104TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
104–76

UNFUNDED MANDATES REFORM ACT OF 1995

MARCH 13, 1995.—Ordered to be printed

Mr. CLINGER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1), to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Unfunded Mandates Reform Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to strengthen the partnership between the Federal Government and State, local, and tribal governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and

tribal governments without adequate Federal funding, in a manner that may displace other essential State, local, and tribal governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and tribal governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) to promote informed and deliberate decisions by Congress on the appropriateness of Federal mandates in any particular instance;

(5) to require that Congress consider whether to provide funding to assist State, local, and tribal governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) to establish a point-of-order vote on the consideration in the Senate and House of Representatives of legislation containing significant Federal intergovernmental mandates without providing adequate funding to comply with such mandates;

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments and the private sector before adopting such regulations, and ensuring that small governments are given special consideration in that process; and

(8) to begin consideration of the effect of previously imposed Federal mandates, including the impact on State, local, and tribal governments of Federal court interpretations of Federal statutes and regulations that impose Federal intergovernmental mandates.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) except as provided in section 305 of this Act, the terms defined under section 421 of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) shall have the meanings as so defined; and

(2) the term ''Director'' means the Director of the Congressional Budget Office.

SEC. 4. EXCLUSIONS.

This Act shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress and any provision in a proposed or final Federal regulation that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

(6) the President designates as emergency legislation and that the Congress so designates in statute; or

(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).

SEC. 5. AGENCY ASSISTANCE.

Each agency shall provide to the Director such information and assistance as the Director may reasonably request to assist the Director in carrying out this Act.

TITLE I—LEGISLATIVE ACCOUNTABILITY AND REFORM

SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND REFORM.

(a) IN GENERAL.—Title IV of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) inserting before section 401 the following:

"PART A—GENERAL PROVISIONS"; and

(2) adding at the end thereof the following new part:

"PART B—FEDERAL MANDATES

"SEC. 421. DEFINITIONS.

"For purposes of this part:

"(1) AGENCY.—The term 'agency' has the same meaning as defined in section 551(1) of title 5, United States Code, but does not include independent regulatory agencies.

"(2) AMOUNT.—The term 'amount', with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

"(3) DIRECT COSTS.—The term 'direct costs'—

"(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

"(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

"(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

"(C) shall be determined on the assumption that—

"(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

"(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

"(D) shall not include—

"(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

"(I) to comply with or carry out all applicable Federal, State, local, and tribal laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

"(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

"(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

"(I) compliance with the Federal mandate; or

"(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

"(4) DIRECT SAVINGS.—The term 'direct savings', when used with respect to the result of compliance with the Federal mandate—

"(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to

any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

"(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

"(5) FEDERAL INTERGOVERNMENTAL MANDATE.—The term 'Federal intergovernmental mandate' means—

"(A) any provision in legislation, statute, or regulation that—

"(i) would impose an enforceable duty upon State, local, or tribal governments, except—

"(I) a condition of Federal assistance; or

"(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B)); or

"(ii) would reduce or eliminate the amount of authorization of appropriations for—

"(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

"(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

"(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

"(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

"(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to State, local, or tribal governments under the program; and

"(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing re-

quired services that are affected by the legislation, statute, or regulation.

"(6) FEDERAL MANDATE.—The term 'Federal mandate' means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

"(7) FEDERAL PRIVATE SECTOR MANDATE.—The term 'Federal private sector mandate' means any provision in legislation, statute, or regulation that—

"(A) would impose an enforceable duty upon the private sector except—

"(i) a condition of Federal assistance; or

"(ii) a duty arising from participation in a voluntary Federal program; or

"(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

"(8) LOCAL GOVERNMENT.—The term 'local government' has the same meaning as defined in section 6501(6) of title 31, United States Code.

"(9) PRIVATE SECTOR.—The term 'private sector' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

"(10) REGULATION; RULE.—The term 'regulation' or 'rule' (except with respect to a rule of either House of the Congress) has the meaning of 'rule' as defined in section 601(2) of title 5, United States Code.

"(11) SMALL GOVERNMENT.—The term 'small government' means any small governmental jurisdictions defined in section 601(5) of title 5, United States Code, and any tribal government.

"(12) STATE.—The term 'State' has the same meaning as defined in section 6501(9) of title 31, United States Code.

"(13) TRIBAL GOVERNMENT.—The term 'tribal government' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians.

"SEC. 422. EXCLUSIONS.

"This part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

"(1) enforces constitutional rights of individuals;

"(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

"(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

"(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

"(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

"(6) the President designates as emergency legislation and that the Congress so designates in statute; or

"(7) relates to the old-age, survivors, and disability insurance program under title II of the Social Security Act (including taxes imposed by sections 3101(a) and 3111(a) of the Internal Revenue Code of 1986 (relating to old-age, survivors, and disability insurance)).

"SEC. 423. DUTIES OF CONGRESSIONAL COMMITTEES.

"(a) IN GENERAL.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character that includes any Federal mandate, the report of the committee accompanying the bill or joint resolution shall contain the information required by subsections (c) and (d).

"(b) SUBMISSION OF BILLS TO THE DIRECTOR.—When a committee of authorization of the Senate or the House of Representatives orders reported a bill or joint resolution of a public character, the committee shall promptly provide the bill or joint resolution to the Director of the Congressional Budget Office and shall identify to the Director any Federal mandates contained in the bill or resolution.

"(c) REPORTS ON FEDERAL MANDATES.—Each report described under subsection (a) shall contain—

"(1) an identification and description of any Federal mandates in the bill or joint resolution, including the direct costs to State, local, and tribal governments, and to the private sector, required to comply with the Federal mandates;

"(2) a qualitative, and if practicable, a quantitative assessment of costs and benefits anticipated from the Federal mandates (including the effects on health and safety and the protection of the natural environment); and

"(3) a statement of the degree to which a Federal mandate affects both the public and private sectors and the extent to which Federal payment of public sector costs or the modification or termination of the Federal mandate as provided under section 425(a)(2) would affect the competitive balance between State, local, or tribal governments and the private sector including a description of the actions, if any, taken by the committee to avoid any adverse impact on the private sector or the competitive balance between the public sector and the private sector.

"(d) INTERGOVERNMENTAL MANDATES.—If any of the Federal mandates in the bill or joint resolution are Federal intergovernmental mandates, the report required under subsection (a) shall also contain—

"(1)(A) a statement of the amount, if any, of increase or decrease in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable for activities of State, local, or tribal governments subject to the Federal intergovernmental mandates;

"(B) a statement of whether the committee intends that the Federal intergovernmental mandates be partly or entirely unfunded, and if so, the reasons for that intention; and

"(C) if funded in whole or in part, a statement of whether and how the committee has created a mechanism to allocate the funding in a manner that is reasonably consistent with the expected direct costs among and between the respective levels of State, local, and tribal government; and

"(2) any existing sources of Federal assistance in addition to those identified in paragraph (1) that may assist State, local, and tribal governments in meeting the direct costs of the Federal intergovernmental mandates.

"(e) PREEMPTION CLARIFICATION AND INFORMATION.—When a committee of authorization of the Senate or the House of Representatives reports a bill or joint resolution of public character, the committee report accompanying the bill or joint resolution shall contain, if relevant to the bill or joint resolution, an explicit statement on the extent to which the bill or joint resolution is intended to preempt any State, local, or tribal law, and, if so, an explanation of the effect of such preemption.

"(f) PUBLICATION OF STATEMENT FROM THE DIRECTOR.—

"(1) IN GENERAL.—Upon receiving a statement from the Director under section 424, a committee of the Senate or the House of Representatives shall publish the statement in the committee report accompanying the bill or joint resolution to which the statement relates if the statement is available at the time the report is printed.

"(2) OTHER PUBLICATION OF STATEMENT OF DIRECTOR.—If the statement is not published in the report, or if the bill or joint resolution to which the statement relates is expected to be considered by the Senate or the House of Representatives before the report is published, the committee shall cause the statement, or a summary thereof, to be published in the Congressional Record in advance of floor consideration of the bill or joint resolution.

"SEC. 424. DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

"(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(1) CONTENTS.—If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of—

"(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

"(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

"(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local, or tribal governments for activities subject to the Federal intergovernmental mandates.

"(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

"(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.—For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

"(1) CONTENTS.—If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

"(2) ESTIMATES.—Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of—

"(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

"(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

"(3) ESTIMATE NOT FEASIBLE.—If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

"(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.—If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

"(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.—If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

"SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

"(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider—

"(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

"(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless—

"(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

"(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct costs of such mandate, and—

"(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

"(ii) identifies any appropriation bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

"(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriations for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either—

"(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

"(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

"(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

"(III) provides that such mandate shall—

"(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

"(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

"(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

"(b) RULE OF CONSTRUCTION.—The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

"(c) COMMITTEE ON APPROPRIATIONS.—

"(1) APPLICATION.—The provisions of subsection (a)—

"(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

"(B) shall apply to—

"(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

"(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

"(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

"(iv) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendments in disagreement between the two Houses to any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives.

"(2) CERTAIN PROVISIONS STRICKEN IN SENATE.—Upon a point of order being made by any Senator against any provision listed in paragraph (1)(B), and the point of order being sustained by the Chair, such specific provision shall be deemed stricken from the bill, resolution, amendment, amendment in disagreement, or conference report and may not be offered as an amendment from the floor.

"(d) DETERMINATIONS OF APPLICABILITY TO PENDING LEGISLATION.—For purposes of this section, in the Senate, the presiding officer of the Senate shall consult with the Committee on Governmental Affairs, to the extent practicable, on questions concerning the applicability of this part to a pending bill, joint resolution, amendment, motion, or conference report.

"(e) DETERMINATIONS OF FEDERAL MANDATE LEVELS.—For purposes of this section, in the Senate, the levels of Federal mandates for a fiscal year shall be determined based on the estimates made by the Committee on the Budget.

"SEC. 426. PROVISIONS RELATING TO THE HOUSE OF REPRESENTATIVES.

"(a) ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider a rule or order that waives the application of section 425.

"(b) DISPOSITION OF POINTS OF ORDER.—

"(1) APPLICATION TO THE HOUSE OF REPRESENTATIVES.—This subsection shall apply only to the House of Representatives.

"(2) THRESHOLD BURDEN.—In order to be cognizable by the Chair, a point of order under section 425 or subsection (a) of this section must specify the precise language on which it is premised.

"(3) QUESTION OF CONSIDERATION.—As disposition of points of order under section 425 or subsection (a) of this section, the Chair shall put the question of consideration with respect to the proposition that is the subject of the points of order.

"(4) DEBATE AND INTERVENING MOTIONS.—A question of consideration under this section shall be debatable for 10 minutes by each Member initiating a point of order and for 10 minutes by an opponent on each point of order, but shall otherwise be decided without intervening motion except one that the House adjourn or that the Committee of the Whole rise, as the case may be.

"(5) EFFECT ON AMENDMENT IN ORDER AS ORIGINAL TEXT.—The disposition of the question of consideration under this subsection with respect to a bill or joint resolution shall be considered also to determine the question of consideration under this subsection with respect to an amendment made in order as original text.

"SEC. 427. REQUESTS TO THE CONGRESSIONAL BUDGET OFFICE FROM SENATORS.

"At the written request of a Senator, the Director shall, to the extent practicable, prepare an estimate of the direct costs of a Federal intergovernmental mandate contained in an amendment of such Senator.

"SEC. 428. CLARIFICATION OF APPLICATION.

"(a) IN GENERAL.—This part applies to any bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out any statute, or that otherwise amends any statute, only if enactment of the bill, joint resolution, amendment, motion, or conference report—

"(1) would result in a net reduction in or elimination of authorization of appropriations for Federal financial assistance that would be provided to State, local, or tribal governments for use for the purpose of complying with any Federal intergovernmental mandate, or to the private sector for use to comply with any Federal private sector mandate, and would not eliminate or reduce duties established by the Federal mandate by a corresponding amount; or

"(2) would result in a net increase in the aggregate amount of direct costs of Federal intergovernmental mandates or Federal private sector mandates other than as described in paragraph (1).

"(b) DIRECT COSTS.—

"(1) IN GENERAL.—For purposes of this part, the direct cost of the Federal mandates in a bill, joint resolution, amendment, motion, or conference report that reauthorizes appropriations, or that amends existing authorizations of appropriations, to carry out a statute, or that otherwise amends any statute, means the net increase, resulting from enactment of the bill, joint resolution, amendment, motion, or conference report, in the amount described under paragraph (2)(A) over the amount described under paragraph (2)(B).

"(2) AMOUNTS.—The amounts referred to under paragraph (1) are—

"(A) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill,

joint resolution, amendment, motion, or conference report is enacted; and

"(B) the aggregate amount of direct costs of Federal mandates that would result under the statute if the bill, joint resolution, amendment, motion, or conference report were not enacted.

"(3) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—For purposes of this section, in the case of legislation to extend authorization of appropriations, the authorization level that would be provided by the extension shall be compared to the authorization level for the last year in which authorization of appropriations is already provided.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) by inserting "PART A—GENERAL PROVISIONS" before the item relating to section 401; and

(2) by inserting after the item relating to section 407 the following:

"PART B—FEDERAL MANDATES

"Sec. 421. Definitions.
"Sec. 422. Exclusions.
"Sec. 423. Duties of congressional committees.
"Sec. 424. Duties of the Director; statements on bills and joint resolutions other than appropriations bills and joint resolutions.
"Sec. 425. Legislation subject to point of order.
"Sec. 426. Provisions relating to the House of Representatives.
"Sec. 427. Requests to the Congressional Budget Office from Senators.
"Sec. 428. Clarification of application.".

SEC. 102. ASSISTANCE TO COMMITTEES AND STUDIES.

The Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in section 202—

(A) in subsection (c)—

(i) by redesignating paragraph (2) as paragraph (3); and

(ii) by inserting after paragraph (1) the following new paragraph:

"(2) At the request of any committee of the Senate or the House of Representatives, the Office shall, to the extent practicable, consult with and assist such committee in analyzing the budgetary or financial impact of any proposed legislation that may have—

"(A) a significant budgetary impact on State, local, or tribal governments;

"(B) a significant financial impact on the private sector; or

"(C) a significant employment impact on the private sector."; and

(B) by amending subsection (h) to read as follows:

"(h) STUDIES.—

"(1) CONTINUING STUDIES.—The Director of the Congressional Budget Office shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

"(2) FEDERAL MANDATE STUDIES.—

"(A) At the request of any Chairman or ranking member of the minority of a Committee of the Senate or the House of Representatives, the Director shall, to the extent practicable, conduct a study of a legislative proposal containing a Federal mandate.

"(B) In conducting a study on intergovernmental mandates under subparagraph (A), the Director shall—

"(i) solicit and consider information or comments from elected officials (including their designated representatives) of State, local, or tribal governments as may provide helpful information or comments;

"(ii) consider establishing advisory panels of elected officials or their designated representatives, of State, local, or tribal governments if the Director determines that such advisory panels would be helpful in performing responsibilities of the Director under this section; and

"(iii) if, and to the extent that the Director determines that accurate estimates are reasonably feasible, include estimates of—

"(I) the future direct cost of the Federal mandate to the extent that such costs significantly differ from or extend beyond the 5-year period after the mandate is first effective; and

"(II) any disproportionate budgetary effects of Federal mandates upon particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities, as appropriate.

"(C) In conducting a study on private sector mandates under subparagraph (A), the Director shall provide estimates, if and to the extent that the Director determines that such estimates are reasonably feasible, of—

"(i) future costs of Federal private sector mandates to the extent that such mandates differ significantly from or extend beyond the 5-year time period referred to in subparagraph (B)(iii)(I);

"(ii) any disproportionate financial effects of Federal private sector mandates and of any Federal financial assistance in the bill or joint resolution upon any particular industries or sectors of the economy, States, regions, and urban or rural or other types of communities; and

"(iii) the effect of Federal private sector mandates in the bill or joint resolution on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services."; and

(2) in section 301(d) by adding at the end thereof the following new sentence: "Any Committee of the House of Representatives or the Senate that anticipates that the committee will consider any proposed legislation establishing, amending,

or reauthorizing any Federal program likely to have a significant budgetary impact on any State, local, or tribal government, or likely to have a significant financial impact on the private sector, including any legislative proposal submitted by the executive branch likely to have such a budgetary or financial impact, shall include its views and estimates on that proposal to the Committee on the Budget of the applicable House.".

SEC. 103. COST OF REGULATIONS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that Federal agencies should review and evaluate planned regulations to ensure that the cost estimates provided by the Congressional Budget Office will be carefully considered as regulations are promulgated.

(b) STATEMENT OF COST.—At the request of a committee chairman or ranking minority member, the Director shall, to the extent practicable, prepare a comparison between—

(1) an estimate by the relevant agency, prepared under section 202 of this Act, of the costs of regulations implementing an Act containing a Federal mandate; and

(2) the cost estimate prepared by the Congressional Budget Office for such Act when it was enacted by the Congress.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

SEC. 104. REPEAL OF CERTAIN ANALYSIS BY CONGRESSIONAL BUDGET OFFICE.

Section 403 of the Congressional Budget and Impoundment Control Act of 1974 is amended—

(1) in subsection (a)—

(A) by striking out paragraph (2);

(B) in paragraph (3) by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraph (1)"; and

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively;

(2) by striking out "(a)"; and

(3) by striking out subsections (b) and (c).

SEC. 105. CONSIDERATION FOR FEDERAL FUNDING.

Nothing in this Act shall preclude a State, local, or tribal government that already complies with all or part of the Federal intergovernmental mandates included in the bill, joint resolution, amendment, motion, or conference report from consideration for Federal funding under section 425(a)(2) of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act) for the cost of the mandate, including the costs the State, local, or tribal government is currently paying and any additional costs necessary to meet the mandate.

SEC. 106. IMPACT ON LOCAL GOVERNMENTS.

(a) FINDINGS.—The Senate finds that—

(1) the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

(2) cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

(3) increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

SEC. 107. ENFORCEMENT IN THE HOUSE OF REPRESENTATIVES.

(a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE WHOLE.—Clause 5 of rule XXIII of the Rules of the House of Representatives is amended by adding at the end the following:

"(c) In the consideration of any measure for amendment in the Committee of the Whole containing any Federal mandate the direct costs of which exceed the threshold in section 424(a)(1) of the Unfunded Mandate Reform Act of 1995, it shall always be in order, unless specifically waived by terms of a rule governing consideration of that measure, to move to strike such Federal mandate from the portion of the bill then open to amendment.".

(b) COMMITTEE ON RULES REPORTS ON WAIVED POINTS OF ORDER.—The Committee on Rules shall include in the report required by clause 1(d) of rule XI (relating to its activities during the Congress) of the Rules of the House of Representatives a separate item identifying all waivers of points of order relating to Federal mandates, listed by bill or joint resolution number and the subject matter of that measure.

SEC. 108. EXERCISE OF RULEMAKING POWERS.

The provisions of sections 101 and 107 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of such House, respectively, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House)

at any time, in the same manner, and to the same extent as in the case of any other rule of each House.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Congressional Budget Office $4,500,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to carry out the provisions of this title.

SEC. 110. EFFECTIVE DATE.

This title shall take effect on January 1, 1996 or on the date 90 days after appropriations are made available as authorized under section 109, whichever is earlier and shall apply to legislation considered on and after such date.

TITLE II—REGULATORY ACCOUNTABILITY AND REFORM

SEC. 201. REGULATORY PROCESS.

Each agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS.

(a) IN GENERAL.—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

(1) an identification of the provision of Federal law under which the rule is being promulgated;

(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.

(b) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. SMALL GOVERNMENT AGENCY PLAN.

(a) EFFECTS ON SMALL GOVERNMENTS.—Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall—

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sums as are necessary.

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) IMPLEMENTING GUIDELINES.—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) OMB CERTIFICATION.—No later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

SEC. 207. PILOT PROGRAM ON SMALL GOVERNMENT FLEXIBILITY.

(a) IN GENERAL.—The Director of the Office of Management and Budget, in consultation with Federal agencies, shall establish pilot programs in at least 2 agencies to test innovative, and more flexible regulatory approaches that—

(1) reduce reporting and compliance burdens on small governments; and

(2) meet overall statutory goals and objectives.

(b) PROGRAM FOCUS.—The pilot programs shall focus on rules in effect or proposed rules, or a combination thereof.

SEC. 208. ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.

No later than 1 year after the effective date of this title and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this title.

SEC. 209. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—REVIEW OF FEDERAL MANDATES

SEC. 301. BASELINE STUDY OF COSTS AND BENEFITS.

(a) IN GENERAL.—No later than 18 months after the date of enactment of this Act, the Advisory Commission on Intergovernmental Relations (hereafter in this title referred to as the "Advisory Commission"), in consultation with the Director, shall complete a study to examine the measurement and definition issues involved in calculating the total costs and benefits to State, local, and tribal governments of compliance with Federal law.

(b) CONSIDERATIONS.—The study required by this section shall consider—

(1) the feasibility of measuring indirect costs and benefits as well as direct costs and benefits of the Federal, State, local, and tribal relationship; and

(2) how to measure both the direct and indirect benefits of Federal financial assistance and tax benefits to State, local, and tribal governments.

SEC. 302. REPORT ON FEDERAL MANDATES BY ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.

(a) IN GENERAL.—The Advisory Commission on Intergovernmental Relations shall in accordance with this section—

(1) investigate and review the role of Federal mandates in intergovernmental relations and their impact on State, local, tribal, and Federal government objectives and responsibilities, and their impact on the competitive balance between State, local, and tribal governments, and the private sector and con-

sider views of and the impact on working men and women on those same matters;

(2) investigate and review the role of unfunded State mandates imposed on local governments;

(3) make recommendations to the President and the Congress regarding—

(A) allowing flexibility for State, local, and tribal governments in complying with specific Federal mandates for which terms of compliance are unnecessarily rigid or complex;

(B) reconciling any 2 or more Federal mandates which impose contradictory or inconsistent requirements;

(C) terminating Federal mandates which are duplicative, obsolete, or lacking in practical utility;

(D) suspending, on a temporary basis, Federal mandates which are not vital to public health and safety and which compound the fiscal difficulties of State, local, and tribal governments, including recommendations for triggering such suspension;

(E) consolidating or simplifying Federal mandates, or the planning or reporting requirements of such mandates, in order to reduce duplication and facilitate compliance by State, local, and tribal governments with those mandates;

(F) establishing common Federal definitions or standards to be used by State, local, and tribal governments in complying with Federal mandates that use different definitions or standards for the same terms or principles; and

(G)(i) the mitigation of negative impacts on the private sector that may result from relieving State, local, and tribal governments from Federal mandates (if and to the extent that such negative impacts exist on the private sector); and

(ii) the feasibility of applying relief from Federal mandates in the same manner and to the same extent to private sector entities as such relief is applied to State, local, and tribal governments; and

(4) identify and consider in each recommendation made under paragraph (3), to the extent practicable—

(A) the specific Federal mandates to which the recommendation applies, including requirements of the departments, agencies, and other entities of the Federal Government that State, local, and tribal governments utilize metric systems of measurement; and

(B) any negative impact on the private sector that may result from implementation of the recommendation.

(b) CRITERIA.—

(1) IN GENERAL.—The Commission shall establish criteria for making recommendations under subsection (a).

(2) ISSUANCE OF PROPOSED CRITERIA.—The Commission shall issue proposed criteria under this subsection no later than 60 days after the date of the enactment of this Act, and thereafter provide a period of 30 days for submission by the public of comments on the proposed criteria.

(3) FINAL CRITERIA.—No later than 45 days after the date of issuance of proposed criteria, the Commission shall—

(A) consider comments on the proposed criteria received under paragraph (2);

(B) adopt and incorporate in final criteria any recommendations submitted in those comments that the Commission determines will aid the Commission in carrying out its duties under this section; and

(C) issue final criteria under this subsection.

(c) PRELIMINARY REPORT.—

(1) IN GENERAL.—No later than 9 months after the date of the enactment of this Act, the Commission shall—

(A) prepare and publish a preliminary report on its activities under this title, including preliminary recommendations pursuant to subsection (a);

(B) publish in the Federal Register a notice of availability of the preliminary report; and

(C) provide copies of the preliminary report to the public upon request.

(2) PUBLIC HEARINGS.—The Commission shall hold public hearings on the preliminary recommendations contained in the preliminary report of the Commission under this subsection.

(d) FINAL REPORT.—No later than 3 months after the date of the publication of the preliminary report under subsection (c), the Commission shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on the Budget of the Senate, and the Committee on the Budget of the House of Representatives, and to the President a final report on the findings, conclusions, and recommendations of the Commission under this section.

(e) PRIORITY TO MANDATES THAT ARE SUBJECT OF JUDICIAL PROCEEDINGS.—In carrying out this section, the Advisory Commission shall give the highest priority to immediately investigating, reviewing, and making recommendations regarding Federal mandates that are the subject of judicial proceedings between the United States and a State, local, or tribal government.

(f) DEFINITION.—For purposes of this section the term "State mandate" means any provision in a State statute or regulation that imposes an enforceable duty on local governments, the private sector, or individuals, including a condition of State assistance or a duty arising from participation in a voluntary State program.

SEC. 303. SPECIAL AUTHORITIES OF ADVISORY COMMISSION.

(a) EXPERTS AND CONSULTANTS.—For purposes of carrying out this title, the Advisory Commission may procure temporary and intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(b) DETAIL OF STAFF OF FEDERAL AGENCIES.—Upon request of the Executive Director of the Advisory Commission, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Advisory Commission to assist it in carrying out this title.

(c) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Advisory Commission, the Administrator of General Services shall provide to the Advisory Commission, on a reimbursable basis,

the administrative support services necessary for the Advisory Commission to carry out its duties under this title.

(d) CONTRACT AUTHORITY.—The Advisory Commission may, subject to appropriations, contract with and compensate government and private persons (including agencies) for property and services used to carry out its duties under this title.

SEC. 304. ANNUAL REPORT TO CONGRESS REGARDING FEDERAL COURT RULINGS.

No later than 4 months after the date of enactment of this Act, and no later than March 15 of each year thereafter, the Advisory Commission on Intergovernmental Relations shall submit to the Congress, including the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate, and to the President a report describing any Federal court case to which a State, local, or tribal government was a party in the preceding calendar year that required such State, local, or tribal government to undertake responsibilities or activities, beyond those such government would otherwise have undertaken, to comply with Federal statutes and regulations.

SEC. 305. DEFINITION.

Notwithstanding section 3 of this Act, for purposes of this title the term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon State, local, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Advisory Commission to carry out section 301 and section 302, $500,000 for each of fiscal years 1995 and 1996.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of sections 202 and 203(a) (1) and (2) shall be subject to judicial review only in accordance with this section.

(2) LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—(A) Agency compliance or noncompliance with the provisions of sections 202 and 203(a) (1) and (2) shall be subject to judicial review only under section 706(1) of title 5, United States Code, and only as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under section 202 or the written plan under section 203(a) (1) and (2), a court may compel the agency to prepare such written statement.

(3) REVIEW OF AGENCY RULES.—In any judicial review under any other Federal law of an agency rule for which a written statement or plan is required under sections 202 and 203(a) (1) and (2), the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement or description) or written plan shall not be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

(4) CERTAIN INFORMATION AS PART OF RECORD.—Any information generated under sections 202 and 203(a) (1) and (2) that is part of the rulemaking record for judicial review under the provisions of any other Federal law may be considered as part of the record for judicial review conducted under such other provisions of Federal law.

(5) APPLICATION OF OTHER FEDERAL LAW.—For any petition under paragraph (2) the provisions of such other Federal law shall control all other matters, such as exhaustion of administrative remedies, the time for and manner of seeking review and venue, except that if such other Federal law does not provide a limitation on the time for filing a petition for judicial review that is less than 180 days, such limitation shall be 180 days after a final rule is promulgated by the appropriate agency.

(6) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1995, and shall apply only to any agency rule for which a general notice of proposed rulemaking is promulgated on or after such date.

(b) JUDICIAL REVIEW AND RULE OF CONSTRUCTION.—Except as provided in subsection (a)—

(1) any estimate, analysis, statement, description or report prepared under this Act, and any compliance or noncompliance with the provisions of this Act, and any determination concerning the applicability of the provisions of this Act shall not be subject to judicial review; and

(2) no provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action.

And the House agree to the same.

WILLIAM F. CLINGER,
ROB PORTMAN,
DAVID DREIER,
TOM DAVIS,
GARY CONDIT,
CARDISS COLLINS,
EDOLPHUS TOWNS,
JOE MOAKLEY,
Managers on the Part of the House.

DIRK KEMPTHORNE,
BILL ROTH,
PETE V. DOMENICI,
JOHN GLENN,
J.J. EXON,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1) to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Sec. 2. Purposes

The Senate Bill includes a list of purposes for S. 1.

The House amendment contains a similar list with one exception. Subsection (8) of the House Amendment states that one of the purposes is to begin consideration of methods to relieve State, local, and tribal governments of unfunded mandates that result from Court interpretations of statutes and regulations.

The Conference Substitute adopts the House provision with an amendment. The substitute provides under subsection (8) that one of the purposes of the bill is to begin the consideration of the effect of mandates on States, local governments, and tribal governments, including those imposed by court interpretations of Federal statutes.

Sec. 3. Definitions

The Senate Bill provides that for purposes of this Act the terms defined under Sec. 408(h) of the Congressional Budget and Impoundment Control Act of 1974 (as added by Sec. 101 of this

Act) shall have the meanings as defined. The Senate Bill also defines the term "Director" as the Director of the Congressional Budget Office.

The House Amendment provides that for purposes of this Act the terms defined under Sec. 421 of the Congressional Budget Act of 1974 (as added by Sec. 301 of this Act) shall have the meanings as defined. The House Amendment also defines the term "small government".

The Conference Substitute adopts the Senate language with technical changes.

Sec. 4. Exclusions

Section 4 of the Senate Bill, titled "Exclusions", sets out those provisions that are exempt from S. 1.

Section 4 of the House Amendment, titled "Limitation on Application", establishes a similar list of exempt provisions with two differences. For the exclusion applying to legislation that prohibits discrimination, the House uses "gender" rather than "sex" and does not include "color." The House bill also includes an exclusion for any provision that pertains to Social Security.

The Conference Substitute adopts the Senate Bill's language with a narrower exclusion for Social Security. The Substitute only excludes legislation that relates to Title II of the Social Security Act.

Sec. 5. Agency assistance

The Senate Bill requires agencies to provide information and assistance to the Director of the Congressional Budget Office in carrying out this Act.

The House Amendment contains no such provision.

The Conference Substitute adopts the Senate language.

TITLE I. LEGISLATIVE ACCOUNTABILITY AND REFORM

Sec. 101. Legislative Mandate Accountability and Reform

Section 101 of the Senate Bill adds a new section 408 to the Congressional Budget and Impoundment Control Act of 1974 that establishes new Congressional procedures for the consideration of mandate legislation.

Section 301 of the House Amendment divides Title IV of the Budget Act into two parts. Part A contains all the existing provisions of Title IV of the Budget Act. Part B contains the new procedures for Congressional consideration of mandate legislation.

Section 101 of the Conference Substitute adopts the House framework for amending the Budget Act. It adds new sections 421 through 428 as Part B of the Budget Act.

Sec. 421. Definitions

Section 101(a) of the Senate Bill adds a new Section 408(h) to the Budget Act that defines terms for the purposes of this Act. This subsection defined the following terms: "Federal intergovernmental mandate", "Federal private sector mandate", "Federal mandate", "Federal mandate direct costs", "amount", "private sector", "local

government", "tribal government", "small government", "State", "agency", "regulation" (or "rule"), and "direct savings".

The House Amendment defines a similar list of terms as a new section 421 of the Budget Act with the following differences. The House Amendment does not include in the definition of the term "Federal Intergovernmental Mandate" a reduction or elimination of the amount authorized to be appropriated for the control of borders by the Federal Government or for reimbursement of net costs associated with illegal, deportable, and excludable aliens, unless the State, Local, or tribal government has not fully cooperated with Federal efforts to locate, apprehend, and deport illegal aliens. In the definition of the term "Federal Mandate Direct Costs," the House Amendment includes the aggregated estimated amounts forgone in revenues in order to comply with a Federal intergovernmental mandate. The House amendment defines "private sector" to include "business trusts, or legal representatives and organized groups of individuals" and excludes from this definition "all persons or entities in the United States." The House Amendment does not exclude from the definition of "agency" the Office of the Comptroller of the Currency and the Office of Thrift Supervision. The House Amendment does not include a definition of "amount", "tribal government", or "direct savings". The House Amendment includes a definition of "Director", "Federal Financial Assistance", and "Significant Employment Impact".

The Conference Substitute includes the list of definitions in a new section 421 of the Budget Act. The Substitute uses the Senate list of definitions with the House language on revenue forgone and defines the term "agency" as provided in the House Amendment. The Substitute defines the term "Director" in section 3.

The Conference Substitute defines direct costs to include the aggregate amount State, local, and tribal governments would be prohibited for raising in revenue including user fees. The conferees note that the Joint Committee on Taxation is responsible for providing revenue estimates to CBO for legislation that affects revenues. CBO works closely with the Joint Tax Committee to assure these revenue estimates are reflected in cost estimates. The conferees do not intend to disrupt CBO's and the Joint Committee's respective responsibilities and expect the Joint Committee on Taxation will provide Congress with estimates for legislation that prohibits State, local, or tribal governments from raising revenue.

Subsection 5(B) of the Conference Substitute includes in the definition of an intergovernmental mandate any provision in legislation, statute, or regulation that relates to a then-existing Federal program that would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide entitlement funding to State, local, or tribal governments under the program. The conferees intend that this definition only apply to caps on individual programs. The conferees do not intend this definition to be applicable to a measure that contains general budgetary limits or caps on spending or categories of spending, unless that measure also contained implementing statutory language for reductions required in specific programs if the budgetary limit or cap were exceeded.

The programs to which this definition relates are Federal entitlement programs that provide $500 million or more annually to

State, local and tribal governments. This would currently include only nine programs: Medicaid; AFDC, Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance and Independent Living; Family Support Payments for Job Opportunities and Basic Skills (JOBS); and, Child Support Enforcement. This subsection would also apply to entitlement programs that Congress may create in the future where Congress provides $500 million or more annually to State, local and tribal governments.

The conferees do not interpret the meaning of ''enforceable duty'' in subsection (5)(A)(i) and (ii) to include duties and conditions that are part of any voluntary Federal contract for the provision of goods and services.

Sec. 422. Exclusions

Section 101(a) of the Senate Bill adds a new Section 408(g) to the Budget Act that provides the same exclusions as contained in section 4 of S. 1.

Section 301(a) of the House Amendment adds a new section 422 to the Budget Act that provides the same limitations on application as a section 4 of the Amendment.

Section 101(a) of the Conference Substitute adds a new Section 422 to the Budget Act that repeats the same exclusions provided in section 4 of the Substitute.

Sec. 423. Committee reports

Section 101(a) of the Senate Bill adds a new Section 408(a) to the Budget Act that requires an authorizing committee, when it orders reported a public bill or joint resolution (hereafter ''a measure'') establishing or affecting any Federal mandates, to submit the measure to CBO and identify the mandates involved. The Senate Bill requires that reports by authorizing committees on measures dealing with Federal mandates include the following information on the mandates in the bill: an identification of the mandates, a cost-benefit analysis, the impact on the public and private sector competitive balance, information on Federal funding assistance to cover the cost of the mandate (including how Federal funding will be allocated among different levels of government), the extent to which the bill preempts State, local, or tribal government law, and a CBO cost estimate.

Section 301(a) of the House Amendment adds a new section 423 to the Budget Act that establishes similar requirements for committee reports except the Amendment does not require the report to indicate whether the mandate bill includes a mechanism to allocate funding in accordance with costs to different levels of government.

Section 101(a) of the Conference Substitute adds a new Section 423 to the Budget Act that adopts the Senate's requirements for reports with technical changes.

Sec. 424. CBO Cost Estimates

Section 101(a) of the Senate Bill adds a new Section 408(b)(1) to the Budget Act that requires CBO to prepare, and submit to the reporting committee, an estimate of the direct costs to the State,

local, and tribal governments of Federal intergovernmental mandates in each reported measure (or in necessary implementing regulations). For intergovernmental mandates, CBO is required to prepare estimates if the costs of the mandate would equal at least $50 million in any of the five fiscal years after the mandate's effective date. For private sector mandates, CBO is required to prepare estimates if the costs of the mandate would equal at least $200 million in any of the five fiscal years after the mandate's effective date. The Senate bill extends the scope of the estimate to ten years following the mandate's effective date.

The Senate Bill provides if CBO finds it not feasible to make a reasonable estimate, CBO must report that finding with an explanation. If CBO makes such a determination for an intergovernmental mandate, then a point of order would lie against the reported bill only for failure to contain such an estimate under section 408(c)(1)(A). In such case, the bill as reported would be exempt only from the point of order under section 408(c)(1)(B). Other Budget Act points of order would still lie if applicable.

Section 408(b)(3) of the Senate Bill provides that if direct cost of respective mandates in a measure fall below the thresholds, CBO is to so state, and is to explain briefly the basis of this estimate. Paragraph (4) of this subsection requires a conference committee, under certain circumstances, to ensure that CBO prepare a supplemental estimate on a measure passed by either house in an amended form (including a measure of one house passed by the other with an amendment in the nature of a substitute) or reported from conference in an amended form. The Senate Bill requires such action if the amended form contains a mandate not previously considered by either house or increases the direct cost of a mandate in the measure.

Section 301(a) of the House Amendment adds a new section 424(a) to the Budget Act that establishes similar requirements for CBO cost estimates on mandates. The House Amendment provides the threshold is $50 million for both intergovernmental and private sector mandates. In addition, the Amendment does not limit the scope of the estimate to ten years.

Section 101(a) of the Conference Substitute adds a new Section 424 to the Budget Act that adopts the Senate language on CBO's responsibilities for preparing estimates on legislation containing intergovernmental and private sector mandates with two changes. The Substitute amends the language the Senate proposed on the scope of CBO cost estimates. If the bill would authorize appropriations and makes an intergovernmental mandate contingent on appropriations as provided in section 425(a)(2)(B) in the Conference Substitute, then CBO is required to provide an estimate of the budget authority needed to pay for the mandate for each fiscal year for a period not to exceed ten years. The Substitute provides a threshold of $100 million for private sector mandates.

Sec. 425. Points of Order Against Unfunded Mandates

Point of Order & Mandate Cost Estimates

Section 101(a) of the Senate Bill adds a new Section 408(c)(1)(A) to the Budget Act that establishes a point of order in

the Senate against consideration of a reported measure containing a mandate unless the report accompanying the measure contains a CBO cost estimate of the mandate, or the CBO cost estimate has been published in the Congressional Record.

Section 301(a) of the House Amendment adds a new Section 424(a)(1) to the Budget Act that establishes a similar point of order in the Senate and the House against consideration of a reported measure, but provides it does not apply to supplemental estimates prepared by CBO.

Section 101(a) of the Conference Substitute adds a new Section 425(a) to the Budget Act that adopts the House language with minor changes.

Point of Order & Unfunded Mandate Legislation

Section 101(a) of the Senate Bill adds a new Section 408(c)(1)(B) to the Budget Act that establishes a point of order in the Senate against consideration of a bill, joint resolution, amendment, motion, or conference report (hereafter referred to as "legislation") containing intergovernmental mandates exceeding the thresholds established above, unless the legislation funds these mandates. The Senate bill applies this point of order against legislation that would cause the direct costs of intergovernmental mandates to breach the $50 million annual threshold. The waiver of this point of order and the appeal of rulings regarding this point of order are covered by existing provisions under title IX of the Budget Act. Section 904 provides that in the Senate points of order under title IV of the Budget Act, including the point of order regarding unfunded mandate legislation, can be waived or appealed by a simple majority.

This subparagraph of the Senate Bill provides that legislation is not subject to the point of order if it provides either: (1) direct spending authority equal to the mandate's costs for each fiscal year; (2) an increase in receipts and an increase in direct spending authority for each fiscal year for those mandates equal to their costs for each fiscal year; or, (3) an authorization of appropriations at least equal to the direct cost and provides a mechanism to ensure that a mandate is effective only to the extent that it is funded in appropriations Acts.

The House Amendment establishes a similar point of order against consideration of legislation in the House and Senate containing intergovernmental mandates. The House amendment differs from the Senate bill on the requirements of funding mechanisms for mandates. Under the House amendment, legislation is subject to the point of order unless it provides: (1) new budget authority or new entitlement authority in the House (or direct spending authority in the Senate) in an amount that equals or exceeds the direct costs of the mandate; (2) an increase in receipts or a decrease in new budget authority or new entitlement authority in the House (a decrease in direct spending authority in the Senate) to offset the costs of spending authority for the mandate; or, (3) an authorization of appropriations at least equal to the direct cost and provides a mechanism to ensure that a mandate never takes effect unless fully funded in appropriations Acts or mandates are scaled back consistent with appropriations levels.

The Conference Substitute adopts the House language with an amendment. The Substitute provides that legislation containing a Federal intergovernmental mandate is out of order in the House and Senate unless it provides either: (1) new budget authority or new entitlement authority in the House (or direct spending authority in the Senate) in an amount that equals or exceeds the direct costs of the mandate; or (2) an authorization of appropriations and a mechanism to assure the mandate is only effective to the extent funding is provided in Appropriations Acts. If legislation funds the mandate to avoid the point of order, it must fund the entire cost of the mandate for each fiscal year.

The Substitute drops language in the House Amendment that provides a mandate could be paid for by an increase in spending authority and offset by a decrease in spending authority or an increase in receipts. This language is unnecessary because other budget laws already would govern how Federal mandates could be financed.

Nothing in the Substitute waives existing provisions of law that establish controls on Federal spending. The Budget Act, budget resolutions adopted pursuant to the Budget Act, and the Balanced Budget and Emergency Deficit Control Act already establish requirements for Federal budgeting. Since these laws already control legislation providing Federal funding, including funding that could be provided to cover a mandate's direct costs, the conference agreement does not address requirements for offsets to pay for Federal funding for mandates.

The Substitute provides that the point of order can be avoided if the mandate is paid for by either an increase in spending authority outside the appropriations process (new budget authority or new entitlement authority in the House of Representatives and new direct spending authority in the Senate) or is contingent on funding being provided in the appropriations process.

If a Committee chooses to fund a mandate with spending authority outside the appropriations process, this legislation will be subject to the requirements of the Budget Act and the pay-as-you-go provisions of the Balanced Budget and Emergency Deficit Control Act. If a committee chooses to pay for a mandate with an increase in spending authority outside the Appropriations process, there are generally three options under these laws: provide new spending authority that will cause a deficit increase; provide new spending authority and offset it by reducing existing spending authority for other programs; or, provide new spending authority and offset it by increasing receipts. If a committee chooses to make the mandate contingent on funding being provided in Appropriations Acts, the Appropriations Committees will have to fund these mandates within the annual allocations made under section 602 of the Budget Act and the discretionary caps under section 601 of the Budget Act.

Point of Order & the Appropriations Process

Section 101(a) of the Senate Bill adds a new Section 408(c)(1)(B)(iii) to the Budget Act that allows legislation to avoid the unfunded mandate point of order if the mandate is contingent on funding being provided in the appropriations process. More spe-

cifically, the legislation would escape the point of order if it: (1) authorizes appropriations in an amount equal to the direct costs of the mandate; (2) specifies the amount of direct costs of the mandate for each year or other period up to ten years during which the mandate will be in effect; (3) identifies any appropriation bill that would be expected to provide funding for direct costs of the mandate; and (4) provides that, if appropriations are insufficient to cover the direct cost of the mandate (as previously calculated by CBO), the mandate will expire unless Congress provides otherwise by law (through expedited procedures).

Section 408(c)(1)(B)(iii)(III) of the Senate Bill requires mandate legislation to include procedures in the event insufficient appropriations are provided to cover the entire direct costs of a Federal intergovernmental mandate for a fiscal year. If appropriations provided are insufficient for the mandate, the Agency is required to notify Congress within 30 days of the beginning of the fiscal year and submit either: (1) a statement, based on a re-estimate of the direct costs of the mandate, that the lower appropriations is sufficient; or, (2) legislative recommendations for implementing a less costly mandate or making the mandate ineffective for the fiscal year. Sixty days after the Agency submission, the mandate ceases to be effective unless Congress provides otherwise by law (see Appendix). Only if the appropriation is less than the direct cost of the mandate, the agency is required to submit a statement or legislative recommendation.

Section 408(c)(1)(B)(iii)(III)(bb) stipulates that the relevant committees in both the House and Senate provide an expedited procedure in the underlying intergovernmental legislation for the consideration of agency statements and legislative recommendations. If the relevant committees of the House and Senate choose not to include expedited procedures in the underlying intergovernmental mandates legislation, then a point of order may be raised against that legislation.

Section 408(c)(3)(A) of the Senate Bill exempts appropriations legislation from the points of order against unfunded mandates but establishes a procedure to extract legislative intergovernmental mandate provisions in appropriations legislation. An appropriations bill, resolution, amendment thereto, or conference report thereon that contains a provision with an intergovernmental mandate that exceeds the thresholds established in the Bill is out of order in the Senate. Upon a point of order being sustained against provisions in appropriations legislation containing mandates, the offending provision is deemed strickened from the measure.

Section 408(c)(2) allows State, local, or tribal governments to continue to voluntarily comply with the original intergovernmental mandate at its own expense.

Section 301(a) of the House Amendment adds a new Section 425(a)(2)(C) to the Budget Act that establishes different procedures for intergovernmental mandates that are contingent on appropriations Acts. More specifically, if mandate legislation funds an intergovernmental mandate through an authorization of appropriations, in order to avoid the point of order, the legislation must either: 1) require the implementing agency to repeal the mandate at the beginning of the fiscal year unless there are sufficient appropriations

to cover the full cost of the mandate; or, 2) require the implementing agency to reduce the requirements of the mandate to bring its costs within the amount provided in the appropriations Act.

Second, the House Amendment exempts appropriations bills and amendments thereto from the point of order.

Section 101(a) of the Conference Substitute adds a new section 425(a)(2)(B)(iii) to the Budget Act, which adopts the Senate language with technical changes. In the House of Representatives and the Senate, the requirements of subclause (II) shall be considered as fulfilled by inclusion in the authorization bill of any procedural prescription to expedite consideration of the statement or legislative recommendations, including a requirement that the authorizing committee consider the statement or legislative recommendations on an expedited basis.

If an agency submits a statement with a re-estimate of the direct costs of a mandate or legislative recommendations pursuant to section 425(a)(2)(B)(iii), the conferees expect the agency to submit this statement or legislative recommendations to CBO for its review and comment. The conferees expect the relevant agency to fully and freely share with CBO the information used in developing the re-estimate or the legislative recommendations for a less-costly mandate. CBO should make its review and comments available to Congress as appropriate.

The agency is expected to consult with State, local, and tribal governments in preparing its re-estimate or its legislative recommendations for a less costly mandate.

Determinations of Applicability of the Point of Order

Section 101(a) of the Senate Bill adds a new Section 408(c)(4) to the Budget Act that requires the Presiding Officer of the Senate to consult with the Senate Governmental Affairs Committee, to the extent practicable, on the applicability of the point of order in the Senate. Paragraph (5) provides that the levels of mandates for a fiscal year be determined on the basis of estimates by the Senate Budget Committee.

Section 301(a) of the Senate Bill adds a new Section 425(c) to the Budget Act that only provides that mandate levels be based on estimates made by the Budget Committees, in consultation with CBO.

The Conference Substitute contains the Senate language as a new section 425 (d) and (e) of the Budget Act.

Sec. 426. Provisions Relating to the House of Representatives

Section 101(a) of the Senate Bill adds a new Section 408(d) to the Budget Act that makes it out of order in the House to consider a rule or order that waives the point of order established by S. 1.

Section 301(a) of the House Amendment adds a new Section 426 to the Budget Act that contains the same provision as the Senate Bill. Section 427 of the House Amendment establishes procedures for the disposition of the point of order in the House.

The Conference Substitute contains the House language on House waivers of rules as a new section 426(a) of the Budget Act. Section 426(b) of the Substitute contains the House language on the House's disposition of points of order.

Sec. 427. Senator's requests for CBO cost estimates

The Senate Bill requires CBO to prepare a cost estimate on a bill, joint resolution, amendment, or motion containing an intergovernmental mandate at the written request of any Senator.

The House Amendment contained no such provision.

Section 101(a) of the Conference Substitute adds a new section 427 to the Budget Act that narrows the Senate language so that it only applies to cost estimates for amendments that contain intergovernmental mandates. The conferees note CBO already responds to members requests for cost estimates to the extent practicable. Viewing the concern about the applicability of this point of order to amendments that would cause the intergovernmental mandate thresholds to be exceeded, however, the conferees have retained language requiring CBO, to the extent practicable, to prepare cost estimates for a Senator's amendment if it were to cause the thresholds to be exceeded.

This more limited language is not intended to preclude CBO from preparing mandate cost estimates for bills. These requirements are already provided for in section 424 of the Substitute regarding reported bills and conference reports. Moreover, the conferees intend that CBO be responsive to Senator's requests in preparing cost estimates for bills and joint resolutions that may be marked up or for bills and resolutions that may be offered as amendments.

Sec. 428. Clarification on the application

Section 101(a) of the Senate Bill adds a new subsection 408(f) to the Budget Act, which clarifies that application of section 408 to legislation. If a legislative measure would reauthorize or amend existing statutes, the points of order established by the bill would apply only if the measure would either: (1) reduce net authorized financial assistance for complying with mandates by an amount that would cause a breach of the thresholds, without reducing duties by a corresponding amount: or, (2) otherwise increase the net aggregate direct costs of mandates by an amount that would cause a breach of the thresholds. The Senate Bill also provides that the net direct cost of Federal mandates in legislation means the net increase of those costs as compared to current law levels. If mandate legislation is extending an authorization of appropriations, the levels authorized in the mandate legislation are to be compared to the last year in which appropriations are authorized under current law.

Section 301(a) of the House Amendment adds a new Section 425(d) to the Budget Act that provides narrower language for limiting the application of part B.

The Conference Substitute contains the Senate language as a new section 428 of the Budget Act.

Sec. 102. CBO assistance to committees and studies

Section 102(l) of the Senate Bill amends section 202 of the Budget Act to add to CBO's responsibilities a requirement to assist committees in analyzing legislative proposals that may have significant budgetary impact on State, local, and tribal governments, or significant financial impact on the private sector. The Bill also

amends section 202 of the Budget Act to require CBO to prepare studies at the request of the chairman or ranking minority member of a committee. Subsection (h)(1), regarding continuing studies, restates existing law. Subsection (h)(2) adds new provisions regarding mandate studies.

Section 102(2) of the Senate Bill amends section 301(d) of the Budget Act to require committees to comment on mandate legislation as part of their views and estimates submissions to the Budget Committees.

Section 301(a) of the House Amendment adds a new section 424(b) and (c), which includes similar language as the Senate Bill except that the House Amendment requires CBO to assist committees in assessing mandate legislation that will have a significant employment impact on the private sector.

The Conference Substitute contains the Senate language with an amendment to reflect the House language to require CBO to assist committees in assessing the impact of private sector mandates on employment. The Substitute drops the definition of employment for the purposes of this section.

Sec. 103. Cost of Regulations

Section 103 of the Senate Bill express the sense of Congress that agencies should review planned regulations to ensure that they take CBO cost estimates into consideration. It also requires CBO, at the request of any Senator, to estimate the cost of regulations implementing mandate legislation and compare it with the CBO cost estimate for the legislation itself. It directs OMB to provide CBO with such data and cost estimates.

The House Amendment contains no such provision.

The Conference Substitute adopts the Senate language with an amendment to narrow the section in two respects. First, the section provides that the chairman or ranking minority member of a committee can request such a study, consistent with requests for mandate studies (section 102 of S. 1). Second, the section requires CBO to compare the agency's cost estimate to the estimate prepared by CBO when the legislation was considered. In preparing a comparison, the conferees intend that CBO critique the agency cost estimate in such comparison to make sure it is an accurate reflection of the cost of the mandate.

The primary objective of the Unfunded Mandate Reform Act is to make sure Congress is adequately informed of the cost of mandates in legislation when they are considered. The conferees are particularly concerned about instances in which agencies exceed their discretion to impose regulations that are much more costly than anticipated when the legislation was considered. The intent of this section is to provide, when requested, a review of agencies' actions and estimates to make sure they are consistent with the costs of the mandate when Congress considered the legislation.

Sec. 104. Repeal of existing requirements for CBO mandate cost estimates

Section 106 of the Senate Bill repeals provisions in section 403 of the Budget Act that are superseded by Part B.

Section 305 of the House Amendment contained similar language.

Section 104 of the Conference Substitute contains the Senate language.

Sec. 105. Consideration for Federal funding

Section 107 of the Senate bill provides that nothing in S. 1 denies federal funding to State, local, or tribal governments because they are already complying with all or part of a federal mandate.

The House Amendment contains no such provision.

The Conference Substitute contains the Senate language with a clarification that it applies to section 425(b)(2). The Conferees do not intend this section to create any legally binding duty to pay these governments, nor is it intended to affect the calculation of mandate estimates or Federal budget cost estimates.

Sec. 106. Impact on local governments

Section 108 of the Senate Bill includes findings about cost shifting from Federal to State and local, and from State to local, governments, and resultant increases in property taxes and service cuts. This section states the sense of the Senate that these practices should cease and that curbing them, and reducing taxes and spending at all levels, are primary objectives of this Act.

The House Amendment contains no such provision.

The Conference Substitute adopts the Senate language as section 106.

Sec. 107. Enforcement in the House of Representatives

The Senate Bill did not include language on enforcement in the House of Representatives.

Section 302 of the House Amendment amends House Rule XXIII so that when the Committee of the Whole is considering an amendment that includes a provision that would have been subject to a point of order established by the bill, it will be in order to move to strike that provision, unless the special rule for considering the measure specifically prohibits the motion. The House Amendment also requires the Committee on Rules to list in its activities reports all special rules waiving points of order established by the bill, and the measures to which they related.

The Conference Substitute contains the House language as section 107.

Sec. 108. Exercise of rulemaking

Section 105 of the Senate Bill provides that certain provisions of S. 1 are enacted pursuant to the rulemaking power of each house.

Section 303 of the House Amendment contains similar language.

Section 108 of the Conference Substitute preserves the rulemaking authority of the houses.

Sec. 109. Authorization of appropriations

Section 104 of the Senate authorizes $4.5 million annually through fiscal year 2002 for CBO to carry out this act.

Section 421(e) of the House Amendment contains the same language.

Section 109 of the Conference Substitute authorizes appropriations for CBO. The conferees note that this Act provides a major expansion in the responsibilities of CBO and recognize the need for additional funding in order for CBO to carry out these responsibilities. The conferees intend that these new responsibilities should not supplant CBO's existing responsibilities under the Budget Act.

Sec. 110. Effective date

Section 109 of the Senate Bill provides an effective date of January 1, 1996, or 90 days after an appropriation for CBO authorized by the Bill becomes available.

Section 306 of the House Amendment provides an effective date of October 1, 1995.

The Conference Substitute contains the Senate language as section 110.

TITLE II. REGULATORY ACCOUNTABILITY AND REFORM

Sec. 201. Regulatory process

The Senate bill, in section 201, directs each agency, "to the extent permitted in law", to assess the effects of regulations on State and local governments and the private sector, and to minimize regulatory burdens that affect the governmental entities. It authorizes the appropriation of such sums as are necessary to carry out this title.

The House amendment, in section 201, contains a similar provision.

The Conference substitute directs each agency, unless otherwise prohibited by law, to assess the effects of regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).

Sec. 202. Statements to accompany significant regulatory actions

The Senate bill, in section 202, requires that before promulgating any final rule that includes a Federal intergovernmental mandate that may result in aggregate costs to State, local, or tribal governments, and the private sector, of $100,000,000 or more in any one year, or any general notice of proposed rulemaking that is likely to result in such a rule, an agency must prepare a written statement. The statement must estimate anticipated costs to such governments and the private sector of complying with the intergovernmental mandate, as well as (to the extent that the agency determines that accurate estimates are reasonably feasible) the future compliance costs of the mandate, and any disproportionate budgetary effects of the mandate on any particular region of the nation or type of community. Also included in the statement must be a qualitative, and if possible, quantitative assessment of the costs and benefits anticipated from the intergovernmental mandate, the effect of the private sector mandate on the national economy, a description of the extent of prior consultation with State and local elected officials (or their designated representatives), a summary of

the comments of such officials, a summary of the agency's evaluation of those comments, and the agency's position supporting the need to issue the regulation.

The House amendment, in section 202, contains a similar provision with those same requirements, except that it applies to Federal mandates generally, and not just intergovernmental mandates, and the costs of $100,000,000 shall be of expenditures by States, local governments, or tribal governments, in the aggregate, *or* the private sector. In addition, it requires that the statement identify the provision of Federal law under which the rule is being promulgated, the disproportionate budgetary effects of the mandate on particular segments of the private sector, the effect of private sector mandates on the national economy, and the extent of the agency's prior consultation with designated representatives of the private sector.

The Conference substitute adopts the House provision, along with a condition that the items in the written report be included "unless otherwise prohibited by law". This section does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule. Several other modifications to the House provision were made by the conferees. The rules to which the required statement applies are any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes a Federal mandate, or any final rule for which such notice was published. The substitute adds a requirement that there be a qualitative and quantitative assessment of the anticipated costs and benefits of the mandate, and an analysis of the extent to which such costs may be paid with Federal financial assistance. The requirement that the effect of private sector mandates on the national economy be included is amended, so that the limitation to "private sector" mandates is stricken. The requirement that the statement include the agency's position supporting the need to issue the regulation containing the mandate is dropped. Also, the requirement for a description of prior consultation drops both the reference to "designated representatives" and to "the private sector", and instead refers to the "prior consultation with elected representatives (under section 204)".

It is the intent of the conferees that the rulemaking process shall follow the requirements of section 553 of title 5, United States Code, and shall be subject to the exceptions stated therein. When a general notice of proposed rulemaking is promulgated, such notice shall be accompanied by the written statement required by section 202. When an agency promulgates a final rule following the earlier promulgation of a proposed rule, the rule shall be accompanied by an updated written statement. In all cases, the exceptions stated in section 553 shall apply, including for good cause.

Sec. 203. Small government agency plan

The Senate bill, in subsection 201(c), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency provides notice to potentially affected small governments, enables officials of such governments to

provide input, and informs and advises such governments on compliance with the requirements. Such sums as are necessary to carry out these requirements are authorized to be appropriated to each agency.

The House amendment, in subsection 201(c), contains an identical provision.

The Conference substitute retains this provision.

Sec. 204. State, local and tribal government input

The Senate bill, in subsection 201(b), requires each agency, to the extent permitted in law, to develop an effective process to permit State, local and tribal elected officials (or their designated representatives) to provide meaningful and timely input into the development of regulatory proposals containing significant mandates. Such a process shall be consistent with all applicable laws.

The House amendment, in subsection 201(b), contains a similar provision, but without the references to "to the extent permitted in law" and "consistent with all applicable laws".

The Conference substitute requires each agency, to the extent permitted in law, to develop an effective process to permit elected officers (or their designated employees with authority to act on their behalf) of State, local and tribal governments to provide meaningful and timely input into the development of regulations containing significant intergovernmental mandates. It provides that the Federal Advisory Committee Act (FACA) shall not apply to such intergovernmental communications where the meetings are held exclusively between Federal officials and elected State and local officials (or their designated employees with authority to act on their behalf) acting in their official capacities, and where such meetings are solely to exchange views on the implementation of Federal programs which explicitly share intergovernmental responsibilities. The President shall issue guidelines to agencies on the implementation of this requirement, within 6 months.

The conferees agree that an important part of efforts to improve the Federal regulatory process entails improved communications with State, local, and tribal governments. Accordingly, this legislation will require Federal agencies to establish effective mechanisms for soliciting and integrating the input of such interests into the Federal decision-making process. Where possible, these efforts should complement existing tools, such as negotiated rulemaking and/or the use of Federal advisory committees broadly representing all affected interests.

The conferees recognize that FACA has been the source of some confusion regarding the extent to which elected officials of State, local, and tribal governments, or their designated employees with authority to act on their behalf, may meet with Federal agency representatives to discuss regulatory and other issues involving areas of shared responsibility. Section 204(b) clarifies Congressional intent with respect to these interactions by providing an exemption from FACA for the exchange of official views regarding the implementation of public laws requiring shared intergovernmental responsibilities or administration.

Section 204(c) requires the President to issue guidelines and instructions to Federal agencies, consistent with other applicable

laws and regulations, within six months of enactment. The conferees would expect the President to consult with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services (GSA) before promulgating such guidelines.

Sec. 205. Least burdensome option or explanation required

The Senate bill contains no such provision.

The House amendment, in subsection 201(d), prohibits an agency from issuing a rule that contains a mandate if the rulemaking record indicates that there are two or more alternatives to accomplish the objective of the rule, unless the mandate is the least costly method or has the least burdensome effect, unless the agency publishes an explanation of why the more costly or more burdensome method was adopted.

The Conference substitute requires that before promulgating any rule for which a written statement is required under section 202, an agency shall identify and consider a reasonable number of regulatory alternatives and select from them either the least costly, the most cost-effective, or the least burdensome alternative that achieves the objectives of the rule, unless either the agency head publishes an explanation of why this was not done or such a selection is inconsistent with law. The conferees intend that "a reasonable number of regulatory alternatives" means the maximum number that an agency can thoroughly consider without delaying the rulemaking process. The substitute also requires the OMB Director, within one year of enactment, to certify agency compliance with this section, and to include in the written explanation any agencies and rulemakings that fail to do so.

Sec. 206. Assistance to the Congressional Budget Office

The Senate bill, in section 203, provides that the OMB Director shall collect from the agencies the statements prepared under section 202 and periodically forward copies to the CBO Director on a timely basis.

The House amendment, in section 203, contains an identical provision.

The Conference substitute retains this provision.

Sec. 207. Pilot program on small government flexibility

The Senate bill, in section 204, requires the OMB Director to establish pilot programs in at least two agencies to test innovative and more flexible regulatory approaches that reduce reporting and compliance burdens on small governments, while meeting overall statutory goals and objectives. Any combination of proposed rules and rules in effect may be part of the pilot programs.

The House amendment, in section 204, contains an identical provision.

The Conference substitute retains this provision.

Sec. 208. Annual statements to Congress on agency compliance with requirements of title II

The Senate bill contains no such provision.

The House amendment, in section 207, provides that the OMB Director shall annually submit written statements to Congress, detailing agency compliance with the requirements of its sections 201 (Regulatory Process) and 202 (Statements to Accompany Significant Regulatory Actions).

The Conference substitute adopts the House requirement and applies it to compliance with all sections of this title.

Sec. 209. Effective date

The Senate bill, in section 205, provides that this title shall take effect 60 days after the date of enactment.

The House amendment would take effect upon enactment.

The Conference substitute adopts the House effective date of upon enactment.

TITLE III. REVIEW OF FEDERAL MANDATES

Sec. 301. Baseline study of costs and benefits

The Senate bill, in section 301, provides that within 180 days, the Advisory Commission on Intergovernmental Relations (ACIR) shall begin a study of how to measure and define issues involved in calculating the total direct and indirect costs and benefits to State, local, and tribal governments of compliance with Federal law, and the direct and indirect benefits to such governments of Federal financial assistance and tax benefits. The study shall deal with issues related to the feasibility of measuring, and how to measure, such items.

The House amendment contains no similar provision.

The Conference substitute adopts the Senate language, except that the study is to be completed within 18 months rather than started within 180 days.

Sec. 302. Report on Federal mandates by Advisory Commission on Intergovernmental Relations

The Senate bill, in section 302, requires ACIR to study the role of unfunded Federal mandates in intergovernmental relations, and to make recommendations regarding allowing flexibility in complying with specific mandates, reconciling conflicting mandates, terminating duplicative or obsolete mandates, suspending mandates that are not vital to public health and safety, consolidating or simplifying mandates, and establishing common definitions or standards to be used in complying with Federal mandate. To the extent practicable, the specific unfunded mandate to which a recommendation applies should be identified. One of the existing Federal mandates that ACIR is to study and make specific recommendations on is the Federal requirement that State, local, and tribal governments utilize metric systems of measurement. Within 60 days of enactment of this Act, ACIR is required to issue proposed criteria under this subsection, and then to allow 30 days for public comment, with adoption of the final criteria not later than 45 days after the issuance of the proposed criteria. Within 9 months of enactment, ACIR is required to publish a preliminary report on its activities under this title, including its recommendations, and then to hold public hearings on these preliminary recommendations. Not later than 3

months after publication of the preliminary report, ACIR shall submit to Congress and the President a final report on its findings, conclusions, and recommendations under this section.

The House amendment, in section 101, contains nearly identical provisions, except that it also requires ACIR, when studying the role of unfunded Federal mandates, to review their impact on the competitive balance between State and local governments, and the private sector, to review the role of unfunded State mandates imposed on local governments and the private sector, and to review the role of unfunded local mandates imposed on the private sector. Definitions of "State mandate" and "local mandate" are provided. It also requires that ACIR make recommendations regarding the establishment of procedures to ensure that when private sector mandates apply to entities that compete with State or local governments, any relief from unfunded Federal mandates is applied in the same manner and the same extent to both. In addition, ACIR is instructed to give highest priority to mandates that are the subject of judicial proceedings between the United States and a State, local, or tribal government. The House amendment contains no provision regarding the metric system of measurement.

The Conference substitute retains the Senate provisions, and adds the House requirements for a review of the impact on competitive balance and a review of the role of unfunded State mandates imposed on local governments (only), as well as the provision placing highest priority on mandates that are the subject of intergovernmental judicial proceedings. It also includes a modification of a House requirement, so that ACIR shall make recommendations on mitigating any adverse impacts on the private sector that may result from relieving State and local governments of mandates, and the feasibility of applying relief from mandates in the same manner to both the private sector, and State and local governments. The House definition of "State mandate" is also retained. In addition, a provision is added requiring that, to the extent practicable, any negative impact on the private sector that may result from implementation of a recommendation be identified.

The conferees intend that ACIR have flexibility to review a wide array of federal requirements on State and local governments. These requirements may include conditions of federal assistance, such as those attached to the receipt of Federal grants, or direct orders like emissions testing requirements, carpool mandates, and national voter registration directives that are not tied to the receipt of Federal funds.

Sec. 303. Special authorities of Advisory Commission

The Senate bill, in section 303, provides authority to the ACIR, for purposes of carrying out this title, to procure temporary and intermittent services of experts or consultants, to receive on a reimbursable basis detailees from Federal agencies, and to contract with and compensate government and private persons for property and services.

The House amendment, in section 102, contains the same provisions, as well as a provision authorizing ACIR to receive on a reimbursable basis administrative support services from the General Services Administration.

The Conference substitute adopts the House language.

Sec. 304. Annual report to Congress regarding Federal court rulings

The Senate bill contains no such provision.

The House amendment, in section 205, provides that ACIR shall annually submit to Congress a report describing Federal court rulings in the preceding year which imposed an enforceable duty on one or more State, local, or tribal governments.

The Conference substitute modifies the House provision, by requiring that the report describe any Federal court case to which a State, local, or tribal government was a party in the preceding year that required them to undertake responsibilities beyond those they would otherwise have undertaken, to comply with a Federal statute or regulation.

Sec. 305. Definition

The Senate bill contains no such provision.

The House amendment, in section 103, defines, for purposes of this title, ''Advisory Commission'' to mean the Advisory Commission on Intergovernmental Relations, and ''Federal mandate'' to mean any provision in statute or regulation or any Federal court ruling that imposes an enforceable duty upon States, local governments, or tribal governments including a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

The Conference substitute retains the House definition of ''Federal mandate'', but adds at the beginning of it the phrase ''Notwithstanding section 3 of this Act,''.

Sec. 306. Authorization of appropriations

The Senate bill, in section 304, provides an authorization of appropriations of $1,250,000 for each of fiscal years 1995 and 1996 to ACIR for the purposes of carrying out sections 301 and 302.

The House bill provides no authorization of appropriations.

The Conference substitute provides an authorization of appropriations of $500,000 for each of fiscal years 1995 and 1996 to ACIR to carry out sections 301 and 302.

COMMITTEE REPORT ON JUDICIAL REVIEW

The purposes of Section 401 are as follows. Section 401(a) (1) and (2) would allow court review only to redress a failure of an agency to prepare the written statement (including the preparation of the estimates, analyses, statements or descriptions) required to be included in such statement under Section 202 or the written plan under Section 203(a) (1) and (2). A reviewing court may not review the adequacy of a written statement prepared under Section 202 or a written plan under Section 203(a) (1) and (2). Challenges to an agency's failure to prepare a written statement under Section 202 or a written plan under 203(a) (1) and (2) may be brought only under Section 706(1) of the Administrative Procedures Act and may not be brought until after a final rule has been promulgated.

Section 401(a)(3) prohibits any court in which review of a completed rulemaking action is sought from staying, enjoying, invalidating or otherwise affecting the effectiveness of an agency's rule-

making for failure to comply with the requirements of Section 202 and Section 203(a) (1) and (2) of this Act. This is true not only under Section 401(a)(3), which regards review of rules under other provisions of law, but also under Section 401(a)(1), which only authorizes a court to compel the agency to prepare a written statement, but does not authorize a court to stay, enjoin, invalidate, or otherwise affect a rule.

It is the intent of the Conference Committee that if an agency prepares the statements, analysis, estimates or descriptions under Section 202 and the written plan under Section 203(a) (1) and (2) for purposes of its rulemaking pursuant to the underlying statute, a court may, if pursuant to the review permitted under such statute, consider the adequacy of such information generated. Section 401(a)(4) provides that information generated under Section 202 and Section 203(a) (1) and (2) is not subject to judicial review pursuant to this Act under Section 706(2) of the Administrative Procedures Act. Section 401(a)(4) does allow that such information may, in accordance with the standards and process of the underlying statute, be part of the agency's rulemaking record subject to judicial review pursuant to the underlying statute. Any such information that is part of the record for judicial review pursuant to the underlying statute. Any such information that is part of the record for judicial review pursuant to the underlying statute may be subject to review under Section 706(2) of the Administrative Procedures Act (or other applicable law) and can be considered by a court, to the extent relevant under the underlying statute, as part of the entire record in determining whether the record before it supports the rule under the "arbitrary and capricious" or "substantial evidence" standard (whichever is applicable). Pursuant to the appropriate Federal law, a court should look at the totality of the record in assessing whether a particular rulemaking proceeding lacks sufficient support in the record. The provisions of this Act do not change the standards of underlying law, under which courts will review agency rules.

Section 401(a)(5) provides that, for any action under Section 706(1), the provisions of the underlying Federal statute relating to all other matters, such as exhaustion of remedies, statutes of limitations and venue, shall continue to govern, notwithstanding the additional requirements on agencies that Title II of this Act imposes. If, however, such underlying Federal statutes does not have a statute of limitations that is less than 180 days, then for review of agency rules under Section 706(1) that include the requirements set forth in Section 202 or Section 203(a) (1) and (2), the time for filing an action under Section 706(1) is limited to 180 days.

Finally, Section 401(b)(1) makes it clear that except as provided in Section 401(a), no other provision or requirement in the Act is subject to judicial review. Title I, those portions of Title II not expressly referenced above, and Title III are completely exempt from any judicial review. Section 401(b)(2) states that, except as provided in Section 401(a), the Act creates no right or benefit that can be enforced by any person in any action. Section 401(a)(6) states that any agency rule for which a general notice of proposed rulemaking has been promulgated after October 1, 1995 shall be

subject to judicial review as provided in Section 401(a)(2) (A) and (B).

U.S. SENATE,
OFFICE OF THE SECRETARY,
March 10, 1995.

Hon. DIRK KEMPTHORNE,
U.S. Senate,
Washington, DC.

DEAR SENATOR KEMPTHORNE: Per our conversation of March 9, 1995, I am writing to confirm that in the counting of days in the U.S. Senate, a sine die adjournment will result in the beginning again of the day counting process and that the sine die adjournment of a Congress results in all legislative action being terminated and any process ended so that it must begin again in a new Congress.

Hoping this may be of help. I remain,
Sincerely,

ROBERT B. DOVE,
Parliamentarian, U.S. Senate.

WILLIAM F. CLINGER,
ROB PORTMAN,
DAVID DREIER,
TOM DAVIS,
GARY CONDIT,
CARDISS COLLINS,
EDOLPHUS TOWNS,
JOE MOAKLEY,
Managers on the Part of the House.

DIRK KEMPTHORNE,
BILL ROTH,
PETE V. DOMENICI,
JOHN GLENN,
J.J. EXON,
Managers on the Part of the Senate.

○