With the Corps and the EPA interpreting almost every activity as one covered by the Section 404 program, the Corps has adopted a series of Nationwide Permits that cover routine activities and prevent the necessity of proceeding through the costly and time-consuming normal permitting process. One of these permits, Nationwide Permit 26, which covers certain areas up to 3 acres in size, is scheduled to expire in December 1998. The Corps is developing a series of ''replacement permits''. These ''carve outs'' are essential if the Corps is to be able to manage this program without enormous delays in permit processing times. This is particularly true as the bureaucracy continually expands the types of activities that are regulated under the Section 404 program. Yet, some interest groups are attempting to pressure the Administration to reject these replacement permits. If they are successful, I am convinced that the program will fall into disarray, prompting calls not only for the reform of the current program, but the repeal of the whole thing. We will all have to keep an eye on this development.

Finally, a case is pending in the United States Court of Appeals for the Ninth Circuit styled Resource Investments, Inc. v. U.S. Army Corps of Engineers. In this case, the Corps used its Section 404 regulations to overturn the judgment of a county government in a public bid process regarding the location of a new solid waste disposal facility. I can assure you that it is not this Senator's view that the mission of the Army Corps of Engineers is to make judgments that historically have been within the purview of local elected officials.

Mr. President, this is just a quick survey of some of the judgments that are being made by Federal agencies and Federal courts regarding the Section 404 program. These judgments sometimes expand and sometimes narrow this program. What is missing—and has been missing for 20 years—is the judgment of elected officials about fundamental aspects of this regulatory program that defy common sense and so often intrude on privately owned property, local economic activities and governmental infrastructure decisions. It is long-past time for the committee of jurisdiction over this program to bring forth legislation that proposes meaningful and responsible adjustments to this awful program.

By the way, Mr. President, I should add one more thing. The current President of the United States, when he was the Governor of Arkansas, chaired the Lower Mississippi River Delta Development Commission. The statutory charge of this Commission was to study the seven-state Lower Mississippi River Delta region and to develop a ten-year regional economic development plan. This is a particularly troubled region economically. Both my state of Mississippi and the President's state of Arkansas contain portions of the Lower Mississippi River Delta.

In May, 1990, the Commission filed its report, which was submitted to Congress over the signature of the current President. That report specifically addressed the problems of Federal wetlands regulation, stating:

The national wetlands policy has caused significant problems for agriculture, aquaculture and commercial and industrial development.

* * * * *

Current definitions do not adequately differentiate the quality of wetlands.

* * * * *

Current interpretations of the national wetlands policy have placed major limitations on the Delta's economy because commercial and industrial development is being impaired. (all quotes from page 80 of the report)

The report then made a number of recommendations, including these two from page 81 of the report:

Congress should direct appropriate federal agencies to establish minimum-sized wetlands for regulation.

* * * * *

Congress should assign the responsibility for identification and maintenance of a wetlands inventory to one agency, and require consultation with other affected agencies.

Mr. President, the President of the United States seems to have forgotten what he learned as chair of the Lower Mississippi River Delta Development Commission. The current Federal Section 404 permitting program regulates all wetlands regardless of size and is administered by two Federal agencies: the Corps of Engineers and the EPA. The President was correct with respect to these recommendations in 1990, but now that he is in a position to act, nothing has happened. I would hope that the President of the United States would submit at least these meaningful changes to Congress for our consideration in 1998.

Mr. BOND. Mr. President, I share the concerns of the Majority Leader regarding the shortcomings of the Section 404 program. In light of the recent and pending court cases, as well as the ongoing controversy over the scheduled demise in December of Nation Wide Permit 26, I agree strongly that Congress must address the Section 404 program legislatively. We should not continue to let the program bob and weave and stray in response to interpretations or policy preferences of each successive court decision or agency action. The law is unpredictable and it is not fair to the agencies administering the law or the landowners impacted by the law.

Based on accounts of the oral arguments in the United States Court of Appeals for the District of Columbia Circuit, and subsequent conversations my staff has had with various officials, it appears very possible that the lower court decision on the ''Tulloch'' rule will be upheld. The ''Tulloch'' rule extends regulation under the Section 404 program to activities like ''drainage'' and ''excavation'' that harm wetlands. The lower court held that expanding the Section 404 program to cover these activities might be very good public policy, but the current statute does not cover these activities. Legislation expanding the program will be needed. In its successful attempt to obtain a stay of the lower court decision, the Federal government filed documents suggesting that the failure to regulate ''drainage'' and ''excavation'' would be an environmental catastrophe. Thus, if the Court of Appeals upholds the lower court decision, legislation will be necessary to cover these activities.

My colleague from Louisiana and I have released a series of proposals in a ''discussion draft'' to encourage discussion of these difficult issues. One proposal in the draft would expand the activity regulated under Section 404 to include ''drainage'' and ''execution.'' This draft signals our commitment to engage in a constructive process with all parties to develop legislation that will stabilize the Section 404 program, expand the program to cover activities that are destructive to wetlands and make a number of common sense changes to the program that will make it more acceptable to private landowners on whose property 75% of these regulated areas are located.

Senator BREAUX and I released our discussion draft last summer. Time is growing short in this session of Congress, yet there is still time to act if there is a willingness of the various stakeholders to negotiate constructively and the will for us to legislate. I believe that I speak for my colleague from Louisiana when I pledge our cooperation in any reasonable process to develop Section 404 improvement legislation that will earn the support of a majority of our colleagues and will be good both for the environment and the regulated community.

Mr. President, I agree with the Majority Leader. Twenty years without legislative attention is long enough for the Section 404 program. The time has arrived to tackle this difficult issue.

NOTICE OF ADOPTION OF AMENDMENTS

Mr. THURMOND. Mr. President, pursuant to Section 303 of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1383), a Notice of Adoption of Amendments was submitted by the Office of Compliance, U.S. Congress. This notice contains amendments to Procedural Rules of the Office of Compliance to cover the General Accounting Office and the Library of Congress under various sections of the Congressional Accountability Act.

Section 304 requires this notice and the amendments to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the Notice and Amendments be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: AMENDMENTS TO PROCEDURAL RULES

NOTICE OF ADOPTION OF AMENDMENTS

Summary: The Executive Director of the Office of Compliance (''Office''), with the approval of the Board of Directors (''Board''), having considered comments received in response to the Notice of Proposed Rulemaking (''NPRM'') published on October 1, 1997, 143 Cong. Rec. S10291 (daily ed. Oct. 1, 1997), has amended the Procedural Rules of the Office of Compliance to cover the General Accounting Office (''GAO'') and the Library of Congress (''Library'') and their employees under the rules governing: (1) proceedings involving Occupational Safety and Health inspections, citations, and variances under section 215 of the Congressional Accountability Act of 1995 (''CAA''), and (2) ex parte communications.

The NPRM also proposed to extend the Procedural Rules to cover GAO and the Library and their employees for purposes of processing allegations of violation of sections 204–206 of the CAA, which apply rights and protections of the Employee Polygraph Protection Act of 1988 (''EPPA''), the Worker Adjustment and Retraining Notification Act (''WARN Act''), and the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA''), and of section 207 of the CAA, which prohibits employing offices from intimidating or taking reprisal against covered employees for exercising rights under the CAA. However, by a recently published Supplementary Notice of Proposed Rulemaking, 143 Cong. Rec. S86 (daily ed. Jan. 28, 1998), the Office is requesting further comment on whether the Procedural Rules should be extended to cover GAO and the Library with respect to alleged violations of sections 204–207, and no final action will be taken on this question until the comments have been received and considered.

Availability of comments for public review: Copies of comments received by the Office in response to the NPRM are available for public review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact: Executive Director, Office of Compliance, at (202) 724–9250 (voice), (202) 426–1912 (TTY). This notice will also be made available in large print or braille or on computer disk upon request to the Office of Compliance.

SUPPLEMENTARY INFORMATION

The Congressional Accountability Act of 1995 (''CAA'' or the ''Act''), Pub. L. 104–1, 2 U.S.C. §§1301–1438, applies the rights and protections of eleven labor, employment, and public access laws to certain defined ''covered employees'' and ''employing offices'' in the Legislative Branch. The CAA expressly includes GAO and the Library and their employees within the definitions of ''covered employees'' and ''employing offices'' for purposes of four sections of the Act: (a) section 204, making applicable the rights and protections of the Employee Polygraph Protection Act of 1988 (''EPPA''); (b) section 205, making applicable the rights and protections of the Worker Adjustment and Retraining Notification Act (''WARN Act''); (c) section 206, making applicable the rights and protections of section 2 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA''); and (d) section 215, making applicable the rights and protections of the Occupational Safety and Health Act of 1970 (''OSHAct''). These four sections go into effect by their own terms with respect to GAO and the Library one year after transmission to Congress of the study under section 230 of the CAA. The study was transmitted to Congress on December 30, 1996, and sections 204–206 and 215 therefore went into effect at GAO and the Library on December 30, 1997.

The purpose of the NPRM was to extend the Procedural Rules of the Office to cover GAO and the Library and their employees for purposes of any proceedings in which GAO or the Library or their employees may be involved. To accomplish this, the NPRM proposed to cover GAO and the Library and their employees in four respects: (1) Sections 401–408 of the CAA establish administrative and judicial procedures for considering alleged violations of part A of Title II of the CAA, which includes sections 204–206, and the NPRM proposed to extend the Procedural Rules to include GAO and the Library and their employees for the purpose of resolving any allegation of a violation of sections 204–206. (2) Section 207 prohibits employing offices from intimidating or taking reprisal against any covered employee for exercising rights under the CAA, and the NPRM proposed to extend the Procedural Rules to include GAO and the Library and their employees for the purpose of resolving any allegation of intimidation or reprisal prohibited under section 207. (3) Section 215 specifies the procedures by which the Office conducts inspections, issues citations, grants variances, and otherwise enforces section 215, and the NPRM proposed to extend the Procedural Rules to cover GAO and the Library and their employees for purposes of proceedings involving section 215. (4) Section 9.04 of the Procedural Rules governs ex parte communications, and the NPRM proposed to extend the Procedural Rules to cover these instrumentalities and employees for purposes of section 9.04.

In the only comment received in response to the NPRM, the Library argued that ''Congress expressly excluded the Library and other instrumentalities of Congress from the application of Titles I, III, IV and V of the CAA,'' which include the administrative and judicial procedures established in sections 401–408. (The Office of Compliance has made the Library's entire submission available for public review in the Law Library Reading Room of the Law Library of Congress, at the address and times stated at the beginning of this Notice.) As to whether GAO and the Library and their employees are covered by the procedures mandated by sections 401–408 when a violation of sections 204–207 is alleged, the Library's comments raise issues of statutory construction upon which the Office seeks further comment. To solicit such comments, the Office recently published a Supplementary Notice of Proposed Rulemaking, 143 Cong. Rec. S86 (daily ed. Jan. 28, 1998), and will make no decision as to whether the Procedural Rules will be amended to cover GAO and the Library and their employees for purposes of resolving allegations of violations of sections 204–207 until after the comments are received and considered.

The issues of statutory construction raised by the Library's comments are not pertinent, however, to proceedings under section 215 and to rules regarding ex parte communications. The procedures under section 215 expressly cover GAO and the Library and their employees because section 215(a)(2)(C)–(D) explicitly includes these instrumentalities and employees within the definitions of ''employing office'' and ''covered employee'' for purposes of applying the OSHAct ''under this section [215].'' As to ex parte communications, section 9.04 of the Procedural Rules includes within its coverage any covered employee and employing office ''who is or may reasonably be expected to be involved in a proceeding or rulemaking.'' The CAA explicitly authorizes GAO and the Library and their employees to be involved in proceedings under section 215(c), as described above, and the Library itself has exercised its right to be involved in the Office's rulemaking proceedings.

The Library further notes that the substantive regulations adopted by the Board to implement section 215 have not yet been approved by the House and Senate pursuant to section 304 of the CAA and argues: ''Since all OSHA regulations must follow the procedures for adopting substantive rules under section 304 of the Act, including approval by Congress, it would seem more appropriate to delete the reference to the coverage of the Library for purposes of section 215 of the CAA, in order to avoid confusion over the effect of possible Congressional approval of these proposed rules but not the underlying provisions applying to OSHA procedures.'' However, the Library's assumption that ''all OSHA regulations,'' including provisions of the Procedural Rules describing the Office's procedures under section 215, are subject to Congressional approval is incorrect. Congressional approval under section 304 is required only for the regulations adopted by the Board under section 215(d) of the CAA, which must generally be the same as the substantive regulations promulgated by the Secretary of Labor to implement section 5 of the OSHAct. The Board adopted such regulations for employing offices other than GAO and the Library and submitted the regulations to Congress for approval under section 304, see 143 CONG. REC. S61 (daily ed. Jan. 7, 1997), and recently amended those regulations to cover GAO and the Library and submitted the amendments to Congress for approval, see 143 CONG. REC. S11663 (daily ed. Nov. 4, 1997). However, the Procedural Rules, including provisions describing the Office's procedures under section 215 of the CAA, were adopted under section 303 of the CAA, which authorizes the Executive Director, subject to the approval of the Board, to adopt rules governing the procedures of the Office. See 143 CONG. REC. H1879, H1879–80 (daily ed. Apr. 24, 1997). The amendments in this Notice are likewise adopted under section 303, so the Library's expressed concern is unfounded.

Finally, although no comments were received regarding the specific language of the proposed amendments to the rules, the final adopted rules differ slightly from the text of the proposed amendments. The preamble to the NPRM explained that the purpose of the rulemaking was to cover GAO and the Library and their employees ''for purposes of any proceedings in which GAO and the Library or their employees may be involved as employing offices or covered employees,'' and, with respect to section 215, the preamble stated that GAO and the Library would be covered ''for the purposes of proceedings involving section[] . . . 215 of the CAA . . . .'' 143 CONG. REC. S10291, S10292 col. 1 (daily ed. Oct. 1, 1997). However, the proposed rules in the NPRM described specific kinds of proceedings under section 215, i.e., enforcement of inspection and citation provisions of the CAA and the granting of variances, and stated that GAO and the Library would be covered for purposes of those specific proceedings. Id. at S10292 col. 2. To avoid any confusion, the final rules have been simplified and revised to make clear that they cover GAO and the Library for purposes of ''[a]ny proceeding under section 215.'' Section 1.02(q)(1) of the Procedural Rules, as amended by this Notice.

Signed at Washington, D.C., on this 9th day of February, 1998.

RICKY SILBERMAN,
Executive Director, Office of Compliance.

The Executive Director of the Office of Compliance hereby amends section 1.02 of the Procedural Rules of the Office of Compliance by revising paragraphs (b) and (h) and

by adding at the end of the section a new paragraph (q) to read as follows:

"§ 1.02 Definitions.

''Except as otherwise specifically provided in these rules, for purposes of this Part:

* * * * *

''(b) *Covered employee*. The term 'covered employee' means any employee of:

''(1) the House of Representatives;

''(2) the Senate;

''(3) the Capitol Guide Service;

''(4) the Capitol Police;

''(5) the Congressional Budget Office;

''(6) the Office of the Architect of the Capitol;

''(7) the Office of the Attending Physician;

''(8) the Office of Compliance; or

''(9) for the purposes stated in paragraph (q) of this section, the General Accounting Office or the Library of Congress.

* * * * *

''(h) *Employing Office*. The term 'employing office' means:

''(1) the personal office of a Member of the House of Representatives or a Senator;

''(2) a committee of the House of Representatives or the Senate or a joint committee;

''(3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate;

''(4) the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance; or

''(5) for the purposes stated in paragraph (q) of this section, the General Accounting Office and the Library of Congress.

* * * * *

''(q) *Coverage of the General Accounting Office and the Library of Congress and their Employees*. The term 'employing office' shall include the General Accounting Office and the Library of Congress, and the term 'covered employee' shall include employees of the General Accounting Office and the Library of Congress, for purposes of the proceedings and rulemakings described in subparagraphs (1) and (2):

''(1) Any proceeding under section 215 of the Act. Section 215 of the Act applies to covered employees and employing offices certain rights and protections of the Williams-Steiger Occupational Safety and Health Act of 1970.

''(2) Any proceeding or rulemaking, for purposes of section 9.04 of these rules.''

PROGRESS IN BOSNIA

Mr. BIDEN. Mr. President, one of the most important foreign policy issues with which the Congress must deal in the coming months is continued American involvement in Bosnia and Herzegovina.

Last December, President Clinton announced his decision that the United States should maintain ground troops in an international force that will replace SFOR, whose mandate expires in June. Soon, he will ask the Congress for the funding to support this operation.

I support the President's decision as being squarely in the national self-interest of the United States. As I have said on many other occasions, the stability of southeastern Europe depends on the ability of the Bosnians, working with the international community, to create a self-sustaining, peaceful, democratic system in their country.

Failure to achieve this goal would inevitably restart the violence that produced the worst bloodletting in Europe since World War II, and would almost certainly ignite the ethnic tinderbox that is smoldering in neighboring countries. Other potential Radovan Karadzics cannot be encouraged to believe that they can get away with similar crimes. The devil's work of the mass murderers, ethnic cleansers, and rapists in Bosnia must not be allowed to stand in that country or, worse still, to be repeated there and elsewhere.

Moreover, as President Clinton said in his State of the Union address, staying the course in Bosnia is a test of American leadership in Europe in general, and in NATO in particular. It was American military involvement in the fall of 1995 and our diplomatic leadership in crafting the Dayton Accords that ended the carnage in Bosnia.

Make no mistake about it: we are the indispensable country in the European security equation, as Bosnia demonstrates. Although our alliance partners are shouldering the lion's share of the economic and military burden in Bosnia, without our participation on the ground and in the air, SFOR and any post-SFOR force would be impossible.

The task in Bosnia is complex and will take several more years to complete. President Clinton himself admitted his error in thinking that nearly four years of horrific violence could be remedied in one year, or even two-and-a-half years.

But our commitment to assisting the Bosnians, of course, is not open-ended. Rather than tieing our exit to an artificial date, we should—and will—link it to the completion of clearly defined criteria, such as the establishment of a functioning national government and other national institutions, seated elected local governments, free media, and a free-market economy. I have every confidence that the Administration will spell out these benchmark criteria in detail in its request for U.S. participation in the international force after this June.

I had the opportunity to accompany the President to Bosnia before Christmas—my fourth journey in recent years to that troubled land. The trip confirmed the impressions that I gained in a longer trip last summer: we have made significant progress in implementing the military and civilian provisions of the Dayton Accords.

I scarcely need to add the caveat that much still remains to be done to put Bosnia back on firm footing. Today I have several concrete policy proposals to further that end.

To put them into context, I would like to review in some detail the significant progress that has been made in the last nine months in implementing both the military and civilian provisions of the Dayton Accords.

Mr. President, I believe that even the most skeptical observer has to admit that the situation in Bosnia has improved greatly since Dayton, and with an increased tempo in the last nine months.

Thanks to our magnificent troops in IFOR and SFOR and those of allied and partner countries, a stable military environment has been created and the warring parties separated. No fewer than three hundred thousand troops from all sides have returned to civilian life.

Nearly seven thousand heavy weapons have been destroyed, and an additional two thousand six hundred put into supervised cantonments.

A joint Muslim-Croat Federation Defense Force has been created, although below the top command much more integration remains to be accomplished. The American Train and Equip Program to create a defensive Federation capability is in full swing. I visited its headquarters last summer, and was impressed with its trainers and its Muslim and Croat students.

Progress has also been made in creating non-political local police forces, both in the Federation and in the Republika Srpska. Integrated police forces are operating in eight major locations around the country, including the pivotal northern town of Brcko, whose future will be determined in March by an international arbitrator.

The International Police Task Force or IPTF has had its share of problems, perhaps unavoidable given the fact that no fewer than forty countries are contributing officers to it. Recent reforms, however, in which Americans have played a prominent role, have strengthened its professionalism. A new Federation Police Academy has been opened near Sarajevo to train new recruits from all religious groups.

Last fall, I called for our European allies to contribute forces from their paramilitary formations to create a gendarmerie in Bosnia as a vital middle layer—under SFOR control—between the local police and SFOR. Although there was an initial, predictable negative public reaction from Europe, I am told that several of our partners are now actively considering the idea. These European gendarmes could provide the security for newly elected municipal governments, guarantee safety for minority refugee returns, and take over the lead-role in capturing indicted war criminals.

In fact, slowly but surely the indicted war criminals are already being rounded up. Nearly one-third of the seventy-nine individuals under open indictment have been taken into custody in the War Crimes Tribunal in the Hague.

Last month, for the first time American SFOR troops carried out a capture operation, seizing a notorious Bosnian Serb who as the sadistic commander of a prison camp called himself the ''Serb Adolf'' and reveled in his grisly murder of Muslims. He is one of only a handful