay. For the benefit of my colleagues I am attaching a brief statement concerning the provisions of the bill now under consideration.

I also want to point out that the concept of two-tier regulation was one of the issues considered by the recent White House Conference on Small Business which included a recommendation for two-tier legislation as No. 15 on the list of priorities. The Small Business Administration counsel for advocacy would have the authority and responsibility to make sure that agencies do as expected under the law.

Finally, I want to commend all of the Members who worked so long and hard on this matter and particulary the chairman of our Special Small Business Problems Subcommittee, ANDY IRELAND, the subcommittee's ranking minority member, Mr. BROOMFIELD, and the ranking minority member on the committee, JOE MCDADE. I also want to commend Representative MARTY RUSSO who previously served on the Small Business Committee and chaired the Special Small Business Problems Subcommittee. It was his initial efforts and drafting which laid the groundwork for the bill we are considering today.

The material follows:

S. 299

(As passed Senate 8-6-80)

Sec. 2. Provides extensive statement of findings and purposes.

Sec. 3. Amends 5 U.S.C. to provide regulatory flexibility—

§ 601. Definitions—

(1) Agency means as defined in 5 U.S.C. (1)

(2) Rule means rule covered under 553(b) and includes those on grants but excludes rules of particular applicability relating to wages, prices, etc.,

(3) Small Business means as defined under

§ 3 of Small Business Act unless agency redefines,

(4) Small organizations means not for profit, independently owned and operated and not dominant in field of operation,

(5) Smal governmental jurisdiction means political subdivision of less than 50,000 population unless agency can justify additional definition, and

(6) Small entity means small business, small organization and small governmental jurisdiction.

§ 602. Regulatory agendas—

(a) In October and April each agency shall publish a regulatory flexibility agenda including

(1) Expected rules with significant economic impact on substantial number of small entities,

(2) Summary of nature of rules,

(3) Name and phone number of involved agency official—

(b) Copy of agenda sent to Chief Counsel for Advocacy,

(c) Agency shall provide notice by letter, publication etc, and

(d) Agency may promulgate regulation even if not on agenda.

§ 603. Initial regulatory flexibility analysis—

(a) If proposed rule must be published, an analysis must be done of impact on small entities; requires publication in Federal Register and transmittal to SBA's Chief Counsel for Advocacy, and

(d) Analysis must contain—

(1) Reason for rule,

(2) Objectives and purposes,

(3) Estimate of number of small entities to which rule will apply,

(4) Description of anticipated compliance requirements, and

(5) Crossreferences to other rules.

(c) Description of significant alternatives considered, including discussion of—

(1) Different compliance or reporting requirements,

(2) Clarification, consolidation or simplification of compliance and reporting requirements,

(3) Use of performance rather than design standards, and

(4) Exemption for smalls.

§ 604. Final regulatory flexibility analysis—

(a) Final rule shall be accompanied by final analysis; including—

(1) Succinct statement of need for rule and objectives,

(2) Summary of issues raised by comments, Agency assessment of issues, Changes made in response, and

(3) Alternatives and why rejected.

(b) Agency must make analysis available and give notice of availability in Federal Register.

§ 605. Avoidance of duplication or unnecessary analyses—

(a) Agency may do analyses as part of other proceedings,

(b) Regulatory flexibility analysis not required if head of agency certifies that rule will not have significant economic impact on substantial number of small entities, and

(c) Related rules may be combined into one analysis.

§ 606. Effect on other laws—Regulatory flexibility analysis does not alter other laws.

§ 607. Preparation of analyses—Agency may use either a quantifiable or numerical description of effects of proposed rule or alternatives or a more general description if quantification is not practicable or reliable.

§ 608. Waiver or delay—

(a) Agency head may waive or delay initial analysis upon written finding that final rule is emergency one making compliance impracticable, and

(b) Agency head may not waive final analysis but may delay it for up to 180 days after final rule published if emergency rule making; if not done, the rule lapses.

§ 609. Comment gathering procedures—When rule is promulgated having significant economic impact on substantial number of small entities, agency head shall assure that small entities have been given opportunity to participate through techniques such as—

(1) Notification that rule may have significant economic effect on a substantial number of small entities,

(2) Publication of notice of rule making in publications likely to be obtained by small entities,

(3) Direct notification of small entities,

(4) Holding open conferences or public hearings, and

(5) Agency rules designed to reduce cost of participation by small entities.

§ 610. Periodic review of rules—

(a) Within 180 days of law, agency shall publish in Federal Register a plan for periodic review of rules with a significant economic impact upon substantial number of small entities. Purpose is to change as needed to minimize significant economic impact upon substantial number of small entities. All rules reviewed within 10 years and new ones within 10 years, except agency may delay review for up to 5 years one year at a time,

(b) In conducting review, agency shall consider—

(1) Continued need for rule,

(2) Complaints or comments,

(3) Complexity,

(4) Relationship with other Federal or state regulations, and

(5) Changes which have occurred.

(c) Agency annually publishes agenda of rules to be reviewed in next year.

§ 612 Judicial review—

(a) Agency decisions regarding regulatory flexibility implementation are not subject to judicial review except as below in (b),

(b) Regulatory flexibility analysis and compliance or non-compliance by agency are not subject to judicial review but the analysis shall be apart of record of agency action if rule is subject to judicial review, and

(c) Nothing herein bars judicial review of any other impact statement or analysis otherwise permitted by law.

§ 611. Reports and intervention rights—

(a) SBA's Chief Counsel for Advocacy shall monitor agency compliance and report to President and Congress annually;

(b) Chief Counsel for Advocacy may appear amicus curiae in any action to review a rule to present his views on effect of rule on small entities, and

(c) U.S. court shall grant application of Chief Counsel for Advocacy to appear for purpose of (b).

§ 4. Effective date—Act effective 1-1-81 except that provisions for initial regulatory flexibility analysis and final regulatory flexibility analysis apply only to proposed rules issued 1-1-81 or after.

Mr. HARRIS. Mr. Speaker, I would like to yield at this point to the chairman of the Subcommittee on Administrative Law and Governmental Relations of the Committee on the Judiciary, the gentleman from California (Mr. DANIELSON), who has worked on regulatory reform so assiduously over the past several months.

Does the chairman of that subcommittee wish me to yield to him at this point?

Mr. DANIELSON. Mr. Speaker, as long as the gentleman from Virginia (Mr. HARRIS) is here and is managing the bill on behalf of the Committee on the Judiciary, which has jurisdiction over this subcommittee, and with no other committee having that jurisdiction, I will allow him, with my thanks, to continue in the management of the bill, but I would like to have an opportunity to comment later. I trust the gentleman will give due recognition to members of the Committee on the Judiciary who are here and who would like to be heard.

Mr. HARRIS. Mr. Speaker, I would like to yield to our fine colleague from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, the legislation before us today, the Regulatory Flexibility Act, may be one of the best means we have to acknowledge that our diversity, which is our strength, is based as much on size as on anything else.

This bill addresses the very real differences between big business and small business—large urban areas and small towns—major national organizations and small local nonprofit groups.

It says, basically, that the Federal Government should, where feasible and consistent with the intent of the law, develop regulations only after thoroughly assessing their impact on small entities—business, organizations and governmental jurisdictions.

The measure before us is a result of several years of effort, numerous hearings in the House and Senate, and compromises between the House, Senate and the administraiton. More than half the House has cosponsored some version of flexible regulation legislation.

The Senate has twice unanimously passed a version of this legislation—comparable to my own bill in the House—first on the last day of the 95th Congress, and most recently on August 6 of this year.

Senator CULVER deserves particular praise for his efforts on behalf of this legislation. He, along with Senator NELSON, developed the concept back in 1977, and they have built a body of testimony substantiating the need for such legislation.

The President has issued a statement in support of the bill and embodied it in a directive to agency heads last November. We propose to embody it in law to assure congressional oversight of agency compliance with regulatory flexibility provisions.

The bill requires that agencies consider the needs and interests of small entities in carrying out their mandates. In no other respect does it alter current procedures. In no respect does it alter substantive law.

The bill's treatment of judicial review is intended to strike a balance between two necessary goals.

First, to insure that the internal procedures of the agencies are not unnecessarily delayed by interlocutory and intermediate court review of the regulatory flexibility analysis; and

Second, the desire to insure that agencies take seriously their obligation under the law by providing for review of regulatory flexibility analyses as part of the entire record.

Mr. LEVITAS. Mr. Speaker, will the gentleman yield at that point?

Mr. HARRIS. Mr. Speaker, I might note that I have the time here, and I am going to continue to yield to the

gentleman from Wisconsin (Mr. KASTENMEIER). I have the time.

Mr. KASTENMEIER. Mr. Speaker, may I conclude my remarks? The gentleman from Virginia (Mr. HARRIS) has the time, and perhaps he will yield to the gentleman from Georgia (Mr. LEVITAS) at the appropriate time.

Mr. LEVITAS. Mr. Speaker, if the gentleman from Virginia will yield, I have a question I would like to ask the distinguished member of the Committee on the Judiciary about that very point that he was just addressing. If he could explain it for the RECORD, it would be quite helpful.

Mr. HARRIS. Mr. Speaker, I do have a number of requests for time, but I do yield for the purpose of a question by the gentleman from Georgia (Mr. LEVITAS).

Mr. LEVITAS. Mr. Speaker, I would simply like to inquire, what does this bill do by way of providing a judicial review to see that the procedures that have been written into this are in fact followed and can be reviewed by a court to see if they have been followed?

Mr. KASTENMEIER. Mr. Speaker, my understanding is, as the gentleman from Georgia (Mr. LEVITAS) knows because he has been following the bill, too, that this strikes a balance between having an appeal and not having appeals made on the record of the regulatory analysis as such, but when challenges to the rules themselves are made, that is, as a part of the complete record, the process of regulatory analysis may also then be reviewed, but only reviewed in that context judicially.

Mr. Speaker, if I may conclude my remarks, in other words, as I was saying, the courts may examine the regulatory flexibility analysis in determining the reasonableness of the final rule. The bill in no other way, changes or alters the right of judicial review under the Administrative Procedure Act.

Through this bill we can remove some of the burdensome requirements placed on small business and small governments. We can begin to free vitally needed capital and human resources from wasteful activities and direct these energies to more productive and efficient purposes. This can be an important component of our economic recovery program and one that all Members of this body should support.

Mr. HARRIS. Mr. Speaker, may I inquire of the Chair as to how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Virginia (Mr. HARRIS) has 10 minutes remaining.

The Chair recognizes the gentleman from Ohio (Mr. KINDNESS).

Mr. KINDNESS. Mr. Speaker, I yield myself 5 minutes.

(Mr. KINDNESS asked and was given permission to revise and extend his remarks.)

Mr. KINDNESS. Mr. Speaker, public discussion of overregulation and the need for regulatory reform all too often conjures up the oversimplified image of a confrontation between big government and big business. But, as we all know, it is small business that carries the heaviest burden with respect to governmental regulation. Other small entities such as hospitals, small colleges, and local governments are also hampered by the same situation. Unlike large corporations or unions, these organizations do not have the time, the personnel, nor the resources to adequately monitor and comply with the morass of regulation that confronts us all daily.

For this reason, I support the regulatory flexibility concept that is symbolized in S. 299.

I would like to point out by way of clarification how we happen to be where we are today. The Committee on Small Business of the House reported out some months ago H.R. 4660, the Small Business Regulatory Flexibility bill, which was sequentially referred to the Committee on the Judiciary. The concept was embodied into the regulatory reform bill that the Committee on the Judiciary has been working with.

However, the administration has sought to delay the progress of the regulatory reform bill in the full Judiciary Committee for reasons that have to do with its current contents. Thus the concept has not reached us or has not reached the House floor previously in what would be an orderly fashion. Incidentally, H.R. 4660 amended the Small Business Act, and that properly came out of the Committee on Small Business.

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This bill that comes to us from the other body, however, adds a chapter VI to the Administrative Procedures Act and thus, of course, appropriately is within the jurisdiction of the Judiciary Committee; but Small Business and the Judiciary Committee are certainly no strangers, and the interest is shared, of course, with the Small Business Committee in seeing a more appropriate type of approach to regulatory flexibility for small business.

The regulatory flexibility approach recognizes that it is often counterproductive and unfair to apply identical regulations to entities regardless of their size. The regulatory flexibility approach is based upon the understanding that generalized rules often do not advance the regulatory objective that is involved.

However, I would be less than candid if I did not express concern over our present involvement in a piece-meal approach to regulatory reform. This is only a part of the picture that we are dealing with today. As important as regulatory flexibility for small organizations is, it does not address the full range of problems brought on by overregulation. We on the Judiciary Committee have been working on comprehensive regulatory reform since last November. Tomorrow the full Judiciary Committee was scheduled to resume its consideration of the Regulatory Reform Act of 1980, H.R. 3263. This has been stalled for some time, since about last May, because of the direct intervention of the Carter administration whose regulatory reform program has been marked by confusion and hypocrisy. It remains my hope that we will be able to bring this broader, more comprehensive bill to the House floor before adjournment.

The concept of small business and small organization regulatory flexibility is an important element in H.R. 3263 that is before the Judiciary Committee. But this measure also would require that agencies consider the economic impact of regulation, as well as regulatory and geographic differences, in promulgating new rules. H.R. 3263 also contains provisions aimed at speeding up seemingly interminable administrative proceedings, along with encouraging expanded public and business input into the regulatory process.

In fact, it is particularly worth noting that the language of H.R. 3263 is even stronger than the bill before us today with respect to small business and small organization regulatory flexibility. The bill we consider today requires that regulatory agencies undertake a detailed analysis, so as to give special consideration to the impact of a proposed rule on small entities. However, there is no language specifically requiring that the agency act on the conclusions of their analysis. It is conceivable that we could study these problems and then choose to do nothing about them. In contrast, under H.R. 3263, an agency is empowered to exempt a small business or small organization from the scope of a regulation, or to set lower compliance standards, where such a distinction is lawful, desirable and feasible.

I urge that S. 299 be supported today, realizing it is only part of a larger picture.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa (Mr. BEDELL).

(Mr. BEDELL asked and was given permission to revise and extend his remarks.)

Mr. BEDELL. Mr. Speaker, I rise in strong support of this legislation.

Mr. Speaker, I strongly support S. 299, the Regulatory Flexibility Act, and urge its passage by the full House.

As a small businessman myself, I am painfully aware of the need for a policy of 2-tier regulation as a means of helping small businesses. S. 299 addresses the fact that small businesses cannot and should not be expected to comply with all of the regulations developed for application to big businesses.

In addition, small governmental jurisdictions with populations of less than 50,000 are also granted relief by this bill. It incorporates a number of methods of making regulations fore flexible, including, for example, the establishment of differing compliance and reporting requirements that take into account the amount of resources available to small businesses and mandate agency consideration of regulatory effects on small cities and towns, as well as on small enterprises and on individuals.

The present regulatory environment has a devasting effect on the competitive viability of the small business sector. Regulations when applied uniformly to big businesses and small businesses clearly provide huge advantages to the largest enterprises. Big business has the lawyers, accountants, engineers, consultants, and economic resources to comply with governmental regulations. On the other hand, the small business-

person often must spend critical time and resources sorting through a confusing morass of complex Federal regulatory requirements, which is a drag on national productivity.

As the chairman of the House Small Business Subcommittee on Antitrust, I have been a witness to the need for this legislation. I have heard not only from my constituents in northwest Iowa, but from small business people from all over the United States.

Last year, the Antitrust Subcommittee undertook an investigation into petroleum retail marketing practices. We found that several years of Federal attempts to regulate that industry have harmed the competitiveness of participating small businesses, contributing to tens of thousands of independent service station operators going out of business. Ironically, this effect was not the intent of the Federal regulations. Small businesses, whom the Government sought to protect, were smothered by a system imposed upon them that gave them no opportunity to respond to changing marketplace demands. Large oil companies, whom the Government attempted to control through regulation, easily found ways to manipulate and profit from Federal regulations, further entrenching their dominant industry position at the expense of the small business operator.

Today the gasoline retail market is structurally unsound, due to the uneven way Federal regulations have affected competition. As a result, the House Small Business Committee favorably reported the Small Business Motor Fuel Marketer Preservation Act, H.R. 6722; a bill also identified by the Speaker's Task Force on Small Business as being one of this Congress most vital small business bills.

Regulations reward staid, inefficient business practices that often are found in large bureaucratic enterprises. Frequently, they are drafted to force these enterprises to respond to the interests of our national goals. But when applied uniformly to small business they stifle innovation, creativity and efficiency—the hallmark of the entrepreneur.

Of course, judicial review is necessary to assure that agencies comply with this act. The question of judicial review has been addressed very sensibly in this legislation, which provides that the courts should not be bogged down with lawsuits before the agencies have even finished their rulemaking. However, section 611(b) states that regulatory flexibility analyses can be examined by the courts when the validity of final rules is being determined. So judicial review in this act fits in well with the practice of judicial review under the law we are amending today and, I might add, with most of the other pending regulatory reform bills. I think this is a good, balanced approach to judicial review which will achieve the benefits the bill seeks without causing any unnecessary litigation.

Mr. Speaker, I have been supporting action on this problem ever since I came to Congress 6 years ago. A Federal policy of regulatory flexibility is long overdue. The delegates to the White House Conference on Small Business, representing the views of small business people from all across the United States, overwhelmingly endorsed the concept of reg-flex. Your task force on small business chose this legislation as a small business priority for this session of Congress. Two hundred and forty-six Members of Congress, including every member of the House Small Business Committee, are cosponsors of H.R. 4660, the original House version of S. 299. This legislation deserves the support of the entire House.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. LEVITAS).

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Mr. Speaker, I support the concept of S. 299, but I think it is important for the Members of this body to know that this legislation does not really, in the long run, solve the problem.

This legislation does rightfully address some of the problems faced by small businessmen. The small businessman must be given special consideration, as offered by this bill, for regulations which are applied generally, can be most oppressive to small businesses. But I do not want the American public, or the small businessman, to be taken in and made to believe that this legislation alone will accomplish meaningful regulatory reform.

As the gentleman from Ohio pointed out, all of the language in this legislation could be totally ignored by any agency. There is no effective enforcement mechanism. This legislation can be disregarded by the same bureaucrats who are trampling over the small businessman right now.

If the administration thinks it can get away with calling this bill alone regulatory reform, without action on the comprehensive regulatory reform bill, then they are going to have people across the country remind them of the hypocrisy of their actions, both on the Republican side and on the Democratic side, between now and November. Without more comprehensive regulatory reform, this bill alone will be comparable to attacking a dragon with a wet spaghetti noodle.

We need real regulatory reform that has teeth in it. This is a good move in the right direction, but it in and of itself will not accomplish the goals of effective regulatory reform. We need results, not cosmetics.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. ALBOSTA).

(Mr. ALBOSTA asked and was given permission to revise and extend his remarks.)

[Mr. ALBOSTA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I rise in support of S. 299, which embodies the concept of regulatory flexibility. This means that agencies must analyze alternatives to proposed regulations that would minimize any adverse burden on small business. Among the alternatives would be the granting of outright exemptions or issuing regulations with different and less burdensome standards of compliance for small business. This concept has undergone several legislative changes in the last few months. And I am glad to say that these changes have improved the proposal significantly.

Earlier this year, a variation of this concept was presented in the form of an amendment to the Regulation Reform Act which the Judiciary Committee was considering in May. That amendment required an agency to issue regulations which exempt or lessen the burden on small businesses when the agency's analysis indicates it would be feasible to do so. I believe strongly that every effort must be made to free small businesses from unnecessarily burdensome regulations. At the same time it is important that this goal not be attained in ways that would result in significant weakening of other important public interests to which regulations may be directed.

For example, we must be careful not to make it easy for big businesses to spin off their dirty operations into small businesses that are not subject to a strict regulation. This occurred when the kepone scandal broke, involving the Allied Chemical plant in Hopewell, Va. Allied Chemical simply spun off the plant to a small business. Certainly we do not intend to say that being a small business, is in itself, sufficient grounds, for exempting it from public health and safety laws.

Another factor relates to productivity. In some cases, an exemption could create an incentive for a small business to stay small. Certainly we do not want to create any disincentives to economic growth.

Another important consideration is whether a particular exemption would impair the ability of the government to protect the public health and safety. For example, amendments have been offered from time to time to exempt from occupational safety and health laws any business employing less than 25 people. It is important to make sure that OSHA does not impose unnecessary burdens on small businesses. On the other hand, people who work for a business that employs less than 25 people surely are entitled to have their health and safety protected.

Because it seemed to me that agencies ought to consider such factors, I offered an amendment to the regulatory flexibility amendment during the Judiciary Committee markup in May. The amendment read:

In determining whether it is feasible and desirable, and in the public interest, to exempt or set differing and less burdensome standards for small businesses and small organization, the agency shall consider whether such exemption or standard would

(A) provide opportunities for businesses and organizations that are not small businesses and small organizations to avoid compliance with such rule;

(B) create incentives for small businesses and small organizations against increasing their productivity, hiring additional employees, merging with other businesses or organizations, or otherwise increasing their size; or

(C) impair the ability of the agency to pro-

tect the public health, safety or the environment or otherwise achieve statutory requirements.

While there was important committee support expressed for my amendment, it was the consensus of the committee that such language would be best handled in the report, rather than in the bill itself.

Representative ROBERT KASTENMEIER, one of the regulatory flexibility amendment's coauthors, stated that he supported report language to this effect. The regulatory flexibility amendment's other coauthor, Representative CALDWELL BUTLER, expressed appreciation to me for bringing this matter to the attention of the committee and stated that he would work with the subcommittee chairman in an effort to accommodate my recommendations into the legislative history.

Representative ROMANO MAZZOLI, who was managing the bill in the absence of Representative GEORGE DANIELSON, the chairman of the Subcommittee on Administrative Law and Government Relations, offered his services in drafting report language similar to the language in my amendment.

The reason I raise these points now is that the Judiciary Committee has not yet completed marking up the Regulation Reform Act and, therefore, no report has been written. In supporting the Senate bill we are now considering I want to make sure that the record reflects that my support, and I believe that of many other Members, is given with the understanding that such considerations are implicit in this legislation.

Mr. KINDNESS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. MOORHEAD).

Mr. MOORHEAD of California. Mr. Speaker, I rise in strong support of S. 299. At the same time, I wish to remind the Members of this body that the American people have been asking for true regulatory reform for many years. We are told that overregulation costs the American people over $100 billion a year. This bill is directed to only a small segment of the total amount of industry that is affected and the total number of people in this country who are affected by this overregulation.

This bill is a good first step, but I would hope that we would not take it as a substitute for H.R. 3263 which the Judiciary Committee and this Congress has been laboring over for many, many months.

The American people deserve to have true regulatory reform that deals with all of American industry and American problems of overregulation. This bill that we are considering today requires the publication of a semiannual regulatory agenda of any proposed rules which are expected to have significant economic impact on a substantial number of small entities, such as small businesses, organizations and governmental jurisdiction. It requires an initial and final regulatory analysis of all rules to assess their impact on small entities.

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The analysis may be done in conjunction with any other required analysis.

The analysis may not be done if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The analysis may be waived but delayed in the event of an emergency, but not for more than 180 days.

The head of the agency shall assure that small entities have the opportunity to participate in commenting on rules affecting them.

Each agency shall conduct a review of all existing rules that have a significant impact on a substantial number of small entities.

There will be no separate judicial review of the regulatory analysis, though it will be part of the record on review of the rule itself.

The Small Business Administration shall monitor agency compliance.

You can see from the things that this bill covers that there are many, many areas that are left totally uncovered. We do nothing in this legislation about a one- or two-House veto giving the Congress the right to decide themselves whether regulations are in order that have been passed by a regulatory agency. At the present time we have nonelected people that are determining the fate of thousands and thousands of American businesses and jobs of millions of American people without any real opportunity for the elected Members of Congress to react in such a way that they could overturn the regulations that are adopted, even though they are not in conformity with legislation that has previously been adopted by the Congress, or even if they are nonessential and go far beyond the problems that they seek to cure.

I think it is important in regulatory reform that the regulations at least are cost effective. This bill does not provide for that. It is a good first step, but please, let us not have the Congress fall for the kind of control that the present administration is presently imposing upon the Congress to prevent true regulatory reform.

Let us do something about this problem that we have promised the American people that we would do something about. Let us do it this year. Let us not let this bill take the place of a strong, true regulatory reform bill.

Mr. KINDNESS. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania (Mr. MCDADE).

(Mr. MCDADE asked and was given permission to revise and extend his remarks.)

Mr. MCDADE. Mr. Speaker, I want to thank my friend, the gentleman from Ohio, for yielding to me.

Mr. Speaker, today the House will have the opportunity to approve legislation of tremendous significance to our Nation's small business men and women. The Small Business Committee has worked on this bill for almost 3 years, and I am pleased to say that I have cosponsored a similar measure and worked for its passage. Because the bill was stalled during the consideration of another bill in the Judiciary Committee, the Senate version has been used as a vehicle for this body to act upon this urgent request of the small business community.

S. 299 provides the impetus to Federal agencies to undertake innovative, flexible approaches when adopting and applying Federal regulations which otherwise may adversely affect smaller enterprises. Small organizations and small Government units are also covered by the bill's provisions.

The legislation under consideration revises administrative procedures to require Federal departments and regulatory agencies to perform an analysis of the economic and paperwork impact of a proposed rule on individuals, small businesses, organizations, and local governments. A number of alternatives designed to insure that rules promulgated are tailored to fit the size and scale of the entities to be regulated consistent with the applicable statute, are spelled out in the bill.

These include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation of compliance, and reporting requirements; and

Use of performance rather than design standards.

Regulatory flexibility legislation represents 3 years of hearings and related work by the Small Business and Judiciary Committees, with input by small business owners and their national associations, labor representatives, public interest groups, economists, fellow Members, and administration officials.

The need for flexible standards has generally been acknowledged and endorsed by these various interests. Prompt passage of this proposal is imperative, especially as we proceed through a period of escalated inflation, high unemployment, and business decline. By directing Federal agencies to consider the economic and redtape impact of their proposed regulations, we can expect less burdensome requirements for small entities. In this way, a measure of the resources necessary to get us back on the road to economic recovery can be directed to more efficient and productive purposes.

Mr. Speaker, no doubt each of us has heard from individuals operating small firms within our districts. The comments are always the same. Small business owners regularly report that they are unfairly burdened by complicated, costly regulations uniformly applicable to both large and small operations; by insensitive Federal regulators; and by detailed, time-consuming paperwork requirements. Such regulations strain the limited resources of small business owners who find that their limited capital must be spent on compliance and their precious time consumed by redtape demands. It is simply unfair to expect small outfits to be subject to the same rules as their counterparts, when less burdensome methods could be adopted and still serve the mandate of the applicable statute.

The measure under consideration today revises Federal administrative procedures so that whenever a Federal department or regulatory agency under-

takes a rulemaking, it must perform an analysis of the economic impact, including the cost of compliance, of a proposed rule on individuals and small businesses, organizations and governmental units. The purpose behind this requirement is to assure that Government agencies adopt reasonable alternatives, consistent with the underlying substantive statute which would be less burdensome for smaller concerns. The proposal spells out a number of solutions agencies are to seriously consider to insure that rules promulgated are tailored to fit the size and scale of the parties to be regulated. The alternatives recommended to minimize the impact of a proposed rule on individuals and small entities include:

Establishment of differing compliance or reporting rules, taking into account the financial resources available to affected parties;

Exemption from coverage of the proposed rule;

Clarification, consolidation and simplification of compliance and reporting requirements; and

Use of performance rather than design standards.

Let me point out that Federal agencies are not limited to consideration of these alternatives only. Other reasonable means of assuring regulatory flexibility may be discussed. But, these alternatives are included in the legislation so that agencies will be on notice of their authority and, in fact, of their duty to take flexible steps in their regulation of small entities, if this would be consistent with the applicable statute. The alternatives the agency reviewed and deemed feasible, along with the reasons why any were rejected, must accompany issuance of the final rule.

When undertaking a regulatory flexibility analysis, Federal agencies are also required to evaluate the impact of recordkeeping and reporting requirements imposed by a proposed rule, including an estimate of the time necessary to complete such paperwork. Additionally, S. 299 directs the agencies to actively seek the participation of small businesses, organizations and governmental units in the consideration and formulation of proposed regulations. To insure adequate advance notice, each agency will have to publish semiannually an agenda of rules and regulations expected to be issued or reviewed during the coming year. Finally, at least once every 10 years, agencies must assess regulations currently on the books, with a view toward modification of those which unduly impact on small entities.

I must emphasize that this legislation is not designed to confer special favors or advantages on certain individuals or groups within our society. Nor is it intended to strip away the advances we have made in laws promoting the public's health, safety, and well-being, including statutes calling for clean air and water, a safe workplace, and manufacture of safe goods, to name just a few. Small business owners who testified before the Small Business Committee have not called for a wholesale abrogation of these laws. Rather, they have sought recognition that the regulations implementing these laws accommodate the size and capabilities of affected parties. I feel that S. 299 ably accomplishes these goals.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I yield to the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this bill.

Mr. Speaker, I would like to see congressional action to improve Federal agency rulemaking for all segments of our economy, and I certainly support S. 299 which is a positive beginning toward reducing the regulatory burden imposed upon small business by the Federal Government.

Small business plays a vital role in our Nation's economy. As a group, small businesses exemplify the traits which made America Great. Today, however, this important sector of our economy is being crushed by the weight of Federal regulations and the resulting paperwork. One of the most frequent complaints I hear from the small business people of my district concerns the burden of Federal regulations, and I believe this is true of most of us in the Congress. The small business community's message to us regarding the Federal regulations and paperwork burden has been loud and clear: Reduce it. And that is the aim of this bill: To reduce the impact of Federal regulations on small businesses.

The bill does not call for a special commission to make a study of the problem and issue a report to Congress. Nor does it call for a new agency to deal with the continuing growth of regulations. This bill checks the growth at its source.

This legislation will make some overdue changes in the way the Federal agencies develop and issue regulations. It requires the agencies to weigh carefully the effects of their rules on small businesses and not issue those regulations whose benefits do not justify their costs to small business.

It is not the intent of the legislation to undermine the important progress our country has made during the past two decades in providing safer food, drugs, places of work, and cleaner air and water. We must protect the health and welfare of people as well as small business. Many regulations are essential and were developed in response to rising expectations and demands of the public that the Federal Government "do something about that."

This bill does not seek the elimination of Federal regulations, but a control of the bureaucrats. It deals with those Federal regulations that severely impact small business, and are not necessary, equitable, or very poorly serve the public interest. The legislation meets the justified concerns of small businesses without sacrificing progress toward meeting the goals established by legislative mandate and public need.

This bill gives the Members of the House a chance to really do something about a major problem facing small business. It is not a final answer, but it is a first step toward keeping the regulatory agencies from being a nightmare for small businesses. I urge my colleagues to support it.

Mr. Speaker, I wonder if the gentleman from Pennsylvania would join me in a little colloquy on the intent of this bill.

Mr. McDADE. I would be delighted to.

Mr. BROOMFIELD. Mr. Speaker, I am concerned about the difference between this bill and H.R. 4660 which I cosponsored, was approved unanimously by my subcommittee and was passed out of the Small Business Committee. Particularly, I am worried about whether the agencies are actually required to analyze their regulations for impact on small businesses, or may merely slide over potentially devasting provisions with only a cursory glance.

Mr. McDADE. My friend, the gentleman from Michigan, as usual, has raised a tremendously important question, one that we looked at in the subcommittee with diligence. May I say that it is the intent of our committee, and we are the people who wrote and reported the companion bill, and I believe I can speak for the members of the committee, I know I certainly speak for my friend, the gentleman from Massachusetts, who has had 3 years of his life invested in this bill, that agencies and departments have a positive duty under this legislation to determine the impact on small businesses of each and every new regulation and a specific, and I repeat, specific statement of businesses to which the new rule will apply and the proposed alternatives to reduce that impact. Furthermore, the agency has a positive duty to consider alternatives that would lessen the impact upon small business.

Mr. BROOMFIELD. Mr. Speaker, will the gentleman yield further?

Mr. McDADE. I would be delighted to yield to my friend.

Mr. BROOMFIELD. But what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy, or incomplete?

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. KINDNESS. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania.

Mr. BROOMFIELD. Mr. Speaker, repeating the question, but what if the agency fails to do this analysis, or if the analysis is inadequate, sloppy or incomplete? What if the agency ignores significant information provided by an affected individual; or, more importantly, what happens if the agency ignores its own findings or makes a conclusion that is not in keeping with its own facts?

Mr. McDADE. Mr. Speaker, again I want to commend my friend. The question, I think, is terribly important as we establish the legislative history of this piece of legislation.

Let me say unequivocally as a member of the committee that wrote this bill, that in that instance, upon review of the final regulation, it is the intent of our committee that the court should strike down the regulation.

Now, I must make it clear that there are no intermediate court reviews. The

only review will be for final regulations; but when the court does review it, and I know I speak for my friend, the gentleman from Iowa, the distinguished chairman of the subcommittee on this, when the court finally does review it, then we intend that this regulation shall be invalidated.

Mr. BROOMFIELD. Mr. Speaker, I thank the gentleman.

Mr. SMITH of Iowa. Mr. Speaker, will the gentleman yield?

Mr. McDADE. I am delighted to yield to my friend, the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Speaker, I just want to point out that it is difficult to make sure in legislation that every agency will do what it is expected to do; but to try to guarantee that, this bill provides, and our bill provided, although I think our bill was a little stronger, that the Chief Counsel for Advocacy has both the authority and the responsibility to carry through within the administration to make sure agencies do what they are expected to do under this legislation. The Chief Counsel for Advocacy does have a measure of independence within the administration and we will be sure he gets the personnel to do that.

Mr. McDADE. I thank my chairman. I could not agree with him more. It is our intent that our bill, and I agree with the chairman, it was stronger than the one we are considering today, but the intent of all of us in passing this legislation is to do exactly what the gentleman says and to make the agencies respond.

I thank my friend, the gentleman from Iowa, for his contribution.

Mr. KINDNESS. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. CONTE).

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I stand in support of this critical legislation. With the passage of this measure before us today, the House takes a major step forward on behalf of the overregulated small businessman and woman in this recession-ridden country.

For years now the small business community has been disproportionately burdened by the same reporting requirements as the corporate giants in the United States, those multinational, multibillion dollar entities which comprise the Dow-Jones industrial stock average. This is true even though the problems which gave rise to the Government action may not have been caused by the smaller entities.

It is obvious to all in this Chamber that unnecessary regulations create many barriers in many industries and discourage potential businessmen and women from introducing beneficial products and processes into the mainstream How far do you think Wilbur and Orville would have gone if faced with similar regulations?

Mr. Speaker, as a member of the Small Business Committee since 1965, I have actively supported and cosponsored legislation designed to achieve the stated goals of this legislation. It is critical for the future posture of our industrial, high-technology Nation that it provide the innovative and productive sector of our society, small business men and women, the opportunity to direct most of its energies on production and not paperwork.

Failure to pass this long-awaited measure translates into continued diminution of this country's image as a world leader in innovation and technology. The long-term effect will be that the Japan's and Germany's in the world marketplace will continue to surge ahead in their relative productivity figures.

Therefore, it is imperative that Federal agencies endeavor to fit regulatory and information requirements to the scale of the businesses. If we can accomplish the objectives of this legislation, small businesses throughout the United States will save the millions of nonproductive man hours and billions of dollars required each year to comply with these unnecessary regulations.

I urge passage of this important matter.

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In closing, Mr. Speaker, I want to congratulate the subcommittee, the gentleman from Iowa (Mr. SMITH) and the gentleman from Florida (Mr. IRELAND), who is chairman of the subcommittee. I also want to thank the gentleman from Pennsylvania (JOE MCDADE) and all of the others on the Small Business Committee, who have worked so hard and diligently for the past 3 years on this piece of legislation which I, too, have cosponsored.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. NOWAK).

(Mr. NOWAK asked and was given permission to revise and extend his remarks.)

Mr. NOWAK. Mr. Speaker, today we will consider landmark legislation on behalf of small business. For the first time, Government regulations must be designed to "fit the scale of those being regulated." Regulatory flexibility is not a new concept. Both Houses of the Congress have considered similar measures over the last few years.

Recently, I voted, along with 29 of my other colleagues on the Small Business Committee, to report a similar bill, H.R. 4660. And every Member knows the issue: They have been directly involved with constituent cases, and have seen how excessive Government regulations hamper smaller firms.

S. 299, the Regulatory Flexibility Act, is the first step toward the establishment of a broad, tiered Government policy, one which recognizes the special needs and limits of smaller firms. Ultimately, this policy will restore our free enterprise system.

It will insure that the small business community will continue to create the jobs, competition, and innovation our economy so desperately needs in the 1980's.

S. 299 provides a framework which will yield regulatory flexibility. Federal agencies are required to periodically publish a regulatory flexibility agenda. And they must prepare a regulatory flexibility analysis which will explain how their rules can be tiered to accommodate smaller firms. Lastly, they must review existing regulations and change them if they adversely affect small business.

Tiered regulations are not a drastic departure from past regulatory practice. A good example of a two-tiered reporting requirement is the personal income tax form. Salaried persons earning less than $20,000 a year are permitted to file a short form, 1040A, while others fill out the more detailed long form.

The Securities and Exchange Commission has embarked on an ambitious program of tiering. The Department of Energy tiers, the Environmental Protection Agency tiers, the Occupational Safety and Health Administration tiers. The problem is that, in some cases, past efforts to promote flexible regulations within the agencies have been undertaken without adequate economic analysis. The results are sporadic and sometimes inconsistent.

What this bill would do is impose an orderly, Government-wide, process on a rather ad hoc process. Some may ask, if we impose too many restrictions on the agencies' informal rulemaking, are we opening the door to the possibility that agencies will get around the restrictions by increasing enforcement efforts in an attempt to establish legal precedents? Agencies, of course, can, and should pursue violators of the law. However, when enforcement becomes petty or ill conceived, Congress has shown little reluctance to step in and chastise agencies through the oversight and budget review process.

Small business' demands are not outrageous. They only want straightforward, equitable laws. They are willing to pull their own weight, to hire employees, sell their products, to pay taxes, and contribute to our economy. Today, unfortunately, what they have is a jungle of conflicting regulation, and a Tax Code skewed in favor of the wealthy and the large corporations.

Tiered laws and regulations will move us a step closer to our goal. S. 299 is an important and vital first step which should be overwhelmingly supported by this House.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri (Mr. SKELTON).

(Mr. SKELTON asked and was given permission to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, I rise in support of S. 299, the Regulatory Flexibility Act.

The House version, H.R. 4660, the Smaller Enterprise Regulatory Improvement Act was unanimously reported by the Small Business Committee on October 17, 1979, and had 245 cosponsors.

S. 299 was unanimously passed by the Senate August 6, 1980.

This legislation would require Federal agencies to assess the small business impact of their regulations and tailor them to fit the size of the entity being regulated.

Legislation of this nature was one of the major goals of the White House Conference of Small Business.

Our Nation's small businesses file more

than 305 million Federal forms every year, totaling over 850 million pages and containing over 7.3 billion questions. The cost of this paperwork is about $12.7 billion, a cost that is eventually passed along to the consumer.

I commend the gentleman from Florida (Mr. IRELAND) for his work and leadership on this measure. I support it and urge its passage.

Mr. HARRIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Hawaii (Mr. HEFTEL).

(Mr. HEFTEL asked and was given permision to revise and extend his remarks.)

[Mr. HEFTEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. IRELAND)..

(Mr. IRELAND asked and was given permission to revise and extend his remarks.)

Mr. IRELAND. Mr. Speaker, today marks the next to last step of a very long journey—that of the odyssey of the concept of regulatory flexibility for small business. I need not take up the House's time explaining how the mounting tide of Federal regulation and paperwork has swept away small business after small business. We have all heard the horror stories. The Small Business Committee has worked on this issue for years.

The result of several years of effort in our committee was H.R. 4660. This bill gained 246 cosponsors. Over 60 more Members asked to cosponsor after the report on the bill had been filed. The main concepts of the bill were later incorporated into major House regulatory reform legislation. Apparently, that legislation may not proceed further this Congress. In any event, small business cannot wait any longer.

Today we have before us Senate bill S. 299. This bill, which passed the Senate unanimously, is essentially the same as H.R. 4660. In fact, in all candor, S. 299 improves upon several sections of H.R. 4660.

What will this bill do for small business? First, Federal agencies will be required to publish in the Federal Register every 6 months a regulatory flexibility agenda. This agenda will also be sent to the Chief Counsel for Advocacy at the Small Business Administration and agencies will also endeavor to notify small businesses of the agenda through other channels. The agenda will contain a summary of any rules to be proposed which will have a significant economic impact on small business as well as the name and telephone number of a knowledgeable agency official among other things.

Second, whenever an agency has to publish notice of general rulemaking they are to prepare and make available for comment an initial regulatory flexibility analysis. They then must prepare a final regulatory flexibility analysis after having reviewed all comments. In this analysis, they must explain how their rules can be "tiered" or their burdens on small business otherwise lessened.

Third, agencies must review all regulations currently on the books and determine the continued need for any rules which have a substantial impact on small business. They have 10 years in which to complete this task and may use 1-year extensions, not to exceed 5 years, to complete the task.

Finally, the Chief Counsel for Advocacy of the Small Business Administration will monitor agency compliance with this law and will report at least annually to the Congress on said subject.

The Members of the House should know that regulatory flexibility was one of the major priority recommendations to come out of the White House Conference on Small Business. Last November, the President issued an executive memorandum that directed Federal agencies to consider flexibility in future rulemakings.

Mr. Speaker, the United States is presently in the midst of a rapid and pervasive expansion of Government influence over business. To assure a future for private, competitive enterprise, Federal policy needs to give careful attention to ways of dealing with the increasing intrusion of Government into the mechanics of the marketplace.

The design of the regulatory process goes right to the heart of the relationship between the Government and the people. It is the most tangible contact many people have with their Government. Every aspect of our lives is affected in some way by Government regulation: The air we breathe, the food we eat, our daily transactions in the marketplace, our safety as we drive our cars or work at our jobs. Government intervention in the economy is today much more the rule than the exception.

Although Federal regulation has helped our society achieve many desirable goals, evidence is growing that too many regulations are poorly designed to begin with, or have outlived their usefulness. Such unnecessary regulations have imposed tremendous burdens on the public.

The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: First, the disproportionate impact of Government regulation on small business reduces the competitive capacity of small business, thereby placing Government in the strange position of encouraging ecoprices. Thus, while the most immediate sumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

The time to act is now. The vehicle is S. 299.

I would like to take this opportunity to commend President Jimmy Carter for the leadership and concern he has shown in this area of regulatory relief for small business. While the congressional wheels were turning, the President put regulatory flexibility into an executive memorandum and in effect got the ball rolling early. His staff has been very helpful in the latter stages of this process and their expertise and assistance was much appreciated.

The Nation's small businesses owe a special debt of gratitude to the former chairman of the Subcommittee on Special Small Business Problems, Representative MARTY RUSSO. MARTY worked long and hard on this legislation and due to his appointment to the Ways and Means Committee was unable to continue as chairman. We all know that MARTY RUSSO has been a leader in the fight against needless regulation not only on this bill but also by his work on independent bakers' labeling problems.

Needless to say this bill has wide support. Chairman NEAL SMITH and ranking minority member, JOSEPH MCDADE, of our committee have been towers of strength for years in the battle against overregulation of small business. Also, SBA Administrator A. Vernon Weaver, Chief Counsel for Advocacy Milton D. Stewart and, Jere W. Glover, Director SBA Office of Interagency Office Affairs, have been instrumental in this process. The National Federation of Independent Business and the National Small Business Association have played a major supportive role during considerations on this bill.

I would like to thank the subcommittee staff which has worked for several years on this issue—Stephen P. Lynch and Patricia E. Reese of the majority staff; Marvin W. Topping of the minority staff; and James W. Morrison, former consultant to the subcommittee.

Mr. Speaker, at this point I would like to insert in the RECORD a legislative history of H.R. 4660, a discussion of the issues involved in regulatory flexibility, and a letter from Senator CULVER.

I also would ask permission to revise and extend my remarks.

WON'T TIERED REGULATIONS ENCOURAGE LARGE BUSINESSES TO SET UP "DUMMY" SMALL BUSINESSES TO TAKE ADVANTAGE OF LESSER REQUIREMENTS ON SMALL BUSINESS?

The bill provides that the definition of a small business shall be that employed by SBA or a definition of the agency's choosing. The SBA definition, at 15 USC 632 provides, among other things, that a small business concern "shall be deemed to be one which is independently owned and operated . . ." This tough, explicit definition provided by Congress has been strengthened by SBA criteria which further refine the concept of a small and independent business. SBA has more expertise on this matter than any other agency in Washington. Its Size Standards Division has carefully researched the question of business size for many years. An important body of case law has developed around these SBA definitions.

For instance, the courts have held that the SBA definitions have the force of law. (See for example: *Otis Steel Products Corp. vs. U.S.*, 1963, 316 F. 2d,937,161 Ct. Cl. 694.) The courts have also backed up SBA's refusal to consider an affiliate of a big business as a small business. (See, for example. *American Electric Co., vs. U.S.*, D.C. Hawaii 1967, 270 F. Supp. 689 and *Springfield White Castle Co. vs. Foley*, D.C. Mo. 1964, 230 F. Supp. 77.)

Thus, these highly-developed, legally binding SBA criteria should be adequate in nearly every situation. However, should a rare case arise in which an agency feels it needs even more stringent criteria to define a small business, the bill would allow the agency to de-

velop its own definition. Given these stringent safeguards against abuse, and given the bill's stipulation that critical matters of public health, safety, and welfare are never to be compromised, the issue of potential misuse of the tiers would seem to be fully addressed within the legislation.

SEPTEMBER 8, 1980.

Hon. THOMAS P. O'NEILL, JR.,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: This is in response to your inquiry with regard to the judicial review provisions of S. 299 recently approved by the Senate. I understand that your concerns relate to part of the explanation on page S. 10939 in the Congressional Record of August 6, 1980.

I believe your concern can be resolved by the addition of the words "and consciously" between "completely" and "ignores" in lines ten and eleven of the second column, and by striking the word "therefore" in the eighteenth line of that column.

Sincerely,

JOHN C. CULVER.

LEGISLATIVE HISTORY OF H.R. 4660 OF THE HOUSE SMALL BUSINESS COMMITTEE

H.R. 4660 was the result of 3 years of hearings and related work by the Committee. During the Ninety-Fifth Congress two relevant bills were referred to the Committee, H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. Caldwell Butler of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative Andy Ireland of Florida. The purpose of his bill was to give Federal agencies flexibility in the issuance of Federal regulations.

Hearings were held on these bills on February 1, March 8, March 9, and March 16, 1978.

During this Congress, several similar bills were introduced and forwarded to the Committee. They were:

H.R. 1306, introduced by Representative Richard Schulze of Pennsylvania. The purpose of his bill was to require the preparation of small business impact statements in connection with Federal agency rules.

H.R. 1745, introduced by Representative Andy Ireland of Florida. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 2837, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of her bill was to require the preparation of small business impact statements in connection with Federal agency rules, and for other purposes.

H.R. 2908, introduced by Representative Marilyn Bouquard of Tennessee. The purpose of this bill was to amend the Small Business Act to provide regulatory flexibility for small business in certain instances so that the effect of regulation matches the size of business regulated.

H.R. 3011, introduced by Representative Robert Lagomarsino of California. The purpose of his bill was to amend the Small Business Act to require Federal agencies to reimburse small business for certain paperwork costs.

Hearings on these and the concepts considered last Congress were held on April 5, April 24, May 17, and May 22, 1979.

In these eight hearings the Committee heard from almost 40 witnesses from the public and private sectors. The result of all of this was a Committee bill combining the original Butler and Ireland concepts with refinements—H.R. 4660. This bill was considered and ordered favorably reported by the Full Committee 30–0, on July 17, 1979, as amended. At present 246, including all 39 members of the Small Business Committee, are co-sponsoring this legislation.

THE NEED FOR THE LEGISLATION

The Committee has for the last several years received evidence and heard testimony from countless small businesses complaining about Federal overregulation. These individuals have not opposed all regulation, but have drawn attention to instances of too much regulation and of ill-conceived regulation which has had an extraordinary economic impact.

Most of the witnesses who addressed themselves to this legislation sought means for balancing the goals of Federal regulation with those of a market economy. One such witness, Dr. Murray L. Weidenbaum, the Director of the Center for the Study of American Business at Washington University in St. Louis, has devoted considerable effort to studying the various impacts Federal regulation has upon business. In testimony before the Committee, he eloquently outlined some problems of regulatory impact. Turning to the Occupational Safety and Health Administration (OSHA), for example, he noted that the agency "provided a complex pamphlet containing 24 pages of fine print just listing theapplicable standards for 'general industry'." And the explanation of those standards? For this the reader was referred to 29 CFR 1910. How is the average businessman supposed to know that CFR is the Code of Federal Regulations, that 29 is the volume 29 dealing with labor, and 1910 is section 1910, devoted to OSHA?

"(Assuming such a business person eventually located) * * * a copy of 29 CFR 1910, he is in for some surprises. The document contains 455 pages of fine print, including algebraic equations and trigonometric functions, but no index. Let us assume, generously, that our small business executive skips over the obviously technical parts and turns to what seems to be a simple section—the definition of an exit. By way of reference, the dictionary tells us that exit is 'a passage or way out.' For OSHA, however, defining exit is a challenge to its bureaucratic prerogatives, and it is not found wanting.

"To OSHA, an exit is 'that portion of a means of egress which is separated from all other spaces of the building or structure by construction or equipment * * *' to provide a protected way of travel to the exit discharge." Obviously, our business executive now needs to find out what is "a means of egress" as well as an "exit discharge."

"Exit discharge is the easier term. It is defined merely as 'that portion of a means of egress between the termination of an exit and a public way.' Next comes OSHA's definition of a means of egress: 'a continuous and unobstructed way to exit travel from any point in a building or structure to a public way and consists of three separate and distinct parts: the way of exit access, the exit, and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel (?) and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, exits, escalators, horizontal exits, courts, and yards.'"

Anyone who followed all this would ultimately discover that OSHA is saying that an exit is an exit is an exit. In the case of "ladder" there are three renditions of the same tedious set of definitions plus one trigonometric function.

OSHA is certainly not the only offender when it comes to abstruse regulations. One could note the proposed regulations on job testing written by the Equal Employment Opportunity Coordinating Council. The guidelines were drafted with the best of intentions—to assure that tests do not discriminate on the basis of race, color, religion, sex or national origin. The objective surely is worthy. Yet the guidelines have been challenged by such professional organizations as the American Society for Personnel Administration and the American Psychological Association.

Reading the proposed regulations reveals the basis for the objections. Here is a typical section, one of which in fact attempts to ease the burden on employers:

"A selection procedure has criterion-related validity, for the purpose of these guidelines, when the relationship between performance on the procedure and performance on at least one relevant criterion measure is statistically significant at the .05 level of significance * * * If the relationship between a selection procedure and a criterion measure is significant but non-linear, the score distribution should be studied to determine if there are sections of the regression curve with zero or near zero slope where scores do not reliably predict different levels of job performance."

Should such guidelines be enforced, the result would surely not be fairer testing but a shift from what would be very costly and cumbersome procedures back to the simpler but far more bias-prone oral interview.

A CASE STUDY OF REGULATORY EFFECT ON SMALL BUSINESS LABELING RULES AND INDEPENDENT BAKERS

The Subcommittee on Special Small Business Problems conducted all the hearings leading up to H.R. 4660. In addition they have held many other hearings concerning regulatory impact on small business. One of the most telling examples of what is happening came in their hearings on small bakers and a Food and Drug Administration labeling regulation.

In the 1930's there were more than 10,000 idependent bakers in America. Between 1939 and 1964, while the volume of bread production increased fivefold, the number of bakery plants declined to less than 5,000. Today the number of independent bakers is less than 1,000. Several large metropolitan areas have only one independent to serve them.

Independent bakers have made significant contributions to their industry as well as to the economy. For example, all of the following bakery innovations are attributed to independent bakers:

1. Wrapped bread.
2. Marketing of sliced bread.
3. Baking of a continuous-mix bread.
4. Bag bread.
5. End labels.
6. Bread in cellophane.
7. Bake-and-serve items.

Under sections 401 and 403 of the Federal Food, Drug, and Cosmetic Act, Congress directed the Food and Drug Administration to require careful and detailed labeling of food products. In particular, the act requires that all foods composed of two or more ingredients be labeled with the common or usual names of those ingredients. The FDA, in interpreting the law has for the most part required that ingredients be listed in the order of predominance.

In 1978 the FDA was prepared to put a new labeling regulation into effect. The rule had no flexibility and called for all products to be listed in strict order of predominance on the label. Since small bakeries tend to have more variable sources of supply the requirement would have necessitated the printing of an almost infinite number of labels by such small operations. Small bakers complained to the Subcommittee that this one new rule would add vast new costs and would drive a number of them out of business

Subcommittee members had several meetings with the bakers, FDA officials, and consumer advocates. Once various consumer representatives who had urged the FDA to adopt the regulation saw what the results

would be, they were ready to modify the rule. The FDA was very cooperative. A new rule was issued, taking into account the needs of smaller bakeries.

Based on this and other similar experiences, the FDA has now set up four information desks throughout the nation for small business. The agency also now seeks out small buinesses for all their views, not just on labeling.

The lesson of this experience is important. An accelerated decline in independent bakeries would have led to a concentrated group of dominant companies and might well have created a baking monopoly or oligopoly. Characteristics of monopolies and/or ologopolies are all to well known—controlled output, high prices, and excess profits. Such a situation would confront the consumer with a market functioning according to the whims of a few. An objective of Federal regulation is to stop such concentration, not to create it. But a Congressional Subcommittee cannot realistically be expected to intervene in every such situation.

OTHER EXAMPLES

The Committee's files are replete with documentation of burdensome regulations adversely affecting small business. Productivity and innovation have ben curtailed. Inflation has been increased. Instances like the following are unfortunately all too commonplace:

A gas station owner spent 600 hours last year filling out just his Federal reporting forms.

An Idaho businessman paid a $500 fine rather than fill out a Federal form which was 63 feet long.

A New Hampshire radio station paid $26.23 in postage to mail its license renewal back to Washington.

A dairy plant licensed by 250 local governments, 3 states, and 20 agencies had 47 inspections in 1 month.

A butcher had one Federal agency tell him to put a grated floor in his shop 1 month and then the next month was told by another Federal agency he could not have a grated floor.

A company was forced out of the toy business because one of its main products was inadvertently placed on a Federal ban list.

An Oregon company with three small shops received Federal forms weighing 45 pounds.

THE OVERALL REGULATORY CLIMATE FOR SMALL BUSINESSES AND SMALL ORGANIZATIONS

A regulatory environment which necessitates the hiring of lawyers, accountants, engineers and consultants for businesses of any size to survive will clearly provide competitive advantages of the largest, most automated businesses and increase the size of firms which can enter the marketplace or remain there.

Professor Milton Kafoglis, formerly Senior Economist of the Council on Wage and Price Stability, set forth the problem in testimony on this legislation:

"* * * the regulatory agencies usually assume—contrary to fact—that costs imposed by regulation can be passed through to consumers with equal ease by all firms. This assumption tends to blunt the concern of regulatory agencies about disproportionate impacts on various sizes and classes of business.

"Though 'uniform' regulatory treatment of all businesses seems to be a reasonable criterion, it must be remembered that there are real differences and that uniformity of regulation could represent an economically inefficient solution * * *

"Uniform application of regulatory requirements seems to increase the size of firm that can effectively compete. In technical jargon, the unit-cost curve of the firm is shifted upward and to the right with its minimum point occurring at a larger output. That is, the imposition of regulations will, in most cases, artificially increase the size of the firm that can survive. If one employs the economists' theoretical 'dominant firm' model and introduces such upward shifts in cost curves (the small firm's cost curve shifting more than that of the dominant firm's), the market share of the dominant firm will increase while that of the small firms will decrease. As a result, industrial concentration will have increased. Thus, the 'small business' problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

"The usual paperwork and reporting burden whose total costs are invariant to output is the most obvious example of economies of scale imposed by regulation. Whereas large firms typically have a managerial structure and/or legal section that can absorb these costs with either no increase in staff or with an incremental increase, small firms must either add increments which are large relative to the size of the firm or seek consulting services which are expensive and not very highly specialized in the firms' particular needs. All such expenses are invariant to output, and their cost per unit of output declines as output increases. Such costs raise the cost curves of all firms but place the small firm at a relative disadvantage on a unit-cost basis.

"More importantly, the technology imposed by most regulations is itself subject to scale economies * * *

"Standards which impose technologies involving large fixed costs also raise barriers to entry, imposing capital burdens that small or medium-size firms cannot handle, and solidifying the market positions of existing firms. Indeed, large firms are likely to support such regulations since they are capable of insulating the industry from new competition * * *

"* * * there is not to my knowledge a government regulation which (if uniformly applied to all firms) would generate diseconomies of scale and increase the number of firms in an industry, thus encouraging deconcentration and increased competition."

Our Committee found ample evidence, on the other hand, that flexible regulatory strategies are not only workable in theory but have in fact been used on a sporadic and ad hoc basis throughout the agencies. An example of a two-tiered reporting requirement with which most Americans are familiar is the income tax form. Salaried persons, earning less than $20,000 are permitted to file their tax returns on Form 1040A (the "short form"), while other taxpayers are required to fill out Form 1040 (the "long form"). In this instance the Internal Revenue Service has made a determination that less information is necessary from low- and middle-income taxpayers with a single major source of income than is necessary from other taxpayers. Other agencies on occasion use multi-tiered techniques and they should continue to do so.

The Committee discovered numerous examples of such flexibility (both legislatively and administratively mandated) throughout the Code of Federal Regulations. The National Federation of Independent Business (NFIB) presented schematic charts of some of the varieties of existing "tiered" Federal regulation in a dozen different regulatory areas. Other witnesses compiled lists of flexible regulations in specific industries.

Unfortunately, however, efforts to promote regulatory flexibility have until now been sporadic, lacking in overall Congressional guidance, and at times ill considered. For example, the General Accounting Office's (GAO) testimony drew attention to the Department of Energy's crude oil entitlements program, which has enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels per day, the threshold of the entitlements program, whereas the minimum technologically efficient refinery size is 175,000 barrels per day.

Our Committee is persuaded that the most direct and practical solution to counterproductive flexible regulations, is to stimulate a much greater degree of participation in rulemaking by affected parties. Offering agencies the means for tailoring regulations to the resources of affected parties must be accompanied by a strong mandate to involve those parties in the deliberations.

Thus, although administrative and legal precedents support the general approach of the bill, they do not obviate the need for the legislation.

In fact, much of the thrust of the legislation could be met by the agencies by adapting their application of Executive Order 12044 to the demonstrated problems of small businesses and small organizations.

The Executive order requires that regulations should be as simple and clear as possible and should achieve legislatively mandated goals effectively and efficiently. It states that:

"They shall not impose unnecessary burdens on the economy, on individuals, on public and private organizations, or on state and local governments."

While this policy is completely consistent with the purposes of H.R. 4660, such as reducing unnecessary requirements and simplifying and clarifying necessary ones, there are numerous provisions of H.R. 4660 which are not addressed in the Executive order.

The order does not address the issue of the different impact of uniformly applied regulations on individual segments of the population, nor does it urge agencies to issue rules which apply differently to such segments of the population. Although the order does improve the opportunities for public comment on substantive rules, its provisions are narrower than those of H.R. 4660, and it does not open reporting requirements for public comment.

Finally, the Small Business Committee noted that enforcement of the Executive order is restricted. Since the question of agencies' compliance with the order is not subject to judicial review, realization of the benefits the order seeks to provide will largely depend upon the personal sensitivity and good faith of the rulemakers. Adherence to the order by the independent regulatory agencies, which are not part of the executive branch, is completely voluntary. Moreover, the Office of Management and Budget has limited structural mechanisms for enforcing the order, even within the executive agencies.

H.R. 4660 does not conflict with the Executive order and does not represent a duplication of objectives. H.R. 4660 would supplement and strengthen the order in several ways, notably by adding two new regulatory objectives: improving public participation and an assessment of alternative regulatory strategies in light of their impact on small concerns. Thus, the Committee believes this legislation is not only necessary, but timely.

Indeed, the Committee agrees with the testimony offered by the General Accounting Office (GAO) that:

"In the absence of Congressional action establishing comprehensive guidelines to improve agency rulemaking, we would support legislation designed specifically to ease the regulatory burden on small business."

H.R. 4660 has been carefully designed to permit such broad scale reform in the future, and nothing in the legislation would stand

in the way of comprehensive rulemaking reform. Each major aspect of the bill accords with generally accepted principles under Executive Order 12044 or existing administrative law.

THE CONCEPT OF FEDERAL REGULATION OF THE MARKETPLACE

Federal regulations have the effect of law when finalized. Though thousands of new regulations are created every year, very few are ever taken off the books. Estimates of the cost to the economy of all these regulations ascend to $100 billion. In such a situation, it is important to keep track of the main lines of reasoning in support of Federal intervention in the marketplace.

There are two main arguments. Market failure, a term which economists use to designate a flaw in the marketplace which produces undesirable consequences, can create several problems. Regulations can remedy many of these problems. Among them are:

Natural monopoly, resulting in high prices, reduced output, and excess profits;

Interdependencies in natural resource extraction, resulting in the inefficient use of natural resources;

Destructive competition, resulting in chronically sick firms unable to satisfy consumer demand;

Externalities, which impose costs in society but not on the person who causes them; and

Inadequate information in the marketplace, resulting in poor decisions and wasted resources.

A regulation in any of these areas is meant to improve the market system and aid competition.

The second line of reasoning concerns social or political problems which demand regulation. Among these are regulations which are intended to:

Alter income distribution;

Strengthen national security;

Improve the environment;

Protect public health and safety;

Promote new industries;

Give special protection to groups like small business or family farms;

Provide special assistance to smaller communities and/or rural areas.

In each of these cases, regulation serves to meet an important social need. Difficulties arise when bureaucracies which are not responsible to the electorate exceed their statutory authority or fail to consider rulemaking alternatives which would have a less burdensome impact on the regulated public. It is this imbalance between goals and unnecessary burdens which this legislation is designed to address. The Committee did not intend to sanction any diminution of the legislatively mandated goals of Federal regulation.

AGENCY ENFORCEMENT

During the hearings an issue arose concerning an option which agencies may use rather than regulation. One of the witnesses before the Subcommittee, Mr. Calvin Collier, a former Deputy Director of OMB and former Chairman of the Federal Trade Commission, raised the possibility that agencies confronting new rulemaking procedures might evade them by resorting to the creation of legal precedents through enforcement actions against "worse case" offenders, and subsequent enforcement of such precedents upon the regulated public as though the precedents were actual rules.

While our Committee believed such agency action is much more likely under the more sweeping regulatory reform measures now pending before Congress, and that the Smaller Enterprise Regulatory Improvement Act would impose little additional burden on any agency, the Committee would note that agency enforcement budgets will be subject to rigorous oversight if evidence suggests that enforcement actions are being used as a surreptitious form of "rulemaking."

A PUBLIC PROBLEM

Overregulation is not just a small business probem. It is a problem with significant public consequences. One witness summed it up this way:

"The overregulation of small business is not just a parochial problem; it is a public problem as well. This public interest lies directly in two areas: (1) the disproportionate impact of government regulation on small business reduces the competitive capacity of small business, thereby placing government in the strange position of encouraging economic concentration, and (2) consumers, to a large extent, must pay the costs of regulation in the form of higher prices. Thus, while the most immediate and visible impact may fall to the small entrepreneur, the public shares the burden.

"The disproportionate impact of regulation on small business stems from economies of scale inherent in the regulatory process. This fact is neither unexpected nor stunning once attention is drawn to it. But as often is the case of the obvious, we tend to dismiss it in our preoccupation with the more specific."

On October 17, 1979, H.R. 4660 was referred to the House Judiciary Committee. On May 28, 1979, the Judiciary Committee was discharged from further consideration of H.R. 4660.

DISCUSSION OF ISSUES

When the Senate passed S. 299 on August 6, a "Description of Major Issues and a Section-by-Section Analysis" was provided to explain certain substitute language adopted for that bill. (See 126 Congressional Record S. 10934–43.) Members of the House of Representatives took an active role in helping the various parties in interest achieve the understandings which were necessary to bring the measure before the Senate, just as members of the Senate have provided much help in bringing the measure before the House of Representatives today. Thus the Senate document entered into the Record on August 6 already reflects many of the concerns of House members who have been involved in the development of regulatory flexibility legislation. Indeed, much of S. 299 as passed is derived from provisions of H.R. 4660. Rather than commenting again on each of the various sections of S. 299, as passed by the Senate, this Discussion of Issues will supplement the Senate document by noting some general themes and objectives of the legislation, occasionally amplifying some of the points made during Senate consideration, and drawing upon, where appropriate, House Report 96–519 on H.R. 4660 (which should be incorporated by reference into the legislative history of the pending bill.) That House report more fully conveys the views on regulatory flexibility legislation of the principal authors and sponsors in the House of Representatives. Agreement on the matters discussed in this Discussion of Issues has helped provide the broad political consensus necessary to bring S. 299 before the House of Representatives in lieu of H.R. 4660. House members who have worked on this legislation are deeply grateful for the active and creative participation of Senators Culver, Nelson, Laxalt, Thurmond, and others in developing S. 299. Senator Culver has shown particular strength and perseverance in the long effort to enact regulatory flexibility legislation.

In general, regulatory flexibility legislation is designed to eliminate the unnecessary regulatory burdens which attend uniform or rigid regulatory strategies, particularly with respect to those on whom such unnecessary burdens weigh the most heavily—small businesses, small organizations, and small jurisdictions of government. The legislation directs agencies promulgating federal rules, reporting, and recordkeeping requirements to carefully examine them with the purpose of seeking less burdensome "flexible" alternatives.

The agencies are directed to assess such options as "tiering" (that is setting differing and less burdensome requirements on smaller entities), exemptions from all or parts of rules, the structuring of differing timetables for compliance, the use of performance standards rather than design standards, and so on. It is important to note that agencies are not restricted to use of the options specifically enumerated in S. 299. When S. 299 refers (in Section 603(c)) to "any significant alternatives to the proposed rule" and then enumerates alternatives "such as" those mentioned above, it means just that—that those alternatives are examples or possibilities, but that any other appropriate flexible regulatory strategory which is suggested must be given serious consideration. The Act does not specifically mention the adoption of less frequent reporting requirements for smaller entities, for example, although this form of flexible regulation is already used by many agencies, and is indeed completely consonant with S. 299. Equally appropriate in the future, although again not explicity noted in the Act, would be such current agency practices as adopting multitier regulations, and using criteria which have the effect of tiering by size (as for example, the EPA regulations affecting leather tanneries which are tiered according to volumes of effluent discharge.) The Act does not specifically cite the entitlements programs now in use by some agencies, although entitlements programs are a form of flexible regulation. Nor does it take no of imaginative new approaches like the Environmental Protection Agency's "bubble" concept, which takes into account that agency's mandate to clean up the air while lessening unnecessary burdens through a flexible application of a statute.

Neither S. 299 nor any other single piece of legislation could ever begin to specify the appropriate solution to address every situation regulators will encounter, now and in the future, and it would be unwise to attempt to do so. Reguatory flexibility should be viewed by the agencies as Congressional encouragement to reward agency personnel for seeking out and applying creative solutions to the genuine problems our smaller entities face in complying with broad, general statutes. Statutory mandates must never be compromised—that is why section 606 explicitly states that the Act does not alter any other statutory standard—but agencies are required by the Act to solicit and consider flexible approaches in the application of their statutes, where legally permissible.

Agencies may undertake initiatives which would directly benefit such small entities. Thus, the term "significant economic impact" is neutral with respect to whether such impact is beneficial or adverse. The statute is designed not only to avoid harm to small entities but also to promote the growth and well-being of such entities.

Ascertaining the impact on small entities is the heart of the regulatory flexibility analysis. It is a finding of substantial impact on a substantial number of small entities which triggers the consideration of flexible regulatory strategies. Evidence of such impact upon any one of the three types of entities—the small businesses, the small organizations or the small jurisdictions of government—requires agency compliance with applicable provisions of this legislation. Normally, rules will not affect two or three types of small entities simultaneously, but when this does occur, agencies should take steps to involve each type of entity in their rulemaking, and account for each in their

regulatory flexibility analyses. Agencies should promulgate final rules whose flexible provisions are based on the rule's potential impact on each of the different types of affected small entities.

Thus the possibility that a rule may cause a substantial impact on a significant number of small entities is central to an agency's determinations under this legislation. Exactly what a "significant economic impact on a substantial number of small entities" is will vary from case to case. For example, if there were 500 small organizations of a certain description, and 200 of them would face major new reporting requirements if a certain rule were implemented, then the rule should be expected to have a significant economic impact on a substantial number of small entities (in this case small organizations). If there were only 25 small businesses in an industry dominated by 12 large businesses, then a rulemaking initiative which would threaten the economic viability of 15 of those small businesses, and thus adversely affect competition and industrial concentration, would have a "significant economic effect on a substantial number of small entities" within the meaning of the legislation, even though the absolute number of small businesses involved would be minuscule. As this example makes clear, economic impacts include effects on competition and economic concentration. The phrase "significant economic impact on a substantial number of small entities" is ambiguous in order to cover critical situations such as these examples without imposing exact numerical thresholds on the agencies overall. But clearly, any anticipated rulemaking which common sense would suggest could have a direct, noticeable economic impact on several thousand or more small entities (of any type) should be considered as included within the concept of having a "significant economic impact on a substantial number of small entities." Obviously, agencies are not expected to estimate the unforeseeable or to avoid ever making any mistakes in their estimates. Rather, the agencies should make good faith efforts to arrive at reasonable estimates and should scrupulously follow the procedures outlined in the legislation.

Those procedures can be delineated in a step-by-step manner. The initial decision the agency makes is a determination that the provisions of this Act are applicable to the agency and to the actions that it takes. This is clearly an important decision, which the agency should consider very seriously. The legislation is intended to be as inclusive as possible, and doubts about its applicability should be resolved in favor of complying with the provisions of the Act. Any significant comments from the public or especially the Office of Advocacy that a rulemaking should be accompanied by a regulatory flexibility analysis should be given the utmost serious consideration by an agency.

Although these more inclusive interpretations may result in additional effort for the agencies in the short run, such inconvenience should be viewed in light of the final rule's long-term advantages: more just application of the laws and more equitable distribution of economic costs, which will ultimately serve both the society's and the government's best interests.

It is difficult to ascertain how many regulatory flexibility analyses agencies will be required to prepare or publish under this Act. One estimate is that there will be about 500 per year. There may be more or fewer. The number will surely vary according to the subject areas the agencies choose to consider in any given year.

Having made the determination described above, the agency must then perform the regulatory flexibility analysis. The first step in this analysis is a careful estimation or projection of whether a rule, not yet proposed, may if implemented have a significant economic effect on a substantial number of small entities. This estimation will become a part of the agency's permanent rulemaking record. Under normal circumstances, a positive finding regarding impact should be followed by notification on the agendas required by section 602 that the rule, if implemented, could have such an effect on small entities. Sometimes, very early in rulemaking, agencies may only know in general terms that an area of rulemaking activity could have such an effect. This, too, should be noted on the agendas. In other words, an agency does not need to have a specific rule already developed to provide the public with agenda notification; agency activity in an area which is likely to result in a proposed rule having such an effect should also be noted. For purposes of agenda publication, agencies should interpret potential impact liberally. It would be preferable to have the agendas err on the side of anticipating more impact than subsequent rulemaking records indicate is likely to occur than to have such impact overlooked on agendas. For in cases where such potential impact proves to be unsupported by subsequent evidence, agencies are completely free to suspend any further regulatory flexibility analysis (provided appropriate certification is published pursuant to section 605(b) of this Act), but the rulemaking record will have been enhanced by public comment on the agenda items. (Such public comment on agendas should be gathered in accordance with Section 609 of this Act, to the extent feasible.) A different type of situation occurs when an agency obtains evidence later in its rulemaking that suggests that an estimation of "significant economic impact on a susbtantial number of small entities" would be appropriate. In such a situation, the agency should proceed directly to the publication of an initial regulatory flexibility analysis. In other words, when, an agency must consider or act upon an item which did not appear in an agenda, it may do so. And an agency will not be required to consider or act upon any matter solely because it appeared in an agenda. In preparing agendas, as with other responsibilities under this Act, agencies may reduce their paperwork and avoid duplicative analyses by considering a group of closely related rules as one rule for purposes of simplifying analyses. But agencies may not avoid the requirements of this Act by dividing a larger rule into smaller rules with less impact.

Following the receipt and consideration of comments on the agency's impact assessment, as published in its agenda, the next step in the regulatory flexibility analysis is either the agency head's certification, under section 605(b), that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, on the publication of an initial regulatory flexibility analysis under section 603. A certification under 605(b) must be made by the agency head personnaly, must be based upon sufficient evidence with in the rulemaking record, and must not ignore or fail to account for any significant evidence to the contrary. Certifications under section 605(b) should not be abused or taken lightly; they represent an important step in the evolution of an agency's regulatory flexibility analysis and overall rulemaking. Such certifications will also become a part of an agency's rulemaking record. For the administrative convenience of the agencies, the Act allows, certifications under section 605(b) to be published either concurrently with proposed rule publication, or after publication of an initial regulatory flexibility analysis (under section 603) concurrently with final rule publication. This timing of publication is flexible so that section 605(b) certifications can serve as the final evaluation in the analysis: The point at which the evidence makes clear that a flexible rule is not warranted by a rule's potential impact.

Agencies are required to notify the Chief Counsel for Advocacy of the Small Business Administration whether they publish an initial regulatory flexibility analysis under section 603 or whether they publish a certification under 605(b). The Chief Counsel's office was set up by Congress (under P.L. 94-305, 90 Stat. 669) to be an advocate for small business within the Federal Government. In that role, the Chief Counsel's office has been empowered to take part in a variety of inter-governmental activities, including participation in agency rulemaking proceedings. Comments by the Chief Counsel's office on agency certifications under section 605(b) should be viewed by the agencies as being just as significant as comments by the Chief Counsel's office on other parts of the regulatory flexibility analysis, such as comments upon the publication of the initial regulatory flexibility analysis under section 603. Because of the broad role Congress is assigning the Chief Counsel in the Administrative Procedure Act in monitoring agency compliance with this legislation, any comments submitted by the Chief Counsel in connection with an agency rulemaking should be given the utmost serious consideration by the agency. Agencies will benefit from the considerable experience of the Chief Counsel in developing flexible alternatives under this new area of law.

The reports on agency compliance which the Chief Counsel is required to submit to the President and to Congress under section 612(a) of this Act should include a listing of the Chief Counsel's comment submissions regarding the applicability to agency actions of provisions of the Act, including especially sections 602(b), 603(a), 605(b), and 610, as well as candid evaluations of all instances of disagreement between the Chief Counsel and the agencies involved. The reports will measure the progress of regulatory reform by compiling the number of regulatory flexibility analyses completed, rules under review, rules reviewed and flexible alternatives adopted. Inasmuch as the Chief Counsel is required to report "at least" annually, he may report more frequently, and may from time to time issue special reports on matters of particular significance with respect to regulatory flexibility implemention. Reports by the Chief Counsel's office, and other responsibilities of the Chief Counsel under this Act, should be implemented in accordance with existing procedures under that office's authorizing statute, P.L. 94-305. Section 612 of the Regulatory Flexibility Act provides that the Chief Counsel for Advocacy be permitted to appear as amicus curiae in any action in any U.S. Court to review a rule, to present his views with respect to the effect of a rule upon entities covered under the Act. This judicial role complements his already-established function of monitoring federal rulemaking affecting small business and participating in such rulemaking where appropriate.

After publishing an initial regulatory flexibility analysis, an agency should take the steps stipulated in section 609 for gathering comments, and should do so with special vigor if such steps have not already been taken following agenda publication under section 602.

Section 609 is quite explicit about the direct involvement of affected smaller entities in rulemaking. The participation of affected smaller entities in an agency's deliberations regarding flexible alternatives is an absolutely essential responsibility of an agency under this legislation. Such public participation will doubtlessly produce a number of significant contributions to an agency's search for the least burdensome regulatory strategy consistent with its mandate.

Analysis of comments gathered using these procedures, as well as comments, if any, from the Chief Counsel's office should form the foundation for the agency conclusions as expressed in the publication of the final regulatory flexibility analysis. An agency's final regulatory flexibility analysis of a rule should be directly linked to the final rule. It would not be reasonable for an agency to publish a finding that a rule is unnecessarily burdensome and that it could and should be made flexible, and for the agency then to fail to promulgate such a flexible rule.

Agencies may conduct emergency rulemaking in exceptional situations. The initial steps of a regulatory flexibility analysis need not be performed if a rule is being promulgated in response to an emergency, although the agency head must personally so certify, as in the case of certifications under section 605(b). However, as noted in section 608 (b), all rules, even emergency rules, must have a final regulatory flexibility analysis published for them, but such publication may occur up to 180 days after the rule is promulgated. Failure to publish a final regulatory flexibility analysis within 180 days shall cause a rule to lapse.

To help agencies cope with unusual circumstances, particularly when unforeseen difficulties arise in the future, an agency head is permitted to extend the time limit for the review beyond ten years, for a year at a time, up to fifteen years. This authority should be used very sparingly, on a case-by-case basis for each rule involved. This provision of section 610(a) is most emphatically not intended to extend the review period beyond ten years on a wholesale basis for any agency. The agency plan for review of its rules, which must be published within 180 days of the enactment of this legislation, should be based on a ten-year cycle of review. In reviewing existing rules, agencies should follow the procedures described in sections 602–609 to the extent appropriate. Of course, such reviews should be consistent with the objectives stated within the underlying statutes of the agencies, as should all agency actions under this Act.

Ultimately, the Regulatory Flexibility Act is directed to agencies which in the past may not have known whether they were permitted by Congressional mandate to promulgate rules which were flexible enough to take into account special problems faced by small entities. The Act is designed to eliminate such uncertainty as well as to encourage agencies already promulgating flexible rules to continue doing so.

The sponsors of this Act hope that those agencies, and the agencies already working to implement flexible rules, will take their new responsibilities under this Act seriously and will make steadfast good faith efforts to comply. There are sanctions available for agencies which do not comply with this legislation, of course, in Congress and in the courts. This Act represents more than three years of careful work by both Houses of Congress to provide responsible legislative assistance to groups of Americans who feel sorely and justifiably afflicted by the way their government has treated them. Congress' concern about this problem is vividly expressed in the legislative history of regulatory flexibility proposals, a history which has included numerous unanimous votes in subcommittees, in full Committees, and on the Floor. In fact, there has never been a single negative vote cast against any regulatory flexibility bill since the introduction of the first such bill in the 95th Congress. Today's vote on the Floor of the House of Representatives finalizes a now general consensus that proper implementation of this legislation will result in much needed relief and significant benefits to our Nation's small entities.

Mr. HARRIS. Mr. Speaker, I yield 2 minutes to the gentleman from California, chairman of the Subcommittee on Administrative Law and Governmental Relations (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. DANIELSON. Mr. Speaker, I should like to point out a few things in connection with this bill which we are today considering, S. 299.

First of all, this bill has never been considered by any committee or by any subcommittee of the House of Representatives. It stands here naked, by itself, the product of the other body, which was passed by the other body, but has never been referred to a committee of the House of Representatives.

Comment has been made, as to the subject matter of judicial review, to the effect that judicial review is provided for in this bill. I should like to point out that section 611 on page 15 of the bill provides as follows:

Except as otherwise provided in subsection(b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

Insofar as there may be Members who feel that judicial review is encompassed within this bill, I trust that the foregoing reference to the language of the bill itself will set that point straight.

I am willing to state as I stand here that this bill has some merit, and I emphasize the word "some." But I submit that it has very little.

The problems of regulatory reform are not fully addressed by this bill. If one were to use a form of common analogy, one could say that this is but a band aid on an economic cancer. The public and the business community have for years been clamoring for some relief from the overregulation from which we all suffer.

My subcommittee and I have worked long and hard to provide that relief. But apparently what we are confronted with now, under suspension of the rules, with no opportunity to amend, is a very small and inadequate substitute.

This bill, S. 299, falls far short of realizing the promise of regulatory reform as heralded so long ago by Executive Order No. 12044 which was issued on March 23, 1978, and which is now scheduled to expire on April 30, 1981.

In response to the public clamor, from all walks of life, for some meaningful reform of the regulatory process which would lift some of the burden of overregulation from the backs of our business and governmental community, the President issued Executive Order No. 12044 setting forth a realistic, meaningful, and hopeful proposal to make some real and substantial changes in the process under which Government regulations are issued to govern the business and community relationships of all our people.

In response to Executive Order No. 12044 I, together with Chairman PETER RODINO of the Judiciary Committee, and others, introduced the bill H.R. 3263 on March 27, 1979. That bill sought to bring about many improvements in the regulatory process and, at the same time, to extend its coverage to govern the regulatory procedures of the so-called independent agencies as well as those agencies which are a part of the Executive Office.

The Judiciary Committee's Subcommittee on Administrative Law, of which I am the chairman, conducted hearings for many months in order to obtain the information which would be necessary to mark up an effective bill which would carry out the purposes of Executive Order No. 12044. We had 10 days of testimony during which we heard more than 100 witnesses from every walk of life, from every section of the business community including small businesses and big businesses alike, from legal scholars, from the officials of many executive department agencies and from independent agencies, from legal scholars and practicing lawyers, from professors and administrative law judges, from organized labor, from public interest groups, Members of Congress, numerous Government officials and others. We benefited greatly from the opinions and experiences of this wide variety of witnesses. There followed 13 days of subcommittee markup before we concluded our amendments to the bill, H.R. 3263, and reported the same to the full Judiciary Committee.

Later the Judiciary Committee held 5 days of markup making sundry amendments to different parts of the bill but largely sustaining the work of the subcommittee.

In fact on May 14, 1979, when we concluded the fifth day of markup by the full committee, we were within about 2 hours of completing our work. Since then we have held the bill, H.R. 3263, in abeyance at the request of those who wish to work out some kind of compromise or agreement on two of the more controversial provisions of the bill; namely, those relating to the so-called legislative veto and those relating to the so-called Bumpers amendment.

Nevertheless, the bill, H.R. 3263, is completed in substantial respect and is an excellent bill which, with or without legislative veto and with or without the Bumpers amendment, could bring about the salutory and meaningful regulatory reform that the executive department, the legislature, the business community, labor, and the public so urgently need.

H.R. 3263 covers the entire spectrum of regulatory reform and would require many innovative techniques to be used by regulatory agencies in the preparation and promulgation of the rules and regulations to which it is directed. The bill would require advance notice to all concerned through a mandated regulatory agenda published twice a year identifying prospectively all major and significant rules that an agency might consider.

It requires regulatory analysis prior to rulemaking for all major and significant rules. As marked up by the Judici-

ary Committee that bill provides the maximum of regulatory flexibility which would take into account the specific needs of smaller businesses, smaller organizations and smaller units of Government.

It would also require flexibility as to geographical sectors since it is obvious, for example, that a rule regulating water must be treated differently in a water rich area such as the Northeastern United States than in an arid area such as the Southwestern part of the United States. H.R. 3263 would require that regulations be drafted in plain English that can be understood by all, that there be an opportunity for public participation in the hearings on ruemaking procedure; and that there be review provisions for those regulations already in effect so that regulations which are no longer necessary could be eliminated and those which no longer meet the problems for which they are intended could be amended and modified. The bill, H.R. 3263, takes into consideration many other factors most of which are not even considered in the present bill S. 299.

One of the inadequacies of the present bill, S. 299, is shown by the following:

The question of whether Treasury regulations issued under the Internal Revenue Code are covered by S. 299 is not resolved by this bill. S. 299 was never considered in the Judiciary Committee nor in any subcommittee thereof. The bill by its terms applies only to the rules and regulations governed by section 553(b) of the Administrative Procedures Act, and that section excepts—excludes—interpretative rules.

Therefore, to the extent that Treasury Department regulations are in fact and in law interpretative rules they would be excluded. Otherwise, they would not be excluded. There are many other "open questions" in the bill which would be avoided by the passage of H.R. 3263.

Mr. Speaker, I respectively submit that the bill, S. 299, is not necessarily a bad bill. Truly, it amounts to nothing. It does not respond at all to, and does not meet, the need for regulatory reform which all of us have heard and considered during the past several years. It certainly does not meet the promise of regulatory reform that the public has come to expect as a result of the clamor of the last few years. After all the clamor and discussion concerning regulatory reform in the past 2 years the public has a right to expect a monumental work which will truly bring about meaningful and useful regulatory reform; instead of that what we are producing here today is a very small molehill.

Mr. Speaker, I hope that no one uses this bill as an excuse for, and that this bill will not lessen the demand for, regulatory reform. And I hope that this poor bill will not be used by the administration, by the Congress, or by anyone else as an excuse for not proceeding further with the bill, H.R. 3263, which is capable of providing the public with meaningful regulatory reform and which could be completed in the remaining days of this 96th Congress.

Mr. KINDNESS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. ROTH).

(Mr. ROTH asked and was given permission to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, I rise in support of the bill, S. 299, the Small Business Regulatory Flexibility Act. S. 299 amends the Administrative Procedure Act to provide for increased flexibility in the application of the Federal rulemaking process to small businesses, small governmental jurisdictions, and small organizations.

This measure further provides that agencies must include economic and red-tape impact analysis for small businesses, small governmental jurisdictions and small organizations whenever it publishes notice of a proposed rulemaking and must give public opportunity to comment on the initial analysis.

Moreover, this measure provides that agencies must publish a final regulatory flexibility analysis when it issues a final rule, explaining how rules can be "tiered" and offer reasons why less burdensome alternatives were rejected. If the Agency fails to do the required analysis or fails to take its own study into account when the final rule is published, the regulation is subject to being struck down by the courts. I want to point out that this act does not deny the statutory responsibility of the agencies. On the contrary, the act makes it perfectly clear to the agencies that they have a congressional mandate to adopt flexible alternatives.

By embracing S. 299, the House can take a quantum leap forward in the reduction of regulatory burdens which small businesses must shoulder. It must be recognized that Federal regulatory policies work a hardship on the small firm that the large is able to escape. Large firms have at their command a myriad of resources—lawyers, accountants, and greater organization that enable them to absorb and sometimes deflect the impact of Federal regulations. We must remember that in order for an economic system to remain competitive, it needs a strong and healthy small business section and I believe S. 299 is a step in the right direction toward insuring this goal.

Mr. HARRIS. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HUGHES).

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I want to say to my colleagues that as a member of the Administrative Law and Governmental Relations Subcommittee of the Committee on the Judiciary, I am extremely disappointed at how the administration has tried to slip this particular bill through as some means of regulatory reform. Our subcommittee has worked for the better part of 10 months in trying to craft a bill that would actually achieve the reform that is needed in the regulatory process.

H.R. 3263 is a much, much superior bill. The bill that was reported out by the Small Business Committee, and the Small Business Committee worked long and hard on, is a much preferable bill. This is not even half a loaf. It does not go anywhere near where we have to go in reforming the regulatory process.

Those that suggest they are cosponsors of this legislation are totally in error. There are no cosponsors to this legislation. This bill is S. 299—a Senate bill. There have been no hearings to look at any aspect of this particular bill, and no Members of Congress in this body have had an opportunity to cosponsor or work their will on this legislation. In fact, I am greatly concerned at this point that the administration will believe that this legislation is an adequate substitute for the bill we should be passing, H.R. 3263.

Mr. LUKEN. Mr. Speaker, I have always been a strong supporter of regulatory flexibility, because I believe burdensome and unnecessary regulations are a threat to the survival of the small businesses of this Nation.

We are currently facing declining productivity and innovation in the United States. Small business can reverse this trend if it is allowed to do so and is not regulated to death. Time and time again, small business has proven itself to be the innovator in our country.

For example, during the period of 1953–73, firms with less than 1,000 employees accounted for almost one-half of major U.S. innovations.

Furthermore, the small business community has proven to be the backbone of our economic system. Recent reports indicate that 43 percent of the GNP is generated by small business and 57 percent of all employees in the United States are employed by small businesses.

In recent years, the regulatory burden for small business has continued to increase to levels that are suffocating their entrepreneurial qualities. This paperwork burden has spread to all types of interaction that small businesses have with the Federal Government. The Small Business Energy Subcommittee, which I chair, has heard testimony from numerous witnesses on the number of forms they must complete to apply for Federal funding and Government procurement. One solar small businessman stated that he has a 4-pound application file, containing 52 different forms, exhibits, and financal statements, requiring no fewer than 1,127 segments of data. Added to this were approximately 5,000 words of narrative descriptions and thousands of calculations and hundreds of hours of preparation time.

Small businesses must be relieved of this unnecessary and costly drain on their time and financial resources. Small business men and women cannot afford to spend the majority of their time completing forms, nor should they have to. If this trend is not reversed, many small businesses will have to close their doors, because they cannot overcome the demands imposed by the Federal Government. We must not let this occur, but we must do everything possible to stand behind the small businesses which are so valuable to our Nation's well-being.

S. 299, the Regulatory Flexibility Act of 1980, is an important step in reducing this disproportionate burden small business face. This legislation tailors regulations to the size and capabilities of those being regulated. Small business will no longer have to bear the brunt of uniform rules and regulations created by Federal agencies. I urge you to join me in supporting this much-needed and valuable legislation. Thank you.●

● Mr. BUTLER. Mr. Speaker, I rise in support of the Regulatory Flexibility Act now pending before us. As the author of the first small business impact bill, H.R. 7739, in the 95th Congress, I am extremely gratified to find that my regulatory approach has now received such widespread support shown in the unanimous enactment of S. 299 by the Senate. I thank my Senate colleagues for their cooperation with me and the other principal House sponsors in the process of revising S. 299. The act we are voting on today is consonant with the objectives of my original bill and H.R. 4660 and creates a viable consensus on those important issues covered by the legislation.

When I served on the Small Business Committee, I was horrified at some of the testimony presented before the committee by small businessmen regarding some Government regulations, and the seeming lack of concern by Federal agencies for the plight of the small businessman in complying with these regulations. Examples are numerous. Horror stories over OSHA regulations are legion, making OSHA a four-letter word among businessmen.

The number and functions of Government regulatory agencies have expanded at an alarming rate in the 1960's and 1970's, and it is obvious that almost every facet of business activity is subject to one or more governmental agencies who have the power to inspect, review, modify or reject the work of private industry; we are talking about regulation which affects nearly every aspect of industry, commerce, agriculture, trade, banking, and even private life.

And this regulation comes to us with an incredible price tag for which the consumer picks up the tab.

The cost of Government regulation in 1979 is estimated to run over $100 billion. Of that amount, $4.8 billion will go to operating costs of the agencies themselves but the cost of compliance with regulation will be over 20 times that. This compliance cost is especially alarming, considering it has doubled since 1974, and is five times its cost in 1970. Regulatory agency staffs now number 80,000, or nearly triple their size in 1970.

The successful small business in this country is the personification of the individual spirit that has characterized the achievements and accomplishments of this Nation. We must do what we can to halt the decline of small business if we are to preserve our free enterprise system. The purpose of well-conceived, meaningful regulations can still be accomplished and small businesses can still be protected if Government agencies will only take small business into consideration when they draft regulations. This act, in my opinion, would help make Government agencies cognizant of small business, would help the agencies implement their statutory goals, and would help preserve small business in our economy.

This legislation directs Federal agencies to consider less burdensome alternatives to regulations with significant economic impact on a substantial number of small entities. The specific requirement to analyze small business needs and regulatory goals will vastly improve the quality of rulemaking and will benefit both society and the affected entities.

Agencies will be required to prepare and publish an initial regulatory flexibility analysis for every proposed rule meeting the impact criterion. This preliminary analysis should generally explain the proposal's goals, the expected impact on small entities and the need for the proposed rule. Such an analysis will also include a preliminary discussion of significant less burdensome atlernatives.

Agencies are invited to go beyond the alternatives presently in use (such as multitiered regulations, reduced paperwork and additional time for compliance and adopt innovative approaches for regulatory flexibility, for example, the EPA "bubble" approach. Additional innovative approaches are especially desirable for the fulfillment of statutory goals with the minimum cost to the affected entities and the public that would inevitably bear a portion of the additional costs.

Let me emphasize that this act does not, in any way, comprise the statutory mission of the agencies. The act simply clarifies the authority of the agencies to adopt flexible alternatives. Where the underlying statute does not specifically preclude the consideration of flexible alternatives, Congress confirms the authority of every agency to incorporate flexible alternatives in its promulgation of rules.

I would like to add that this act also provides an excellent vehicle for agencies to fulfill their obligation under the Small Business Act, other applicable Federal laws and applicable executive orders and memoranda that direct federal agencies to promote and protect the interests of small business. There have been numerous instances of the use of regulatory flexibility approaches to strengthen small business' ability to compete in the marketplace. The term "significant economic impact" was deliberately used to convey the intent of Congress that agencies would continue their practice of utilizing the regulatory flexibility analysis framework to develop rules that will benefit small businesses directly, as well as reducing the burdens on small businesses.

In other words, because the agencies are required to identify all proposed rules with significant economic impact," both adverse and positive, they will consequently be considering alternatives which also promote the health and well-being of small businesses. This benefit from this legislation is particularly welcome news at a time when vigorous small business activity would go far toward reducing inflation and unemployment and promoting the Nation's economic health.

After the receipt of comments from the affected small entities, from the Chief Counsel for Advocacy, if any, and from other interested parties, the agency shall prepare and then publish a final regulatory flexibility analysis. Such analysis shall explain the basis for the adoption of the final rule, and shall include discussion of the significant flexible alternatives.

The act does not require that an agency adopt a rule establishing differing compliance standards. exemptions or any other alternative to the proposed rule. It simply provides that the agency must explain its rejection of any reasonable alternative rule which would have been significantly less burdensome or significantly more beneficial to small entities. The act also insures that agencies which determine that the inclusion of small entities poses a significant burden to the small entities and is also of minimal value to the realization of the statutory goals will be certain to exempt those small entities from the scope of the final rule.

This legislation also recognizes that unforeseen events will occasionally preclude timely compliance with the initial and final regulatory flexibility analysis requirements (sections 603 and 604). Under certain conditions, an agency is permitted to waive or delay the preparation and publication of the initial regulatory flexibility analysis.

However, section 608(b) clearly provides that a final regulatory analysis must be completed for every final rule.

Thus, even rules issued in final (pursuant to section 553(b)(3)(B) of title 5, the "good cause" exception) without a proposed rule published for comment will be subject to a final regulatory analysis.

Although the provision for judicial review in S. 299 is less encompassing than the review applicable in H.R. 4660, this provision nevertheless insures that Government agencies will take seriously their obligation to comply with this new mandate. Current implementation of the concept of regulatory flexibility varies greatly among the agencies. The judicial review provision is designed to eliminate undesirable interlocutory or purely procedural challenges to rulemaking proceedings, but leave unimpaired the present right under the Administrative Procedure Act of review of the final rule. Judicial review of the lack of or adequacy of the regulatory flexibility analysis is permitted to the extent it is relevant to a review of the validity of the final rule. While the compliance of an agency with respect to particular provisions of this legislation is not subject to independent judicial review, such matters may be relevant to a determination of the reasonableness of the final rule.

Thus, unlike the situation regarding environmental impact statements, the failure to perform a regulatory analysis would not be grounds for injunctive relief in advance of the issuance of the final rule. However, the failure to perform an analysis of a reasonable alternative consistent with the desired regulatory goal may be adequate grounds

for a determination that the final rule is unreasonable. Similarly, an agency's unreasonable determination not to perform a regulatory flexibility analysis may provide a basis for invalidation of the final rule, but would not be grounds for interlocutory relief.

The requirement of agenda publication, section 602, and the public notification requirements of section 609 will go far toward assuring adequate small business participation in the formulation of proposed rules with significant small business impact. For example, such a provision could have prevented the recent failure of the Department of Energy (DOE) to consider certain flexible alternatives in its recent proposal of appliance energy efficiency standards. Because the advance notification requirements were not in place, DOE overlooked informing the affected small business trade associations that the Department was proposing to include a testing requirement beyond that required by the Federal Trade Commission that had been developed months earlier. By DOE's own estimate, the new requirement would force some 65 percent of the small appliance manufacturers out of business.

Specifically with regard to small manufacturers of refrigerators, freezers, ranges/ovens, water heaters and room air conditioners, the Department indicated that these manufacturers had a 0.0 percent chance of successfully financing compliance with the new requirement. In its Economic Analysis, DOE simply stated that this was "an acceptable impact."

Furthermore, compliance with the provisions of section 603 requiring an initial regulatory flexibility analysis would have prevented DOE from failing to consider flexible alternatives at the time of the proposal. The Department did not consider the desirability of the alternative of not imposing the additional burdensome testing requirements, nor did it evaluate the impact of the proposal on competition in the industry.

When this act becomes effective, perhaps the Department of Energy will, at last, pay more attention to its statutory mandate and Executive directives to promote and protect small businesses. If the Department still entertains any doubts regarding its authority to promulgate flexible alternatives under its existing laws to aid small businesses and to alleviate small business burdens, this legislation resolves all such doubts and directs DOE to consider and promulgate such alternatives where appropriate.

Let me add a few words about the role of the Chief Counsel for Advocacy of the U.S. Small Business Administration. Under Public Law 94-305, the Chief Counsel for Advocacy is already required to file reports with the President and the Congress. This new law simply specifies the content of one of those reports. The Chief Counsel is already empowered under Public Law 94-305 to compel agency disclosure of the pertinent information required to perform these duties. It is expected that the Chief Counsel for Advocacy's monitoring efforts will insure compliance with the new law and aid Federal agencies in developing effective regulatory alternatives. The Office of Advocacy should act as a catalyst for innovative experimentation with regulatory alternatives by the agencies.

The legislation also provides that the Chief Counsel for Advocacy be permitted to appear as an amicus curiae in any action in any U.S. court to review a rule. He will present the views of the small business community with respect to the effect of a rule on small businesses. This judicial role complements his current role as the primary Federal regulatory watchdog for small business at the agency rulemaking stage. Courts should profitably draw from the considerable experience and expertise of the Chief Counsel in considering the unchartered waters of this regulatory reform. This provision provides an additional incentive for agencies to comply with the new legislation.

As the author of the first small business impact bill, H.R. 7739, I am extremely pleased to have played a part in helping this regulatory flexibility legislation be enacted into law. I am convinced that this act will mark the most significant legislative achievement for small business since the passage of the Small Business Investment Act 22 years ago.●

● Mr. RUSSO. Mr. Speaker, it is with extreme pleasure that I rise today to urge the House to act favorably upon legislation which embodies the concept of regulatory flexibility for small business. Through the majority of work done on H.R. 4660, I was the chairman of the House Subcommittee on Special Small Business Problems. Since that was the case, I believe it only appropriate that for the record I state the history of this concept.

James W. Morrison, who at the time was on Senator GAYLORD NELSON's staff, developed the concept of regulatory flexibility in August 1977. Senator NELSON, along with Senator JOHN CULVER, introduced the concept as a bill, S. 1974. It passed the Senate unanimously last Congress.

Last Congress several regulatory bills were introduced and referred to my subcommittee. The two primary bills were H.R. 7739 and H.R. 10632.

H.R. 7739 was introduced by Representative M. CALDWELL BUTLER of Virginia. The thrust of the bill was to force Federal agencies to do impact statements on new regulations.

H.R. 10632 was introduced by Representative ANDY IRELAND of Florida. The purpose of this bill was to give Federal agencies flexibility in the issuance of Federal regulations.

The concepts in these two bills were merged and formed the basis for H.R. 4660. The interest and hard work of the members of the subcommittee were instrumental in the forging of our final product. The subcommittee also was fortunate to have had Mr. Morrison on board as a consultant during our hearing process for a period of 6 months.

Representative ANDY IRELAND, a member of the subcommittee, became chairman upon my departure and has done a most commendable job of promoting regulatory flexibility. He has perservered and after endless meetings with various parties, he has brought us today to the brink of a new era in the relationship between the Federal Government and the small business community. The Senate on August 6 passed S. 299, thanks to the diligent efforts of many people. Senators JOHN CULVER, GAYLORD NELSON, and PAUL LAXALT deserve special praise.

S. 299 embodies the concept of our own H.R. 4660, and in fact, improves the bill in several areas. We need this legislation.

In poll after poll, growing Federal regulation and its accompanying paperwork demands rank near the top and often are the No. 1 complaint of the Nation's small businessmen and women. Our Nation has a mixed economy. Public and private sectors necessarily interact. The Federal Government, through some regulation, attempts to bolster competition among businesses by laws designed to eliminate restraint of trade. Conversely, certain business activities are directly regulated by the Government. In effect, this substitutes Government decisionmaking for the normal workings of the marketplace. All types of Federal regulation have grown so much in recent years, that virtually every industry and household is now affected in often highly visible ways.

The time to act is at hand. We have the vehicle before us. Let us pass S. 299 and send the bill to the President.●

● Mr. BALDUS. Mr. Speaker, today is a special day for the small business men and women in this country. At last, we, in Congress, are heeding the pleas that they have long made to us to reduce the crush of Federal regulation that they must face on a daily basis.

This bill, S. 299, not only admits that such a problem exists, it addresses that problem as well. If we pass this bill today, in the future, Federal bureaucrats will have to understand, as well as be more sensitive to, the impact of the regulation they generate, and, we will all be better off because of it.

In the last Congress, as a Small Business Subcommittee chairman, I strongly and vigorously supported regulatory flexibility in several different legislative proposals. In this 96th Congress, S. 299 is the culmination of a long search for substantive regulatory flexibility for the small business community. I am especially pleased that this bill also recognizes that small organizations and small governmental jurisdictions are also in need of the same relief.

The primary sponsors of H.R. 4660—Representatives ANDY IRELAND, MARTY RUSSO, and M. CALDWELL BUTLER, should be highly commended for their perseverance in this field. President Carter, who earlier issued an Executive order calling for regulatory flexibility, should also be thanked for his assistance, and it is my hope that he will sign this bill as soon as possible.

Small business makes a tremendous contribution to our Nation's economy. Small business, as defined by the Small Business Administration, constitutes over 13 million businesses, comprises about 97 percent of all U.S. businesses, and accounts for more than one-half of all pri-

vate employment in this country. Small business also accounts for 43 percent of business output, and one-third of the gross national product. Small businesses account for nearly all of the major innovations and inventions that move our technology ahead, as they have since World War II, and small business increases employment by about 4 percent per year as compared to the fortune 500 companies which increase it only about 0.07 percent per year. In terms of economic growth, the record of small business is about twice that of the fortune 500 companies, again, by percent.

For all of these vital contributions small business makes to our economy and the American way of life itself, small business asks very little from us in return. The small business community is one of entrepreneurs that have made it on their own, and believe that they can continue to make it on their own, maintaining their exceptional record of achievement, if they are not unduly interfered with by Government. The Federal help that these 13 million small businesses do receive each year is in the form of 270,000 loans from the Small Business Administration, but the recipients of these loans promise to return the money to the Government, with interest, and on time.

The clearest and most fervent request of these independent, small businessmen and women to the Federal Government is one which distinguishes them from the other special interest groups the Federal Government deals with. In exchange for their substantial contributions to our Nation's economy, they ask not for a handout, but only that the Government stop unreasonably regulating the environment in which they must function.

While the Government will always require a certain amount of information from business and while some regulation of industry may be inevitable, it should and can be accomplished in a reasonable and an equitable manner. It is clear that as it now stands, the amount of Government regulation has grown to self-defeating proportions which is deleterious to small business' very existance.

Mr. Speaker, S. 299 is a major first step in completing the task of reducing the regulation which stifles small businesses in a time when we need small businesses more than ever.

I urge the House to pass this bill.●

● Mr. RATCHFORD. Mr. Speaker, I welcome the opportunity to take a moment today to voice my support for S. 299, the Regulatory Flexibility Act.

My colleagues in the House have all become more conscious of the burdens which Federal regulations place on business and industry, and of the heavy responsibility which rests with the Congress to insure that regulations are neither excessive nor unnecessary. The regulatory process poses particularly large burdens for small businesses, which have neither the capacity nor the resources to challenge or to comply with Federal rules and regulations. It is this concern for the plight of the small businessman to which S. 299 is addressed.

Every week, when I return to Connecticut's 5th District, I hear the frustration of small businessmen who are being increasingly overwhelmed by the burdens of Federal regulation. The White House Conference on Small Business which was convened this January reaffirmed this message, and among the conference recommendations given the highest priority were calls for the establishment of greater regulatory flexibility with regard to small business. The White House Conference on Small Business reminded us all that we cannot treat large corporations and small firms as though they were identical, and the legislation before us today reflects the extent to which Congress has heard and responded to that important message.

The Regulatory Flexibility Act will take some crucial first steps in recognizing the special needs of small business. The legislation requires Federal agencies to analyze the likely impact of their regulations on small, privately owned businesses and other concerns. The bill also requires each agency to publish semiannual lists of rules it anticipates issuing which are likely to have a serious economic impact on small businesses and other concerns. Finally, provisions of S. 299 are designed to encourage small businesses to participate more fully in the Federal regulatory process.

The above provisions are significant, in that they represent the beginning of a growing awareness that regulations must be sensitive to the situation of small businessmen while protecting the public interest. In addition to these advances in the development of new Federal regulation, S. 299 also addresses problems in existing Federal regulations by requiring agencies to review all new and existing rules within 10 years. I have long supported the concept of "sunset" legislation which would mandate a periodic review of Federal programs to assess their effectiveness, and I strongly applaud the use of this type of mechanism in the Regulatory Flexibility Act to protect small business from excess in existing regulations.

Mr. Speaker, I have little doubt that this landmark legislation for regulatory flexibility with regard to small businesses will receive overwhelming approval by my colleagues in the House. The need for greater sensitivity in applying regulations to small businesses is all too apparent, and the merits of this legislation are equally clear. I simply wish to register my strong support for the Regulatory Flexibility Act, and to express my deep hope that this legislation represents the beginning of an honest effort in Congress to shape a regulatory process which serves the public interest while remaining manageable for the small businessmen who have contributed so much to our Nation's strength and prosperity.●

● Mr. RODINO. Mr. Speaker, the Congress, working with the administration, has been moving toward an extraordinary record in regulatory reform. In the last 3 years, we have passed major deregulation bills covering the airline, trucking, and banking industries and we are working on railroads, communications, and a comprehensive overhaul of the regulatory process.

The Regulatory Flexibility Act, which the House is considering today, is a vital part of that program. It will help the small businesses of our country and thereby strengthen competition.

Too many Federal regulations and paperwork requirements are written with big companies in mind, without considering the effect on small business. These rules can have a disproportionate and unfair impact on small businesses, reducing their ability to compete.

The Regulatory Flexibility Act requires all regulators to assess the impact of a proposed rule or report on small organizations. When the impact is significant, the agency must consider alternative approaches, such as requirements tailored to the size of the organizations affected and performance standards that give more leeway on how to comply. The creative approaches to regulation in this act will ease the burden on small business without sacrificing our commitment to protect the public's health and safety.

This act is drafted to help small businesses deal with the regulatory process. Many valid regulations are tied up in years of litigation, and small businesses often cannot afford the legal costs to participate. The judicial review standard in this bill is carefully designed to avoid needless litigation.

I want to commend the chairman of our Subcommittee on Administrative Law and Governmental Relations, Mr. DANIELSON; Mr. HARRIS, the manager of this bill, S. 299; and all of my colleagues who have supported the major deregulation bills that we have passed in the 96th Congress. S. 299 is a very significant part of the overall regulatory reform effort, and I urge my colleagues to vote for its passage.

□ 1530

Mr. HARRIS. Mr. Speaker, I want to recognize all those who worked so hard on this bill. The fact of the matter is that this is a good bill. I think it is time that we remove the tremendous burden of unnecessary regulation upon the small business community. I think they deserve it; I think they need it; I think our economy will benefit from it.

Mr. Speaker, I urge the passage of this bill and yield back the remainder of my time.

Mr. REGULA. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. LENT).

(Mr. LENT asked and was given permission to revise and extend his remarks.)

● Mr. LENT. Mr. Speaker, I rise in support of S. 299, the Small Business Regulatory Flexibility Act.

As a cosponsor of similar legislation, the Smaller Enterprise Regulatory Improvement Act (H.R. 4660), I am gratified that legislation requiring Federal agencies to assess the small business impact of their regulation is on the agenda for final congressional action. This legislation was unanimously passed by the Senate last month. Prompt and positive action today can insure that this legislation is enacted without further delay.

Though I have long sought comprehensive improvements to administrative rulemaking to alleviate unnecessary and costly Federal regulation, I believe expeditious action on behalf of small business, small organizations, and small governmental jurisdictions—"small entities"—is absolutely necessary.

Small organizations face special burdens resulting from Federal regulation; uniformly applied Federal regulations often have a disproportionately greater economic impact on small entities unable to benefit from large-firm economies of scale. Overly burdensome Federal regulations have adversely affected competition and created barriers to innovation and creativity in many industries. Paperwork such as reporting and record-keeping requirements pose special hardships on firms not having in-house accounting and legal departments; too often, compliance with such Federal regulatory requirements necessitates that costly outside assistance be retained.

This legislation is designed to alleviate this counterproductive situation by providing a measure of flexibility in the application of the Federal rulemaking process to small entities. Where necessary, agencies are directed to institute procedures including two-tiered rulemaking and exemptions from all or part of some rules to help reduce the disparate economic impact of rules and regulations on small entities. By assuring that the Small Business Administration is informed of proposed agency rules likely to have a significant economic impact on a substantial number of small entities, this legislation can increase small business participation in the Federal rulemaking process—a process which for too long has remained isolated from the organizations it most affects.

Along with calling for periodic review of new and existing rules affecting small entities, the bill also contains a provision waiving the requirement that a regulatory flexibility analysis be prepared in those cases where a proposed regulation has no significant economic effect on a substantial number of small businesses.

On balance, this legislation makes sense and I urge my colleagues to support passage of S. 299 so this legislation can be enacted into law without further delay.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken.

Mr. HUGHES. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

Pursuant to clause 3 of rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum will be considered withdrawn.

GENERAL LEAVE

Mr. HARRIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill, S. 299.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

NATIONAL AQUACULTURE ACT

Mr. BREAUX. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 20) to provide for the development of aquaculture in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 20

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aquaculture Act of 1980".

FINDINGS, PURPOSE, AND POLICY

SEC. 2. (a) FINDINGS.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 10 per centum of world seafood production, less than 3 per centum of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology—

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water-use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) PURPOSE.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan; and

(3) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquacultural efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) POLICY.—Congress declares that aquaculture has the potential for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

NATIONAL AQUACULTURE DEVELOPMENT PLAN

SEC. 4. (a) IN GENERAL.—(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection (d), beginning not later than six months after the date of enactment of this Act, the Secretaries shall consult with other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretaries shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) If the Secretaries deem it to be appropriate, they may establish, and appoint the members of, an advisory committee to assist in the initial development of the Plan. Individuals appointed to the advisory committee shall be knowledgeable or experienced in the principles and practices of aquaculture.

The House amendment to S. 1625 is of a technical nature and makes no substantive change. I urge my colleagues to concur in the amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HELMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TALMADGE. Mr. President, 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. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 1½ hours and that Senators may speak therein.

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

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, today I am making my 22d speech on a subject of the United States Senate. I will relinquish the floor at any time any Senator wishes to speak and I will be glad to also relinquish the floor to accomplish the transaction of any business. At the moment, there is none that is cleared, but it may be that some business may be cleared before the day is over. It is also possible that some business can be cleared for tomorrow and the remaining days of the week. But for now there is nothing but waiting to be done.

In the event I do yield the floor to another Senator or for the purpose of suggesting the absence of a quorum before completing my statement, Mr. President, I ask unanimous consent that my statement may not show an interruption in the RECORD and that it appear today just before the statement of the program for tomorrow and the motion to recess.

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

(The remarks of Mr. ROBERT C. BYRD at this point on the United States Senate are printed later in the RECORD, by unanimous consent.)

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nomination of Barbara S. Thomas of New York to be a member of the Securities and Exchange Commission.

Mr. BAKER. Mr. President, reserving the right to object, and I will not object, the purpose of the reservation is to provide an opportunity to advise the majority leader that the nomination of Barbara S. Thomas is cleared on our Executive Calendar and we have no objection to the consideration and confirmation.

The PRESIDING OFFICER. Without objection, it is so ordered. The nomination will be stated.

SECURITIES AND EXCHANGE COMMISSION

The legislative clerk read the nomination of Barbara S. Thomas, of New York, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President of the United States be immediately notified of the confirmation of the nomination.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection it is so ordered.

SENATE CONCURRENT RESOLUTION 121—TO CORRECT THE ENROLLMENT OF S. 299

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. BAKER and myself, we send a concurrent resolution to the desk to make a technical correction in S. 299 and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The legislative clerk read as follows:

Senate concurrent resolution (S. Con. Res. 121) to correct the enrollment of S. 299.

The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made:

In section 608(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . ."

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

INFANT FORMULA ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 999, S. 2490, the Infant Formula Act of 1980.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not, the reservation is for the purpose of advising the majority leader that Calendar Order No. 999 is cleared on our calendar, and we have no objection to its consideration and passage.

Mr. ROBERT C. BYRD. Mr. President, I thank the majority leader.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2490) to provide certain requirements for infant formula, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Labor and Human Resources with an amendment to strike all after the enacting clause and insert the following:

That this Act may be cited as the "Infant Formula Act of 1980".

SEC. 2. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 411 the following new section:

"REQUIREMENTS FOR INFANT FORMULAS

"SEC. 412. (a)(1) An infant formula shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by this section;

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the quality control requirements prescribed by the Secretary under this section.

"(2) The Secretary may by regulation—

"(A) revise the list of nutrients provided under subsection (g);

"(B) revise the required level for any such nutrients;

"(C) establish requirements for quality factors for such nutrients; and

"(D) establish the quality control procedures as the Secretary determines necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records). Quality control procedures prescribed by the Secretary shall include the periodic testing of infant formula to determine whether such infant formula is in compliance with this section.

"(b)(1) On the 90th day after the date of the enactment of this section, and on each 90th day thereafter, a manufacturer of infant formula shall notify the Secretary that each infant formula manufactured by such manufacturer provide the nutrients required under subsection (g). Such notification requirement shall expire upon the effective date of regulations relating to qualify control procedures prescribed by the Secretary under subsection (a)(2)(D).

"(2) Not later than the 90th day before the first processing of any infant formula for commercial or charitable distribution for human consumption, the manufacturer shall notify the Secretary whether—

"(A) such infant formula provides nutrients in accordance with this section and

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The SPEAKER pro tempore. The unfinished business is on the question of suspending the rules and passing the Senate bill, S. 299.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. HARRIS) that the House suspend the rules and pass the Senate bill, S. 299.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INSTRUCTING SECRETARY OF SENATE TO MAKE CHANGE IN ENROLLMENT OF S. 299

Mr. DANIELSON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 121) instructing the Secretary of the Senate to make a change in the enrollment of S. 299, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. LEVITAS. Mr. Speaker, reserving the right to object, would the gentleman from California (Mr. DANIELSON) explain what this does.

Mr. DANIELSON. Mr. Speaker, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from California.

Mr. DANIELSON. I will be pleased to explain.

This is simply to make a correction in the enrollment of the bill as it left the other body, and it follows upon the passage of S. 299 here in order that both Houses concur in correcting the enrollment of the bill. It does not make an amendment in substance. It cross-references two sections of the bill.

Mr. LEVITAS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California (Mr. DANIELSON)?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 121

Resolved by the Senate (the House of Representatives concurring), The Secretary of the Senate is instructed that in the enrollment of S. 299 the following change shall be made: In section 606(b), in lieu of the word "An" insert the following: "Except as provided in section 605(b), an . . .".

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 4310, RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT ACT OF 1979

Mr. BIAGGI. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4310) to amend the Federal Boat Safety Act of 1971 to improve recreational boating safety and facilities through the development, administration, and financing of a national recreational boating safety and facilities improvement program, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York? The Chair hears none, without objection, appoints the following conferees: Messrs. ASHLEY, MURPHY of New York, BIAGGI, OBERSTAR, HUGHES, ULLMAN, ROSTENKOWSKI, VANIK, CORMAN, MCCLOSKEY, PRITCHARD, EVANS of Delaware, CONABLE, and DUNCAN of Tennessee.

There was no objection.

RAIL ACT OF 1980

Mr. FLORIO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 7235) to reform the economic regulation of railroads, and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 7235, with Mr. AUCOIN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Friday, September 5, 1980, title III was open for amendment at any point. Pending was an amendment offered by the gentleman from West Virginia (Mr. STAGGERS).

The Chair recognizes the gentleman from West Virginia (Mr. STAGGERS).

Mr. STAGGERS. Mr. Chairman, I ask unanimous consent to be allowed to proceed for 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. STAGGERS. Mr. Chairman, I take one moment to say to one of my colleagues, the gentleman from Florida (Mr. GIBBONS) that I am very sorry about the remarks I made to the gentleman the other day concerning this bill. I was misinformed about the gentleman's intentions and what he was trying to do.

The gentleman from Florida, SAM GIBBONS, is one of the real gentlemen of this House, one who has served his Nation well, who has been a good friend and a great American, and I am sure that whatever he decides to do will be for the right, as he sees it. I believe that his constituents were wise in sending him here, and certainly I hope that they will send him back as he deserves to be reelected to the House.

Mr. Chairman, I rise in support of my amendment, an amendment that has been carefully crafted since H.R. 7235 was last on the House floor in July. Mr. RAHALL and Mr. LEE are also cosponsors of this compromise—they have worked diligently to turn out a bill that is supported by groups as diverse as the AFL-CIO and the American Farm Bureau. I believe this compromise deserves the support of each and every Member of the House who is concerned about the deteriorating condition of our Nation's rail system.

What we have attempted to do in this amendment is give the railroads the flexibility to price transportation services according to the marketplace, up to a certain threshold level. Over that threshold level, the ICC retains jurisdiction over rates. The amendment gradually lifts that threshold level over a period of 4 years, but the threshold never rises above 180 percent of variable cost. Similarly, we have provided a zone of freedom for railroads to raise rates without the fear of having such increases suspended or investigated unless the rate is 20 percentage points above the threshold. I emphasize that these are indeed gradual, orderly forms of pricing flexibility that will not bring chaos to rail shippers.

Other provisions of the compromise are also significantly improved. The surcharge proposal permits a railroad to recover its costs expended in making a particular movement, but provides protection for short-line railroads and shippers. Members from agricultural States have impressed upon us the need to repeal demand-sensitive rates and the need for a shipper's needs board to address the continuing concerns of rail shippers. This we have done. Intrastate rail movements rates will continue to be regulated by State regulatory agencies with uniformity and consistency. Provisions are included in the compromise that provide transaction assistance for lines of the Rock Island and the Milwaukee Railroads that have been abandoned and for which there are purchasers and the necessary legal protections for the Rock Island Railroad to permit the benefits we enacted in the Rock Island Transition Act to flow without further delay.

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I would just like to mention a few of the cosponsors of this bill, the ones who are for it now:

The American Farm Bureau supports this compromise.

The United Mine Workers.

The Railroad Labor Executives Association.

The Brotherhood of Railway and Airline Clerks.

The American Short Line Railroad Association.