THE REGULATORY TRANSITION ACT OF 1995

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

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CONTENTS

THE REGULATORY TRANSITION ACT OF 1995

THURSDAY, JANUARY 19, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2154, Rayburn House Office Building, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, McHugh, Fox, Gutknecht, Scarborough, Shadegg, Ehrlich, Tate, Peterson, Waxman, and Condit.

Majority staff present: Mildred Webber, staff director; John Praed, counsel; and David White, clerk.

Minority staff present: Bruce Gwinn, professional staff member.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order. With a quorum present, we will now start.

Welcome to the first meeting of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. It is a mouthful. I often just refer to it as the subcommittee on regulatory relief.

My name is David McIntosh and I am from Muncie, IN. Our subcommittee is under the full Committee on Government Reform and Oversight. Chairman William Clinger is our distinguished chairman. We are a new subcommittee both in name and jurisdiction. Although the subcommittee's jurisdiction is quite broad, we have every intention to serve the public in an efficient and effective manner.

I look forward to chairing this subcommittee with the understanding that it is quite unusual for a freshman to have this opportunity. I thank the chairman for his confidence, and I welcome the opportunity and look forward to working with many of the distinguished Members on both sides of the aisle in this effort. To the greatest extent possible, I intend to operate this committee in a bipartisan fashion.

With that in mind, I am delighted to introduce, first, my colleagues on the Republican side of the subcommittee, and then we will ask our distinguished ranking member from Minnesota, Collin Peterson, to introduce the rest of our colleagues on the Democrat side of the aisle.

Vice chairman of the subcommittee is Jon Fox from the 13th District of Pennsylvania.

John McHugh is our only nonfreshman on the Republican side and probably needs no introduction. I am going to be turning to him quite often for his wisdom and experience in this process. He is from the 24th District of New York.

Gil Gutknecht hails from the 1st District of Minnesota.

Joe Scarborough is from the 1st District of Florida.

John Shadegg is from the 4th District of Arizona.

Bob Ehrlich is from the 2d District of Maryland.

And Randy Tate is from the 9th District of the State of Washington.

Thank you one and all for serving on this subcommittee.

Mr. Peterson, I understand Mrs. Slaughter is unable to be here because her brother is very ill. Please convey our condolences to her and her family, and we wish them all the best and good health. Mr. Collin Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. We look forward to working with you this coming session.

We have a distinguished group of members that belong to this subcommittee, and we have—we are honored today to have our ranking member of the full committee with us, Cardiss Collins from the 7th District of Illinois, and we are glad to have her with us and enjoy her leadership on the committee.

We also have a number of senior Members of the House that are going to be serving on this subcommittee: Mr. Waxman from the 29th District of California, who also serves as the ranking member on the Health and Environment Subcommittee of the Commerce Committee.

We have some Members that couldn't be with us today because of other situations: Mr. Spratt from South Carolina; as you said, Mrs. Slaughter from New York, who has to be with her brother today, and we wish her and the family well.

Also, Mr. Kanjorski from Pennsylvania could not be with us today. He serves on the Banking Committee.

And, finally, Mr. Condit—Gary Condit from the 18th District in the Central Valley of California, who serves as the ranking member of the Department Operations Subcommittee of Agriculture.

So, with that, Mr. Chairman, we appreciate your calling this hearing and look forward to working with you.

Mr. MCINTOSH. Thank you very much.

To open this hearing today, I thought it would be appropriate to hear from the chairman of the full committee, and so I will ask Mr. Clinger to join us and am delighted that he is able to be here today to provide his guidance.

Mr. CLINGER. Thank you, Mr. Chairman. I have a full statement I ask be submitted for the record.

I want to congratulate you on this inaugural hearing on this brand-new subcommittee. The responsibilities that you are going to exercise will be great.

I am certainly pleased that you have targeted the goal of reducing regulatory burdens as the subcommittee's primary goal for the first hearing. That, frankly, is what led me to choose you for this very important job, because of your background and working in this field and the years that you have devoted to studying the regulatory morass that we deal with at the Federal level.

The burden of regulations being placed on the average American by the Federal Government continue to escalate. I am confident that with your leadership of this subcommittee we can hopefully stem the tide of useless and burdensome regulations that are taxing the resources of every individual in government and business in this country.

The assertion that regulatory burdens continue to mount cannot be discounted. According to a report prepared by the Federal Regulatory Information Service Center, President Clinton's first year in the oval office produced the third thickest Federal Register of all time, in itself not necessarily a bad thing but certainly an indicator that we are not reducing the regulatory burden.

In 1993, the Federal Register's proposed and final regulations, which are often regarded as a crude but useful barometer of the Washington regulatory activity, published nearly 70,000 pages and that I think is reason enough to be undertaking these hearings.

During the past Congress, I commissioned a study by the GAO on the number of hours average Americans spend filling out government paperwork and complying with Federal regulations. To my amazement, GAO reported that Federal agencies reported to OMB that a total 6.6 billion hours were required to fulfill government paperwork requirements. This is another area we will be looking at in terms of the Paperwork Reduction Act and revisiting that legislation.

Let me state that again the Federal Government mandated a total of 6.6 billion hours of paperwork burden on private citizens and individual businesses in 1 year alone, and that is over 2,000 hours per American.

The legislation that you have introduced, I think, is the perfect piece of legislation to initiate the activities of this subcommittee. The bill would impose a 6-month moratorium on all discretionary regulations issued by government agencies. It would not shut down the government. After all, regulations deemed to be mandated by emergency circumstances would still be issued, as I understand it, but it will force regulatory agencies to slow down, think about what they are doing and report to the Congress and the American people what regulations they are considering.

Mr. Chairman, this matter is not just an inside-the-beltway policy debate. In my own district, I have a constituent who is working with the Environmental Protection Agency—in opposition to the Agency—to craft a rule change which will actually relieve his company of current regulatory burdens. The agency is on the verge of issuing a proposed change to a current rule which will save my constituent several million dollars and not detrimentally impact the environment.

So efforts like the implementation of these streamlining efforts I think will be allowed to continue under this moratorium.

The most important result of this bill, however, is that it will give the new Congress an opportunity to take a deep breath and examine the regulations controlling the lives of all Americans.

If H.R. 450 becomes law, our work will not be over. This is going to be a principal focus of this subcommittee, and this is a good initial start. It is going to be the responsibility of each committee of the House, not just this subcommittee and the Committee on Gov-

ernment Reform and Oversight, to study the regulations being proposed by the executive branch. This task should not be taken lightly for the job is going to be monumental.

Mr. Chairman, I appreciate the opportunity to make this opening statement this morning and to wish all the members of the subcommittee well. I think it is an effort that I encourage, and I applaud you for approaching this in a bipartisan fashion and wish the efforts of the subcommittee great success.

Mr. MCINTOSH. Thank you, Mr. Chairman.

[The prepared statement of Hon. William F. Clinger, Jr., follows:]

PREPARED STATEMENT OF HON. WILLIAM F. CLINGER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman: I congratulate you for this inaugural hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. The responsibilities are great and I am pleased that you have targeted the goal of reducing regulatory burdens as the subcommittee's primary goal for the first hearing.

The regulatory burdens being placed on an average American by the Federal Government continue to escalate. I am confident that with the leadership of this subcommittee, we can stem the tide of useless, burdensome regulations that are taxing the resources of every individual, government, and business in this country. The assertion that regulatory burdens continue to mount cannot be discounted. According to a report prepared by the Federal Regulatory Information Service Center, President Clinton's first year in the Oval Office produced the third-thickest Federal Register of all times. In 1993, the Federal Register, whose pages of proposed and final regulations are often regarded as a crude but useful barometer of Washington's regulatory activity, published nearly 70 thousand pages. The only president who beat that total was Jimmy Carter, who served in White House during our previous period of rapid government expansion in the late 1970s.

During the past Congress, I commissioned a study by the General Accounting Office on the number of hours average Americans spend filling out government paperwork and complying with Federal regulations. To my chagrin and amazement, the GAO reported that Federal agencies reported to the President's Office of Management and Budget that a total of 6.6 billion hours were required to fulfill government paperwork requirements. Let me state that again. The Federal Government mandated a total of 6.6 billion hours of paperwork burdens on private citizens and individual businesses in one year alone. That is over 2 thousand hours per American.

The private sector council on regulatory and information management testified last year before the House Small Business Committee that they estimate that the total burden hours even higher, at 10.2 billion hours. When they multiply that figure by an average $50 per hour in labor costs, they conclude that a total of $510 billion dollars is taken from the nation's economy just to comply with Federal paperwork burdens. That is about 9% of the nation's GDP.

I will not suggest tnat all of these efforts to comply with government regulations are wasted. Indeed, our air is cleaner, our roads are safer, and our workers are more productive because of the regulatory efforts of many executive agencies. But that is not reason to allow wasteful, often useless government regulations and paperwork requirements. H.R. 450 in many ways is the perfect piece of legislation to initiate the activities of this subcommittee. The bill would impose a six month moratorium on all discretionary regulations issued by government agencies. It would not shut down the government. After all, regulations deemed to be mandated by emergency circumstances would still be issued. But, it will force regulatory agencies to slow down and to report to Congress and Americans what regulations they are considering.

Because we recognize that not all regulations are onerous, the bill provides a considerable exception for regulations which repeal, narrow, or streamline existing agency procedures. Last Congress, I was pleased to co-author a bill which recreated the Federal Government's procurement system into a better, simpler and more efficient process. This bill, the Federal Acquisition Streamlining Act of 1994, which was signed by the President this past October, will, once implemented, actually reduce the regulatory burdens associated with the government's procurement process and, as a result, save both the government and industry considerable amounts of time and money.

This matter is not just "inside the beltway" policy debate. In my own district, I have a constituent who is working with the Environmental Protection Agency to

craft a rule change which will actually relieve his company of current regulatory burdens. The agency is on the verge of issuing a proposed change to a current rule which will save my constituent several million dollars and not detrimentally impact the environment.

Efforts like the implementation of these streamlining efforts will be allowed to continue under this moratorium. The most important result of this bill, however, is that it will give the new Congress an opportunity to take a deep breath, and examine, the regulations controlling the lives of all Americans. In all honesty, however, this legislation was not necessary. In a letter to President Clinton early this year, the new house leadership asked the President to impose by Executive order his own regulatory moratorium. When given the opportunity to work in a bipartisan fashion to craft a workable compromise, the offer was rejected. Now it is up to the Congress, and particularly, this subcommittee, to find a means to reduce the burdens of the Federal regulatory apparatus.

If H.R. 450 becomes law, our work will not be over. It will be the responsibility of each committee of the House generally, and the Committee on Government Reform and Oversight specifically, to study the regulations being proposed by the executive branch. This task should not be taken lightly as the job will be monumental. Again, I appreciate testifying before you this morning and wish each of you well in your daunting task.

Mr. MCINTOSH. I would also like to now call upon the ranking minority member, Mrs. Collins, for a statement, and then we will begin the proceedings of the hearing.

Mrs. COLLINS. Thank you Mr. Chairman.

I want to thank you for calling this hearing on H.R. 450, which is a bill to impose a 6-month moratorium on regulations.

I am extremely concerned, Mr. Chairman, that this 1 day of hearings will be totally inadequate to resolve the confusion, and many unanswered questions, surrounding this proposal. From what I understand, none of the witnesses at today's hearing can tell us definitively all of the regulations that would be suspended under the provisions of this bill.

The moratorium on regulations proposed in the bill is not part of the Contract with America. When the public has an opportunity to learn about it, I doubt that they will support it.

No one can claim the American public voted in November to block the issuance of regulations that protect consumers from the deadly E coli bacteria in meat. No one voted to stop improved airline safety regulations. No one voted to halt regulations that provide for enhanced safety at nuclear power plants. No one voted to stall new mine safety rules designed to cut down on coal mine fires. Yet, this bill would make these and all other Federal regulations subject to a 6-month moratorium.

In this regard, I have noticed that a pattern is emerging in the Republican bills that this committee has been considering. They all use catchwords like, "unfunded mandates," "line-item veto" and "regulatory moratorium." We need to start speaking English, and tell the American people exactly what these bills are going to do.

To illustrate, the Department of Agriculture has proposed new inspection rules in response to the deaths of children 2 years ago from the deadly E coli bacteria in hamburger. This bill would halt those rules from going into effect.

The new meat and poultry inspection rule is not being promulgated to punish cattle ranchers, poultry farmers, or meat and poultry processors. Its purpose is to stop people from dying and from getting sick from food borne bacteria such as salmonella and E coli. Food borne disease causes an estimated 9,000 deaths every year and 6.5 million illnesses. Medical costs and lost productivity associ-

ated with the treatment of food borne illness are estimated to be between $5 billion and $6 billion every year.

I completely disagree with the proponents of this bill that we should delay even for 1 minute, much less 6 months, the implementation of regulations to reduce the number of deaths and illnesses that occur each year from food poisoning.

Let me turn to a very interesting statement in the testimony from the American Trucking Association, which was the only testimony I received in advance. The trucking industry supports the bill because, among other things, it would delay new regulations that would require random alcohol testing of truck drivers. I doubt most Americans driving down our roads would want to see any kind of delay in that regulation, and I believe that most of us here would feel uncomfortable with some kind of decision to delay a regulation like that.

I think it is time for us to be honest with the American public. While business and industry may like exemptions from regulations that a moratorium would give us, let us remember that regulations are proposed to deal with serious, real-life problems that people face.

I also want to point out an interesting aspect of this bill. Two weeks ago, the Republican leadership proposed a package of new Rules for the House which we adopted. We also passed a bill this week that would make the Congress subject to the same laws that the rest of the country and the executive branch have to live by. So it strikes me as ironic that this regulatory moratorium doesn't apply to Congress. This is the kind of special treatment we recently rejected.

If there are problems with regulations, they should be addressed by the agency. If Congress believes the agency is acting improperly or the law needs revision, we should debate it and change the law accordingly.

Our zeal for reducing regulatory burden must always be tempered by our commitment to serve and promote the well-being of the American public. For this reason, I oppose an across-the-board moratorium and would urge my colleagues to give it their very careful consideration as well.

Thank you and I yield back the balance of my time, Mr. Chairman.

Mr. MCINTOSH. Thank you. I would invite you to stay and hear the testimony of the witnesses and see what their justification is for their positions.

Mrs. COLLINS. I thank you very much. I would be more than happy to, but I have to be on the floor for unfunded mandates. That has been greased through the House already, so I must leave now.

Mr. MCINTOSH. If you get a chance to come back and join us, that would be great.

[The prepared statement of Hon. Cardiss Collins follows:]

PREPARED STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I want to thank you for calling this hearing on H.R. 450, a bill to impose a six-month moratorium on regulations.

I am extremely concerned, Mr. Chairman, that this one day of hearings will be totally inadequate to resolve the confusion, and many unanswered questions, surrounding this proposal. From what I understand, none of the witnesses at today's hearing can tell us definitively all of the regulations that would be suspended under the provisions of this bill.

The moratorium on regulations proposed in this bill is not part of the Contract with America. When the public has an opportunity to learn about it, I doubt they will support it.

No one can claim the American public voted in November to block the issuance of regulations that protect consumers from the deadly E coli bacteria in meat. No one voted to stop improved airline safety regulations. No one voted to halt regulations that provide for enhanced safety at nuclear power plants. No one voted to stall new mine safety rules designed to cut down on coal mine fires. Yet, this bill would make these and virtually all other Federal regulations subject to a six-month moratorium.

In this regard, I have noticed that a pattern is emerging in the Republican bills that this committee has been considering. They all use catchwords, like unfunded mandates", "line item veto", and "regulatory moratorium". What we need to do is start speaking English, and tell the American people what these bills actually do. For example, the Department of Agriculture has proposed new inspection rules in response to the deaths of children two years ago from the deadly E coli bacteria in hamburger. This bill would halt those rules from going into effect.

The new meat and poultry inspection rule is not being promulgated to punish cattle ranchers, poultry farmers, or meat and poultry processors; its purpose is to stop people from dying and getting sick from food borne bacteria, such as salmonella and E coli. Food borne disease causes an estimated 9,000 deaths per year and 6.5 million illnesses. Medical costs and lost productivity associated with the treatment of food borne illness are estimated to be between $5 billion and $6 billion each year.

I completely disagree with the proponents of this bill that we should delay for one minute, much less six months, the implementation of regulations to reduce the number of deaths and illness that occur each year from food poisoning.

Let me turn for a moment to a very interesting statement in the testimony from the American Trucking Association. That was the only testimony I received in advance. The trucking industry supports the bill because, among other things it would delay new regulations that would require random alcohol testing of truck drivers. I doubt most Americans would want to delay that regulation. I doubt most of us in this room would feel comfortable making that decision.

It is time to be honest with the American public. While business and industry may like the exemptions from regulations that a moratorium would give, let us remember that regulations are proposed to deal with serious, real life problems that people face.

I also want to point out an interesting aspect of this bill. Two weeks ago the Republican leadership proposed a package of new Rules for the House which we adopted. We also passed a bill this week that would make the Congress subject to the same laws that the rest of the country and the Executive Branch must live by. It strikes me as ironic that this regulatory moratorium does not apply to Congress. This is the kind of special treatment we recently rejected.

If there are problems with regulations, they should be addressed by the agency. If Congress believes the agency is acting improperly, or the law needs revision, then we should debate it, and change the law accordingly.

Our zeal for reducing regulatory burden must always be tempered by our commitment to serve and promote the well-being of the public. For this reason, I oppose an "across-the-board moratorium", and urge my Colleagues to give it their very careful consideration as well.

Mr. MCINTOSH. Last November, the American people sent a clear message to Washington—"get government off of our backs."

Last week, Congressman DeLay and I introduced a bill to do just that. Titled the "Regulatory Transition Act of 1995," H.R. 450 protects the middle class by placing a moratorium until June 30 on new Federal regulations that the administration has issued or proposed since the election. There are now over 72 cosponsors in the House. I am pleased that this bill has bipartisan support, including the ranking member, Collin Peterson.

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is holding a hearing today on H.R.

450 in order to bring to the Federal Government's attention the many ways in which unnecessary regulation has hurt the American middle class.

First, let me give you a brief outline of some of the principles that I will bring to this task in chairing this subcommittee and that the subcommittee will apply in its work.

First, regulations must maximize the benefits to the public and minimize the burdens on the American people.

Second, we must always have the utmost respect for individual freedom.

Third, it is vitally important that we have a renewed respect for federalism and the role that States and local governments play in our governmental system.

It is also equally important that we respect established constitutional rights. Perhaps most important in this area will be the protection of private property and the rights guaranteed under the Constitution.

We will also need to look to see that other procedural rights are guaranteed for the American citizens who interact with our regulatory agencies.

And, finally, we will promote free markets and free market solutions used in the regulatory process.

Those are the principles that we will use to guide our review of how the government is performing its task in a myriad of areas across a broad cross-section of the country and a broad cross-section of the Federal programs.

The need for a freeze on new regulations is beyond debate. President Clinton's administration has admitted that Federal regulations cost the private sector alone at least $430 billion. Private estimates have projected that the full cost of compliance is well over $500 billion per year. For the average family of four that is a hidden tax of about $8,000 a year.

This hidden Federal tax hurts the average American every day. Regulation pushes up the price that moms and dads pay for food they put on the table, clothing for their kids, for the cars that they drive and for all goods and services. They force farmers to spend time filling out Federal forms rather than tilling their fields. And small businesses cannot create new jobs with the regulatory burden that they are suffering under. The Small Business Administration estimates that in this country small businesses spend at least 1 billion hours every year filling out government forms. America has fought wars that were done in less time than that.

We have tried to work with President Clinton on this bill, but, frankly, I don't think he is serious about cutting back on Federal regulations. Consider the following:

President Clinton has refused a request from the Senate and House leadership to voluntarily freeze more regulations for the first 100 days of this Congress.

President Clinton's regulatory plan, issued shortly after the election, lists about 4,300 pending new regulatory actions that the Clinton administration plans to take this year. Already, they have taken about 823 regulatory actions in the agencies listed in that plan and many others that are not listed therein.

According to the Institute for Public Policy, the President plans to have nearly 130,000 government employees devoted to implementing regulations.

I would like to submit for the record a copy of an article that appeared today in the Washington Post that shows how the budgets for Federal regulatory agencies have been increasing so that they are now 10 times as high as they were in 1970. The onslaught of Federal regulation continues and needs to be put to an end.

[The information referred to follows:]

January 19, 1995

THE WASHINGTON POST

TRENDLINES

Will GOP Cuts Go Too Far?

Rising Cost of Rules Leads to a Rising Tide Against Them

By John M. Berry
Washington Post Staff Writer

Twenty years ago last fall when President Gerald R. Ford was trying to find a way to "Whip Inflation Now," a large group of prominent economists whose leanings ranged from very liberal to very conservative reached quick agreement on something that would help: Change or eliminate federal regulation in 44 areas ranging from milk marketing orders to interstate trucking.

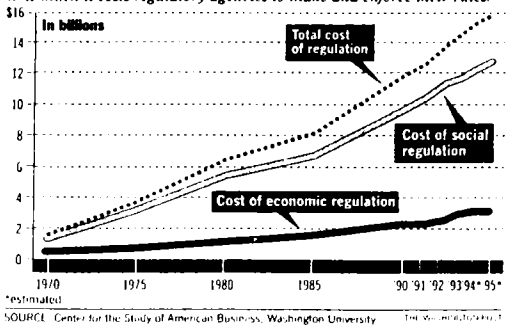
That would make the U.S. economy more competitive and less inflation-prone, the group argued. A number of the changes later were adopted—including deregulation of airline fares and interstate trucking—and most analyses of the results show that prices are lower than they would have been if the old rules had stayed in effect.

One measure of the scope of federal regulations is shown in the chart at the right, which depicts government spending in recent years to cover the costs of salaries and other expenses of federal regulatory agencies. This year, according to the Center for the Study of American Business at Washington University in St. Louis, that cost will be $15.6 billion, more than 10 times what it was in 1970.

Of course, a lot of that increase is due to inflation rather than the expansion of regulation. If the numbers on the chart were expressed in terms of constant dollars, the cost of regulation this

See TRENDLINES, D12, Col. 3

THE COST OF COMPLYING *with all the federal government's regulations, which falls broadly on individuals, businesses and governments at all levels, is extraordinarily hard to pin down, but by some estimates it is more than $500 billion a year. Such costs are the driving force behind efforts in the new GOP-controlled Congress to reduce regulation. Here is how much it costs regulatory agencies to make and enforce their rules.*



Putting a Price Tag on Regulatory Reform

TRENDLINES, From D9

year would be about three times more than in 1970.

Now there is a new drive underway in the Republican-controlled Congress to force sweeping changes in the way regulations are adopted and to cap the total cost of regulations imposed on individuals, businesses and governments. Some estimates of that cost range above $500 billion annually, though the figure is extraordinarily hard to quantify.

As was the case in 1974, economists of all political leanings have found merit in some of the proposed changes, including the requirement that there be an assessment of the human health and safety or environmental risk each new regulation is intended to address.

Paul Portney, vice president of Resources for the Future, a Washington-based nonprofit organization that specializes in the economics of regulation, wrote recently in The Washington Post: "Certainly, environmental regulation needs major reform; not even the most ardent environmentalist could dispute that. One reason the [reform proposal] strikes such a chord is because so many absurdities and inefficiencies are built into current rules."

In a similar vein, at the annual meeting of the American Economic Association here earlier this month, Murray L. Weidenbaum, former chairman of President Ronald Reagan's Council of Economic Advisers and now head of the Center for the Study of American Business, said the high cost of inefficient regulation has caused a massive backlash, particularly among business executives. "I believe that the past failure to adopt relatively modest [reform] proposals . . . has led to the slash-and-burn approach that we will be reading about in coming months," he said.

Weidenbaum has been urging for years that more risk assessments be done so that available funds be directed at reducing or eliminating the risks that pose the greatest danger. At the same time, he has called for more cost-benefit analyses and giving those required to comply with regulations more freedom to choose the most cost-effective way to do so. But with rare exceptions, such as allowing electric utilities to sell or trade pollution credits, few changes have been made, Weidenbaum said.

"In general, reduced economic regulation ... has enabled the competitive process to work better."

— Murray L. Weidenbaum, Center for the Study of American Business

The lack of progress has caused House Republicans to go too far in trying to curb regulations, Weidenbaum said in an interview. By "slash-and-burn" he was referring to the proposal that no new regulations could be adopted that would impose any cost on society unless the cost of compliance with existing regulations be reduced by a similar amount.

Weidenbaum said there simply is no bank of information on which to base such a law. No one knows with any certainty what the cost of regulatory compliance is, so such an approach would be unworkable, he said.

Said Portney, "If enacted in anything resembling their present form, the changes proposed would bring the regulatory system to a jarring halt. This would not only jeopardize regulations everyone would agree are in the national interest [such as the mandated removal of lead from gasoline several years ago], but also kill chances for more measured reform."

The other two lines on the chart show that the expansion of regulation has not come in the traditional sphere of economic activity. Only about one-fourth of the cost of running federal regulatory agencies involves regulation of finance and banking, general business activities or industry-specific circumstances.

Instead, the expansion has come in social regulation—encompassing consumer safety and health, job safety, energy use and the environment—and it will cost the federal government about $12.6 billion this year to make and enforce the rules, according to the center.

"In general, reduced economic regulation—ranging from outright deregulation to simplification and streamlining of rule making—has enabled the competitive process to work better," Weidenbaum said.

"The reverse trend has been experienced in the area of social regulation. A lack of concern with adverse economic impacts has accompanied the most rapid and costly expansion in environmental and workplace regulation in American history," he said.

Mr. MCINTOSH. Since we introduced the moratorium bill we have met with the White House twice. They have acknowledged that there are serious problems with the way in which the regulatory machinery works, but President Clinton has refused to sign off on our bill and put a stop to the regulatory juggernaut.

This evidence leads to one conclusion—President Clinton is having a love affair with Federal regulations, and the American middle class has had to pay the price. Well, not any more. No more business as usual. This Congress will put a stop to costly, unnecessary regulations.

In order to reform the way the Federal Government makes regulations, we need to move forward with the moratorium, and there are several reasons we need to do that. I think most important are the regulations that would be affected during that time period.

One of them is the California Federal implementation plan that will come due under a court deadline February 15th. Although the implementation date has been moved for 2 years, this would become a final regulation which would hang over the heads of the citizens of southern California and threaten over 160,000 individuals with the loss of their jobs if that FIP comes into place.

The American people will hear a lot of reasons why we shouldn't have a moratorium on regulations. The proponents of big government will try to scare them into believing that the horror of horrors will happen, and life will come to an end as we know it. Those red herrings will be put to rest by this committee, and we will assure the American people that we will fully protect the environment, we will fully protect the health and safety of every worker, and we will fully protect the American public when it is necessary, but we will cut back on unnecessary regulations that cost us jobs and cost the American taxpayer every day in the marketplace.

Let me mention some of the reasons that are given and tell you why I don't think they really apply.

First, the President and his staff are worried that the moratorium would paralyze the Federal bureaucracy. Quite honestly, I know a lot of people think that is maybe not too bad. But I suspect that the bill's opponents have overstated the burden this bill would create and that perhaps some of those 130,000 employees in the Federal Government could turn their attention to reducing regulatory burdens rather than creating new ones.

Second, there will be those who oppose the bill by exploiting the fears of the American public. I have heard claims that without new Federal regulations, airline safety will be jeopardized—not so—and that children will be threatened with new toys that are dangerous—not so. The bill has an exemption that guarantees the health and safety of the American public and allows the President to put forward any regulations that he deems necessary to address immediate threats in those areas.

Third, the President's staff does not like the fact that the bill permits private citizens to sue the Federal Government if it doesn't follow the freeze on new regulations. I find it highly ironic that the President is in favor of tort reform when the government is the defendant but in no other instance.

The American people will not be fooled. They know the White House's opposition to this proposal is nothing more than a camou-

flage for their true feelings: They want to move forward with more regulations. I hope that we can put that aside and work together to pass this bill.

I encourage President Clinton and all Federal regulators to listen to the message the voters sent last fall, to work with this new Congress to accomplish these tasks, to put old thinking behind us and to move forward to address these problems. We are determined to reduce the regulatory burden on the American people, to cut the hidden tax, and we welcome the President's cooperation. But let me be clear. We have heard the mandate of the American people, and we will move forward with or without that cooperation.

In a moment, a number of Americans will testify about the tremendous burdens that Federal regulations have imposed on their daily lives. We will hear about how EPA has cost small businesses hundreds of thousands of dollars, how regulations have cost jobs in America, how women in America cannot use the latest techniques to test for breast cancer because the FDA won't get off the dime and approve them. These are real Americans—not lobbyists, not Washington professionals, not special interest representatives. We will hear how they are victims of regulations.

Their stories are only a few of the millions that could be told. Indeed, we asked a number of other witnesses to testify today. Some declined because they feared retribution from Federal regulators. In the past, I have heard rumors about such retribution. Today I am here to tell you that these rumors are true, sad as it may be. Such arrogant abuse of power is intolerable in a free society.

And let there be no misunderstanding. If I find out that anyone is harassed by the government for cooperating with this subcommittee and our effort to reduce regulations, I will hold those persons personally accountable.

[The prepared statement of Hon. David M. McIntosh follows:]

PREPARED STATEMENT OF HON. DAVID M. MCINTOSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

THE PEOPLE HAVE SPOKEN, AND WE HAVE LISTENED

Last November the American people sent a clear message to Washington—"Get government off our backs."

Last week, Congressman DeLay and I introduced a bill to do just that. Entitled the "Regulatory Transition Act of 1995," House Resolution 450 protects the middle class by placing a moratorium until June 30, 1995 on new federal regulations the Clinton Administration has issued or proposed since the election. There are now over 72 co-sponsors. I am pleased that this bill has bi-partisan support—including my distinguished colleague from Minnesota, Ranking Member Collin Peterson.

The Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs is holding hearings today on H.R. 450 in order to bring to the Federal Government's attention the many ways in which unnecessary regulation has hurt the American middle class.

PRINCIPLES OF REGULATORY REFORM

As we begin this important task, the American people deserve to hear the six principles of regulatory reform that will guide my work and the work of this subcommittee.

Regulations Must Maximize Benefits and Minimize Burdens

Regulations, by their nature, impose burdens on the American people—both direct and indirect. For too long, the federal government has failed to take into account these burdens, and to weigh them against the benefits of regulation. In the future, new regulations will be subject to a cost benefit analysis that ensures that regula-

tions do more good than harm. In conducting this analysis, we need to make sure that our math is honest and our science is sound. In making this balance, we can no longer justify an improper regulation by simply putting the thumb of government on the scales.

Respect for Individual Freedom

America was founded on the principle of individual freedom. Today, that freedom is under attack, not from a foreign threat, but from our own government—through a suffocating fog of regulations. Over 150 years ago, Alexis De Tocqueville warned America about this attack from within. In Democracy in America, Tocqueville wrote: "[Regulation] covers the surface of society with a network of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate . . . . [Regulation] does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to be nothing better than a flock of timid and industrious animals, of which the government is the shepherd." It is time we recognize that the American people are free-thinking, hard-working, responsible citizens capable of ordering their lives as they see fit. They will no longer tolerate the government's encroachment on their freedom.

New Respect for Federalism

It is time for the federal government to again recognize that it is not the only government in existence in these United States. Fifty state governments and tens of thousands of local governments also exist for good and proper reasons. The Tenth Amendment to the Constitution commands us, as legislators, to acknowledge that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." I am dedicated to the principle that federal regulations that encroach on powers reserved to the States will not stand. Even where the federal government has the constitutional authority to act, we need to also ask whether it is best suited for the task. I believe there are many tasks currently performed by the federal government that can be better performed by the states—the police power, for example.

Vigorous Protection of Property Rights

The Fifth Amendment to the Constitution prohibits the federal government from taking private property for public use without just compensation. With the rise of the regulatory state, government effectively takes private property when regulations limit its use. Federal regulations need to be subjected to careful scrutiny to ensure they do not violate this most basic of all rights.

A Bill of Rights for Victims of Excessive Regulations

Those Americans victimized by regulations must be afforded certain procedural rights as a guarantee against improper federal action. The most important of these procedural rights are embodied in the Bill of Rights. These protections need to be preserved in the regulatory state.

Protect Free Markets and Find Free Market Solutions

Whenever possible, we need to create regulations that protect, not destroy, free markets. The days of big government trying to micro-manage our economy are over.

With these principles of regulatory reform in mind, let me turn now to the specifics of the Regulatory Transition Act of 1995.

FEDERAL REGULATIONS ARE AN $8,000 HIDDEN TAX

The need for a freeze on new regulations is beyond debate. President Clinton's Administration itself has admitted that Federal regulations cost the private sector alone "at least $430 billion." Private estimates have projected that the full cost of compliance is well over $500 billion per year. For the average family of four, that's a hidden tax of about $8,000 a year.

This hidden federal tax hurts the average American everyday. Regulations push up the prices Moms and Dads pay for food and clothing for their kids, the car they drive, and all goods and services. They force farmers to spend time filling out forms rather than tilling their fields. Small businesses cannot create new jobs. The Small Business Administration estimates that small businesses in this country spend at least 1 billion hours every year just filling out government forms. America has fought wars that didn't take that long.

THE WHITE HOUSE HAS REFUSED TO ACT

We have tried to work with President Clinton on this bill. But quite frankly, I don't think he's serious about cutting back on regulation. Consider the following evidence:

Exhibit #1—President Clinton refused a request from Senate and House leaders to voluntarily freeze new regulations for the first 100 days of the new Congress.

Exhibit #2—President Clinton's Regulatory Plan (which was published only six days after the election) lists about 4,300 pending new regulatory actions on the Clinton agenda. Already, the Clinton Administration has taken 568 new regulations. Here's the Federal Register to date from 1949.

Exhibit #3—According to the Institute for Public Policy, the President wants to have nearly 130,000 government employees devoted to implementing regulations in 1995.

Exhibit #4—Since we introduced the Moratorium Bill, the White House has met with us twice and has acknowledged that there are serious problems with the regulatory machine—some would say it is out of control. But President Clinton has refused to shut off this engine.

Exhibit #5—Only yesterday, the White House canceled a meeting with this subcommittee to discuss the Moratorium Bill.

This evidence leads to only one conclusion: President Clinton is having a love affair with federal regulations. And the American middle class has had to pay the price—well, not any more. No more business as usual. This Congress will put a stop to costly unnecessary Federal Regulations.

In order to reform the way the federal government makes regulations, the American people need a break from the daily deluge of new regulations. The freeze on new regulations gives them that break. The moratorium also ensures that once we reform the regulatory process, we will not be stuck with thousands of regulations still in the pipeline that have not been subjected to proper scrutiny.

OBJECTIONS TO THE MORATORIUM ARE INSINCERE

As we move forward with the Regulatory Moratorium, the proponent of big government will try to scare the American people with a parade of horror stories—all of which are false!

First, the President's staffers are worried the moratorium would paralyze the federal bureaucracy. Quite honestly, I suspect that many Americans think paralyzing the federal government would be a good thing. I also suspect that the bill's opponents overstate the burden this bill would impose on the White House staff. I find it hard to believe that a well run Executive Branch cannot comply with a regulatory moratorium and do its job at the same time.

Second, there will be those who oppose this bill by exploiting the fears of the American public. I have heard claims that without new federal regulations airplane safety will be jeopardized—not so—and that children will be threatened by their toys—not so. The President and I both know that the Moratorium Bill allows the government to pass regulations that protect the public from an imminent threat to health or safety or other emergency. I am disappointed that anyone would stoop to fear-mongering to protect the regulatory juggernaut.

Third, President Clinton's staff does not like the fact the bill permits private citizens to sue the federal government if it breaks the freeze on new regulations. I find it highly ironic that the President is in favor of legal reform only when his Administration is being sued.

The American people cannot be fooled. They know the White House's opposition to the Republican's proposed freeze on new federal regulations is nothing more than camouflage for the President's true feelings—a deep-seeded love of regulation.

CONGRESS AND THE WHITE HOUSE SHOULD WORK TOGETHER

Well, we are here to say, it is a "New Day" in Washington. I encourage President Clinton and all federal regulators to listen to the message of the voters, and to work with this new Congress to accomplish those tasks we were sent to Washington to do. Reforming the way regulations work in this country is one of the most important tasks the Republicans promised to tackle in the 104th Congress. We are determined to reduce the onslaught of new regulations and roll back unnecessary red tape that are a hidden tax on the American middle class. We welcome President Clinton's cooperation—bet let me repeat we will get the job done with or without that cooperation.

MCINTOSH SPEARS OUT AGAINST RETRIBUTION BY FEDERAL REGULATORS

In a moment, a number of Americans will testify about the tremendous burdens that federal regulations have imposed on their daily lives. We will hear how EPA has cost small businesses $100,000's. How regulations cost jobs. How women in America cannot use the latest techniques to test for breast cancer because the FDA won't get off the dime. These are real Americans—not lobbyists, not Washington professionals, not special interests. We will hear how they are victims of regulation.

Their stories are only a few of the millions that could be told. Indeed, we asked a number of other witnesses to testify today. Some declined because they feared retribution from federal regulators. In the past, I have heard rumors about such retribution. Today, I am here to tell you that those rumors are true. Such arrogant abuse of power is intolerable in a free society.

Let there be no misunderstanding: If I find out that anyone is harassed by the government for cooperating with this subcommittee, I will hold those responsible personally accountable.

Mr. MCINTOSH. Let's begin with opening statements from my colleagues—although I understand there is a journal vote, and we need to take a short recess to allow the Members to vote.

Collin, if you don't object, I suggest that we take a 10-minute recess to vote and then return for your opening statement. Thank you.

We will stand in recess for 10 minutes.

[Recess.]

Mr. MCINTOSH. The committee is in session.

I would like to ask the Members unanimous consent to change the order slightly out of deference to Chairman Bliley of the Commerce Committee. He has agreed to come and talk with us today, but has to get back to his committee for a hearing that is going on. Collin, if you don't object, I would like to hear from him and then go back to your opening statements.

Let me present a man who needs no introduction, the new chairman of the Commerce Committee, Mr. Bliley.

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Would you introduce me to that man who is second on your right? Good morning, Henry.

Thank you, Mr. Chairman. I appreciate the opportunity to testify before you this morning, and I want to begin by congratulating you on your chairmanship. Many of us on the Commerce Committee had the opportunity to work with you when you were at the White House several years ago and are pleased that you have assumed the new responsibilities.

Mr. Chairman, I think you will agree that one of the important messages from last November's elections is that the American people are concerned about—indeed, are fed up with the growth of the Federal Government and its invasion into virtually every aspect of their daily lives. It is my understanding that the American public pays nearly $500 billion per year—almost 10 percent of the gross domestic product—to comply with Federal regulations. EPA alone is responsible for administering more than 9,000 regulations, covering everything from standards for inspecting your car to requirements for disclosing environmental hazards when you sell or lease a house.

Make no mistake: many existing government regulations are necessary, and some of these regulations provide substantial benefits.

My concern is that as the demand for Federal regulations has increased, Congress has failed to ensure that the costs of these new Federal regulations are reasonably related to their benefits and that these regulations actually address real risks. These shouldn't be controversial goals, but our efforts in past Congresses to adopt meaningful regulatory reform have been opposed by supporters of the status quo.

I expect, however, that the 104th Congress will be different. This Congress has already committed itself to making major changes in the way Federal agencies write regulations. The Government Reform Committee on which you serve has already reported legislation on unfunded mandates, and the House will begin to consider that legislation today.

In addition, within the next week or so, the Commerce Committee, along with several other committees, will begin work on portions of H.R. 9, the Wage Enhancement and Job Creation Act. This legislation contains significant reforms in the areas of risk assessment, cost-benefit analysis and peer review principles. This is landmark legislation that will dramatically improve the way in which Federal regulations are written and implemented.

However, it will take a little time before this bill is approved and put in place, and until this work is finished, the Federal agencies will continue to write and issue more regulations. The current administration said it would eliminate unnecessary and burdensome regulations, but it has failed to take meaningful steps in that direction. Instead, it proposed the broadest expansion of the Federal bureaucracy in history. So the only option we have left is to seek a moratorium—or a "time out"—through the legislative process.

I must admit that I have some reservations with legislation that proposes across-the-board solutions to problems, especially since a moratorium established by Congress can only be a blunt and crude instrument. Despite its extensive resources and capabilities, this committee can't possibly review every regulation and determine whether a moratorium is appropriate in each case. That is the job of the authorizing committee.

Furthermore, Congress can't possibly anticipate all of the circumstances that might confront a Federal agency during the term of the moratorium. So Congress must give the President broad authority to grant exemptions from the moratorium and trust that he will exercise that authority responsibly.

But we find ourselves today in a serious situation that calls for a serious solution. A congressionally mandated moratorium, despite its shortcomings, is an interim step to temporarily stop the flow of new constraints on the economy pending enactment of a broad range of regulatory reforms. This measure would give the authorizing committees an opportunity to review the regulatory agendas of agencies within their jurisdictions. It would also ensure that as many regulations as possible are subject to the regulatory reforms that are proposed in the Republicans' Contract with American legislation.

I want to assure this subcommittee that the Commerce Committee intends to move aggressively to develop a sweeping program of regulatory reform that will get the bureaucrats off the backs of the American people. As I have mentioned, the committee will hold

hearings in early February on the risk assessment and cost-benefit provision of H.R. 9, the Wage Enhancement and Job Creation Act, and I anticipate prompt Commerce Committee approval of these provisions.

In addition, in the next several weeks the committee's Oversight and Investigations Subcommittee will begin a series of hearings looking at the implementation of the Clean Air Act Amendments of 1990. The purpose of these hearings will be to investigate whether the regulations mandated by the Clean Air Act are achieving improvements in the air quality in a cost-effective manner.

Let me give you just one example of a regulation that we will be looking at, and one that would be affected by the regulatory moratorium legislation pending before this subcommittee.

EPA is currently required by a court order to promulgate a Federal implementation plan—or FIP—for several parts of California by February 15, 1995. It is my understanding that EPA is not anxious to issue this regulation, but it is required to do so by a court order. Governor Wilson's office has estimated that the FIP will cost $8 billion a year to implement over the 15-year life of the program. The State of California has submitted a State implementation plan, but there is no way that EPA can approve that plan by February. It is also my understanding that EPA and the plaintiffs in the lawsuit have negotiated some sort of arrangement whereby the effectiveness of the FIP is delayed for 2 years, but I have some questions about how this arrangement is likely to be perceived by businesses in California. The Commerce Committee intends to examine this regulatory requirement to determine whether it makes sense.

In addition to reviewing regulations issued under the Clean Air Act, the Commerce Committee will also move quickly to adopt legislation reauthorizing the Safe Drinking Water Act. The committee spent considerable time last Congress working on legislation to reauthorize the Safe Drinking Water Act. Many parts of last year's bill are worth preserving. Other parts, perhaps, can be improved with only a little work. I want to move a reauthorization bill that ensures the public health by getting rid of unnecessary regulations and giving State and local drinking water officials greater flexibility to deal with their most serious risks first.

The Commerce Committee will also undertake to reauthorize Superfund, to review other Federal programs concerning the treatment and disposal of hazardous waste and to investigate the regulatory practices of the Food and Drug Administration. My feeling is that each of these programs offers an opportunity to enhance public health while minimizing the cost of Federal regulation to the taxpayer.

Mr. Chairman, I want to thank you again for the opportunity to testify before the subcommittee this morning. This subcommittee has already begun to serve an important purpose by identifying regulatory reform opportunities, and I am sure that it will continue to do so under our leadership. I look forward to working with you in the future.

Mr. MCINTOSH. Thank you very much, Mr. Chairman.

I truly look forward to working with you and your committee and following your lead in those important areas. You will have the heavy lifting because you would ultimately have to change the way

these programs are written into law, and our subcommittee looks forward to being of assistance to you in that endeavor.

Let me give the audience an idea of the magnitude of one of the problems Chairman Bliley mentioned, and that is the FIP. This pile of paper is the Federal implementation plan, and this is one regulation that would be affected under this moratorium. It gives you some idea of the magnitude of the problem that we are dealing with here today.

Thank you very much, Mr. Bliley. I don't believe it is traditional for Members of Congress to be questioned by the subcommittee, so I think we will turn to opening statements.

Mr. Gekas has a statement he would like to make to us, but if I could ask your indulgence to have Members finish their opening statements.

Mr. WAXMAN. Mr. Chairman, do we have an opportunity to ask questions of Mr. Bliley?

Mr. MCINTOSH. It is my understanding that it is traditional that Members are not questioned by the subcommittee.

Mr. WAXMAN. He is here as a witness to give us his views. If we want to question him on his views it seems to me appropriate. It has always been my experience that we have had that opportunity.

Mr. BLILEY. I will try to answer questions and dodge as best I can.

Mr. MCINTOSH. I have no questions for you. Does anyone else on the committee have a question?

Mr. WAXMAN. Mr. Chairman, I do.

Mr. MCINTOSH. Go ahead.

Mr. WAXMAN. Mr. Bliley, I am pleased to welcome you to this committee and look forward to working with you on our Commerce Committee, as we have in the past, to try to work out real problems.

We have worked out a Clean Air Act, for example, that passed our committee maybe with one negative vote and the Safe Drinking Water Amendments that, unfortunately, didn't get through the Senate but passed our committee unanimously. These bills represent bipartisan cooperation, and certainly we want to see them enforced once we adopt legislation.

You indicated that you think the moratorium is a blunt way of dealing with problems——

Mr. BLILEY. No question about it.

Mr. WAXMAN [continuing]. And you expressed some discomfort. I want to ask you about one area, and that is the seafood safety area. The Food and Drug Administration is proposing that there be regulations to protect people who get sick from seafood as a preventive measure. I think the industry may also be in favor of those regulations. What rationale would we have to stop those regulations from going into effect where we know there is a serious problem where people get sick every day?

Mr. BLILEY. Under the rules change adopted last week, seafood inspection goes to the Agriculture Committee.

Mr. WAXMAN. That is no solace to somebody who gets sick, which committee has jurisdiction. The FDA is proposing regulations. They are about to put them in effect. Why should we stop those regulations from being put into effect?

Mr. BLILEY. If there is an emergency the President has latitude to do it. But if we have had seafood regulations for all this time if we stop for a few more days I don't think the sun will fail to rise or the stars will fall out of the heavens.

Mr. WAXMAN. Well, the President has a lot of things on his mind.

Mr. BLILEY. I bet he does.

Mr. WAXMAN. And you may be one of them. But the idea that the President should decide on each regulation where there is an emergency——

There is a proposed regulation on incinerators pursuant to legislation we adopted—that would protect people from toxic pollutants in the air. Why should that be held up and why should we have to ask the President to intervene?

Mr. BLILEY. The answer I have for you—and not seeing a specific regulation in front of me—is that somehow this country has gotten along for 200 years without this regulation. Maybe for a few days and months it could get by just as well.

Mr. WAXMAN. I suppose that is true, but hundreds of people get sick every day from seafood. It would seem to me appropriate if we have a way to prevent these problems we ought to do it, and we ought to do it if we have a way——

Mr. BLILEY. I am sorry that we have to consider this legislation, too. We asked the President to voluntarily withhold. He refused, so we have no other choice but to try to move legislation.

Mr. WAXMAN. Thank you for answering my questions. I look forward to moving forward on these regulations and see if we can come together on them then.

Mr. MCINTOSH. If no one else has questions, I would like to offer my thanks to Mr. Peterson for his forbearance and will allow him to make his opening statement. Thank you, Chairman Bliley.

Mr. PETERSON. Thank you, Mr. Chairman.

I want to thank you for calling this hearing today on this legislation that would impose a moratorium on Federal regulations. I share many of your concerns regarding the regulatory process and the burden on business and industry.

As you mentioned, I have cosponsored this legislation, and I feel the Congress does need to look at the way we are developing and implementing regulations.

I am going to deviate from my written statement in light of some of the things that have happened here this morning.

I want to say that I am a little bit concerned with the process as it is developing. I want to work with you, Mr. Chairman, to develop a piece of legislation that is going to do more good than harm, and I am a little bit concerned about it, seems like we are rushing, for whatever reason, this process. I guess the hearing was rushed, but that is not so much of a problem. I understand there will be a markup next week, is that correct?

Mr. MCINTOSH. I understand that there is a markup scheduled for the 25th at which the full committee would have an opportunity to consider this legislation.

Mr. PETERSON. My concern is that, apparently, there is some kind of agenda here in your caucus to move this on a fast track and deal with it. And I don't have any problem with that as long as we do it correctly and we don't cause more harm than good.

I have some issues that have come to my attention that I have been unable to get an answer to, and I guess I am relaying to you that I think I speak for a good many Members of my caucus who support this legislation that we need some of these questions answered before we can support this legislation. I hope that we have the opportunity to do that, that we don't rush pell-mell on some kind of political agenda that we are going to move this on the fast track and don't get these questions answered.

We, as you might understand, are not so concerned with how the Republican party is going to look but whether we are going to do this correctly.

I am somewhat concerned about the meeting yesterday where you said that the White House refused to meet. I understood there was going to be another attempt to try to work through this situation, and it was not my understanding that they refused to meet. I think, for whatever reason, the meeting was canceled or whatever, and maybe we can find out more from them. I am just concerned that we not rush pell-mell into this because of some political agenda or whatever it is that is driving this, and that we get some of these questions answered.

I have a letter from the Tax Executives Institute and have been contacted by CPAs where they are suggesting that we do not move this bill because of their concern what it is going to do with Federal tax regulations. I am a CPA and used to be driven crazy by tax regulations generally because we couldn't get them on a timely basis and didn't know what was going on or what to advise our clients, even though we had a deadline that said we had to file a return and still didn't know what the IRS position was.

If we don't figure out a way to deal with this, you are going to create a situation where that is going to be the case. For the next period of time you will have tax practitioners up against an April 15th deadline, and they won't know how to deal with a certain issue that was in the regulatory process.

I am concerned about the impact of this on routine regulations that I don't think are necessarily causing anybody harm—for example, setting the MW price, which is done on a monthly basis. This bill, as currently constituted, as I understand, is retroactive. Does that mean that it suspends the MW price that was established in November and December?

Being from the Midwest that is a good thing because the MW went down. So if it is suspended my dairy farmers would get higher prices.

We have the California fresh issue. Apparently, that is going to be suspended. That is something that is good for my area because we have been opposed to that, but that is not what we ought to be doing with this. We ought to be establishing a process at the end of this where we are going to have a better regulatory process with less burden on business.

So I just hope that we can proceed in a way that we can get these questions answered, that we can have time to prepare amendments that address concerns raised, and we don't get this thing on the floor before we can deal with that.

With that, I hope we can move forward on a bipartisan basis and look forward to working with you.

[The prepared statement of Hon. Collin C. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, I want to thank you for calling this hearing on legislation that would impose a moratorium on federal regulations. At the outset, I would like to say that I share many of the concerns you have regarding the regulatory burden on business and industry. In fact, I am a co-sponsor of H.R. 450. I feel that Congress does need to look at changes in the way Federal regulations are developed and implemented.

I understand the Republican Caucus' wish to move quickly on this bill, but there are still questions that haven't been answered to my satisfaction at this point. I personally would feel more comfortable if we could get our concerns addressed before we pass this bill. For example, I would like to know how this bill would affect the routine regulations which run the Department of Agriculture. How will it affect the operations of the farmers in my district who's everyday lives are dictated by Federal regulations. I also want to know, how H.R. 450 will affect the filing of 1994 taxes, considering that most Federal tax regulations are published at the end of the year. Will this moratorium hamper the filing of taxes of millions of Americans, causing more harm than good? As a former practicing CPA who was driven crazy by late and incomplete regulations, you can probably understand my concerns.

I don't think anyone in this room can say they fully understand how this proposed moratorium will affect the day to day lives of individuals in their district. Because we don't know the full impact of this bill, I think we need to proceed carefully and not move until our questions are addressed. We can certainly include exemptions in the bill for things we do not want the moratorium to cover. However, relying on the President to issue an executive order exempting matters that pose an imminent threat to the public's health or safety, clearly would not be adequate to deal with the questions I have raised.

Mr. Chairman, I want to work with you towards reform of the regulatory process. I hope we can get answers to our questions before we have to move on this bill.

Mr. MCINTOSH. Let me assure you that we will take time to consider those issues and every issue on this bill and welcome the opportunity to work with you to address concerns that people have.

I have talked to lots of people since the bill has been introduced, and a lot of times there is confusion about how it worked. So some of the problems end up being resolved as the bill's application is explained.

I look forward to working with you in addressing those issues.

Mr. PETERSON. I promised Mr. Condit I would do this on his behalf. He is on the floor taking care of our position on the unfunded mandates legislation and therefore is unable to be with us. He has a statement that without objection he would want entered in the record at some point if that would be all right.

Mr. MCINTOSH. Seeing no objection, so ruled.

[The prepared statement of Hon. Gary A. Condit follows:]

PREPARED STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you for allowing me this time.

Speaking with people back home, time and time again, the problem of unnecessary and overly burdensome regulations is brought to my attention. So I am pleased that this House, is considering H.R. 450, the Regulatory Transition Act of 1995.

Mr. Chairman, just so there is no misunderstanding, many existing government regulations are necessary, and provide significant benefits to our country. My concern is that in recent years, at a time when the number of regulations is increasing, we are failing to ensure that these regulations address real risks at a cost that is comparable to the benefits provided. As you may know, improving the federal governments' ability to conduct risk assessment and cost/benefit analysis has been an interest of mine and I look forward to continuing these efforts.

I must agree that a moratorium on regulations is a controversial first step. But it is one that I support because we must begin now, if we are to reform the flawed

processes, which have resulted in so many regulations, which simply do not work in the real world. I am pleased that the Congress will be considering important changes in our rulemaking process, such as requiring risk assessments on all major regulations in the near future. However, these changes will take time. I believe that a moratorium on new regulations is necessary as a first step towards reforming the regulatory process.

No one can anticipate the future, and I believe that it is important that H.R. 450 grants the President broad authority to grant exemptions from the moratorium for emergencies. It is also my understanding that the bill excludes regulations that repeal or streamline current regulatory burdens.

Mr. Chairman, I want to thank you for holding this hearing. Regulatory reform should be a priority for the 104th Congress, and I look forward to working with you and the other members of the subcommittee.

Mr. MCINTOSH. Let me turn to the vice chairman of the subcommittee, Mr. Fox from Pennsylvania.

Mr. FOX. Thank you, Mr. Chairman.

I am very proud to serve with you. You come to this position with excellent credentials, having been the Executive Director of the Competitiveness Council for Vice President Quayle. I know one of the other reasons why you are so well-qualified, because your wonderful wife, Ruthie, in the audience has been able to listen all night long about your ideas, and she deserves a debt of gratitude for all you have done.

Mr. Chairman and members of the committee, this is not a Republican or a Democrat issue. All Americans want government off their backs and that includes the onerous burden of Federal regulations.

In 1993, Americans for Tax Reform estimated that the average American had to work full time until July 13th to pay the cost associated with government taxation, deficit spending and regulations. This means that 53 cents of every dollar earned went to the Government directly or indirectly.

While there are some regulations which are worthwhile and will withstand scrutiny, many regulations can be counterproductive and harmful to society in at least three circumstances: first, when the total cost imposed clearly exceeds any benefits; second, when the regulation serves merely to reward a powerful special interest at the expense of the public; and, three, when the goal can be accomplished through less costly alternative regulatory requirements or through other means.

Many regulations cost jobs in three different ways: in reductions in efficiency, productivity, investment and economic growth due to regulations which translate into fewer jobs. Second, regulations may raise the general cost of a particular business, leaving it unable or unwilling to hire as many workers as before. And, finally, regulations may raise the cost of employment by imposing specific costs tied to each new employee hired, as often is the case.

We need better enforcement of existing laws, not more regulations that further cripple government and progress. The impact of regulation in destroying jobs is exacerbated because regulation is particularly burdensome and harmful to small business, which is the engine of job growth in the American economy. Regulation hurts small- and medium-sized businesses disproportionately because they have less volume and a small work force over which to spread such regulatory costs.

Some examples of how rules are being enforced are especially disturbing. For example, according to a 1993 editorial in the Wall Street Journal, John Schuler, a Montana rancher, recently was fined $4,000 for violating the Endangered Species Act. His crime? He shot and killed a grizzly bear that charged after him on his own property.

Enforcing regulations in such a manner defies logic. We need to take a common-sense approach to regulatory matters.

These hearings should shed some light on the issues, but I believe that real change will only come if we implement a sunset review process for all Federal agencies and regulations.

In addition to our regulatory prohibition on new regulations that our chairman has wisely introduced, I will offer additional legislation which will provide for such a review process every 7 years on a rotating basis. Those regulations which are obsolete or wasteful could then be terminated. This kind of aggressive review process will thin out existing regulations, keeping those which have worth and doing away with those without value. These are the kind of reforms the American people want to see.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Fox.

Let me turn now to the distinguished gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I appreciate the chance to make this opening comment and to congratulate you on your chairmanship.

I do want to work with you and all our colleagues to make sure that regulations are effective and the least burdensome. I don't think anyone can defend the idea of excessive, costly regulations that don't accomplish their purpose. I think we ought to make sure that the process for regulations is one that is thoughtful and the result of regulations does what needs to be done generally to protect people who are going to be subjected to assault from unsafe drinking water, pollution in the air, seafood that may be rancid and harmful and a whole list of other threats.

But when you take the committee whose name is now this mouthful—National Economic Growth, Natural Resources, and Regulatory Affairs—and characterize it that in your opinion it is a committee on regulatory relief, it seems to me that we have a clear demarcation of the differences of our opinion. I don't think the idea of our job is to give relief to the special interest industries that might be subject to regulation—appropriate regulation to protect the American people.

These regulations are necessary. They affect average, ordinary Americans who aren't so organized to have lobbyists here, the way many of the special interest groups do and who seem to have inordinate access to some people.

I say that because I recall the days of the Competitiveness Council under President Bush. Here was a group that operated outside the framework of the law, met with special interest groups that were heavy contributors to the Republican party and then sought to influence the decisions of the regulators without having on the record what they were trying to do. It seems to me that was tremendously inappropriate.

I also think it is inappropriate to have a cessation of any regulations or a moratorium on these regulations when so many of these regulations are very much needed. We heard about the E coli in meat regulation. I talked about the seafood regulation. There is an incinerator proposal that EPA is going to come forward with, and they ought to be able to complete that regulation.

The tobacco regulations—Dr. David Kessler of the FDA has been looking at whether to regulate tobacco. This legislation would prevent him from even considering it—not just promulgating the regulation but even considering it. Tobacco regulation, it seems to me, could appropriately try to protect kids from being the targets of the tobacco industry to make them the new customers to replace those that are dying out.

Mr. Chairman, our job is not to be the agency for relief to these special interests, and the tobacco industry is one special interest that was reported to have given $2 million to the Republican party in soft money, according to the Washington Post last week. Our job is to be here to protect the ordinary middle-class Americans who will be subjected to these threats to their health.

I also see this moratorium not only as a blunt instrument that is not very thoughtful and can be very harmful but as the opening salvo of an unrelenting attack on our Nation's regulatory safety net. Other provisions in the Contract with America, so-called, are even more extreme. They might even be called a polluter's bill of rights. As incredible as it might seem, this contract would actually require Federal taxpayers to pay corporate polluters to stop polluting.

I see my time has expired. We will have a chance to explore and debate these issues, and I hope, in a reasonable way, to resolve them. I don't think it is fair to say that the President of the United States is not serious about the matter because he doesn't agree with your point of view.

I know this administration is trying to make reforms in the way they move regulations forward. There are differences of opinion. Let's respect the differences, not just try to disregard them and attack the President of the United States saying that he has a love affair with regulations. That would be like my saying the Republicans seem to have a love affair with special interests. Let's put these issues out and discuss them honestly.

Mr. MCINTOSH. Thank you. I share your view that we need to see the effect of these regulations on the American people and welcome the testimony of the American citizens who have traveled here to talk to us about that.

Mr. WAXMAN. I notice on the agenda that we have 14 witnesses that are going to testify for this legislation, two that are against it and two that I am not sure what they are going to say. I have been told that there were witnesses who requested to come in and testify against the legislation but were told that they couldn't be accommodated.

I think that is a strange way to proceed. I want to protest it and suggest that perhaps we need additional time for this hearing if we are going to have a balanced approach for all points of view.

Mr. MCINTOSH. As you are well aware from your previous service as a subcommittee chairman, there are usually more people want-

ing to testify than you are able to find time for, and we have made our best efforts to do that.

Let me proceed with opening statements. Next, I would like to introduce my colleague, Mr. McHugh.

Mr. MCHUGH. Thank you, Mr. Chairman.

Let me put the gentleman from California in the undecided column on this bill. We have a good number of people who wish to testify today, and I don't want to take away from what is already a scarce resource—time.

But I do want to compliment you and Chairman Clinger for acting expeditiously in this manner. The gentleman from California said no one wishes to tolerate irrational and overburdensome regulations. In fact, Congress has, through its acquiescence, supported just that approach to government for some 200 years now. I want to compliment you and, frankly, the freshman Members who have come and said business as usual hasn't worked, and we have to take a new approach.

Obviously, this hearing is long overdue. There is no reason for this Congress year in and year out, session after session, to sit by, talk about the problems and fail to act. You, Mr. Chairman, today have set the stage for action. That has been the message of the people of this country I think for the past 40 years and certainly the one that was articulated most clearly last November.

And it was not a partisan message, despite some of the comments made here this morning. It was a message of desperation, one of a people who had been overwhelmed and totally consumed by a regulatory bureaucracy over which there is simply no control.

The gentleman from California seemed to take exception to the possibility that the President of the United States might take the time through his vast bureaucracy in the White House to oversee the very regulatory agencies that the Constitution charges him with overseeing. I don't happen to find that so distressing. I happen to believe that this bill is absolutely essential, essential for this Congress to begin to assert the authority that the people expect us to assert in the day-to-day operation of this government.

If indeed there are certain selected regulations that are so vital to the continued public health and interest of the people of this Nation, I do believe the President not only can but indeed should take the steps necessary to exempt them from the provisions of this bill. I don't see how else we approach it.

With that, Mr. Chairman, I thank you for this opportunity to be here today.

Mr. WAXMAN. Would the gentleman yield? The point that I was raising was that the President would have the burden to say that a regulation required immediate enactment in order to prevent eminent hazard, and that is a standard that is a very tough one.

Mr. MCHUGH. I think if you look at the record, Mr. Waxman, that is not what you said. You questioned Mr. Bliley's presumptuousness of having to suggest that the President of the United States should take the time, busy as he is, to look at those regulations, and I happen to think that is his duty. We have a difference of opinion there.

Mr. WAXMAN. We have a difference of opinion, if you would permit. Points of personal privilege, if the gentleman would allow.

I don't disagree with the fact that I said the President ought to be examining these things, but the President has to examine each regulation to determine whether it meets a very high standard which otherwise would bar him from going forward on a moratorium. I want to point out——

Mr. MCHUGH. Is this a point of personal privilege, Mr. Waxman?

Mr. WAXMAN. I have just made it.

Mr. MCINTOSH. I would like to recognize the Congressman from Washington, Mr. Tate.

Mr. TATE. Thank you, Mr. Chairman.

I, too, would like to add my name to those that have congratulated you on your new position. As a freshman, we are pretty excited about having you there.

Since the 104th Congress convened there has been a lot of talk about the Federal Government's overbearing impact on the lives of the American people, and today is no different. The American people are tired of the big brother approach to their lives. They are tired of being overregulated. And they are tired of fighting bureaucratic red tape.

Since November, the talk of less government has become a popular theme, but until we do the right thing talk won't result in action. Passing H.R. 450 is the right thing to do. Let's give the American people more bang for their buck. Let's give them the opportunity to compete and succeed.

It is not a coincidence that regulatory costs stifle job opportunities. Government regulations cost each American household at least $8,000 per year. By stopping new regulations we will take positive steps toward slowing the growth of government.

In response to the gentleman from California in reference to the Competitiveness Council, it sounded like a better description of last year's health commission than of the Competitiveness Council.

H.R. 450 is a good bill, and along with Chairman Bliley and Majority Whip Tom DeLay and Chairman McIntosh I urge my colleagues to support it. While President Clinton continues proposing burdensome regulation, H.R. 450 defends American families and the middle class by removing barriers to jobs.

I yield back the balance of my time.

Mr. MCINTOSH. Thank you. I would now like to recognize my colleague from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

I am going to depart from the remarks that my staff worked so hard to prepare for me and say that in the long light of history what we do on this subcommittee can have a much more profound impact on the economic competitiveness of this country than a lot of the work that is being done in other parts of this Congress and this city.

I think the real issue—and in part to respond to Mr. Waxman—is not whether or not we should have Federal regulation. I think we have begun to see the difference between the two sides. One side believes that the glass is half empty, and the other side tends to believe that the glass is already overflowing.

I think the bill that we are considering today is a good example of let's take a time out and find out if we can begin to sort this out. Regulations have a profound impact.

And coming as a new Member, in part responding to Mr. Waxman, I and 16 of my colleagues in the State legislature having breakfast at the Governor's mansion last year became seriously ill eating pineapple at that event, despite the best efforts of the FDA and the USDA. We got sick, and we recovered, with all the government regulations. More regulations probably would not have prevented that.

I think the real issue that we have to ask ourselves—and I think ultimately as we debate—is the whole issue of reasonableness. Because I think there has been a tendency—and I think I speak for middle America and a lot of small businesses that we have tended to create $50 solutions to $5 problems.

And the truth of the matter is, despite our best effort, we cannot create a risk-proof society. Things are going to go wrong. People are going to get hurt. And more and more government regulation doesn't seem to have much of an impact on that.

Beyond the damage excessive government regulation inflicts on the private sector we have heard some good examples in some of our freshman orientation meetings with some of the regulations that have happened to American people.

For example, a father and son were thrown into prison by the EPA for filling a ditch with sand in their Florida property.

Twenty-two people were laid off by a herring smokehouse owner who had to close his 20-year-old business because he couldn't afford to comply with the FDA demands that he change his production methods. He had sold over 54 million fillets without a case of food poisoning but yet had to change his production methods to comply with new regulations. That is ludicrous but not funny to the small businesses that are already straining to compete and survive in a very competitive marketplace.

This country enjoys one of the highest standards of living in the world. The Federal Government should renew its commitment to assist the American business community, not treat it with contempt. Business as usual will irreparably harm the United States in an ever more competitive global marketplace, and many of us were elected to change this situation. I believe this forum, this bill and this subcommittee is a good start.

Mr. Chairman, I look forward to serving on this committee, and I look forward to the testimony. Thank you.

Mr. MCINTOSH. Thank you.

Now I would like to recognize my colleague from Florida, Mr. Scarborough.

Mr. SCARBOROUGH. Thank you, Mr. Chairman. It is an honor to be serving on this committee, an extremely important committee.

I couldn't help but be reminded by Mr. Gutknecht's remark of that gentleman in the State of Florida that got thrown into jail for piling sand into a ditch. His name is O.C. Mills. He lives in my district and was a supporter of mine but didn't vote for me. Do you know why he didn't vote for me? He couldn't vote. He and his son got thrown into jail for 2 years for piling sand in a ditch. It was a felony. He was not allowed to vote.

Now if that is not one of the starkest illustrations of how absurd regulations have become over the past 20 or so years and if that doesn't explain why people who are pro-environment have become

antiregulation over the years, I don't know what point is going to drive it home more. It is a tragedy that is affecting men and women, businesses across this country.

I have so many businessmen and so many businesswomen and so many middle-class families across this country that would talk not about the need to simply cut taxes but to cut regulations. They will tell me stories about how they worked for years to buy property, only to have the government come in with regulations telling them what they can and can't do on their property.

It is not as if Mr. Mills and his son wanted to build a nuclear plant in the backyard. They wanted to bring some sand on their property.

But what happens? You have regulation after regulation after regulation. And after awhile—it is just impossible. It is an impossible burden for middle-class citizens across this country to deal with huge bureaucracies like the EPA. Then you layer the State agencies on top of that, and after awhile they just give up.

Fortunately, I believe with your leadership, Mr. Chairman, and the leadership of the freshman class, both Democrat and Republican, that were elected to give us less taxes and less regulation and more freedom, I think we will be on the path we need to be on, and we can make sure that the O.C. Mills of the world don't get thrown in jail for trying to help their son build a home and trying to fill a ditch with sand without having the heavy hand of the Federal Government come down on them. It is outrageous how far we have come.

Mr. Chairman, I am deeply honored to be serving on a committee that might free up more people like O.C. Mills to once again have a say in what they do with the property that they have worked hard for all their lives.

Mr. MCINTOSH. Thank you. The Mills of the world are the people we want to hear from on this subcommittee.

I understand Mr. Shadegg decided to forgo the opportunity for opening remarks, and I want to thank him for that.

Let me turn now to my colleague from Maryland, Mr. Ehrlich.

Mr. EHRLICH. I can take a hint, Mr. Chairman. I have a written statement which I will submit for the record.

I would like to make one point. I think we could spend days and days relating stories we have heard out there on the stump, but let me personalize it by putting it in the context of what I have been through for the last year.

I had thought in the course of our campaign for Congress that when we approached the small business community which we did by stopping into strip malls with my NFIB endorsement letter, going up to the small business owner and saying "I may be part of the government. Maybe help you"—I fully expected that I would hear horror stories concerning the tort environment in the State of Maryland, the tax environment in the State of Maryland which is not healthy for small business, and problems with respect to capital availability for expanding business.

But by far the No. 1 concern I heard time and time again across businesses, across industry, was the regulatory burden of what government was doing to that businessman or that businesswoman.

As you have heard here today, the message has gotten across to a lot of people. I think it has been received by every member of this subcommittee, Mr. Chairman, and that is why I am proud to serve on your subcommittee to actually deal with real-life problems that real people have every day in this country.

With that, I will turn it back to the chairman. Thank you very much.

Mr. MCINTOSH. Thank you very much, Mr. Ehrlich.

[The prepared statement of Hon. Robert L. Ehrlich, Jr., follows:]

PREPARED STATEMENT OF HON. ROBERT L. EHRLICH, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

The Regulatory Transition Act of 1995, before us today, is precisely the type of legislation I discussed with thousands of taxpayers and small business owners while a candidate for Congress. Now that I sit here as a new member from Maryland, I believe there is no more important piece of legislation for those of us who have championed the causes of individual freedom, respect for federalism, and protection of working, tax-paying citizens.

Indeed, this hearing is a small first step for those who feel weighed down by the heavy burden of overregulation for it is small business who creates the new employment opportunities our people require.

H.R. 450's temporary cessation of regulatory authority would curtail the overburdensome, increasingly intrusive arm of government which has hurt small business in Maryland and across the U.S. This well-timed bill will provide Congress an opportunity to consider the important reform bills ahead of us, hold hearings, thoughtfully mark-up bills, and hopefully improve the way Congress conducts its business.

Our central goal should be to end multiple regulations that have similar if not identical goals. These duplicative regulations have weighed down taxpayers and businesses, literally to a standstill in some cases. We simply cannot expect the American private sector to compete in a world market if we are unable to go beyond our own starting gate. The problem is not that we have rules. We need rules. What we do not need is a stockpile of rules that repeat and defeat each other to such an extent that the American worker and American business become less competitive.

We are not here to wipe the slate clean and recreate government; we need to stop big government in its current tracks. We must unknot red tape, inventory current regulations, prioritize our actions, and make government function in an orderly, efficient manner.

Finally, I invite the Administration to cooperate in reforming its regulatory policies. Only by working together can we provide real relief for America's overregulated citizens.

Mr. MCINTOSH. Let me now proceed to our first panel.

We heard from Mr. Bliley, and we had an additional Member of Congress who wanted to come and speak to us today. I would like to recognize my colleague, Mr. Gekas of Pennsylvania.

STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GEKAS. I thank the Chair. I am grateful for the opportunity to greet the chairman and the members of this committee, both new and veteran, to discuss the issues that are before it.

The statements that have been made by way of opening statements have very adequately set the stage for the work of the committee. What I want to do now is to underscore some of the issues that have been raised and some of the statements that have been made.

I myself have introduced legislation, which is H.R. 46, which deals specifically with the EPA which calls for not a 6 months, not 1 year but a 2-year moratorium on the enforcement of the Clean Air Act insofar as it deals with auto emissions.

Now this did not hit me like a bolt of lightning, but, rather, we have seen, in the last year or so especially, that several States have been grappling with the problem of how to enforce the auto emissions portion of that Clean Air Act with tremendous problems having occurred with debates on the air quality returns on tests recently taken, on the technology that has been applied for the proposed centralized systems in some of the States, in various points of departure that we have seen from the original intent of act.

The moratorium that I asked for then is because of the existence of deadlines that are in the near and far future. It is in that spirit that I ask this committee if it is going to set priorities on where reviews are going to be made of regulations and their adverse impact on our society. It is in those issues where artificial deadlines or even well-meant deadlines have been set, but as we approach those deadlines everyone in America sees we cannot meet those deadlines in a reasonable fashion without undue harm on the public itself.

And it is the harm on the public which should be the criterion, not special interest to which reference has been made, but the public. If a set of priorities is going to be set by the committee as to what sets of regulations are going to be first reviewed with a view toward a moratorium, it should start, I believe, with those where the deadlines already exist and which if they come will cause disaster to some segments of our society. The February 15th deadline in California was set as one of the examples.

I refer you to deadlines already passed with respect to auto emissions. The EPA has taken it upon itself to review the auto emissions issue, and it has stepped back a bit, but we believe that new deadlines that will come along will not solve the problem. That is why we asked for 2 years. I am willing to settle for 18 months. But the point is that there are so many deadlines ahead of us from previous legislation that have to be the priority for your committee.

I am very happy with the fact that this committee is about to launch on a very, shall we say, salutary campaign on behalf of the American public.

I thank you.

Mr. MCINTOSH. Thank you very much, Mr. Gekas.

Let me make sure I understand—the bill, as proposed, extended all deadlines to June 30th, and any future deadlines gave an additional 6 months on top of those so you didn't have a stacking effect. You would like to see us change that to be 18 months in the future?

Mr. GEKAS. I would like to see on issue by issue, on regulation by regulation, or sets of regulation—by sets of regulation that if you see in your review of it a deadline pending that could be harmful, that that deadline should be set aside for 18 months or 1 year or 2 years as you would deem it necessary, so that that way, with a reasonable approach, you wouldn't be sweeping all regulations off the table but focusing on those where near or far deadlines will be causing harm if you so find and therefore declaring a moratorium on those.

That is a starting point, I believe, for the sets of regulations.

Mr. MCINTOSH. We would like to work with you on that and probably would need to bring in chairmen of the various committees that have authorizing jurisdiction.

Do any of my colleagues have questions for Mr. Gekas?

Mr. GEKAS. I have to leave Henry.

Mr. WAXMAN. Do you have a deadline to meet?

Mr. Gekas, the Clean Air Act was a piece of legislation that I worked on for 10 years, and it was passed by a huge bipartisan majority. We had input from local governments and the National Governors' Association, the League of Cities and Counties. They all supported the legislation. It set out a framework for reducing air pollution which causes harm to health.

The chairman referred to California's SIP. EPA just went ahead and gave California everything the Governor wanted to work out the timeframe for them to meet the standards. I think it is reasonable to work with groups, but to waive all the deadlines means you won't get the pollution reduced that you need to get reduced.

Mr. GEKAS. Who said waive all the deadlines? I didn't. I said when a deadline is pending in which a finding is made that irreparable harm will occur or impact, that that deadline should be one of the first sets of regulations that ought to be examined by this committee with a view of setting a moratorium on the execution of that set of regulations as a priority.

The EPA, as you have said and I have stated, has tried to work, I have to acknowledge and I am grateful for it, with various States to step back, as I have phrased it, and see where they can work together for the further implementation of some of the standards and mandates of the Clean Air Act.

All I am saying is where they fail to do so, where a deadline is pending, which as I say is going to possibly cause irreparable harm, there is a starting point for a moratorium.

Mr. WAXMAN. I appreciate the correction. Irreparable harm is something no one should want to cause, and the agency should try to work with the people who are subject to the regulations to make sure that doesn't happen. If they need legislation, we are here to adopt legislation.

But if we are going to have people come and claim there is irreparable harm, I suspect we will be hearing from the special interest groups who don't want the regulation.

I want to give you an example. In California we had a big fight over the inspection and maintenance program to make sure that the new automobiles actually met standards that would pollute less and cause less air pollution in the community. This was an important part of the strategy for reducing air pollution.

I know that a lot of what was being generated was from a special interest group, garage attendants and service station owners. Their organization claimed that terrible things would happen. They were pressing for what was in their interest. I was hearing from them, but I was also hearing from people who have emphysema and lung problems and every day from people who look out from the hills of Hollywood at Los Angeles, and they can't see, and they can't breathe.

These are people who have an interest as well, and it seems to me that we ought to understand these claims of irreparable harm

are often the wailing and gnashing of teeth from people who are going to have to do something to reduce pollution.

Mr. GEKAS. I dare say that even if a person with emphysema is driving a car and finds that the standards being applied and the technology applied comes out with an incorrect analysis of that automobile would be outraged himself even if he has emphysema.

We have heard from individuals and the public at large who are going to have to pay the brunt of all these auto emissions regulations when the need for it may be diminishing by the EPA's own reports.

Mr. WAXMAN. I would have to differ with you.

Mr. GEKAS. I expect that.

Mr. WAXMAN. It is my time——

Mr. GEKAS. It is.

Mr. WAXMAN. If I might point out to you that the leading cause of air pollution in this country comes from the automobile. It causes harm in kids who are susceptible, particularly if they are asthmatic, but a lot of them to carbon monoxide from other parts of these auto emissions. It adds to smog and other air pollution in the community. And a strategy for reducing air pollution should make us look to the automobile as a way of reducing that pollution.

Now when you hear from these individuals, it seems to me that the ones you are hearing from are the ones who are carrying the argument for those who have an economic interest. I don't think it makes sense to say that we ought to put something in place that doesn't work. I don't think that is happening. We have realistic deadlines that can be met, and we ought to make sure that they are met.

Mr. GEKAS. The gentleman begs the question when he says the strategy. Is the strategy correct? That is what you have to look at. Is the strategy reasonable?

And I say that it has proved unreasonable, unworkable, costly—at least to Pennsylvania and to half a dozen other States that we have heard from, causing the State legislature in Pennsylvania to take a position against the enforcement of the EPA guidelines and regulations in this field.

Mr. WAXMAN. I would be happy to talk to you further and see what we can find out more about this issue.

Mr. MCINTOSH. Thank you very much, Mr. Gekas. I appreciate your coming today in support for this legislation.

I understand that Mr. DeLay, who is to be our next witness, has been delayed; and so I think in the interest of proceeding we will now proceed to the next panel and hear from the witness for the administration.

Let me say that although we have not worked directly on these projects, I am familiar with Ms. Katzen's background and find her to be one of the most capable people working in this area. I know she has labored long in the vineyard to try to find reasonable ways to proceed in the rulemaking process and has a great deal of expertise in that area.

So welcome to this subcommittee. No doubt we will be in contact with you often, so I look forward to many long sessions of fruitful labor. Thank you for coming today, and we look forward to hearing from you.

STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Ms. KATZEN. Thank you, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to appear here today to discuss H.R. 450, the Regulatory Transition Act of 1995.

The opening statements that have been made and the testimony given so far have set forth the basis for and some of the possible effects of this bill. I have prepared written testimony which has been distributed, and I would ask that that be included in the record at this point.

Mr. MCINTOSH. That will be done.

Ms. KATZEN. I would like to use the limited time for an oral statement to emphasize a few points.

There is no question that this bill raises important issues. The issues are important because Federal regulations are important. This administration is committed to regulating when necessary and no more than is needed. We do not believe that all regulations are bad; nor are they all good. In fact, regulations are not inherently good or bad. They have the potential to be either.

Well chosen, carefully crafted regulations can protect customers and consumers from dangerous products. They can assure equal access to markets, limit pollution, govern operation of our prisons, control immigration, provide uniform interpretations of customs and export/import laws, protect workers, and ensure that Americans have the information they need to make informed choices for themselves. Excessive or poorly designed, however, regulations can cause confusion and delay, generate unreasonable burdensome compliance costs. They can retard innovation, reduce productivity and distort private incentives. The challenge is to craft regulations when needed so they do not have these unintended consequences.

One of the very first executive orders that this President signed was directed to improving the regulatory system. Executive Order No. 12866 is built on two basic premises: First, the government has the responsibility to govern, including the responsibility to protect the public through Federal regulation when the American people—through our constitutional representative process—decides that it should. We are talking about statutes passed by the houses of Congress and signed by Presidents of the United States present and past, Democrat and Republican.

Second, the government has the basic responsibility to govern wisely and carefully, regulating only when necessary and then in the most cost-effective manner, with full recognition of the proper roles of State, local and tribal governments.

Without revisiting the past, what happened before our watch, I am proud of what this administration has done to improve the Federal regulatory system. We have made substantial progress, much of which is outlined in my written testimony and in other materials. But I state there and I state here, we recognize that there is more to be done. We want to move forward—working with you—to help further improve the regulatory system.

Regrettably, H.R. 450 does not move us forward in correcting the underlying problems. Instead, the regulatory moratorium will stop good regulations as well as bad ones, substituting an arbitrary, ad-

ministrative process for substantive improvements. Moreover, H.R. 450 creates a number of problems which will only divert us from the important work of focusing on the underlying problems and achieving what we both wish to accomplish.

The first general issue that I have raised with you is the coverage question: What regulations are exempted? Which are subject to the moratorium? Referring to some of the language written into the text, does "international affairs" include Department of Commerce rules affecting domestic manufacturers who export products? Does "public property" include public lands administered by the Department of Agriculture and Interior? Is a regulation establishing auditing procedures for tracking Federal funds an action related to "grants" or "loans?" Does the exclusion for contracts include procurement related regulation?

And what about regulations that are not listed for exemption? Do we want to stop tax regulations? Now, tax statutes are notoriously unclear, and regulations provide for clarity and uniform treatment so that individuals and companies are not subject to arbitrary and disparate treatment by tax examiners. I understand that you have already heard from some working in this field suggesting this is an area for exemption.

Do you really want to stop notices of inquiry and notices of proposed rulemaking? These create no obligation. They impose no responsibilities. They have no binding effect. Rather, they bring the American public into the process. They afford an opportunity to be involved and to provide information and help the government devise sensible solutions. Yet this bill would stop them in their tracks and preclude the acquisition of that information which is what I thought the underlying goal was—have public input on what needs to be done.

In addition, it is essential to note that many regulations are routine, administrative or ministerial or otherwise noncontroversial. Regulations establish traffic lanes into our airports. They set forth the opening and closing time for drawbridges on interstate highways at waterways. Reporting requirements help trace money laundering from the drug trade. They set the eligibility and often the timing requirements as well as financial accounting practices for student, small business loans. They establish quarantines when a pest has hit our fruit supply to keep it from spreading throughout the Nation.

These are all things that are noncontroversial. They are essential functions of the government. They are routine. They, too, would be caught up in this moratorium or would they?

The bill provides for case-by-case exemptions for imminent to health or safety or other emergency. How imminent is imminent? How serious is the harm to health that would be the standard?

This bill sets forth a procedure for agency heads to file in writing, the President to execute an Executive order and then provides for civil litigation.

You commented that you were surprised that we wanted the American people not to bring suit. If you have a President who has made a finding of imminent threat to health and safety the civil litigation will leave the issue in doubt. And confusion is costly to the American public. It is costly to the businesses who have to de-

cide what to do. And yet until the process is completed there will be no resolution.

The retroactivity of the moratorium is another issue that causes grave concern, creating uncertainty, confusion and potential unfairness.

What do we do and what do we say to those who have been responsible citizens who have sought to comply and have invested or otherwise taken steps for a regulation whose effective date falls in the moratorium period? If the regulation is now suspended, will he have a competitive disadvantage? Is that the right signal to send? Wait until the last minute to obey any laws. Disregard them because someone may come and put a stop?

I don't think that is a signal that you wish to send to the American public, and there may be instances where something which has happened pursuant to a validly issued regulation cannot be undone without extreme consequences.

There has been a lot of publicity about the four gray wolves that were caught in Canada and brought to be released in the wilds of Idaho. You may disagree with the decision, but the wolves have now been let loose in their 1-mile pens. Are we to recapture them and put them back in their little steel boxes until June 30th, when the moratorium period will end?

I am somewhat distressed that I am sitting here raising these questions and seeming to be negative about some of these issues because I stated at the outset—and I fervently believe—that there is common ground among us, that there is room for improvement, that we have been working on this on our own, and we welcome your efforts to work with us, and we want to work with you.

This bill does not do that. This bill is a digression, a detour, a distraction. It takes the very people who can help improve the system, and it asks them to write lists and do a paper process. We want to resolve these underlying issues. We want to improve the regulatory system. We want to work with you.

Thank you very much. I am sorry I extended my time, but I wanted you to understand clearly where the administration stands in this issue if I have been able to do so.

Mr. MCINTOSH. Thank you very much.

As you indicated, I did allow you to extend your time. As we proceed with questioning and other witnesses, I am going to become firm about keeping that 5-minute rule, but I thought it was important to give you all the time you needed to present your views, in fairness to the administration. I do plan to be very firm to keep to the 5-minute rule because we have a large agenda today.

[The prepared statement of Ms. Katzen follows:]

PREPARED STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Good morning Mr. Chairman and Members of this Subcommittee. I am Sally Katzen, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. It is a pleasure to be here to discuss issues related to the improvement of the regulatory system, a subject about which this Administration cares very much and on which I look forward to working with you cooperatively. In particular, I appreciate the opportunity today to discuss H.R. 450, the "Regulatory Transition Act of 1995."

Before talking about any specific legislative proposals, I would like to comment on a word that is being used a lot, but that means different things to different peo-

ple. The word is "regulation." Some say regulations are all bad; some say they are all good. In fact, regulations are not inherently good or bad. They have the potential to be either. Well chosen and carefully crafted, they can protect consumers from dangerous products, assure equal access to markets, limit pollution, govern operation of our prisons, control immigration, provide uniform interpretations of customs and export/import laws, protect workers, and ensure that Americans have information to make informed choices. Excessive or poorly designed, however, they can cause confusion and delay, generate unreasonable compliance costs, retard innovation, reduce productivity, or distort private incentives.

Some regulations carry out legislative policies, raised by previous Congresses and signed by Presidents, from both parties. Several of these policies were or are controversial, but in other cases, regulations are routine, administrative or ministerial, and noncontroversial. These regulations unobtrusively serve the public day in and day out, and are seldom included in what most people mean when they argue about the value of regulations. Examples include rules that establish: traffic lanes for airplanes; opening and closing times for drawbridges; reporting requirements to help trace money laundering from the drug trade; eligibility and timing requirements—as well as financial accountability practices—for student, small business, and other loan programs; safe practices at nuclear power plants; and quarantine areas to prevent the spread of pests such as the medfly.

Regrettably, the regulatory system that has been built up over the past five decades—under both Republican and Democratic administrations—is subject to serious criticism. I think we can agree that there are too many regulations, that many are excessively burdensome, that many do not ultimately provide the intended benefits, and that, consequently, many members of the public are justifiably frustrated and angry with the federal regulatory system. It was for this reason that one of the first executive orders that this President signed was Executive Order No. 12866, "Regulatory Planning and Review", which declared at the outset that the American people deserve a system that works for them, not against them.

The Administration's regulatory philosophy and principles that are set forth in the Order are built upon two basic premises. First, the Government has the basic responsibility to govern, including the responsibility to protect the public, through Federal regulation, where the American people—through our Constitutional representative process—decide that it should. Second, the Government has the basic responsibility to govern wisely and carefully, regulating only when necessary and only in the most cost-effective manner, with full recognition of the proper role of State, local, and tribal governments.

To implement this philosophy, the Order sets forth principles emphasizing the importance of private markets; the need for regulation to be limited to the requirements of law; the critical role of analysis (of costs, benefits, and risks) and the use of that analysis for decisionmaking; consideration of alternatives; extensive consultation with those affected by regulation; and better consideration for the needs of small businesses.

In the year and a half since the Order was signed, we have made a lot of progress. We have opened the rulemaking process and increased its accessibility to the public; for example, agencies are making greater efforts, early in the rulemaking process, to seek comment from those affected by regulation. We have increased cooperation and coordination among the Federal agencies, between the Congress and the Executive Branch, and between the Federal Government and State, local, and tribal governments, businesses, and individuals. And we have seen good processes produce good decisions, both in improving new regulations and in looking back at existing regulations that may have outlived their usefulness or never operated as expected.

For example, the Department of Transportation's National Highway Traffic Safety Administration rulemaking on side-impact protection for light trucks was accompanied by a first-rate regulatory analysis that led the agency to delete a significant, expensive component of the proposed rule and instead request comment on a less costly but more effective safety feature. In designing its rules under the Mammography Quality Standards Act, the Food and Drug Administration made the standards less burdensome on mammography facilities, which are nearly all small businesses, by incorporating existing industry standards to the maximum extent possible. The Coast Guard, in promulgating rules to alert crews about the likelihood of unanticipated oil spills, proposed allowing the use of lower cost signalling devices (i.e., overfill stick gauges) rather than more costly and sophisticated alarm systems.

One of the best examples of a review of existing regulatory programs is the work currently being done by the Department of Commerce's Bureau of Export Administration to rewrite the Export Administration Regulations (EAR). This comprehensive review is intended to simplify and clarify this lengthy and complex body of regulations that establishes licensing regimes for dual-use products—i.e., those that

may have both commercial and military applications—and to make the regulations more user-friendly, which they currently are not. This effort will fundamentally change the EAR by reversing the regulatory presumption—from requiring a license unless specifically exempted to authorizing export without a license unless specifically provided otherwise.

While we have done much to improve the regulatory system, there is much more that needs to be done. That is what we are talking about when we say that there is common ground and that there is a lot—both particular regulatory programs as well as regulatory methods—that we need to address. In the Administration's view, H.R. 450 does not do this. To the contrary, a regulatory moratorium will contribute to the very problem that we are all trying to fix—overly complex administrative systems, gridlock, and endless debate on process instead of substance. In fact, the concept of a moratorium suffers from some of the same problems that often plague regulations, and, for that matter, legislation—its intentions, even if laudable, are lost in the administrative nightmare of implementation and the unintended consequences that no one in this room would want to impose on the American public.

Let me be more specific. H.R. 450 does not purport to place a moratorium on all regulation. It acknowledges that in certain cases regulation is necessary for the Federal government to be able to meet its responsibilities, and in other instances it reflects a judgment that some regulations are particularly beneficial or otherwise desirable. For example, the legislation—by its terms—excludes from the moratorium activities related to: military or foreign affairs; international trade; public property; loans; grants; benefits; contracts; granting licenses; registrations; permitting new or improved applications of technology; and, in general, activities to streamline or narrow rules. In addition, the bill establishes an emergency exception process for activities associated with an imminent threat to health or safety or other emergency, or necessary for the enforcement of criminal laws.

This framework creates a net through which certain regulations pass and in which others are caught. However, people may disagree about whether these are the right criteria and even if they are, how do they apply in particular cases. Does "international affairs" include Department of Commerce rules affecting domestic manufacturers who export products? Does "public property" include public lands administered by the Departments of Agriculture and Interior? Is regulation establishing auditing procedures for tracking federal funds an action related to "grants" or "loans"? Does the exclusion for "contracts" include procurement related regulation? What exactly is "new and improved" technology (since virtually all inventors believe their inventions are new and improved)? Is a proposed regulation, 75% of which streamlines an existing body of rules but 25% of which strengthens existing requirements, subject to the moratorium? Is the 75% exempt, but the 25% caught? What if the two are viewed as a package that together provides a net reduction of 15% of the burden? If a rule does not fall into one of the exemption categories but is based on a rigorous cost benefit analysis and the quantified benefits clearly outweigh the quantified costs, is it to be caught in the moratorium?

The agency head will have to answer questions like these, and many others. If he or she concludes that a rule falls within one of the exclusion categories enumerated in Section 6(3)(B), the bill provides that the agency head is to certify that the moratorium is waived and to publish that finding and the waiver in the Federal Register. Such an action would presumably trigger the provisions of Section 7, Civil Action, which permit anyone "adversely affected" to seek relief in a civil action against the agency, thus involving the courts in the micro-detail of administering the moratorium. In other words, even where we believe the bill does not apply, the issue will not be resolved until the process is complete.

The bill also provides for emergency exceptions (Section 5). Where there is an imminent threat to health or safety or other emergency, or activities necessary for the enforcement of criminal laws, the agency head must submit a written request to the President, with copies to the appropriate committees of Congress, and the President must issue an Executive Order to waive the requirements of the moratorium for that rule (Section 5(a)). This is paperwork run wild. Each year, hundreds of airworthiness directives are issued by the Federal Aviation Administration, as well as other air safety rules, such as the recent actions regarding icing on commuter planes. The Animal Plant Health Inspection Service issues scores of rules to quarantine certain regions to prevent the spread of pests that would affect our food supply. These are just two examples of the many frequent and routine regulations issued by agencies to protect public health and safety. Is the President to issue an Executive Order waiving the moratorium for each of them?

In addition, is the scope of the emergency procedure clear? Exactly how imminent is imminent, regarding health and safety regulations? What constitutes "other emergencies"? Are emergencies that we estimate are 4 or 5 weeks distant included?

Emergencies that are 4 or 5 months distant? The proposed bill would inappropriately elevate these questions to the Presidential level, creating more rather than less inefficiency and delay.

Furthermore, here, as above, the bill provides that the President's decision can be second-guessed by the courts, since anyone who is adversely affected can bring a civil action. Now, we will have all three branches micromanaging all aspects of the Government's operations—clearly a costly and time consuming step backwards from the call for less government, more efficient government, and more effective government.

In addition, the bill, as drafted, does not enumerate categories for waiver or exceptions that should be included. For example, it appears that regulations related to the tax code would be caught in the moratorium. Is this really what we wish to do? I understand that you have already started to hear from those who work in this area arguing that such regulations provide clarity for both individuals and businesses, and need to be issued expeditiously.

The moratorium would also catch notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking. These actions do not have a binding effect on anyone, but instead seek the involvement of all those affected by a regulation—soliciting information on how best to meet mandates established by statute or, in some cases, by judicial interpretations of statutory requirements. Will delaying these efforts for several months help regulatory reform? Or will such delay instead place more strain on the system by preventing the receipt, review, and analysis of information from those most affected by the proposed rule, including those in the best position to help the government devise more sensible, less costly, and more effective rules?

The retroactivity of the moratorium (Section 6(2))—starting over two months ago, on November 9, 1994—would also create significant administrative problems, tie up resources, and create argument, confusion, and inefficiency. In some cases, people will already have started complying with rules that were issued and/or became effective within the period between November 9th and the present. In some such cases, those who have made an effort to comply and invested resources to comply, will find themselves at a competitive disadvantage with those who made no effort to comply. Moreover, in many instances, the questions associated with the moratorium will create uncertainty in the private sector, and the costs that result from the lack of certainty. Now everyone has to ask, "Are these regulations within the scope of the moratorium? Are they within one of the exceptions? Are they subject to Agency Head/Presidential Review because they implicate health, safety, or another emergency? Who will provide clarification of the situation? And when will that occur?"

There may even be situations where what was done pursuant to a validly issued regulation cannot now be undone without inordinate expenses or adverse consequences. There has been substantial press coverage concerning the gray wolves captured in Canada and reintroduced in the wilds of Idaho. Whether or not you agree with the decision, the wolves have now been let loose. Are we to recapture them and, if successful, keep them in holding pens until June 30? Consider also the position of individuals who made year-end decisions based on tax regulations issued after November 9th. If these regulations are suspended, how is their 1994 income to be calculated? And, once again, the prospect for civil litigation means that any answer will be subject to judicial review, and the absence of certainty will plague both proponents and opponents of any particular federal action.

The provisions of Section 4—waiving regulatory, statutory, and judicial deadlines—may also add to the confusion. First, waiving judicial deadlines between date of enactment and June 30th will require further administrative and legal action, again tying up resources. Second, extending deadlines that have passed by the date of enactment would create confusion in the cases where legal or judicial action has already started regarding those deadlines.

My point is that the bill raises numerous questions, some raised above and others not yet thought of, on which reasonable persons will differ. Both legislative branch and executive branch staffs will spend much of the moratorium debating what is covered and what is not, what was intended to be covered and what was not within the intent of Congress, and what should be covered and what should not. The people who will be caught up in these debates are the same officials who would otherwise spend their time working on substantive solutions to the real problems with the regulatory system. The moratorium, therefore, instead of ensuring "economy and efficiency of Federal Government operations" will generate litigation, more bureaucracy, and, in the meantime, delay the work necessary to actually change the system for the better.

Regulatory reform is underway. But it will not happen overnight, and will not happen during a six-month moratorium. Such a moratorium only puts off dealing

with significant issues, both in the regulatory process and in particular regulatory programs. As I noted in my response to Senator Dole, Representative Gingrich, and others regarding this issue, a moratorium is a blunderbuss approach that delays rules based on necessarily arbitrary categories rather than based on their merits. During the next few weeks and months, we should be working together to improve current regulations and the regulatory process, not arguing about what should be or should have been exempted from a moratorium. A moratorium is merely more procedure and more bureaucratic administration, diverting our collective time and energy from the difficult tasks ahead. It makes more sense to focus on the substantive sources of that frustration and try to reduce them than it does to devote our resources to the artificial promise of a moratorium, creating in effect yet another program to administer.

I am concerned that my time here is spent raising questions, emphasizing where we disagree, rather than where we agree. As I stated at the outset, we believe the regulatory system should be improved. We have been working to that end on our own and we want to work with you. H.R. 450, however, is a distraction and detour from where we ought to be going. I would hope that we can join forces to bring the American people a rational regulatory system that improves the quality of life, promotes our health and safety, and protects the environment without imposing undue costs or burdens. We are committed to that objective and we hope you will join us in working towards those goals.

Thank you, Mr. Chairman. That concludes my remarks. I would be happy to answer any questions you may have.

Mr. MCINTOSH. Let me begin my 5 minutes of questioning by responding to some of your concerns, and let me do so in a general sense.

I think the best result of this moratorium will be that it will allow people in the executive branch agencies and in the administration to begin to think in different ways about regulation. I think that was the demand that the American people put on us in Congress in the last election. They don't want us to be sitting and thinking about lists of things that do or don't fall into exemption. They want us to stop regulating and have that the standard.

The moratorium moves us in that direction and allows people to start thinking of their jobs in a different light. They don't want us to think about difficulties that will be placed on the Federal Government to implement their programs. They want us to think about problems they are creating for the American people by implementing those programs.

So I think it is important that we look at what is the effect on the American public. And I am convinced that we have handled the problems that could come up with the emergency exception, the exception for routine matters that affect individuals and are not forward-looking rules of general applicability. But I am very willing to work with you and others in crafting those exemptions if there are ways that we can do a better job.

But I think we have to start adopting this different mind-set that says the government should be less intrusive in our lives. We should protect the American people from overregulation and allow them to go about their lives unhindered by the heavy hand of the Federal regulators.

Let me specifically mention a couple of things. I think it is important that we do have a broad scope to this bill and that we do include notices of rulemaking inquiry precisely because those are the beginnings of a new regulation, and this Congress is going to change the way we implement many of those programs. It would be a fruitless and useless effort for an agency to begin a rulemaking when the Commerce Committee or the Natural Resources

Committee or the Banking Committee is going to be changing the underlying statute, when we are going to be adopting fundamental changes in the way regulations are written with cost-benefit analysis, risk assessment, takings protection.

So it makes sense to me to put those on hold and allow us to make the changes in the legislative branch so that the regulators don't use their time unwisely.

The specific question that I wanted to pose to you was that you mentioned that the administration standard was to regulate when necessary, but go no further than is needed. There is one regulation that would be affected by this moratorium that was released in December of last year, the so-called California car rule that applies the standards that California uses for car emissions to all of the Northeast.

Many of the States in that region objected to that rulemaking and proposed an alternative that allowed them to trade with utilities in their emissions. And, in fact, it was my understanding that that alternative was gaining widespread acceptance and perhaps after the November election would have even gained more adherence in the Northeast region itself. It was very clear that it maintained the same level of emissions reductions as the alternative in the California car rule, but was far less expensive because it allowed trading not only among car manufacturers but also between other sources of pollutants.

That type of trading program, which is a market-based approach, I think is something we all agree needs to be more widely used in these areas. To me, that is a concrete example of a regulation that is going to be costly, that needs to be caught by this moratorium and put on hold so that we can find, under the administration's standard, a less burdensome approach to achieving the same regulatory outcome.

I wanted to ask your views on that regulation and what should be done about it.

Ms. KATZEN. Thank you very much.

I want to tell you that we have been thinking differently about regulations from the time we came into office in January 1993. It has not been business as usual, and the Executive order to which I referred you sets forth the very principles that you articulate—less intrusive, protection of overregulation, to be unhindered by the government in exercising liberty. These have been the principles that we have been using, and it did not take the November election to change our practices. They have been longstanding.

With respect to the OTC proceeding that EPA had decided in December, that was a petition by those Northeast States. The statute set forth a provision by which the States themselves would get together because smog in the air, pollution in the air does not know State boundaries, and the Northeast sector has a lot of air pollution that goes across State boundaries, and no one State can do something within its own territory that will protect it from air coming into that area.

These States themselves petitioned EPA to grant them authority—not to mandate, but to grant them authority—to take certain action. They wanted permission to do something. And EPA's action there granted permission. EPA used it as a basis for exploring

what is known as the 49 State car alternative, which is generally desirable, and has continued work in that effort.

No State has been required to do anything by EPA in this area, and if there will be additional changes to the Clean Air Act amendments I think that some of the work that has been done on the OTC petition will prove very useful to show what new and different ways of achieving our regulatory objectives in a less intrusive way can be derived from this process.

Mr. MCINTOSH. Ms. Katzen, I realize that I filibustered a bit on that questioning. One of my colleagues has agreed to yield you more time from his questioning if you need it on that issue. If not, we will proceed.

Let me turn now to Mr. Peterson.

Mr. PETERSON. Thank you.

Ms. Katzen, as I understand it, back when these—some of these regulations were suspended I guess under Executive order there was some litigation that took place. And people said that suspending regulations was actually rulemaking, and they should have followed the Administrative Procedures Act, and there was some litigation that took place in that area.

Apparently, this legislation will—does it say that it suspends the Administrative Procedures Act? Is that what it does?

What I am getting at is, how much potential litigation do you think that there would be if this is passed the way it is currently constituted? Do you think it is going to create litigation as it is currently constituted and can it be fixed so that that will be minimized?

Ms. KATZEN. By profession I am a lawyer and so it is with some regret that I say that we are an overly litigious society, and any occasion will produce litigation. There was a lot of litigation in earlier attempts to impose moratoriums.

I notice that if this is made retroactive to November 9, the agency that has the largest number of regulations from November 9, to January 13, is the Treasury. Some of those are IRS tax regulations and that bar in particular wants a certain degree of certainty and clarity. The next group is DOD and EPA.

And those two agencies also tend to engender some controversy, and with a moratorium and a suspension I believe that one of the serious questions here is whether we will be moving simply to the courts some of those questions which should be debated on the merits in this body.

Mr. PETERSON. Is it realistic that this could be resolved in 6 months in the court?

Ms. KATZEN. Yes. They may not want resolution.

When I say we are overly litigious, there are different objectives, and one may want resolutions in one's own time. And the problem with a bill that provides for civil actions here is that it is a clear statement that these issues are to be decided.

Our courts right now are heavily clogged with all sorts of actions, and it is not clear that if you brought a suit it would be resolved in time, but it certainly would engender at this time confusion which is not salutary.

Mr. PETERSON. You heard my opening statement where I was concerned about routine regulations that might be affected either

by the retroactive provisions or perspective. Can you by next Wednesday give us an inclusive list of these potential problems so we could try to address them by amendment? Is that a realistic—do we know enough about this to be able to identify areas that are not really in contention, not controversial, that probably should be exempted so that we can offer amendments to take care of certain of these situations?

Ms. KATZEN. I certainly appreciate the kind comments of the chairman about my expertise in this field, and I certainly could come up with a list of serious issues and regulations that are either routine or administrative or noncontroversial.

To say that I can anticipate all of them, no, I don't believe that I could. I believe that no matter what I come up with would still be incomplete.

I was searching last night for a list of the kinds of routine administrative actions that have been taken, because we heard that we have undertaken 1,823 regulatory actions since November. I had a piece of paper here on which I had scribbled some numbers, but of those the final rules were something in the 800's and 900's. Those final rules were—only 70 of them were actual rules. The rest were notices of hearings, change of location of field offices, availability of documents—those are all called regulatory actions.

The 1,823 number provides mailing addresses to send in applications for loans. It provides establishment of committees for meetings to be held. It withdraws information. It provides a variety of notices. And I couldn't—if I had not looked through that list I would not have anticipated those kinds of things.

I will undertake to do what I can for you and provide you what I can, but I give you no assurance that it will be complete.

Mr. PETERSON. If we pass this legislation and we find out afterwards that we have missed a number of these things, what can be done? Can the administration do something to try to fix this or are we stuck with it until June 30?

Ms. KATZEN. The only option for the administration would be to declare it an imminent threat to health or safety. I can't see me recommending the President to do that.

Mr. PETERSON. So there is no provision in here to deal with these routine kinds of things. That might be something we could consider in an amendment possibly. I am very concerned about that aspect of this bill and us getting our arm around that before we move it out of this committee.

Mr. MCINTOSH. Let me say I would welcome Ms. Katzen's input into areas that she thinks are routine like that and determine what could be done. To the extent they further a rulemaking process I have serious questions about not including them because we are going to have committees around this Congress looking at those areas. But there may be other routine matters that don't, and I will be glad to consider proposals and information about those by next Wednesday.

Ms. KATZEN. I would say that when Chairman Bliley spoke about the Safe Drinking Water Act, I was very encouraged because the administration strongly supported rewrite of that act last term. There will be significant changes, but some things will be the same and consistent with your agenda, some things will not change, and

it would be difficult I think in any one of these instances to try to parse which are which.

Mr. MCINTOSH. The time of the gentleman has expired. Let me now turn to my colleague from Washington, Mr. Tate.

Mr. TATE. Thank you, Mr. Chairman.

I haven't counted them all up, but I believe you have probably reviewed and signed off on hundreds if not thousands of new regulations since you were confirmed. Do you believe each of these new rules' benefits outweigh the costs they impose on society?

Ms. KATZEN. Our office has reviewed far fewer than thousands of regulations. When you are talking about thousands you are talking about notices of changes of locations of offices, and we don't review those.

Of the significant regulations that we review we have seen a new dedication to cost-benefit analysis, to considering the data on which decisions are being made, to good data, good analysis being used to inform decisions rather than to justify it.

And I stated earlier that I am proud of what this administration has done. This is a very large government. There are very many pieces. We have brought them together to speak collegially and constructively to do better regulations. Some of the traits of the past have disappeared, and we are thankful for that.

Mr. TATE. You referenced Executive Order 12866, which requires you to do a cost-benefit analysis, what the imposition is onto society, but it seems to me we are still imposing more regulations that have incredible impacts on society—they are imposing enormous cost on society but very little benefit many times. Is that really cost-benefit analysis? It is great to do the cost-benefit analysis, but if nothing is changing that creates a lot of work but not much difference.

Ms. KATZEN. I don't think that nothing is changing. There are limitations.

The Clean Air Act, which was passed with a broad bipartisan support and signed by President Bush and actually heralded as one of his greatest accomplishments, sets forth technology-based regulation. The maximum achievable control technology standards do not take cost into account at the max floor. That was a choice of the Congress.

If that is to be revisited, that is to be revisited; and those are issues that may come up. But I am satisfied that this administration is dedicated to improving the regulatory process. I think progress has been made, and I think that the use of cost-benefit analysis has affected changes.

One of the examples that I use in the written testimony is the National Highway Transportation Safety Board which was looking at side impacts, front seats, back seats, and found that the cost-effectiveness in the front seats was very good but cost-effectiveness for back seats was not. So they deleted that component and instead requested comments on increasing bumpers, which are much more cost-effective ways of protecting passengers in collisions.

This is where analysis was used to inform the decisionmaking, and that proposal was put in the Federal Register, looked very different from the original game plan was because they did the analysis, and they used it. That is progress, and that is what is impor-

tant. I believe if we receive comments on that, if we are able to review and analyze them and then implement them, we will be saving more lives at less cost. I think that is progress. I think that is what we should be doing.

Mr. TATE. Last question on this. You have been pretty vigorous in defense——

Ms. KATZEN. I speak vigorously.

Mr. TATE [continuing]. In your opposition to this particular piece of legislation. Can we expect that if this lands on the President's desk that it would be vetoed?

Ms. KATZEN. I have tried consistently to find a common ground and to work with those with an interest in that area. I have spent my time raising questions about problems.

The bill, as currently drafted, I find causes more problems than it solves. It has greater costs than benefits. I am troubled by the bill as constructed.

This is a legislative process. The chairman has indicated an interest in considering these issues, and I would like to see and work with you as the bill goes through Congress.

Mr. TATE. I guess it is impossible to know if it will have greater cost because it is impossible to know what every regulation is because people in the real world who have to deal with these regulations can rarely figure them out and many times get conflicting answers from conflicting agencies, whether they be State, local, or Federal. I urge support of this legislation.

Mr. MCINTOSH. Will the gentleman yield?

Let me urge Ms. Katzen to give specifics on those areas. In some of our previous meetings, we talked about the general concept and left saying that you want to consider and have the opportunity to think about specific comments on this bill. Let me urge you to do that and take up Mr. Peterson's suggestion of providing data and information about the effects of any changes and what rules would be affected by that by next Wednesday so that we can proceed with the markup with that information.

Mr. TATE. Thank you for coming in. I look forward to working with you.

Ms. KATZEN. Thank you.

Mr. MCINTOSH. The gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman.

Ms. Katzen, it is interesting you would make a comment that this legislation may have greater cost than the benefits that even the proponents of the legislation hope to get from it. What strikes me is how precipitously people are moving forward with legislation that has enormous consequences and ramifications and how little information is out there as to what the effect will be. You have indicated you are trying to accommodate these concerns expressed that we have regulations that are reasonable, that are going to be minimizing the cost, that will have more benefit to society and that all these different factors will be taken into consideration, but if we just put a moratorium on and adopt this legislation, will that help you accomplish that goal or will it hurt you?

Ms. KATZEN. I was concerned and stated in my testimony that I believe this is a distraction from what should be our ultimate objective and that it would slow down the progress on the substance

which sorely needs it. That is why the concept of a moratorium seems to be more government rather than less, more paperwork rather than less. There may be ways of attacking it differently, but I wanted to make clear how I saw it affecting my ability to focus on the underlying issues and bring about the changes I hope to do.

Mr. WAXMAN. I can't imagine if by next Wednesday you gave us a list of 1,800 regulations that are about to go into effect the members of this committee could digest it and make an intelligent decision what to let go forward and what to stop.

I guess the only way we would act is the way Congress always acts. If they haven't heard from lobbyists complaining about it or constituents, they assume it is OK. That is not a way for decisions of this magnitude to be made.

The statements that are made that regulations that have been adopted have greater cost than benefits, Mr. Tate made that statement. I would like to know what data there is for a statement like that. I am concerned that we have a lot of anecdotes, people who would like to change things and come here not knowing what the laws or regulatory processes are and say we ought to turn it on its head as if that would be a plus when, in fact, it might be counterproductive even to what they would think is a realistic step forward.

I guess we are trying to make regulations more cost-effective. If this legislation were adopted, would it make regulations more cost-effective?

Ms. KATZEN. No. This legislation does not address any of those issues. This is simply a holding pattern, a stopgap measure, as I understand it. H.R. 9 raises some of those issues, and I believe this committee and Commerce and others will be focusing there, and that is where we want to focus our attention.

Mr. WAXMAN. It seems to me there are two problems. One is, a holding pattern means that decisions that should be made are not being made under existing law. The second problem is, the law is the law until changed; and even if people come in with ideas on how the law ought to be changed, they may want to be talked out of those ideas if they are open to information and to further consideration.

Second, laws don't always get passed even though people want them to be passed. The Clean Air Act didn't get passed for 10 years because we were stymied. We couldn't reach agreement on different issues. But the law is the law, and aren't these regulations that are beginning to be proposed in furtherance of existing law for the most part?

Ms. KATZEN. Yes.

Mr. WAXMAN. Should we ignore the law that is on the books because some would like to change it?

Ms. KATZEN. I can't. I have taken an oath of office to carry out the law of the land as a member of the executive branch, and I believe respect for processes should obtain. That is one of the reasons that, in some respects, there is a cart before the horse here, and we should get to the underlying merits and see those through.

Mr. WAXMAN. The chairman indicated he wants to stop regulations because we would like to adopt not only changes in the substantive laws but a whole long procedure of bills to make you think

differently, you people who have to enforce the laws and adopt the regulations.

Some of those ideas that they want to propose I hope they will rethink. I think they are a tremendous assault on a lot of important regulations that affect the health and safety of the American people.

The idea that ordinary Americans should have to put their money together and pay a polluter not to pollute—that is what one of the bills would do. They say it would protect private property; but, in effect, it would say that you can't do anything to stop a polluter without all of us getting together and paying that polluter rather than the polluter having that as internalization of his costs.

They would have people who sue the Federal agencies, including individual agency employees, for damages for issuing or even recommending issuance of a regulation or an enforcement action. That is incredible. What a chilling action there would be when people trying to do their job legitimately could be sued by some enormous corporate interest group that wants to be sure that an agency doesn't pick on them.

I give the example of the tobacco industry. Tobacco concerns are being looked at by OSHA to protect the rights of the nonsmokers from being forced to breathe in a class A carcinogen, and FDA is looking to see whether regulation would be required, reasonable or lawful to protect kids from being the target of the tobacco industry. If the tobacco industry is going to benefit, as they certainly will because FDA wouldn't be allowed to evaluate the situation, it seems to me that the American people ought to know. This is a huge gift to a very big special interest.

There aren't mom and pop tobacco manufacturers. These aren't small business people. They are people who manufacture a legal product, but it seems to me that we ought to evaluate, since it is a major pollutant, what kind of regulations would be appropriate.

Mr. MCINTOSH. The time of the gentleman has expired.

Let me ask my colleague, would you grant a minute or so for Ms. Katzen to answer that?

Mr. WAXMAN. Certainly.

Ms. KATZEN. I think these are difficult issues on which people will disagree. They have been debated in this body.

There was a statement by someone earlier about respect for different use. We are a democratic society—small d—in which a number of different constituent parts feel very strongly, some more protective, some more laissez-faire, some more technology oriented, some more philosophically oriented. I believe that those who come to the table do so in good faith, and we should hear them out, and we should wrestle with the problems and then make decisions, and ultimately those will be yours to make in the Congress. That is the process that has to be gone through, and something that is sort of arbitrary or process oriented is not productive would be my comment on those.

Mr. WAXMAN. Will the gentleman yield? I will ask unanimous consent for you to have more time.

What impact would this legislation have on FDA's tobacco investigation and work?

Ms. KATZEN. My reading of the bill is that no action can be taken in pursuit of anything that might end up as a rule except to do a cost-benefit analysis. If I am reading it correctly, FDA could assemble the costs and the benefits and seek to do the analytical part, but I am not sure how it would get the information to do that, given the way the language is structured. That is my own reading of it, and I would defer to the drafters if they see a better plan.

Mr. MCINTOSH. Mr. McHugh.

Mr. MCHUGH. Thank you, Mr. Chairman.

I think we are losing the distinction, and I am a firm opponent of terms limits, but I may have to reconsider between laws and regulations. We are not seeking here to terminate the implementation of well-reasoned and passed laws but rather the implementation of not-so-well-reasoned regulations.

By the way, in that regard I want to tip my hat to this administration. I do think that it has done some meaningful things toward that very important objective, and I find nothing of partisanship about this.

Ms. Katzen made some comment about previous administrations, and I couldn't agree more. Back when I had power as a member of the State legislature I knew what it was like to operate under the prolific bureaucratic capabilities of Republican administrations as well, so I don't think that is the issue here.

Rather, as I said in my opening statement, we should seize this opportunity across the board, notwithstanding the attempts by this White House, to give ourselves a 6-month time period to look at this issue and to try to reassert the authority that I think the U.S. Congress should have. I know the people in my district expect the U.S. Congress to have over the implementation of the laws that it passes. We have lost our way, and we have lost control in many instances over those bills that the gentleman from California holds in such high esteem, and I agree with him, and over the process by which we deliberate on those initiatives. If it ended at our gate I don't think this problem would have quite the magnitude that it does.

Ms. Katzen, in your comments you spoke about the effect that this bill would have on the rulemaking process, and you suggested—I think the words you used were that rulemaking has no effect on the actual implementation but rather is part of the process.

Are there not occasions when the implementation of a rule, in fact, locks in a procedure until the final determination is made? I am thinking, for example, in those cases where we are about to designate a particular piece of land as in our State—we call it Forever Wild Wildlife Refuges. When that is a subject of rulemaking does not that status automatically take effect until the rulemaking process is completed?

Ms. KATZEN. You are correct. There are a few instances where the law provides that once a proposal has been duly made then action taken during the period while the rulemaking is pending that is inconsistent with that proposal to the extent that proposal becomes final would be inappropriate.

I have said this in a circuitous way, but the effect is that if that proposal is never adopted there is no binding effect. And this would

be true in this area as well. I specifically was talking about advance notices of proposed rulemaking where there isn't even a proposal on the table, where we are simply beginning the process. With the exception of these few specific areas even notices of proposed rulemakings would not have that kind of an effect.

Mr. MCHUGH. That is why I asked, because I think there is a distinction. And for purposes of looking at this bill and working it up it may be an area where the distinction exists, and we may want to look at that.

Your written testimony on page 8 talks about the retroactivity provisions, and you seem to be troubled by the confusion, as you call it, and the tying up of resources and administrative problems. You mention the wolves recently brought in from Canada. Is there not a lawsuit currently ongoing with respect to their release?

Ms. KATZEN. There was originally a suit by ranchers which was resolved. And then some environmentalists brought a lawsuit, and that was subject to a temporary restraining order which kept the animals in their pens for a couple of days. That was then resolved, and they are now in their 1-mile areas acclimating—my understanding is that the litigation has been resolved, and they have been taken out of their little pens and put in their big pens. I can confirm that.

Mr. MCHUGH. On the issue of retroactivity on the next page, you talk about the wolves and then you go on to talk about tax regulations. You have mentioned that a couple of times—consider the position of individuals who made hearing decisions on tax regulations. Has this administration changed its position on retroactivity of taxes?

Ms. KATZEN. No, sir. I think it is important that those written in December remain in place. There is deduction for membership in a club. Your definition is now suspended. And if someone did or did not join a club relying on that regulation and assuming that it would be deductible or not, that would now be retroactively changed if we suspend that.

There is an antipartnership abuse regulation——

Mr. MCHUGH. If you define the administration's position on the 1990 tax bill, one that in fact imposes retroactivity of taxes, even to the extent that people who had the temerity to die prior to its implementation——

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. MCHUGH. I ask unanimous consent for whatever time Ms. Katzen may need to answer that last question. I am not trying to bait her necessarily. I think it is genuine, a point of discrepancy that I would like to see resolved.

Ms. KATZEN. My comments here are addressed to the fact that in any number of areas people may rely on certain provisions and take actions.

One of those areas here has to do with the tax code and that if those were validly issued at the time and applicable at the time and people acted on those and they are now suspended, that changes for them. And that is, it seems to me, one of the issues that is raised.

You may want to do that. That may be the choice Congress wants. My purpose here was to raise kinds of I think legitimate

questions that have been raised by the tax bar about how we are proceeding in this area.

Mr. MCHUGH. Thank you. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you Mr. McHugh.

We just have two bells on a vote. My question to my colleagues is, do you have questions? Let me proceed and see when it gets to 10 minutes left. Then we will head off and vote.

Mr. Gutknecht, do you have any questions?

Mr. GUTKNECHT. No, I did not. But I wondered—if we are going to break for a vote, perhaps we could break for 45 minutes?

Mr. MCINTOSH. If we are able to finish with the questioning.

Mr. Shadegg.

Mr. SHADEGG. Thank you. I am trying to understand this. As I understand it, you are concerned that people might act in reliance upon a regulation that was already in place, and they might be hampered if we now suspend that regulation. Is that correct?

Ms. KATZEN. That is right.

The other example I used was competitive disadvantage. If they have made the investment in pollution control equipment or changed their processes in an attempt to comply with something which is presumed to be effective now and their competitors have not and we suspend the rule, that would be a competitive disadvantage for that individual. That is the kind of analogy I was using.

Mr. SHADEGG. I appreciate that concern, but do you see an inconsistency with that and the administration's earlier position where they felt it was not inappropriate if people acted and came back at a later time and taxed that action that they had earlier taken? You do not see an inconsistency there?

Ms. KATZEN. I have raised certain points which I think are relevant to this bill. If you want to use this as an opportunity to inquire into the administration's position on a wide range of issues, that is your prerogative. That is not my purpose here.

Mr. SHADEGG. I only asked if you saw an inconsistency.

Ms. KATZEN. I do not.

Mr. MCINTOSH. Thank you. Mr. Ehrlich.

Mr. EHRLICH. I appreciate your comments. I appreciate the spirit in which they are made.

The phrase was used by one of my colleagues a minute ago that we are interested in reasserting our authority, and another point was made with respect to the fact that we are not here just to hear a series of anecdotes about what regulatory burdens have done, and we understand that. Your point is well taken with respect to the need to work with us to achieve a more sensitive—for lack of a better term—environment upon which regulations are promulgated.

But, in that context, let me go back for a second to the OTC issue that the chairman brought up. I have distilled the facts down, and I understand you are very familiar with the story. I have lived this issue in Maryland for years in the State legislature.

It appears that the relevant facts are that the OTC petitioned EPA to impose California car standards on the region from Maine to Virginia. Four States within the region voted against the petition. There were negotiations that EPA was involved in. An alternative was put forth that even EPA said was as good or better than

originally provided for. Yet EPA approved the petition. This has put the States in a very difficult position.

My question to you is, knowing what State I come from, in the context of what we are trying to do here and in the context of the elections and the message that we are bringing back to Washington, why not promote emissions training? Why not be more innovative when it comes to the rulemaking process and being sensitive to the concerns that were expressed in this context by the private sector?

Ms. KATZEN. I think that is an excellent question.

The statute that was governing this process called for majority rule of the States, which is why the four dissenters still had to go along with the proponents of this in the petition to EPA. EPA was restricted by the statute in what it was able to do. It was not able to say use the 49 State car. I think there is an express prohibition in the statute against what they call the third car. There is the California car and the nationwide car. You can't have a third car.

That is a statutory constraint, and EPA was operating within the statute as it is written, as it should. It was presented with a prima facie showing that unless something was done with mobile sources, with cars, these States could not meet the standards. It was presented good, valid data. It had no choice but to say there is a problem.

In terms of the remedy, it would have loved to have said go 49 States but was not able to do so.

I agree innovative, cost-effective, creative approaches is what we have to do. That is what we are determined to do to the extent statutes will let us. And as you preserve congressional authority I hope that these issues will be on your platter and we can discuss them on the merits, because there is common ground here. We join you in this effort.

Mr. EHRLICH. Thank you.

Mr. MCINTOSH. Let me suggest that we will be in recess until 1 o'clock for lunch and an opportunity to vote. Thank you for coming.

Let me clarify one thing. It would not be my preference in any way to have a list of exceptions in the bill. The list would be helpful to me and Mr. Peterson and would be examples for possible general changes that you might propose in the legislation.

Ms. KATZEN. Thank you for the clarification.

Mr. WAXMAN. Mr. Chairman, I have a second round of questions I would like to ask Ms. Katzen. Can we return and complete questioning of her?

Mr. MCINTOSH. It is my preference to proceed with the other panels, and if there are additional questions we can submit them in writing.

Mr. WAXMAN. Mr. Chairman, I have a right to ask a second round. I think we need to get more information, and I would like to exercise that right to inquire further and insist on a second round. If you want to do it at 1 o'clock, I will be back at one.

Mr. MCINTOSH. It is my understanding that each of us has a right to 5 minutes of questioning and no necessary right to a second question. In the interest of hearing from the Americans who are here today, I want to proceed with the other panels.

Mr. WAXMAN. Mr. Chairman, I happen to be an American as well. Having been elected by many Americans in my district, they sent me here to understand what I am doing before I pass legislation. I have a right as a Member of Congress to proceed with a second round of questioning of this witness. This is one of the key witnesses that we have before us today. I demand that I have my rights respected. I am willing to come back, but I do have questions that I want to ask, in a public forum, of this very important witness.

Mr. MCINTOSH. Mr. Waxman, it is my ruling that we will proceed with the other panels, and you are able to submit your questions to Ms. Katzen in writing.

Mr. WAXMAN. Let me make a point of order.

Mr. PETERSON. I know we are under a new regime, but I was a subcommittee chairman in the last Congress on this committee, and we routinely allowed Members a second round of questions. That seems to me to be reasonable, especially—as I have said to you, I am troubled by the speed with which we are being asked to deal with this.

I support what you are trying to do, and I hope that we can have a bipartisan bill, but if you continue along these lines I am not averse to taking my name off this bill and getting the rest of the Democrats to take their names off the bill if that is what you want.

Mr. MCINTOSH. Let me suggest we stand in recess, talk with Ms. Katzen about her availability after the other panels. The committee will be in recess until 1 o'clock.

Mr. WAXMAN. The chairman refuses to recognize a point of order?

Mr. MCINTOSH. The committee was in recess.

Mr. WAXMAN. Mr. Chairman, you have to have a majority vote to recess this committee.

Mr. Chairman, my point of order is that I have a right under the rules to inquire further of a witness and to have a second round of questions. Is the Chair ruling that I do not have that right?

Mr. MCINTOSH. It is the Chair's ruling that each Member has a right to 5 minutes of questioning. We will then proceed to the other panels, when you will have a right to question.

Mr. WAXMAN. I appeal the decision of the Chair. Pending that, I will let the chairman inquire of the Parliamentarian whether he is respecting the rights of the Members before he makes a ruling.

Mr. MCINTOSH. I will so inquire. There are bells for a vote. I suggest we take those, and we will resolve this when we return.

[Recess.]

Mr. MCINTOSH. This subcommittee is reconvened and in session. As we were recessing, I was making a ruling of the Chair that we would proceed to the next panel. Let me clarify for the purposes of the record, that I am convinced under Rule 14 that is within the prerogative of the Chair to do.

However, my colleague from California, Mr. Waxman, has prevailed upon me and I will grant him an additional 5 minutes to question Ms. Katzen, who is the only representative of the administration here today, and any other Member, although I am told other Members do not seek that time, and then we will move on to the next panel.

Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I appreciate the chance to ask this administration witness additional questions and I just would point out to everyone—from my whole experience as a subcommittee chairman for 15 years, I have never turned down the Republican members of the committee or subcommittee a second opportunity to ask witnesses from the administration, which for most of the time were Republican administrations, an opportunity to ask additional points. I think it is unfortunate that we are not going to have a full opportunity to hear even more from Ms. Katzen, but maybe if we have additional hearings or additional responses in writing, we can get more of an idea what the impact of this legislation will be.

I just think we are moving awfully fast without knowing what the full ramifications are.

Ms. Katzen, Cryptosporidium is a parasite that made over 400,000 people sick, killed over 100 people in Milwaukee in 1993, and it has been found in 80 to 90 percent of the surface waters used for drinking water in the United States, but it is not currently regulated. Last year EPA proposed a rule that would simply require water suppliers to test for this life-threatening contaminant.

I don't think anybody disagrees with it. Maybe some of the water purveyors do. I am not sure, but no one in the debate on the reauthorization of the Safe Drinking Water Act has suggested that this not be the rule. H.R. 450 would prevent EPA from finalizing this essential rule as planned. Is that your understanding?

Ms. KATZEN. I believe they did provide a proposal and that——

Mr. WAXMAN. Is it your understanding the bill would stop this rule from going into effect?

Ms. KATZEN. Yes.

Mr. WAXMAN. And if no one is arguing in Congress to change the safe drinking water law, on that point, have you heard of any reason why this regulation shouldn't go into effect?

Ms. KATZEN. This is one of the few regulations that I haven't heard some questions being raised about. When I answered yes, by its terms, it would apply and it would stop it. There is this procedure whereby apparently the head of the agency would submit a written request to the President, send a copy to the appropriate committees of each House of Congress, the President would then prepare an Executive order and circulate that to all the agencies to follow the procedures for the Executive order and then there would be civil action.

Mr. WAXMAN. That would be the way the rule would be enforced?

Ms. KATZEN. No. That is all before it could become effective. You would then have litigation and——

Mr. WAXMAN. This bill would stop that whole process from going forward?

Ms. KATZEN. Yes.

Mr. WAXMAN. Now, EPA is talking about the emission standards for incinerators and it would prevent hospital and municipal incinerators from emitting hundreds of thousands of tons of toxic chemicals into the air, which include lead, mercury, and dioxin. H.R. 450, as I understand it, would prevent EPA from finalizing these standards; is that correct?

Ms. KATZEN. That is the medical waste incinerator rule and that would fall again within the confines here.

Mr. WAXMAN. OK. Now, in the food safety area, we have the industry asking for the regulations on seafood inspection so that there can be preventive controls, and the FDA has called for these regulations as well. Is it your understanding that H.R. 450 would stop these regulations from going into effect?

Ms. KATZEN. It would have the same process where FDA would be precluded from proceeding to finalize the rulemaking and respond to the industry comments and the public interest comments that have been filed.

Mr. WAXMAN. Now, FDA is in the process of reviewing interim regulations on mammography and these regulations would set standards for the manufacture and use of mammography equipment, and this is to set out to ensure that mammographies, which are often inaccurate, are more reliable. It is a life and death matter for women throughout this country. Is it your understanding that this would be delayed under H.R. 450 if it were to become law?

Ms. KATZEN. I think so, and the reason I am hesitant is that what FDA is doing here is actually using industry standards.

Mr. WAXMAN. Yes.

Ms. KATZEN. This is one of the examples of, I think, sensible regulation. Instead of trying to design their own, they have gone to get the best practices of the industry and they want to incorporate those. But I think it still would be captured here because it is not streamlining in those terms.

Mr. WAXMAN. And let me ask you about why EPA had to prepare a Federal implementation plan or a FIP for California, if you know the answer to that?

Ms. KATZEN. Yes, I saw the chairman raise the Federal FIP. That unfortunately came about because the State declined to file in a timely basis its State implementation plan, and this triggered a lawsuit then in which the plaintiffs sued the Federal Government and we, as the sort of default, had to come in and propose something.

Having a proposal in place prompted the State to then prepare a State implementation plan which they have since filed, and I recognize the chairman's concern with the February 15th date. We too recognize that concern and have negotiated with the plaintiffs a 2-year delayed effective date specifically to provide the time to analyze the State SIP before the February 15th date. That was precisely why we did it that way.

Mr. WAXMAN. The whole idea of a FIP is to try to make sure the State operates to clean up the air——

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. WAXMAN. Just to finish that sentence.

It is to force the State to develop their own implementation plan, isn't that the purpose?

Ms. KATZEN. That is correct.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Waxman.

Do any other Members have any questions for Ms. Katzen?

Mr. GUTKNECHT. Mr. Chairman?

Mr. MCINTOSH. Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, just a brief clarification here. You seem to be saying that the administration would be prevented from moving ahead with some of these very important regulations, but it is my understanding, and maybe I don't understand the bill correctly, but if you believe there is an emergency, the administration does, they can go ahead and implement these, can't they?

Ms. KATZEN. Well, the terms of the statute, and we have not been able to go through this in the detail, I suppose, that we would like to, but the way it is set up is that you cannot take any action to complete a rulemaking. Somehow, there is an assumption that, notwithstanding that, it may get to the point where the agency head is in a position to certify that this is a threat—imminent threat to health and safety.

If that occurs, then we follow this emergency process which calls for a declaration that it is an imminent threat to health and safety, and those are undefined terms here, and once you head down that emergency route, then notwithstanding it is an emergency, there is the option for civil litigation to challenge the basis on that by any person adversely affected, and therefore it may or may not ultimately be possible within the period of the moratorium to implement any or all of these.

There are procedures set up, but there are obstacles and hurdles that would go through, notwithstanding a strong conviction, and, in fact, demonstrable evidence that there is a problem.

But not all health and safety is an imminent threat to health and safety. If you take auto safety, if you think about the airlines, the commuter air traffic, we had a number of accidents. I would personally consider that an imminent threat to health and safety. There are others who will say, well—and actually Chairman Bliley this morning said, we haven't had seafood regulation for X number of years; it won't matter if it is another 6 months. Apparently he didn't think it was an imminent health and safety threat, and yet there are statistics to people not just getting sick, but dying.

And at what point you make these judgments calls for judgment, calls for, I think, discussions on the merits of what is really involved, and instead of having that enlightened conversation on the merits, instead we have a process, more government rather than less. I hope I have been responsive.

Mr. GUTKNECHT. Well, Mr. Chairman, I think that is sort of the crux of the issue. It seems to me that the government is going to have to demonstrate the need and reasonableness of rules rather than almost the private sector having to prove to us that they aren't needed or reasonable.

This is a pivotal debate, but I guess the real point is, if there is an imminent danger to the public, there is a safeguard in this bill, as I understand it, in section 5 so that emergency rules can go ahead.

Ms. KATZEN. They can go ahead subject to civil litigation.

Mr. GUTKNECHT. Well, isn't everything subject to civil litigation?

Mr. MCINTOSH. Why should we suspend people's rights just because the government makes a decision on something? That to me is exactly backwards.

Ms. KATZEN. But what the suit is about is how imminent is imminent? It is not whether it is ultimately called for by the statute

or it is ultimately justified on a cost benefit or other basis. It is not on the merits of the decision.

It is on whether it is really imminent, is there a problem—I mean, we are talking now in January. This ends June 30th, presuming that it is enacted and not changed in the endpoint. Does that mean that something that happens on July 1st, August 1st, or September 1st, do we do statistical probabilities of when it is likely that people will have injury?

You are establishing a different threshold and it is, I think, wholly appropriate to speak about the government having the burden of proof. I think it is essential that regulations be based on good data and good analysis. I think that is the essence of a sound regulatory system and that is what we are committed and dedicated to do.

But to then establish a hurdle that it is not just cost effective and not just beneficial for health and safety, but will prevent an imminent threat to health and safety, is an additional hurdle for this short period of time and that is what I was responding to in terms of the effect of this statute.

Mr. MCINTOSH. Any further questions?

Mr. GUTKNECHT. Well, Mr. Chairman, I think that is sort of the debate we are going to have in this subcommittee, not just in this particular hearing, but I think as we go forward through the entire Congress, is how safe is safe, how imminent is imminent, what role should the government play and whether or not the rules and regulations that we impose are—you know, whether they have real need and reasonableness. And reasonableness, I think, is going to be the ultimate standard that we are going to have to apply.

But to say that if there is an imminent danger to the American public, this bill would prevent the administration from responding, that really is not completely accurate and I just want that on the record, Mr. Chairman.

Mr. MCINTOSH. Thank you. Thank you very much, Ms. Katzen, and we look forward to hearing from you next week and working with you further on this issue.

STATEMENTS OF WILLIAM SANDFER, HEMOPUMP PATIENT, WEBSTER, KY; AND DR. RONALD BARBIE, CARDIOVASCULAR SURGEON, ADVANCED CARDIOVASCULAR INSTITUTE, LOUISVILLE, KY

Mr. MCINTOSH. Let me now proceed to the next panel of witnesses, Mr. William Sandfer and Dr. Ronald Barbie.

Mr. Sandfer and Dr. Barbie, thank you very much for joining us here today. I understand you have traveled from Kentucky to be here. I very much appreciate that and your willingness to come forward and talk with us about this very important issue.

Mr. Sandfer is a patient who has received a new technology, a heart pump that is, as of today, not approved for general use by FDA, but in clinical trials. He is going to describe his experience with that. Dr. Barbie is his doctor who implanted that device and will elaborate to us the standing of the device and its medical effectiveness and any safety concerns that he is aware of.

I welcome you for joining us today, Mr. Sandfer.

Mr. SANDFER. Thank you very much. It will be 5 years this January that I had the pump implanted due to a heart attack. I have completely recovered from all the problems I had. I am doing very well.

Like I say, this will be 5 years and I would hope that this pump could be available for anyone else that would—that was in the condition I was in at that time, that they would have the use of this pump. Certainly any member of my family, I would hope would be available for it.

It has done wonders for me. I feel great and I am satisfied. Without it, I would not be here today, so I really appreciate the use that I got from the pump and that is about what I have to say about it. I really do hope that they do something to get the pump more available. I think more people should get the use of it, if they need it.

Mr. MCINTOSH. Thank you very much, Mr. Sandfer.

I think the way we will proceed is to have Dr. Barbie also provide his testimony and then have the panel question either of you, as they may desire.

Dr. Barbie.

Dr. BARBIE. Well, Mr. Sandfer can't be more specific on his condition prior to putting the pump in because he was extremely ill. I might mention that this is not a permanent pump. Mr. Sandfer does not still have the pump in. It was a temporary device which allowed his own heart to recover, after which it was removed.

The device we are talking about is called the hemopump. It is a class of ventricular assist devices, which means that if the heart is thought of as an engine, when a malfunction occurs in the engine, an assist device is used as an auxiliary engine to take over until the main engine recovers.

Various types of assist devices are available, ranging from very simple ones to extremely complex and expensive ones. The most simple assist device that we have is called a interaortic balloon pump. An example of the most complex assist devices that are being under investigation now is called a thoratic ventricular assist device.

The costs of the assist devices range, depending on their complexity. The hemopump is about mid-range between the least and the most complex. We first became involved with the hemopump in 1988 during the phase 1 clinical trial which lasted from 1988 to 1991. This device is inserted through an artery, threaded up the aorta, placed through the aortic valve in which it draws blood from a sick heart through a rotor and supports a person's circulation while that sick heart is decompressed and rested and relaxed.

The experience in the phase 1 trial was limited to those people like Mr. Sandfer who had had massive heart attacks and had failed all other means of support. In his case, he was in shock. He had run the gamut of all the drugs that were available. He had an intraortic balloon pump in place and his chance of survival was known to be less than 10 to 20 percent.

Fortunately, he responded. In other words, his heart recovered. It is impossible for us to predict who is going to recover and who is not going to recover in this situation; fortunately he did recover. Our experience in the phase 1 clinical trial which showed that 35

to 37 percent recovered as opposed to 61 percent that didn't recover in this situation. Does that light mean I have to stop talking?

Mr. MCINTOSH. The red light would indicate your time is up. You may proceed, so continue with your testimony, Dr. Barbie.

Dr. BARBIE. Our experience stopped in 1991 with the end of the phase 1 clinical trial. Currently a phase 2 clinical trial is going on. This involves the hemopump used in different ways such as an alternative to a bypass machine for heart surgery and also to support people's hearts during angioplasty.

It has been modified now, based on the experience in the phase 1 & 2 clinical trials, to include several different sized devices. If anyone is interested in a more detailed description of the hemopump, there is a book out which I provided a chapter for and I have a copy of it in my briefcase.

Mr. MCINTOSH. Thank you.

And if you could provide that chapter for us, we will make that part of the record for today's hearings.

[NOTE.—To reduce publication costs, the subcommittee has omitted from the record chapter 7 of the book entitled, "Cardiac Mechanical Assistance Beyond Balloon Pumping." A copy of the book may be found in the subcommittee files.]

Mr. MCINTOSH. Let me ask you a couple questions, both of you. This was approximately 5 years ago. Mr. Sandfer, would you say that the availability of the hemopump could be said to have saved your life in this instance?

Mr. SANDFER. Oh, I am sure it did, yes. It saved my life, and I am sure that a lot of other people could benefit from it if it was available but, like it has been 5 years and it is still not available to the hospitals and the doctors to use it. I think it is a shame that it has not been brought up to where people can use it and more people get the benefit of it. That is my feeling on it.

Mr. MCINTOSH. I agree with you there very much. Let me ask you, Dr. Barbie, the survival rate seemed to have increased on that early phase 1 data from something of 10 to 20 percent to 35 to 37 percent, nearly doubling the chances of a patient's survival with the use of a hemopump. Is that phase 1 data being—are you having similar results in phase 2, or do you know——

Dr. BARBIE. I am not involved in the phase 2, so I can't comment on that. The phase 2 are involved with different types of patients. These aren't people in cardiogenic shock, so I think the phase 1 trial was suggestive and that it was beneficial. The results of the phase 1, I am sure you have access to.

Mr. MCINTOSH. Let me ask this: How many patients would you estimate each year would potentially benefit from this? They are in a state of shock and need some intervention.

Dr. BARBIE. Well, I have some estimates in my briefcase that address the general population. Our experience with the hemopump has been in running a moderately sized cardiovascular service, meaning that we do 800 to 1,200 heart operations a year. We used it probably two to three times a year in our surgical patients, and then in the medical patients, such as Mr. Sandfer, used it probably another two to three times. So you can estimate from that, how often it would be used all through the country with the number of

patients having heart attacks, the number of patients having heart surgery.

On the order of 6 to 10 per 1,000.

Mr. MCINTOSH. Patients who have a heart attack——

Dr. BARBIE. Who would fulfill the criteria of having a hemopump inserted.

Mr. MCINTOSH. Do you know offhand how many people suffer from heart attacks in this country each year?

Dr. BARBIE. Again, I have a summary from Johnson and Johnson that has all those numbers, if you want to have that too.

Mr. MCINTOSH. Yes, if we could put that into the record that would be very helpful, but it certainly would be a significant number of people who would benefit from this if the product were widely available?

[The information referred to follows:]

THE HEMOPUMP;

CLINICAL RESULTS AND

FUTURE APPLICATIONS

Walid Aboul-Hosn and Richard Wampler

1.0 INTRODUCTION

Cardiovascular disease is the leading cause of death in the United States[1] killing about one million Americans (population 250 million) each year. Seventy million Americans suffer from and nearly two people in five will ultimately die of cardiovascular disease. Acute myocardial infarction kills five hundred thousand Americans each year and of these, 90,000 die of cardiogenic shock. Table 1 shows the number of deaths associated with cardiovascular disease and myocardial infarction in the United States.

1.1 CARDIOGENIC SHOCK - BACKGROUND

Cardiogenic shock is a life-threatening condition characterized by severe left ventricular dysfunction, hypoperfusion, and secondary organ failure. Cardiogenic shock may occur secondary to open heart surgery, acute myocardial infarction (AMI), myocarditis and acute donor graft rejection in heart transplant recipients. Cardiogenic shock complicates 7.5% of all patients with acute myocardial infarction making AMI the most common cause of cardiogenic shock[2]. If the heart is unable to provide blood flow sufficient to maintain cellular metabolism , multiorgan failure and death will result.

1.2 CARDIOGENIC SHOCK - TREATMENT

The strategy of the treatment of cardiogenic shock posits that the heart may recover from even severe acute myocardial dysfunction if it is relieved of the requirement to support the circulation and is effectively decompressed. The standard treatment for cardiogenic shock includes pharmacological agents intended to increase heart contractility, reduce myocardial oxygen consumption and increase tissue perfusion. In severe cases, intra-aortic counterpulsation in combination with pharmacological modalities has been used in an attempt to improve the survival of cardiogenic shock. However, these modalities have been of limited clinical utility in decreasing the high mortality (80% to 90%) of cardiogenic shock[3,4,5]. Ventricular assist devices (VADs) provide much greater circulatory support than the IABP and may offer a more effective alternative to the IABP in the treatment of cardiogenic shock. Indeed, LVADs have been shown

to effect recovery of noncontractile but viable or 'stunned' myocardium in the setting of cardiogenic shock in experimental animals and have demonstrated limited clinical utility in patients who fail to wean from bypass and as bridges to cardiac transplantation[6,7,8,9]. Unfortunately, existing LVADs have not yet evolved to practical devices because current embodiments are large, complicated experimental devices adapted to limited use in surgical patients[10,11,12,13,14]. Consequently, LVADs are rarely used in the treatment of cardiogenic shock secondary to AMI because the risks of the major surgery needed to implant them preclude their use. Clearly, if LVAD's are to find a place in the treatment of cardiogenic shock, a new technology is needed.

An 'ideal' assist device should combine the hemodynamic power of the LVAD with the simplicity and safety of the IABP. Such a device could make it possible to exploit the therapeutic potential of the LVAD in the treatment of cardiogenic shock. The HEMOPUMP embodies many attributes of both the IABP and the LVAD.

1.3 EVOLUTION BEYOND IABP

The HEMOPUMP [15] represents a significant improvement in LVAD technology because it supports most of the cardiac output, reduces the work load of the heart and does not require major surgery for implantation. The HEMOPUMP combines the hemodynamic power of the LVAD with the relative simplicity of the IABP. The HEMOPUMP is a catheter mounted LVAD that can support most of the circulation for up to seven days and yet be implanted without major surgery.

The HEMOPUMP improves on the IABP because;

1. It does not need to synchronize with the heart rhythm.
2. It does not require some remaining left ventricular contractility to be effective.
3. It has a higher flow capacity.
4. It provides much more effective decompression.

2.0 HEMOPUMP - DESIGN AND PERFORMANCE

A pump is a machine that transfers mechanical energy generated by an external energy source to the fluid flowing through the pump. The HEMOPUMP is based on the principle of the screw pump developed by the ancient Egyptians and later described by Archimedes in 200 BC. The HEMOPUMP transforms electrical energy into the rotational energy of a high speed rotor. The rotary energy then accelerates the blood such that it is removed from the low pressure inlet (left ventricle) to the high pressure pump outlet (the Aorta).

2.1 DESIGN

The HEMOPUMP consists of two main systems: the disposable pump catheter and motor (Figure 2.1), and the electrical console (Figure 2.2). The main components are described below;

Motor Stator	Transforms electrical energy into rotational motion.
Magnet Housing	Transmits rotational motion to the flexible drive cable.
Flexible Drive Cable	Transmits torque from the motor magnet to the hydraulic rotor (impeller).
Pump and Cannula	Axial flow pump and inflow tube which conducts blood from the left ventricle to the aorta.
Electrical Console	Provides power and purge solution to disposable pump.

The pump's cannula is advanced into the left ventricle via a peripheral vascular access or the ascending aorta. The Cannula inlet draws blood from the left ventricle and expels it into the aorta as shown in Figure 2.3. Blood flows against a pressure gradient due to the energy imparted to the blood by the rotor.

The console is an integrated electronic controller that provides pump speed selection, pump lubrication, and diagnostics. New consoles also provide an electrical signal that can be used to verify correct placement of the cannula across the aortic valve.

2.2 PERFORMANCE

The pump's flow is dependent on three main factors; 1) the pump diameter (the larger the diameter the larger the flow), 2) the rotor speed (the higher the rotor speed the larger the energy transferred), and 3) the pressure gradient across the pump (the lower the gradient the higher the flow). Presently the HEMOPUMP is available in three different sizes, 14, 24, and a 26 (Sternotomy) French sizes (Figure 2.4). The 14 French HEMOPUMP is introduced percutaneously through a specialized introducer, the 24 French is introduced through a graft anastomosed to the femoral artery, and the 26 French is placed through a graft anastomosed to the ascending aorta.

The 14 French percutaneous HEMOPUMP (at 70 mm of mean pressure) can produce a flow of 2.3 L/min, the 24 French 3.5 L/min, and the 26 (Sternotomy) French 5.0 L/min. The improved flow of the 26 French over the 24 French is due to the improvement in the 26 French hydraulic efficiency rather than the size difference.

In contrast with the iABP the HEMOPUMP does not need to synchronize with a beating heart. Therefore, the pump can support the patient whatever the heart rhythm. Figure 2.5 shows a physiographic tracing with and without pump assistance in a patient with cardiogenic shock. Assistance is characterized by an increase in the mean aortic pressure, a decrease in the aortic pulse amplitude (non-pulsatile in this case) and a decrease in peak ventricular pressure wave and left ventricular end diastolic pressure. The reduction in peak ventricular pressure and improvement in the aortic pressure clearly shows the ability of the HEMOPUMP to unload the left ventricle.

3.0 FEMORAL HEMOPUMP - PHASE I

The initial clinical trials [6] focused on the HEMOPUMP in treating cardiogenic shock. Patients were accepted into the trial if shock was secondary to one of the following: Acute Myocardial Infraction (AMI), Failure To Wean from cardiopulmonary bypass (FTW), Low Cardiac Output (LCO), and Other causes (acute donor graft rejection, cardiomyopathy etc.).

3.1 PHASE I TRIALS CARDIOGENIC SHOCK

3.1.1 Protocol

Patients with cardiogenic shock secondary to AMI, FTW, LCO and Other causes were accepted into the trial if they met the following hemodynamic criteria.

1) Pulmonary capillary wedge pressure greater than 18 mmHg
2) Systolic pressure less than 90 mmHg
3) Cardiac Index less than 2 L/min/m^2
4) Patient refractory to drug and volume therapy

The HEMOPUMP was placed through the femoral artery via a 12 mm graft anastomosed end to side to the artery. The pump was introduced through the graft and advanced into the left ventricle. Anticoagulation was maintained with intravenous heparin to achieve an activated clotting time (ACT) at 1.5 to 2 times the baseline.

3.1.2 Patient Summary

The mean age was 53.7 years (range 8.6 and 76 years). All these patients had evidence of "irreversible cardiogenic shock" and were on assisted ventilation. Sixty-eight percent failed to respond to the intra-aortic balloon pump and most had evidence of major organ failure. Table 3.1 [17] summarizes the diagnosis at the time of entry into the trial. The study included 145 patients. Successful insertion was completed in 79% (115/145) of the patients, 40% (46/115) were successfully weaned from assistance and 27% (31/115) survived to 30 days.

Patients with acute myocardial infarction assisted with the HEMOPUMP had a survival rate of 32.4% (11/34) compared to a survival of 16.7% (2/12) (p value NS) for AMI patients in whom the device could not be inserted. Although, the failed insertion group was not a perspective control group, these results do suggest that the HEMOPUMP may significantly improve survival in patients with cardiogenic shock secondary to AMI.

3.1.3 Hemodynamic Response to HEMOPUMP

The hemodynamic effects of the HEMOPUMP were verified by measuring the cardiac Index (CI), pulmonary capillary wedge pressure (PCWP), and systolic blood pressure. Table 3.2 [14] shows these values before HEMOPUMP insertion, during HEMOPUMP operation, and 24 hours after weaning. The data shown is the result of the first 88 patients.

The average cardiac index before pump insertion for all patients was 1.72 L/min/M2 which is consistent with severe cardiogenic shock. The cardiac index increased by 35% for patients weaned from the device. In addition the CI improved significantly during the first 24 hours of device operation. The average PCWP decreased 57% in patients weaned from support and 38% in all patient. This demonstrates the effectiveness of the device to unload the heart.

3.1.4 Physiologic Response to the HEMOPUMP

The physiological response to HEMOPUMP assistance was evaluated by measuring the urine output and the fraction of inspired oxygen (FIO_2) provided by the ventilator. Table 3.3 summarizes the urine output and inspired oxygen of the first 88 patients.

The urine output was stable in the group successfully weaned while it decreased by 52% in the group not weaned. The fraction of inspired oxygen (FIO_2), which is an indicator of lung edema and gaseous exchange, shows a 25% reduction in weaned patients and no change in the those not-Weaned. The improvement in the FIO_2 after 24 hours of pump assistance is probably a direct result of left ventricular decompression.

3.1.5 Hematological Response to HEMOPUMP

Since the HEMOPUMP energizes the blood by transferring velocity from a high speed rotor, it is logical to expect significant damage to the blood components, especially red blood cells. To evaluate the effect of the HEMOPUMP on cellular elements of the blood, the platelet count, total hemoglobin, and plasma free hemoglobin were measured. Table 3.4 shows the platelet count, plasma free hemoglobin, and total hemoglobin. The data shown is the result of the first 88 patients. A moderate thrombocytopenia was observed but only a minor elevation in plasma free hemoglobin was noted.

The resilience of the blood elements to the high velocities in the pump remains a mystery. The exact mechanism that protects blood cells in the harsh environment of the pump is not well understood. Many theories have been advanced to explain why the blood can withstand the shear force of a 27,000 rpm rotor but none have been proven. One plausible theory suggests the short time (2.5 ms) that the blood is exposed to the pump is not of sufficient duration to result in damage.

4.0 STERNOTOMY HEMOPUMP - PHASE II

Although the HEMOPUMP was originally conceived for use in the treatment of cardiogenic shock, we have come to the conclusion that the difficulties of conducting a study of cardiogenic shock that would pass the scrutiny of the FDA may be insurmountable. The Phase II trial for the Sternotomy HEMOPUMP will study its clinical utility for intra-operative non-oxygenator support during aortocoronary bypass (ACB) surgery.

The purpose of this clinical investigation is to show that the HEMOPUMP Cardiac Assist System is equivalent to or better than conventional extracorporeal cardiopulmonary bypass when used to support a subset of patients who would normally be candidates for isolated aortocoronary bypass graft surgery. It is our belief that such a study can demonstrate significant reductions in blood transfusions, complications, recovery time, and cost. Recent experience with surgery on the beating heart and the historical development of ACB surgery supports this hypothesis.

4.1 AORTOCORONARY BYPASS SURGERY WITHOUT SUPPORT

Motivated by the desire to avoid the complications of CPB and the artificial oxygenator, several investigators have reported reduced complications while performing ACB surgery on the beating, unsupported heart. Buffolo, Benetti and Pfister investigated the merit of ACB surgery on the unsupported beating heart and concluded that the complications of CPB can be avoided during ACB surgery[19,20,21,22,23].

4.2 NON-OXYGENATOR AORTOCORONARY BYPASS SURGERY ON THE ASSISTED BEATING HEART

Non-oxygenator extracorporeal circulatory support with ventricular assist devices (VADs) has been successfully used to support patients during ACB surgery. Use of VADs during ACB surgery avoids the risk of the artificial oxygenator, since the patients own lungs are functioning, yet allows the surgeon to safely revascularize vessels that were inaccessible in the experiences of Buffolo, Benetti, and Pfister reported above. Glenville[24] and Sweeney[25] demonstrated that a VAD may be effectively used for intraoperative hemodynamic support and ventricular decompression during ACB surgery. The use of nonoxygenator extracorporeal support during ACB surgery has a number of theoretical advantages.

1) Ventricular decompression should decrease myocardial oxygen demand and increase coronary flow to ischemic areas, thereby protecting the myocardium.
2) An artificial oxygenator and the associated circuit are not needed since the patient's own lungs oxygenate the blood.
3) Aortic cross-clamping and ischemic arrest are not necessary.
4) The heparin dosage can be lowered with a corresponding potential reduction in blood loss.

Although Glenville and Ross did not exploit all of the theoretical advantages mentioned above, they were the first to successfully use a VAD for circulatory support during ACB surgery. Sweeney modified Glenville's procedure to exploit more of the theoretical advantages. He reported on 43 patients who presented with either acute or chronic severe left ventricular dysfunction and subsequently underwent VAD assisted ACB surgery. Six of these patients were in cardiogenic shock. The mean ejection fraction was 22% (range 12-28%). Two of these patients died for an overall mortality of 4.6%.

Although the results with VAD supported ACB surgery have been encouraging, currently available VADs are not ideally suited to this application. At this time, VAD supported ACB surgery adapts a centrifugal pump intended for use in a cardiopulmonary circuit as an extracorporeal VAD. There are several disadvantages to this approach.

1) Use of large cannula, particularly on the left side of the heart, is cumbersome and complicates the surgical procedure.

2) A hole must be made in the left ventricular apex to achieve good LV decompression.

3) Negative pressures inherent to a centrifugal pump in an extracorporeal blood circuit pose the risk of air embolism.

The Sternotomy HEMOPUMP is an intracorporeal circulatory assist device that, because of its unique design, may avoid the difficulties of extracorporeal VADs[26]. The HEMOPUMP may be particularly well suited to intraoperative support and could be readily adapted to nonoxygenator circulatory support during ACB surgery.

5.0 PHASE II CLINICAL TRIALS

This trial will be a prospective, randomized study. A patient may be entered into the study if he or she meets all of the following criteria.

1) The patient is a candidate for isolated aortocoronary bypass grafting using conventional CPB;
2) one to five grafts are planned;
3) the target vessels intended for bypass are among the following:

Left Coronary Artery

a) left anterior descending artery
b) ramus medianus artery
c) diagonal artery
d) obtuse marginal artery 2 cm from the takeoff of the circumflex artery

Right Coronary Artery

a) acute marginal artery
b) posterior descending artery
c) posterior left ventricular artery

A patient will be excluded from the trial if he or she meets any one of the following criteria:

1) The patient has a significant blood dyscrasia;
2) has a prosthetic aortic valve or severe aortic stenosis or insufficiency;
3) refuses to accept blood transfusions;
4) has a left ventricular or atrial mural thrombus;
5) has pulmonary hypertension;
6) is a candidate for emergency surgery;
7) has intravascular hemolysis greater than 25 mg%

The clinical utility of non-oxygenator support with the HEMOPUMP and cardiopulmonary bypass will be established by assessing freedom from serious complication and avoidance of heterogeneous blood transfusions. Serious complications will include:

1) Any reoperation due to bleeding;
2) focal neurological deficit following surgery;
3) pulmonary failure defined as the need for ventilator support 24 hours post surgery;
4) low output state defined as impaired hemodynamics requiring inotropic drug therapy longer than 24 hours post surgery of the use of an IABP;
5) disseminated intravascular coagulopathy (DIC).

Pilot studies based on this protocol began in Europe in the spring of 1993. Approval of an investigation device exemption from the U.S. FDA was granted in 1993. The clinical trial is now in progress in three U.S. centers and one in Europe. To date 25+ patients have undergone ACB on HEMOPUMP support. One patient could not be completed on HEMOPUMP support and was crossed over to CPB. One to four grafts have been performed. There has been one postoperative death in a patient that crossed over to CPB. Although it is too early to present specific data, the following trends are emerging; 1) postoperative bleeding is significantly reduced in the HEMOPUMP group, 2) the HEMOPUMP supported patients seem more vigorous in the postoperative period and require less time in the ICU and hospital, and 3)

fewer patients in the HEMOPUMP group require blood transfusions. Published reports of initial clinical experience are anticipated during 1994.

6.0 FUTURE USE

The technology of a high efficiency, catheter mounted, miniature, LVAD has already spawned a multitude of applications. The initial trials of the HEMOPUMP were hindered by failed insertions (25%) due to the large diameter of the 24 French femoral device. This fact drove the development of a percutaneous HEMOPUMP, which is a 14 French HEMOPUMP intended for nonsurgical insertion by the interventional cardiologist. The Percutaneous HEMOPUMP is undergoing limited clinical trials in Europe for support of high risk angioplasty. Successful clinical use of the percutaneous HEMOPUMP in high risk angioplasty patients was first reported by Scholz[27].

Another potential application of the HEMOPUMP adapts it for use as an extracorporeal blood pump during fetal heart surgery. In the past, fetal surgery which required circulatory support was hindered by the large volume needed to prime the extracorporeal circuit. Frank Hanley et. al. at the University of California in San Francisco have used a modified HEMOPUMP to support the circulation of the ovine fetus during cardiac surgery. Significant reduction in placental dysfunction and dramatic improvement in fetal survival has been observed. This study is still in its initial stages and published results are anticipated within a year.

Another logical application for the 14 French Percutaneous HEMOPUMP is pediatric ventricular support. It was necessary to shorten the inflow cannula to accommodate the anatomical difference between children and adults, but the 14 Fr. device should offer a great advantage over any present technology used for pediatric assistance.

Besides these applications, right ventricular support is possible with the same basic technology adapted to right heart support. In conclusion, the HEMOPUMP technology could be modified and adapted to many applications requiring the movement of blood.

7.0 CONCLUSION

The HEMOPUMP is an innovative left ventricular assist device that, for the first time, provides a practical way to exploit the benefits of mechanical circulatory assistance in the treatment of cardiogenic shock and acute myocardial infarction. The initial clinical trials in the treatment of cardiogenic shock and the early experience with supported interventional procedures are very encouraging. New applications for its use continue to emerge as we gain experience and confidence in the safety and effectiveness of the HEMOPUMP. Ongoing clinical experience will define the indications for use and clinical utility.

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LIST OF TABLES

LIST OF FIGURES

		Pre-Insert	During	Post-Removal
Urine Output	*All Patients*	116 ± 14.5	81 ± 7.4	92 ± 11.9
	n	72	70	60
	Weaned	109 ± 22.1	104 ± 11.4	114 ± 17.6
	n	31	35	33
	Non-Weaned	120 ± 19.4	58 ± 8.0	65 ± 14.0
	n	41	35	27
Fraction of Inspired O_2	*All Patients*	0.82 ± 0.027	0.70 ± 0.023	0.62 ± 0.029
	n	80	76	57
	Weaned	0.81 ± 0.038	0.61 ± 0.027	0.58 ± 0.036
	n	34	36	31
	Not-Weaned	0.83 ± 0.037	0.78 ± 0.030	0.67 ± 0.047
	n	46	40	26

Table 3.3: Patient Physiological Response. Source IDE G870192/43 March 13, 1991 JJIS Annual Report[16].

		Pre-Insert	During	Post-Removal
Platelet Count 1,000/cu mm	*All Patients*	207 ± 11.9	122 ± 7.1	116 ± 8.1
	n	81	69	55
	Weaned	210 ± 17.2	117 ± 9.5	110 ± 8.6
	n	34	35	34
	Non-Weaned	205 ± 16.5	126 ± 10.7	125 ± 15.2
	n	47	34	25
Plasma Free Hgb mg/dl	*All Patients*	18.5 ± 3.4	44.9 ± 6.9	35.0 ± 7.9
	n	47	65	51
	Weaned	14.1 ± 3.9	27.2 ± 3.5	30.0 ± 11.9
	n	21	33	27
	Non-Weaned	22.1 ± 5.2	63.2 ± 12.3	40.6 ± 10.1
	n	26	32	24
Hemoglobin gm/dl	*All Patients*	11.5 ± 0.24	10.4 ± 0.17	10.4 ± 0.20
	n	87	75	61
	Weaned	11.8 ± 0.37	11.0 ± 0.19	10.8 ± 0.25
	n	37	36	34
	Non-Weaned	11.3 ± 0.32	9.9 ± 0.23	9.8 ± 0.29
	n	50	39	27

Table 3.4: Patient Hematological Response Source IDE G870192/43 March 13, 1991 JJIS Annual Report[16].

Dr. BARBIE. Oh, certainly.

Mr. MCINTOSH. If it is 6 to 8 percent of your patients and you are only one facility throughout the country that would do that.

Let me ask you this: What are the potential downsides to this type of product? Presumably FDA has requested additional tests because they are fearful of some complication, or have they given any indication of that, as far as you know?

Dr. BARBIE. Well, not being involved with the current phase trial and I am not affiliated with Johnson and Johnson at all, I can't really say what the motives of the FDA are. All I can do is comment on our experience. The developer of this is named Dr. Richard Wampler if you are interested in talking with him, and he would be more familiar with the regulatory aspect of it. I don't know how else to answer that.

Mr. MCINTOSH. I have no further questions for you. Again, thank you for coming today and sharing that experience with us. Mr. Peterson, do you have any questions for the witness?

Mr. PETERSON. Yes, Mr. Chairman. I just am trying to figure out how this relates to this bill, but Mr.—Dr. Barbie, how many patients have you treated while this pump was being studied?

Dr. BARBIE. Twenty.

Mr. PETERSON. Twenty?

Dr. BARBIE. At our institution.

Mr. PETERSON. Have you conducted studies on the hemopump itself?

Dr. BARBIE. What kind of studies do you mean?

Mr. PETERSON. Well, have you studied the way it operates or——

Dr. BARBIE. Right, yes. We found it to be an effective device—more effective than a balloon pump. There is a learning curve to learn how to put it in. The earlier cases did not go well because of difficulty with the insertions, but the later cases we seemed to do a bit better.

Mr. PETERSON. Would your studies on this hemopump be considered controlled clinical trials?

Dr. BARBIE. Well—as it was a part of the phase 1 clinical trial, I guess you would have to suppose it is, yes.

Mr. PETERSON. Well, I am curious as to what—how this ties into the moratorium or what we are—is there some regulation that is in place at FDA that is stopping you? When was this application put in and what is the problem? I mean, that has been——

Dr. BARBIE. I am not prepared to answer that because I am not a person who is involved with the development of the hemopump or a person who is associated with Johnson and Johnson.

Mr. PETERSON. So you don't know when the application was filed with FDA?

Dr. BARBIE. No.

Mr. PETERSON. Does anybody know that? When it was filed and how long it has been there, what it is——

Dr. BARBIE. All I can do is describe my experience with the phase 1 trial and how it affected Mr. Sandfer, because I was directly involved with his case.

Mr. PETERSON. What was your experience again?

Dr. BARBIE. I am a clinical cardiovascular surgeon.

Mr. PETERSON. Is there some regulation that caused you to have problems with what you were doing here or what?

Dr. BARBIE. No. I think we are here to tell you about our experience with the device and allow you all to make up your own mind as to whether a delay from 1990 to 1995 is appropriate.

Mr. MCINTOSH. Would the gentleman——

Mr. PETERSON. I guess that is my question. Who caused this delay?

Mr. MCINTOSH. Would the gentleman yield? It is our understanding that the FDA granted the IDE, the initial device experimentation request, in 1988, and that the device has been being tested since that time. In terms of the purpose for this hearing, the FDA is considering a series of rulemakings that would expand the regulation of new devices entering into the marketplace. This is an example of a device that has been held up under the current regime.

Mr. PETERSON. Mr. Chairman, can you tell me when the application to approve this was submitted to the FDA?

Mr. MCINTOSH. It is my understanding that they have committed their initial application in 1988, that FDA, after phase 1, rejected the test results and required that they go back and enter into phase 2, and, as a result, have been delaying the approval of this.

Mr. PETERSON. Was this a premarket approval application, are you aware?

Mr. MCINTOSH. It is my understanding this is something called an IDE.

Mr. PETERSON. Does anybody know what that is?

Mr. WAXMAN. If you will yield, it sounds to me like this is a device for which FDA is trying to establish whether to approve it or not, and it sounds like a very useful device from your experience.

All of us would like to see lifesaving devices out there as quickly as possible so that people can benefit from them, but, as I understand, Mr. Chairman, the approval or rejection by FDA of a request for a drug or a device is not a regulation.

That is each individual case, they have to come in and tests have to be established, and phase 1 or phase 2 testing to set the record for them. I don't know the relevance to the regulations, although there is, interestingly enough, one regulation that I do know FDA is considering.

Speaker Gingrich has raised the issue a number of times about an ambicardial pump. It is to deal with people with cardiac arrests, and there was a tie-up in FDA because they couldn't get informed consent, obviously, of somebody who needs to be resuscitated, which makes no sense, and so FDA is changing its rules to say that they wouldn't have to get that informed consent to use the device so they could actually get to the established approval of this particular device, but—and if this bill were adopted, that FDA proposal to change its rule so they could be more reasonable in evaluating that particular device could be stopped because that is a regulation on how to investigate devices.

It is my understanding that that type of regulation would be a classic example of one of the ones not covered by this bill because it would relieve a burden and allow the testing to go forward.

Mr. PETERSON. Well, reclaiming my time, so you are not aware of there being a premarket approval application filed? Because as

I understand it, FDA can't make a decision on this one way or the other unless that has been filed, and so if it hasn't been filed, obviously, the process can't proceed.

Mr. MCINTOSH. Would the speaker yield? It is our understanding that there—I am not aware of any approval that has been filed. It is the regular course of action by device manufacturers and drug companies to only proceed with that type of filing once the agency has indicated they don't seek any additional clinical trials. They have not done that. They rejected the first one and requested additional tests.

Mr. PETERSON. Still, I am having a hard time understanding.

Mr. WAXMAN. Will you yield to me?

Mr. PETERSON. I will yield.

Mr. WAXMAN. I wanted to point out to the chairman because he thought the statement I made about the FDA proposed change in rules for approval of device would not be held up because it is a deregulation.

Oftentimes, the rules that would be changed would say, we will deregulate or change it in one case, but they may ask for further requirements on hospitals to get post-approval of reporting, and that would be held up because that would be a rule that would provide more regulation, not a deregulation.

The point I want to make is that FDA is in the process of trying to streamline some of their approval processes. I think that is long overdue, and I am afraid this bill would stop that from happening, but I don't think this bill, if it were law, would get this device out any faster.

Mr. PETERSON. My concern is, as I understand it, without an application, the regulations of FDA don't have any impact on this. Until there is actually something in front of the agency, these regulations don't apply. So I guess I would like to know if an application has been filed and if not, why not?

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. Fox, do you have any questions for the witnesses?

Mr. FOX. No.

Mr. MCINTOSH. Mr. Fox does not. Let me—Henry.

Mr. WAXMAN. I have no questions. Thank you for coming and sharing that experience, and I think it is always a reminder to us that we have got to push FDA and all regulatory agencies to be mindful of the fact that while they are doing the legitimate job of making sure the device or drug or whatever is safe and effective, we want them to act as quickly as possible, because the other side of it is that people like Mr. Sandfer can't wait. They may not live long enough to wait to get some of these things out.

Mr. MCINTOSH. Thank you.

Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, not so much a question for the witnesses, and I do appreciate them coming today, but I do think this is an issue that really needs to be examined on its own. In fact, over the weekend, as Representative Peterson I am sure will agree, we have in Minnesota a relatively high percentage of medical technology firms and I was rather alarmed.

I met with representatives of some of those firms over the weekend and more of this research now is being exported to other coun-

tries, in part, because—and with relatively simple technologies, because of—it is far more difficult, and perhaps some would say it should be far more difficult, to get FDA approval than it is to get approval in almost any other country now and, as a result, we are losing some of those technology because jobs, but worse than that, I think there are patients who could benefit, as Mr. Sandfer has testified today, from these technologies and they are being denied it because of the very difficult process that the FDA has set up.

And so without respect to this particular bill, I hope that—in fact, I would extend this public invitation to have the subcommittee come to Minnesota, and I suspect we can round up a full day's worth of testimony from individuals, researchers and so forth, about the problems that are confronted by people like Dr. Barbie, and, as I say, some of this technology is relatively simple.

I mean, we are not talking about real complicated things, but yet it can take years and years and ultimately, and I was told over the weekend, some of the technologies, by the time the FDA approves them for use here in the United States, the second or third generation of that particular device is already being marketed in Germany and Japan and France and Great Britain and other parts of the world. So I would hope that this subcommittee would get deeper into this because I think Americans are being hurt.

Worse than that, we are exporting technology jobs and research projects that for all intents and purposes should be—should be here in the United States and more and more the researchers are saying, we might as well do this in Switzerland or Germany or Great Britain, and perhaps Dr. Barbie can respond to that if he is—and I would take it he is involved in the cardiovascular industry enough to know what I am saying is essentially true.

Dr. BARBIE. I don't believe I have talked with any doctor, regardless of whether they are in the cardiovasular industry or not, that is happy with the situation as it is now.

Mr. GUTKNECHT. Mr. Chairman, if I might just follow up. Is it safe to say or an overstatement to say the people in the United States are being harmed now by the regulations and the delays in bringing some of this technology to market here in the United States?

Dr. BARBIE. Well, I can't say that they are being harmed. I don't know that they are being helped.

Mr. GUTKNECHT. Thank you.

Mr. MCINTOSH. Thank you very much, both of you, for joining us today. I appreciate that testimony, and I appreciate Mr. Gutknecht's suggestion that we continue to look further into the question on medical devices and, pending resources, would be delighted to take him up on his offer to help us have a field hearing in his home State.

As you know, my home State of Indiana also has a lot of device manufacturers, maybe we can make a swing through the Midwest in doing that.

Thank you for coming today and appreciate your help. The staff will contact you about those additional parts for the record.

Dr. BARBIE. Thank you.

Mr. MCINTOSH. Now we will move on to our next panel, Mr. James——

Mr. FOX. Mr. Chairman, I wanted to make a comment, not a question. I just wanted to say that this was the kind of example of Dr. Barbie and Mr. Sandfer that probably is the reason why these hearings are needed to be held, and I am very happy for the bipartisan interest in this, and I am sure that the American public will be appreciative that these two individuals came today and that it will make a difference for America.

Thank you.

Mr. MCINTOSH. Thank you, Mr. Fox. Our next witness is a gentleman who has responsibility for administering the environmental protection programs in the State of California. He is an expert in the environmental enforcement area and in addition, has impeccable credentials as an environmentalist, and I am delighted that he is able to join us here and talk about this moratorium bill as well as other issues that may come up that we will be addressing in a manner in which regulations are written here at the Federal level.

Thank you very much for joining us, Mr. Strock, and welcome.

STATEMENT OF JAMES M. STROCK, SECRETARY, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Mr. STROCK. Thank you, Mr. Chairman. It is a pleasure to be here and I appreciate the indulgence of the committee on the rather informal written statement I had. It was banged off a computer as best we could while traveling. We don't have quite the staff support some folks in Washington seem to have.

Mr. Chairman, you are of course very acquainted with these issues and have been a leader in this field for quite awhile. Governor Wilson in California has given every effort to regulatory reform there. From the State perspective, I come before you as a regulator, but also as one who is regulated by the Federal Government. I would like to very briefly make a few points about your proposal, then make a few points about what we are doing in California, and then of course I would like to respond to any questions you might have.

Governor Wilson strongly supports this legislation. We believe it could serve a very significant role in allowing for there to be a serious reconsideration of Federal, State environmental relations. We believe your regulatory reform bill has particular strengths in that it attempts to avoid several pitfalls that have been raised. One is the emergency exemption provision; the other is that it would not limit what everyone agrees are long overdue efforts by EPA here to reform its own regulations. I would add with respect to some of the technical issues raised on the definition of emergency and that sort of thing, there are, of course, numerous precedents in existing law. We would be pleased to be of assistance to you in that process.

In California, Governor Wilson has worked in regulatory reform and the first thing he has done is to make certain that a distinction is made separating our high environmental standards from the permitting process. It is clear that much of the permitting process—and much of it is imposed from Washington—does not add environmental value. It is often counterproductive, particularly when it holds up new technologies from being placed on the market. And following a whole series of process reforms, Governor Wilson in

California has recently proposed a State constitutional amendment that may be of some interest to the committee.

To briefly summarize its components. One, is that it would treat new regulatory costs in California like taxes are treated in California's constitution, requiring a two-thirds super majority.

Second, it would allow for majority votes for new regulatory burdens where they are accompanied with a decrease in net cost at the same time. Several important aspects of this I would urge to the committee's consideration.

One is that it moves the question of regulatory cost and benefits up the process to legislators. That is very important. In California, as in Washington, there are increasing requirements at the end of the line, at OMB or at EPA or elsewhere, but what that does not do is provide a useful way for legislators to set priorities. They often do not even know what the regulatory costs are. That is particularly important in the environmental area because, as the committee is aware, EPA's budget is around, for example, $7 billion per year. The regulatory costs they impose are probably about $100 billion or more a year, conservatively estimated, so if the debate is solely on the agency's operating cost, it is missing the heart of the matter.

In closing, I would reiterate our support for your legislation. We think it can add great value. We also hope that the committee might consider related issues in the future, such as the overall delegation of environmental programs to the States. We believe that a stronger Federal role that makes clear its understanding that the States are the environmental leaders and, as such, are the basis for our national leadership in this area would be very important to reinforce from Washington.

Mr. MCINTOSH. Thank you very much, both for traveling all the way out here and for your support for this legislation and Governor Wilson's support.

[The prepared statement of Mr. Strock follows:]

PREPARED STATEMENT OF JAMES M. STROCK, SECRETARY, CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify today. I am James M. Strock, Secretary of the California Environmental Protection Agency. The issue of regulatory reform is of great concern to Governor Wilson and California—as recently demonstrated by the continued controversy over the U.S.EPA's Federal Implementation Plan for parts of California.

Today I would like to discuss the Wilson Administration's position on the McIntosh bill for a regulatory moratorium, as well as the general principles we are following on regulatory reform, including the Governor's recent proposal for a constitutional amendment regarding regulatory reform in California.

THE MCINTOSH REGULATORY MORATORIUM

Governor Wilson wholeheartedly supports the regulatory moratorium. It is difficult, from the perspective of a state such as California, which is a world leader in environmental protection in its own right—a state on whom the U.S. as a whole looks to for leadership—to see value being added from the regulatory behemoth here in Washington.

It is important to recognize that regulations imposed by the federal EPA can not only damage the economy unnecessarily, but can also harm our efforts to protect the environment. A key example is the inspection-and-maintenance program which the U.S. EPA sought to impose on all of the states. California has consistently sought a program that would meet or exceed our strict environmental standards,

and would include flexibility in the process by which we achieve the standards. To impose a single regime for all states could, among other things, force us to accept a technologically stagnant approach that would in fact limit our continued advancement toward our strict standards.

The McIntosh regulatory reform bill is particularly well-drafted, in that it avoid two major pitfalls. One, it provides for an emergency exemption. Two, it would not limit overdue efforts by the federal EPA to reform its own regulations.

GOVERNOR WILSON'S APPROACH TO REGULATORY REFORM IN CALIFORNIA—CHANGING THE DIALOGUE: SEPARATING STANDARDS FROM PROCESS.

Our reform in the state of California has focussed particularly on the process. California is making great progress in moving from a system with high environmental standards and a convoluted legal process, to a system of high standards achieved through a rapid, decisive and simplified process. In this regard, our unprecedented alliance with the environmental technology industry has been essential, since that industry's success depends on the high standards and a simplified process. From a technological standpoint, an unnecessarily long or complex process acts as an inadvertent subsidy to older, less environmentally protected technologies.

It is important that standards and process be examined distinctly. Process reforms—making legal procedures uniform, etc.—add clear environmental and economic value and can be sought along traditional lines. On the other hand, strict standards, when based upon strong scientific rationale, have environmental and economic value. As with all areas, they are worthy of continual reexamination and improvement, but that should be primarily a scientific endeavor.

Governor Wilson has proposed a constitutional amendment on regulatory budgeting and reform that would do the following:

A. Require a 2/3 supermajority for approval;

B. Allow for emergency exemption—also offset;

C. Lead to regulatory budgeting and accountability at the legislative level, not merely at regulatory level, at the end; and

D. Change from the current organizational construct conceived in the late 19th Century that applies command-and-control regulations of a 1930's vintage to environmental problems defined in the 1970's and move toward new approaches that bring about the dynamism, change and constant challenges needed to advance our environmental leadership into the new century.

NEED FOR NEW RELATIONS WITH NATIONAL GOVERNMENT

Delegation needs to be true delegation. States need freedom to establish programs to meet environmental standards in various ways. This is the essence of America's national as well as state leadership in the environment; if our environmental solutions are unnecessarily convoluted, bureaucratic, expensive, etc., as with Washington, then we will not only endanger our economy, but will forfeit our leadership if other nations conclude our policies are not transferable to their circumstances.

A moratorium provides the necessary breathing space for this kind of self-examination, appropriate now that U.S. EPA is 25 years old. Governor Wilson, who has played a key role since the beginning of the environmental era, will work with Congress and other states to help envision and achieve a new leadership role for the coming years.

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 21

INTRODUCED BY ASSEMBLY MEMBER BRULTE—FEBRUARY 24, 1995

Assembly Constitutional Amendment No. 21—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 24 to Article IV thereof, relating to legislation.

LEGISLATIVE COUNSEL'S DIGEST

ACA 21, as introduced, Brulte. Legislation: cost imposition: vote requirement.

The California Constitution specifies certain vote requirements for the passage of bills that apply in accordance with the nature of the contents of each bill.

This measure would require a 2/3 vote of the membership of each house of the Legislature to pass a bill that would impose or authorize requirements or prohibitions that would impose a direct aggregate cost equal to, or exceeding, an unspecified amount in any fiscal year upon businesses and individuals. This measure would, as provided, establish an exclusion from this vote requirement in the case

in which statutes enacted previously during the same legislative session, or the bill in question, repeals existing requirements or prohibitions to reduce the costs of businesses and individuals in an offsetting amount.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1995–96 Regular Session commencing on the fifth day of December 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended by adding Section 24 to Article IV thereof, to read:

SEC. 24. (a) Except as provided in subdivision (b), no bill containing provisions that would mandate or authorize any requirements or prohibitions that would result in a direct aggregate cost of _____ dollars (_____) or more to businesses and individuals in any fiscal year may be passed unless, by rollcall vote entered in the journal, two-thirds of the membership of each house concurs.

(b) The vote requirement of subdivision (a) shall not apply to a bill as described therein if either of the following conditions is met:

(1) Statutes have been previously enacted during the same legislative session that in the aggregate contain provisions that eliminate existing requirements or prohibitions, or the authorization therefor, to reduce the direct aggregate costs to businesses and individuals in any fiscal year by an amount that is equal to or greater than the highest amount of direct aggregate costs to businesses and individuals that would result in any fiscal year from the provisions of the bill described in subdivision (a).

(2) The bill described in subdivision (a) contains provisions that would eliminate existing requirements or prohibitions, or the authorization therefor, to reduce direct aggregate costs to businesses and individuals in any fiscal year by an amount that is equal to or greater than the highest amount of direct aggregate costs to businesses and individuals that would result in any fiscal year from the other provisions of the bill.

Mr. MCINTOSH. Earlier there was discussion of the Federal implementation plan. I will show it to everybody once again so you get the visual effect of what they are doing here at the Federal level. Let me ask you, Mr. Strock, in the case of the Federal implementation plan developed by USEPA, does the Federal plan provide any environmental benefits above and beyond the State implementation plan that you have submitted for approval?

Mr. STROCK. We believe strongly it does not.

Mr. MCINTOSH. Does it contain costs and burdens on the public that go beyond the implementation plan——

Mr. STROCK. By the plaintiffs' and EPA's own views, it does, and in fact, I would add that the—and this is from the Associated Press of last week, the 14th, and I would be pleased to submit it for the record, if you would like, the head of what apparently is the lead plaintiff says that this plan would be, "An unmitigated disaster."

Mr. MCINTOSH. So no one involved thinks that the Federal implementation plan is a wise course to proceed with. What has caused the delay with the USEPA's approval of your alternative plan?

Mr. STROCK. I don't know. You would have to ask EPA. I have, for example, a letter which I could also submit for the record signed by the EPA Administrator in Washington, Carol Browner. It was to Congressman Jerry Lewis, and I mention it because it states, some have stated quite often in the past but have now backed away from, it has been a great cause for concern by the State. At that time, EPA repeated their often stated view that, "It is our sincere hope that California's SIP," that is, the State plan, "due to EPA on November 15th, 1994, will contain the adopted rules and regulations that would allow EPA to avoid," and this is the key, "final promulgation of the FIP."

What occurred last week—and the reason you got a reaction from the State—is that EPA has gone ahead to promulgate the FIP and simply delayed its effective date. The problem with that, and we make clear over and over to the hierarchy what we need here, is that it leaves in total limbo what the State's regulations will be for at least a 2-year period.

If I might add, Mr. Chairman, to add to Mr. Waxman's earlier point, the State has never argued against having a Federal plan as a backstop. That is a key part of Federal law, and no one has ever argued that under the 1990 act there shouldn't be that backstop.

This disagreement relates solely to this court case which relies on the 1977 Clean Air Act, otherwise expired, to the FIP solely under that act. The point that we thought we had agreement with EPA, and they have said they agree with it in policy ways, is that the 1990 act supersedes the 1977 provisions, our timely submittal under the 1990 act, if approved, meets our obligation overall. If we do not succeed in that, there is a 1990 FIP process they can use. It is a mystery to us why it is still at issue.

Mr. MCINTOSH. Thank you. Let me turn to one of the other issues you raised because it will be of interest in this subcommittee at a future date, and that was Governor Wilson's constitutional amendment. One of the provisions of H.R. 9, that deals with the regulatory budget, attempts to set out a process where we can quantify the costs of regulations and establish an overall budget for the agencies.

It strikes me that the amendment that Governor Wilson was proposing moves in a similar direction when it allows for a procedure to add additional benefits if others are removed.

What is your experience in developing some of the cost and benefit analysis that would be needed to go into that? In general, I would appreciate your input into that whole regulatory budget process.

Mr. STROCK. California has been on the forefront of these kinds of analyses in the regulations, and we have increasing obligations to undertake them.

What a regulatory budget ought to do, but has not been done to my knowledge anywhere successfully yet, is to have a uniform set of cost accounting principles that can be applied, and ideally presented to legislatures when they pass the laws. That is what Governor Wilson's amendment is intended to spur.

Mr. MCINTOSH. Do you know of any efforts in the State of California to develop those principles?

Mr. STROCK. Well, there has been a lot of effort by separate groups for specific regulations, but again—and one reason we think this is a good amendment—is it will lead to this occurring. There is not a final, infallible set of principles that is used overall. Instead, it is done ad hoc at the regulatory level.

Mr. MCINTOSH. Thank you. If you become aware of those efforts, please forward—ask people to forward them to us. It would be helpful in that process.

One final question. This bill that imposes a moratorium on new regulations, will you still be able to fully protect the environment of the State of California if we move forward with this legislation?

Mr. STROCK. We certainly believe so. I would add that is the importance of the reading of the emergency exemption you have and then the regulatory reform provisions, both of which are critical.

Clearly the Agency will be given great deference in their determination on these, and what is most important to remember is that most of the actual implementation of regulations and permitting occurs at the State level. That, of course, would continue.

Mr. MCINTOSH. Thank you very much. Let me turn now to—I guess Mr. Peterson had to go to the floor for unfunded mandates. Mr. Waxman, and then when Mr. Peterson returns, we can have his time.

Mr. WAXMAN. Thank you, Mr. Chairman. Mr. Strock, what is the reason for a FIP? Why would one be promulgated?

Mr. STROCK. The reason for a FIP—and the reason why we support the FIP concept, for example in the 1990 act is that where a State has not met the approval requirements, the Federal Government would step in and promulgate a FIP.

Mr. WAXMAN. Now, if the State implementation plan is approved by EPA, that would be in effect not the FIP; isn't that right?

Mr. STROCK. We thought so, but it has not turned out to be the case.

Mr. WAXMAN. Why isn't that the case?

Mr. STROCK. If I might explain, what occurred last week, and the reason it is so unsatisfactory, is that the EPA, which previously said if we submitted a timely SIP that could be approved, they would not promulgate. That is the key thing, they would not promulgate this 1977 FIP; instead, they have agreed with the plaintiffs in the case to go ahead and promulgate the FIP next February.

Mr. WAXMAN. But they won't implement it for 2 years?

Mr. STROCK. That is correct, but that is a very important difference.

Mr. WAXMAN. If you get the SIP approved in that 2-year period, wouldn't it supplant the FIP?

Mr. STROCK. Mr. Waxman, again, the FIP ought to already have been supplanted by the 1990 law. What has occurred here—and what we find here and what we have sought to avoid—is having the FIP under the 1977 act promulgated now at the same time as we believe successfully we are meeting the 1990 act requirements, because it sets up great confusion for people who are trying to comply in California.

Mr. WAXMAN. If you have a legitimate SIP and it is approved, do you doubt that that would take precedence within this 2-year period?

Mr. STROCK. Mr. Waxman, we don't even know what is in this FIP that is coming out for sure in a month and if it becomes promulgated, that means, sir——

Mr. WAXMAN. But you do know your SIP?

Mr. STROCK. Do you want me to finish your first question or——

Mr. WAXMAN. You do know that they have stopped any effectiveness of the FIP for 2 years?

Mr. STROCK. No, that is not correct. Again, if I could be precise, they have not. They have promulgated it and said they would not seek to have it effective for 2 years. What that does is add a wholly

unpredictable part of the process into our ability to continue to maintain a lead role in the 1990 State submittal. Let me give you one example——

Mr. WAXMAN. Let me stop you because you and I are Californians and this is obviously something we ought to talk about because I want the State to be able to adopt an implementation plan and have it supersede any FIP. The only purpose of the FIP, as you indicated, is to force action on the State and that was what Governor Wilson supported when he was a Senator and that is what you indicated.

Mr. STROCK. He still does.

Mr. WAXMAN. But this legislation—by the way, I have a letter and I would like to enter it into the record, Mr. Chairman. It is from Governor Pete Wilson, dated September 1, 1994, to the President. It says: "I request your administration to use its discretion to postpone the implementation of specific FIP rules for at least 18 months or until this matter is resolved. The 18 months is the same review period afforded by the 1990 amendments to every other State submitting a SIP."

[The information referred to follows:]

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am writing to request your personal assistance on a matter of great importance to California. As you know, the U.S. Environmental Protection Agency (U.S. EPA) is currently under an obligation to promulgate a federal implementation plan (FIP) for California by February 15, 1995. This obligation arises out of district court orders in two lawsuits, *Coalition for Clean Air* v. *EPA* (South Coast) and *Environmental Council of Sacramento* v. *EPA* (Sacramento), and a settlement agreement in *Citizens to Preserve the Ojai* v. *EPA* (Ventura).

The FIP as drafted will impose severe economic hardships upon California. If the FIP is fully implemented, by 2010, losses will total at least $8.4 billion in direct costs, $17.2 billion in output, and 165,000 jobs to the Los Angeles, Sacramento, and Ventura regions—the three regions covered by the FIP. These figures omit impacts on transportation industries based in the rest of the state that will have to bear costs to operate in the FIP regions. And, depending on the region, the FIP will increase unemployment between .5 and 1.7%, comparable to nearly one-half of the 1990–93 recession.

The original intent of the District Court in imposing a FIP order was to respond to a 1987 attainment deadline that California metropolitan areas—as was the case with many other parts of the nation—did not and could not meet, despite extraordinary measures. At that time, the Clean Air Act was silent on how U.S. EPA should proceed. The Court inserted itself to ensure that the national ambient air quality standards for ozone and carbon monoxide would be achieved as expeditiously as possible.

In 1990, Congress amended the Clean Air Act, providing new direction as to the planning requirements and deadlines affecting each non-attainment area. The resulting classification scheme, matching timelines and control stringency to the magnitude of local pollution problems, was unlike anything previously contained in the Act. I participated directly in that amendment process, as you know, and understood Congress to be "restarting the clock" with respect to state obligations. Therefore, I was both surprised and dismayed by the final decision of the courts, asserting that Congress had intended a different and perverse outcome. Namely, the continuation of an obsolete FIP process.

California is currently preparing its state implementation plan (SIP) in compliance with the 1990 amendments to the Clean Air Act. Although the ultimate goal of the planning process is the same for the FIP and the SIP, the approaches and methods differ in significant ways. For example, while the SIP being developed by California uses the most current emissions inventory and modeling data, the FIP relies on different, older, and less accurate information. Furthermore, many of the

control measures included in the FIP were selected by U.S. EPA solely because of ease of enforcement at the federal level. Others are intended to leverage California in ways the national government deems suitable. Neither are responsive to local circumstances or concerns.

Once the FIP is promulgated, its measures will be extremely difficult to supplant with the SIP. The U.S. EPA has been inflexible historically in approving states' plan revisions. The FIP measures will become, in effect, a third and separate standard (in addition to Clean Air Act requirements and federal guidance) against which the SIP will be measured. No others state's plan will be forced to meet this additional barrier to approval.

Removing the FIP mandate legislatively is the most straightforward approach to resolve these problems. However, if the legislative solution is not forthcoming, California needs the White House's assistance to minimize interference with the State's planning process and to prevent shocks to the California economy.

First, U.S. EPA should make every attempt to delay promulgation of the FIP until the SIP process has been concluded. This would require U.S. EPA to petition the District Courts for an extension of the currently established FIP deadline. Support from the plaintiffs would increase the possibility of success, but is unlikely. We would like your Administration to make the attempt unilaterally, if need be.

If promulgation is not delayed, I request your Administration use its discretion to postpone the implementation of specific FIP rules for at least 18 months or until this matter is resolved. The 18 months is the same review period afforded by the 1990 amendments to every other state submitting a SIP. Furthermore, nothing compels U.S. EPA to act precipitously, and the brief, three-month extension suggested by Congressman Waxman and others in an August 18, 1994 letter to U.S. EPA Administrator Carol Browner is not sufficient to ensure a positive outcome. If twenty years of regulatory history is any indication, U.S. EPA is incapable of responding in that time frame.

Second, U.S. EPA must move forward immediately to establish effective and timely national standards for federal sources. Federal law preempts California from regulating many significant emission sources, including off-road farm and construction equipment, new locomotives, and aircraft. In fact, the 1990 amendments specifically removed California's ability to address many of these sources. Moreover, it is not practical to regulate other sources at the state level, primarily heavy-duty trucks and shipping vessels. U.S. EPA has not met the statutory deadlines for controlling these national sources, nor have they acted on several California waiver requests that would address some of these issues. As a result, U.S. EPA has proposed FIP measures that apply only as trains, ships, trucks, planes, and off-road vehicles enter California. If U.S. EPA persists with the present course of insufficient national standards and crushing California-only measures, California will fall short of its environmental goals and suffer severe economic repercussions at the same time.

California is a recognized world leader in air pollution control and public health protection. We have and will continue to press the technological frontier in our quest to provide California residents with the cleanest air possible. I submit to you, Mr. President, that our State's record is second to none.

My Administration is fully committed to satisfying the provisions of the federal Clean Air Act as amended in 1990. The state and local planning efforts are on track with the revised law, and we are confident of our ability to keep pace with the new mandates and deadlines. California must be given the same opportunity to succeed that Congress afforded all states, without the intrusion of a misguided, misconceived and wholly unnecessary FIP. I have enclosed the FIP comment letters from our state agencies. I respectfully request your assistance in seeing that our concerns are addressed by U.S. EPA.

Sincerely,

PETE WILSON.

Mr. STROCK. Mr. Waxman, might I be able to explain?

Mr. WAXMAN. If I have time. As I understand it, you have got 2 years. But the other part of the letter, which is more pertinent to the legislation, is, the Governor said, you probably wrote this for him, "USEPA must move forward immediately to establish effective and timely national standards for Federal sources, Federal operants, California from regulating many significant emission sources, including off road farm construction equipment, new locomotives and aircraft," and then the rest of the paragraph goes on

to say, let's move forward on those Federal regulations, but this legislation would stop those Federal regulations from being put into effect.

Mr. STROCK. That is not my understanding, Mr. Waxman, because I would argue it fits within the exemption of lowering the overall cost, because that would then not require the FIP implementation.

Mr. WAXMAN. It wouldn't lower overall costs in light of this legislation. This legislation would stop any regulation that would require that off-road vehicles have to use antipollution control. It raises costs to them.

Mr. STROCK. Even if that were correct, Mr. Waxman, the fact is, EPA already I believe is 3 years behind in those regulations. If this will help speed them up, that will be great. We have not seen it.

In fact, part of our concern with this agreement last week is that it appears to continue to put them on a very, very slow track on the Federal regulations, extending well, well past this moratorium. It wouldn't be relevant either way.

Mr. WAXMAN. What concerns me is that on the one hand you are saying to the President—or the Governor is saying to the President, get these Federal regulations in place to control the emissions from these sources that are controlled at the Federal level, move forward immediately because the State needs those reductions in emissions so that you can achieve your overall goals.

Mr. STROCK. Yes.

Mr. WAXMAN. Yet you are telling us that the Governor would like us to adopt legislation that would stop regulations from going into effect. I find that inconsistent.

Mr. STROCK. I tried to explain it. I can go back through it piece by piece. It is not——

Mr. WAXMAN. It is based on your belief that this legislation would not stop those regulations; is that correct?

Mr. STROCK. That is correct. I would urge that strongly.

Mr. WAXMAN. Let's take a look at it. Because I fear it does, and if it does, I would presume you would be against that part of the legislation.

Mr. STROCK. I would be for looking at the wording.

Mr. WAXMAN. Obviously the wording is all that is important.

Mr. STROCK. But that is the process. With that, Mr. Waxman, I feel certain people of goodwill could work it out.

Mr. MCINTOSH. Mr. Waxman, would you yield for 1 second?

Mr. WAXMAN. Sure.

Mr. MCINTOSH. Let me state that it is my belief that as we go to mark up, we should put in the record instances such as this where there may be some question about whether a regulation would be reducing a burden, and I would be delighted to do that to clarify it.

Mr. WAXMAN. Lastly, because I am running out of time, in a minute, it is going to go red; that is why I am hurrying. What is your view of the takings provision that is coming down the pike on this Republican——

Mr. STROCK. I have only prepared for this hearing. I am not familiar with that to comment in an informed way today.

Mr. WAXMAN. It would require the government to pay for the cost of the value that is lost when there is a regulation that reduces the value by 10 percent.

Mr. STROCK. I really would have to study it, sir. Again, I prepared for this hearing.

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. STROCK. Mr. Chairman, may I ask one question, and if I am out of order, I know you will tell me.

I take great issue with Mr. Waxman's characterization of Governor Wilson's letter, which I have here. Would I have a chance to at some point respond to that?

Mr. WAXMAN. Mr. Chairman, I think he should be given an opportunity. I rushed him because I had limited time, but maybe Members would——

Mr. MCINTOSH. Yes. I am sure we will find somewhere in our examination to do that.

Mr. WAXMAN. I did ask that the letter be put in the record.

Mr. MCINTOSH. Yes, thank you. And if copies could be made available to the committee Members, that would be helpful.

John, your question is beginning?

Mr. FOX. I would let the witness, Mr. Strock, please explain now how you respond on that.

Mr. STROCK. Thank you, sir. Just to make the point on page 2 of the September 1, 1994 letter that Mr. Waxman kindly has put in the record, I would point out that first it makes very clear that our goal is to have the 1977 FIP, not the 1990 FIP, the 1977 FIP requirement that we alone face because of an extraordinary set of judicial circumstances, to have that removed through clarifying language—through the act itself, if necessary.

Barring that, it goes on very clearly, EPA should make every attempt to delay promulgation—that is the term again. Mr. Fox, I appreciate being allowed to raise it. Third, it says if none of that happens, please at least delay it. Of course we sought every way. When a gun is at one's head and they tell you they will hold it for a day, you accept that, but you don't accept the gun.

Mr. FOX. Let me ask you if I may just additionally, with regard to your comments about the California situation, you were saying that the permitting process imposed by Washington is duplicative. Could you give us some examples so that we could be highlighting it?

Mr. STROCK. Sure. I think a good example is—and we can submit a number for the record on this, if I might, so I can get it very precise. We have a number of parts of the Clean Air Act that we believe, through administrative improvements, can be done better, particularly on stationary sources, and we are hopeful that the EPA, which has begun to meet with various States on this, will be receptive.

Mr. FOX. You can submit that to us then?

Mr. STROCK. Yes.

[The information referred to follows:]

MEMORANDUM—AIR RESOURCES BOARD

To: Mike Kahoe, Assistant Secretary
From: James D. Boyd, Executive Officer
Date: March 6, 1995

Subject: NGA/ECOS Comments on U.S. EPA Title V Proposal

As you may know, Mr. Ray Menebroker, Chief, Project Assessment Branch, Stationary Source Division attended the United States Environmental Protection Agency (U.S. EPA) meeting where the latest U.S. EPA proposal for revisions to Part 70 regulations were handed out and discussed. We believe the proposal goes a long way towards meeting our needs. The issue of U.S. EPA objections to the issuance of a permit was discussed at length. In its proposal U.S. EPA moves all the administrative requirements up into the preconstruction review process. In California most of the critical discussions are made early in the process and therefore this proposal makes sense. The U.S. EPA proposes that if it does not object during the precertification review process, the U.S. EPA will not veto its issuance at the time of Title V permitting.

We believe the proposal represents a reasonable attempt by U.S. EPA to simplify the process for revising a Title V permit.

We will continue to work with U.S. EPA as it further develops the proposal. See the enclosed fact sheet for a summary of our responses to the comments supplied by Mr. Bob Hodanbosi, Ohio Environmental Protection Agency, dated February 17, 1995 on the three attachments to his memorandum.

FACT SHEET

UPDATE ON TITLE V DEVELOPMENTS—MARCH 6, 1995

• Mr. Bob Hodanbosi, Ohio Environmental Protection Agency, provided a Title V operating permit program update on February 17, 1995 to the NGA/ECOS (National Governors Association/Environmental Council of the States) Permit Workgroup with three attachments.

• Attachment 1—In his letter, Mr. Hodanbosi mentioned a major concern with the United States Environmental Protection Agency (U.S. EPA) document titled "Part 70 Permit Revision Discussion Draft," dated February 9, 1995.

—The concern involves the U.S. EPA's veto opportunity. The update states that there are two opportunities, the first, when the preconstruction permit is issued and second, when the Title V permit is revised.

—The Air Resources Board (ARB) staff does not agree with the update interpretation. We believe that the U.S. EPA can announce during preconstruction review intention to veto the subsequent Title V permit revision. The U.S. EPA can not veto the preconstruction permit itself, unless the permitting authority specifically provides for U.S. EPA veto at that time.

—The Ohio concern may arise from an interpretation that an intention to veto during the preconstruction review phase in essence would result in the disapproval of the preconstruction permit. However, we believe that the preconstruction permit may still be issued in spite of a pending veto of the subsequent Title V permit revision.

• Attachment 2—U.S. EPA interim final rule "Revisions to the Administrative Requirements and Provisions of the Clean Air Act Section 105 Grant Program," dated January 4, 1995.

—We support the U.S. EPA's interim final rule.

—The California Environmental Protection Agency sent a comment letter, dated February 6, 1995, to the U.S. EPA concerning the rule. A copy is attached.

• Attachment 3—U.S. EPA guidance memorandum titled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," dated January 25, 1995.

—We have no comments concerning the guidance memorandum.

—The guidance memorandum is consistent with the ARB model prohibitory rule to limit potential to emit, as approved by the U.S. EPA on January 12, 1995.

Ms. Mary D. Nichols
Assistant Administrator
Office of Air and Radiation
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mary:

Thank you for your recent letter requesting our comments on the United States Environmental Protection Agency's (U.S. EPA) interim final rule, "Revisions to the Administrative Requirements and Provisions of the Clean Air Act Section 105 Grant

Program." We are pleased that the interim final rule helps to ensure that states and districts have sufficient funding to carry out the requirements of the federal Clean Air Act (Act).

Previously, we were concerned that California's eight largest districts could lose millions of dollars per year in section 105 grant funds when their Title V programs become effective. However, the U.S. EPA's revisions to the 105 grant requirements should enable these districts to maintain their current air quality programs while administering their Title V programs. The section 105 grant requirements were revised to allow the states and districts to recompute their maintenance-of-effort levels based on the second preceding, rather than the immediately preceding, fiscal year. This provision is beneficial because it allows existing fees and activities to be phased out of 105 grant eligibility according to the phase-in of Title V implementation. In addition, the 105 grant requirements were revised to allow the states and districts to waive the 40 percent cost-sharing requirements for up to three years from the date of initial Title V program approval. This provision should provide sufficient time for the districts to adjust their resource allocations.

Thank you again for the opportunity to comment on the U.S. EPA's revisions to section 105 grant requirements. If you have any questions regarding this letter, please contact Mr. James D. Boyd, Executive Officer, Air Resources Board, at (916) 445–4383.

Sincerely,

JAMES M. STROCK.

MEMORANDUM—STATE OF OHIO ENVIRONMENTAL PROTECTION AGENCY

To: NGA/ECOS Permit Workgroup
From: Bob Hodanbosi, Chief, Division of Air Pollution Control
Date: February 17, 1995
Subject: Title V Permit Update

I wanted to update you on some recent developments associated with the Title V permit program. Mike Trutna from U.S. EPA met with Jon Trout from the Louisville Air Agency and I to discuss further administrative changes available to U.S. EPA to improve the implementation of Title V.

First, attached for your information, is the latest draft EPA proposal on revisions to Title V permits (attachment 1). Although this revision is an improvement over the August 28, 1994 proposal, there remains several concerns with this draft. The primary one being that for major permits U.S. EPA will have two opportunities to override a state decision; first when the construction permit is issued and then when the Title V permit is revised for the new source. After the source has been built and commenced operation is not the time to second guess the construction permit. Please review the attached document and provide me with your comments by February 23, 1995. I will assemble the comments and relay them to U.S. EPA.

On another front, U.S. EPA is planning to issue a Title V "white paper" in March or April of this year. The purpose of the document will be to attempt to clarify a number of issues that have been raised in recent months. As an example, simplify how R&D facilities may be treated under Title V and clarify the details needed in the permit application along with many of the issues raised by the NGA/ECOS. As information becomes available on the "white paper", it will be shared with you. Also, if you are not aware, U.S. EPA has met two of the commitments in the NGA/ECOS issue paper.

U.S. EPA has issued a Federal Register notice that allows Title V monies to be used for a 105 match for an additional three years. It is not a total solution, but it takes the pressure off for the next few years (attachment 2).

U.S. EPA has also issued the promised Potential to Emit (PTE) guidance on January 25, 1995 (attachment 3). Again, U.S. EPA is willing to further clarify this memo to make more sense out of PTE. Please relay to me any comments you have on this item.

Again, thank you for your help and feel free to call me if you have any questions.

AIR RESOURCES BOARD STAFF REVIEW OF NGA/ECOS TITLE V ISSUE PAPER—FEBRUARY 14, 1995

The Air Resources Board (ARB) staff has reviewed the National Governors Association/Environmental Council of the States (NGA/ECOS) Title V Issue Paper dated February 2, 1995. We agree with the general principles stated on page 3 of the Issue Paper. We are providing the following comments concerning the specific issues.

ISSUE 1: POTENTIAL TO EMIT/APPLICABLE SOURCE DETERMINATION

- This issue is significant in California.
- We agree with the proposed solution.
- The United States Environmental Protection Agency (U.S. EPA) has provided the referenced guidance document on January 25, 1995. However, some issues remain regarding hazardous air pollutants. One issue concerns whether fugitive emissions of hazardous air pollutants should be counted when determining potential to emit, such as pesticide emissions in agricultural operations. Another issue concerns exactly when a voluntary emissions limit can be used to avoid triggering the requirements of an emission standard for a hazardous air pollutant.

ISSUE 2: TITLE V MINOR NEW SOURCE REVIEW PERMITS/PUBLIC PARTICIPATION IN PERMITTING

- This issue is significant in California.
- We agree with the proposed solution.
- The ARB staff is actively involved with other states in discussions with the U.S. EPA on the supplemental proposed rule. It appears that the U.S. EPA solution to be proposed will address many of our concerns.

ISSUE 3: GENERAL REQUIREMENTS FOR TITLE V

- This issue is significant in California.
- We agree with the proposed solution, since originally it was our proposal.
- Recent discussions with U.S. EPA staff indicate that they are proceeding with the stated U.S. EPA commitment.

ISSUE 4: PERMIT TERM AND PERMIT ISSUANCE TIMING

- This is not a major issue in California.
- We are neutral on the proposed solution.
- We agree with the stated U.S. EPA commitment to examine how reissuance of the initial permit can be accomplished easier. The process for permit renewal should be simple if there is no change to the previous permit.

ISSUE 5: INSIGNIFICANT SOURCES

- This issue is significant in California.
- We agree with the proposed solution.
- We agree with the stated U.S. EPA commitment.

ISSUE 6: SECTION 112(R) RISK MANAGEMENT PLANS

- This issue is significant in California.
- We agree with the proposed solution.
- We agree with the stated U.S. EPA commitment.

ISSUE 7: PERIODIC/ENHANCED MONITORING REQUIREMENTS

- This issue is significant in California.
- We agree in general with the proposed solution, in particular, that the state should prescribe the methods of compliance, averaging time, and frequency of reporting for sources regulated by the SIP. However, we do not agree with utilizing NSPS as guidelines for meeting enhanced monitoring requirements.
- We have not fully evaluated the U.S. EPA's supplemental rulemaking.

ISSUE 8: TITLE V MONIES FOR 105 MATCH

- This issue is significant in California.
- We agree with the proposed solution.
- We agree with the U.S. EPA commitment. The January 4, 1995 Federal Register notice did address the districts' concerns.

ISSUE 9: TITLE V APPLICABILITY TO SMALL MACT SOURCES

- This issue is significant in California.
- We agree with the proposed solution.
- We agree with the stated U.S. EPA commitment. More recent MACT standards have kept small sources out of the Title V program.

ISSUE 10: TECHNICAL ASSISTANCE FROM U.S. EPA

- This issue is significant in California.

• We agree with the proposed solution. We provided the examples listed.
• We still have a concern with this issue since the U.S. EPA statement does not provide any definite commitment. It is not clear how the U.S. EPA will resolve this issue.

ISSUE 11: ADDITIONAL ITEMS TO PROVIDE FOR AN IMPROVED TITLE V PERMIT PROGRAM—COMPLIANCE ADVISORY PANEL

• This issue is significant in California.
• We agree with the proposed solution, since originally it was our proposal.
• We agree with the stated U.S. EPA commitment.

ISSUE 12: NON-EXISTENT OR CHANGING U.S. EPA GUIDANCE ON TITLE V PERMITTING ISSUES

• This issue is significant in California.
• We agree with the proposed solution, since originally it was our proposal.
• We agree with the stated U.S. EPA commitment.

ISSUE 13: INADEQUATE RESOURCES DEVOTED TO THE DEVELOPMENT OF MACT STANDARDS

• This issue is significant in California.
• We agree with the proposed solution.
• We agree with the stated U.S. EPA commitment.

MEMORANDUM—STATE OF OHIO ENVIRONMENTAL PROTECTION AGENCY

To: STAPPA/ALAPC Permit Workgroup
From: Bob Hodanbosi, Chief, Division of Air Pollution Control
Date: February 2, 1995
Subject: NGA/ECOS Title V Issue Paper

Attached you will find the NGA/ECOS issue paper on Title V along with a summary of the EPA commitments on each specific issue. This package has been sent to U.S. EPA for their review and concurrence. As we move to a resolution on these items, I will provide you with information on a routine basis and ask for your comments, when appropriate.

Please call me if you have any questions at (614) 644–2270.

NGA/ECOS

TITLE V ISSUE PAPER

In December of 1994, the National Governors Association (NGA) convened a conference call of states to identify those areas under the Clean Air Act in which the governors are seeking more flexibility, both administratively and legislatively. The U.S. EPA has recently announced their intent to revisit flexibility under the Clean Air Act and related regulations. This paper addresses the Title V permit program issues and proposed solutions.

Title V is a federally mandated, state implemented comprehensive air quality operating permit program with EPA enforceability and oversight. Title V of the Clean Air Act Amendments of 1990 established the legislative authority for the Title V operating permit program. It is an extremely significant change to many existing air pollution control programs in the nation. It is believed that Title V is the product of those in EPA that wanted to have a NPDES (Water Permit) permit program for Air and to regulate air emissions much in the same manner as water pollution and hazardous waste. Such a discussion can be found in 56 Federal Register 21713 (May 10, 1991). "The new Title V of the Act introduces an operating permits program generally modeled after the NPDES program . . ." In addition, Title V Resource Conservation and Recovery Act, both of which have permit requirements." [56 FR 21713] This basis for the existence of Title V began to fracture when such reasoning was made available for public comment. The promulgated version of the Title V regulations (40 CFR part 70—57 Federal Register 32260 (July 21, 1992) stated that, ". . . EPA recognizes the significant dissimilarities between Title V and NPDES and that NPDES precedent should not be presumed binding for purposes of decision made in the implementation process for the Title V program." Subsequent work to mend such a flawed basis have not proven fruitful.

While Title V does introduce an operating permits program in the Clean Air Act, EPA did recognize the fact that many State and Local air quality agencies had al-

ready been issuing air quality operating permits (based on state/local rules) for a number of years. In 56 FR 21713,

> While to date there has not been an express Federal requirements that States have an operating permit program for air . . . [many State and Local programs issue operating permits based on state/local rules (i.e., issued to construction projects, address new and existing sources, requires renewal of permits periodically)]. . . Many of these programs appear to match closely the intent of Title V in that they have the basis components required by Title V for issuing permits, collecting fees, providing for public participation, reopening permit, and issuing permits for a fixed term. The part 70 regulations have been designed to minimize the disruption to current State efforts . . ."

Since the State/Local air operating permit programs already existing (1991 time frame of 56 FR) "match closely the intent of Title V", why was the enacted version of Title V in 1990 so different? Title V does not appear to reflect the design of the general operating permit program that was already in place in many State and Local air quality districts. As a result, EPA managed to take existing state systems that were not broken, and replace them with a monstrous permit program under Title V. Title V is loaded with overbearing requirements for both State and the regulated industries and diverges from allowing for the existence of any flexibility whatsoever. Flexibility for a permitting agency to minimize disruption to their current operating permits program does not exist with Title V. Flexibility for industry to even compete in the open market has been removed with the requirements imposed on them as a result of Title V.

Transition from an agency's current operating permit program to a Title V program with minimal disruption has been expected from the Federal government's viewpoint and such logic has even been stated in Federal Register citations referring to Title V. On the contrary, extreme divergence has occurred from such a perceived transition and the Federal government needs to remove their "rose colored glasses" and view the beast they developed. In part, divergence exists as a result of the following Issues: (1) Inability to conform with Federal Rules; (2) Insignificant activities; (3) State Discretion; (4) Lake of understanding Title V; (5) Non-vague definitions of key terms; (6) Applicability Issues; (7) Operating flexibility; (8) Permit revision procedures; (9) Reportability—The requirement that a Title V facility must report everything about everything; (10) Compliance assurance and monitoring; (11) Issuance time line; (12) Synthetic Minor Permits; (13) Permit renewal time line. These issues will be elaborated on in the following pages.

Because of the complexity of the issues with Title V, basic principles have been developed to use as a guide to future action by U.S. EPA.

Principles

1. U.S. EPA changes should be to provide simplification instead of complexity.
2. U.S. EPA should be striving to develop a stable, workable system that covers the minimum number of sources.
3. U.S. EPA should provide minimum structural requirements for a Title V system allowing states the maximum flexibility to meet the basic standards.
4. States recognize the need for the opportunity for public input. However, any public comment program that is developed must not restrict the ability of the regulated community to perform minor emission changes in a timely manner.
5. U.S. EPA should recognize that many states have over twenty years of experience in running operating permit programs. Instead of developing permit programs from Washington (or Durham), that are force fed to all states, U.S. EPA should use state programs as an example to build a workable Title V program.

The following issues have been identified by the states as necessary to operate an effective and efficient Title V permit program:

Issue 1: Potential to Emit/Applicable Source Determinations.

The definition of "potential to emit" determines major sources under Title V. The definition mandates that a source use as a potential to emit for every air pollutant, including hazardous air pollutants, calculating that the source operates 24 hours a day, 365 days a year, without any controls. Using this definition, every gas station, or person with a spray gun would have the potential to emit of greater than 10 tons of hazardous air pollutants, and therefore would have to be regulated under Title V. But common sense dictates that this is just not the case, people don't open spray guns and let them blow paint for 8760 hours per year, and regulating them as such brings 1000s of sources into the Title V program needlessly. Many states will be ex-

pending much time and effort to develop "federal enforceable" terms and conditions for sources that will never exceed the major source threshold on an actual basis.

Solution: In order to determine whether or not a facility must apply for a Title V permit, sources should be allowed flexibility to use the physical or operational restrictions inherent in the operation of a source. States should be given the authority to exercise technical judgement on the adequacy of the sources submittal. If the state can issue either a state operating permit or administrative orders that limit the sources operation to less than the major source threshold, that should be sufficient for U.S. EPA's needs. U.S. EPA should use the approach used by California as a starting point for further changes applicable to all states. After all, if a source operates above the major source thresholds, U.S. EPA always has the ability to commence an enforcement action against the facility.

EPA Commitment: U.S. EPA will issue additional guidance to states that will provide alternatives to calculating "potential-to-emit" based upon the nature of the source and the actual emissions versus major source threshold. U.S. EPA will use the California approach as an example for limiting the "potential to emit".

Completion Date:

Issue 2: Title V Minor New Source Review Permits/Public Participation in Permitting

Many state programs require small emission sources to obtain a state construction permit. Some EPA staff believe that all of these minor changes must also go through a comprehensive Title V review and then be enforceable by the federal government. This approach penalizes the states with the most comprehensive minor new source review programs.

Solution: U.S. EPA should stick with major new source review and let the states handle minor new source permit without federal involvement. These small changes can be incorporated into a Title V permit as an administrative change without a formal review and comment procedure.

The most effective time for public input on changes to a facility is during the construction phase. This does not mean, however, that every minor change warrants a public hearing. U.S. EPA should recognize that sources that have completed public participation requirements in the preconstruction phase should be adequate for Title V purposes. For smaller and insignificant emissions changes, notification to EPA and the public after the permit is processed should be sufficient (without a source permit shield). If it can be pointed out that the permit agency did not issue compliance with all applicable regulations, the permit should be re-opened, but only for that basis.

EPA Commitment: U.S. EPA will issue a Supplemental Proposed Rule in the Federal Register sometime in February that will attempt to simplify the latest proposal.

Completion Date:

Issue 3: General Requirements for Title V

U.S. EPA current approach has been to develop prescriptive rules for the operations of Title V permit program. Many states with existing programs will need to substantially modify the existing program structure to meet Title V requirements. This is a burden on many states and does not recognize the successful workings of many state operating permit programs.

Solution: Develop performance criteria for Title V programs, if criteria are met, program is approved. U.S. EPA should not require exact conformance with its prescriptive regulations (e.g., regulations, source test procedures, monitoring and recordkeeping requirements).

EPA Commitment: In future rules, related to Title V, EPA will try to be more general less specific and more flexible on the operation of a Title V permit program.

Completion Date:

Issue 4: Permit Term and Permit Issuance Timing

The Act now specifies the length of a Title V permit to be five years. For sources that continue to be in compliance or do not have any new applicable requirements, this is a waste of time and money for all involved. Further, states are required to review and issue all of the Title V permit applications within three years. This is an unrealistic expectation.

Solution: Extend the permit term of Title V unless the state determines that the permit needs to be reopened as a result of a new requirement and allow states up to five years to issue the first round of permits.

EPA Commitment: The Clean Air Act specifies the five year term so that there is not much flexibility related to the permit term. U.S. EPA will examine ways to provide more time to states for the first round of permit review and issuance. U.S. EPA will examine how reissuance of the initial permit can be accomplished easier.

Completion Date:

Issue 5: Insignificant Sources

Many states have very low or no application cutoffs for emission requirements or state permitting requirements. This can cause entities and states to spend resources on the coverage of Title V permits to insignificant sources.

Solution: Although States may develop exemptions for insignificant air contaminant sources from Title V, U.S. EPA, in conjunction with the states, should develop a list of insignificant air contaminant sources that could be approved automatically. States should be provided with criteria so that additional source categories could be excluded if the criteria was met.

EPA Commitment: U.S. EPA plans to work with states to develop a list of "insignificant sources and activities". EPA would issue a draft for comment prior to the finalization of any guidance.

Completion Date:

Issue 6: Section 112 (r) Risk Management Plans

OSWER is currently the part of EPA developing these program regulations and requirements. It appears that what they are considering is unduly detailed and manpower-intensive, both for the affected sources as well as the permitting agencies. There is also a consideration by some EPA staff that the Title V monies should be used for the review of the 112 (r) submittal.

Solution: The initial requirement for states reviewing Title V permits should be for a good faith effort from sources to the States and EPA. States would only have to certify that a risk management plan, covering all known significant emissions, has been submitted.

The review of the 112(r) submittal is a responsibility of the federal government. Title V monies should be used for Title V permit issuance not emergency response programs. If the federal government would like states to review 112(r) submittals, then additional funding to states should be provided.

EPA Commitment: OAQPS is working with OSWER to scale back the original discussion on the states' obligation under this program.

Completion Date:

Issue 7: Periodic/Enhanced Monitoring Requirements

U.S. EPA has proposed a series of complex burdensome regulations known as "enhanced monitoring". This proposal requires facilities to install emission monitoring equipment on a number of individual emission units with small emission potential. The proposal also requires the installation of emission monitoring equipment, development of quality assurance procedures, and the reporting of data to the states. Further, U.S. EPA, through these requirements, is requiring that its interpretation of the rules on continuous compliance must be met.

Solution: U.S. EPA should scale back the program to only sources that are major based on criteria pollutants. U.S. EPA should utilize the NSPS as guidelines for methods of meeting enhanced monitoring requirements for source categories covered by an NSPS. Finally, U.S. EPA should allow the state prescribe the methods of compliance, averaging time, and frequency of reporting for sources regulated by the SIP.

EPA Commitment: U.S. EPA issued a supplemental rulemaking on December 28 to address some of the concerns.

Completion Date:

Issue 8: Title V Monies for 105 Match

The current interpretation of the ability to match 105 grant money with funds gathered through the operating permit program fee also needs to be rethought. The EPA has determined that funds received for through the operating permit program can not be used as match money for 105 grant purposes. EPA must recognize that this will greatly impact some programs, and must be more flexible in its interpretation.

Solution: The EPA must work closely with states to assure that they will receive adequate federal funding.

EPA Commitment: U.S. EPA has issued additional guidance that allows up to three years for states to continue to use 105 monies as a match for federal funds. A Federal Register notice was issued January 4, 1995 that incorporates this concept.

Completion Date:

Issue 9: Title V Applicability to Small MACT Sources

Another example is regulating many small businesses under Title V, which require very extensive operating permits. For example, neighborhood dry cleaners which are regulated under Section 112 of the Act, Hazardous Air Pollutants are in

the same program that Congress has intended for large facilities subject to many air standards. There is no need to burden the Title V program with these facilities, further there is no need for small sources such as dry cleaners to be included in a program as comprehensive as Title V.

Solution: Limit the application of program to major sources as defined under Title V (criteria pollutants) and Title III (toxic pollutants) under the Act.

EPA Commitment: U.S. EPA plans to keep small sources out of the Title V program by identifying specific thresholds within the MACT promulgation.

Completion Date:

Issue 10: Technical Assistance from U.S. EPA

U.S. EPA have not been responsive to the state needs to operate an effective Title V program.

Solution: The following list are examples where U.S. EPA could improve the working of the Title V program.

A. Improve communication between various groups in U.S. EPA in order to avoid conflicting information on interpretation of federal requirements (e.g., Title III vs. Title V).

B. Respond promptly to formal requests for interpretations of federal requirements (e.g., request regarding field application of pesticides).

C. Review and approve local/state prohibitory rules for inclusion into the State Implementation Plan (SIP) as quickly as possible. This would avoid the need to put outdated SIP requirements in Title V permits.

D. Minimize the administrative burden on local/state permitting authorities (e.g., reporting requirements and data submittal).

EPA Commitment: It is the desire of U.S. EPA to develop an improved system of communication with the states and is willing to discuss with the states the format for such information exchanges.

Completion Date:

Issue 11: Additional items to provide for an improved Title V permit program.

Solution: Make optional the needs for a Compliance Advisory Panel in states that already have an effective small business assistance program.

EPA Commitment: U.S. EPA will examine the statute to determine whether there is any flexibility.

Completion Date:

* The following item has been raised by states related to Title V but is also being addressed by another NGA/ECOS position paper.

Issue 12: Non-existent or Changing EPA Guidance on Title V Permitting Issues.

When a State program is approved, that State and its sources must immediately start dealing with a number of Title V related matters [112(g) enhanced monitoring, periodic monitoring, etc.], even though final or usable EPA guidance will not be available.

Solution: Eliminate federal requirements to implement U.S. EPA regulations prior to their final promulgation. If implementation is required by federal law, accept the state actions taken in these undefined areas.

EPA Commitment: U.S. EPA plans to issue a Federal Register notice that will state than under 112 (g) states will not have to implement a program until U.S. EPA issues final 112(g) requirements.

Completion Date:

** The following item has been raised by states although not related to Title V, and not being addressed by another NGA/ECOS position paper.

Issue 13: Inadequate Resources Devoted to the Development of MACT Standards

The apparent lack of resources at the national EPA level is troubling, especially in the area of developing Maximum Achievable Control Technology (MACT) standards. The EPA has orally expressed concern that they will not be able to meet their requirements under the Act to develop standards to all of the Hazardous Air Pollutants. This will force states to develop individual MACT's for sources until the EPA has developed a national standard. This will result in confusion and inconsistency, with a possibility of hundreds of different MACT's for the same source category.

Solution: The EPA should allocate adequate resources to develop the standards as mandated by the Act.

EPA Commitment: U.S. EPA is aware of this issue and will attempt its best effort to avoid having the "hammer" provisions become effective.

Completion Date:

BRIEFING PAPER TITLE V ISSUES—FEBRUARY 27, 1995

Potential to Emit

Because of the unworkable federal definition of "potential to emit" based on maximum capacity and used to identify "major" sources, 40,000 sources, mostly small sources, could be subject to Title V program requirements. U.S. EPA approval of a "prohibitory rule" to limit the potential to emit of small sources will reduce the number of sources subject to Title V to less than 3,000.

Agricultural Production Exemption

Title V does not accommodate the permit exemption under State law for "major" agricultural production sources. Therefore, major agricultural production sources will eventually be required to obtain Title V permits. The state exemption will need to be removed for these sources in order to comply with Title V requirements. This could be a major problem for California.

Fugitive Emissions from Agricultural Production Sources

It is not clear whether fugitive hazardous air pollutants (HAPs), notably pesticides, should be counted toward the emissions of agricultural production sources. Including such emissions would make many more agricultural production sources to be "major" for HAPs and thus subject to Title V requirements. We wrote asking for U.S. EPA option and have not received a response. (letter attached)

Military Base Major Source

Military bases may contain many different sources with confusing and overlapping functions and responsibilities. Conversion to civilian use may place new and unwanted Title V responsibilities on the military. Bases scheduled to be closed will still need to apply for Title V permits if closure does not fully occur before application deadlines.

Duplicative, Less-Stringent, and Conflicting Permit Terms

The U.S. EPA requires all federal requirements to be included in the permit, even when they are not consistent with other federal or state requirements. We recommend that the U.S. EPA allow flexibility to state/local agencies to include the most stringent requirement as determined by the state/local agency and to only reference the less stringent requirements. The U.S. EPA has provided a response to this issue, but it only resolves a small portion of the problem.

Title V Applicability to Small Maximum Achievable Control Technology (MACT) Sources

The U.S. EPA has, in some MACT standards, required that nonmajor sources get Title V permits. This is to ensure that the states enforce the standards. In California, since state law mandates the enforcement of MACT standards upon promulgation, U.S. EPA is needlessly subjecting these sources to Title V.

Basis for Title V Permits

The U.S. EPA wants Title V permits to be constructed based on all previous preconstruction permits (A/Cs). In California, we want to use existing operating permits as the basis for constructing Title V permits. These operating permits are based on all the A/Cs previously issued, and in a lot of cases there is no record of A/Cs issued years and years ago.

Redundant Compliance Requirements

The U.S. EPA requires redundant federal testing, monitoring, recordkeeping, and reporting requirements. We recommend that the U.S. EPA accept existing state/local testing, monitoring, recordkeeping, and reporting requirements as fulfilling Title V requirements. We also recommend that the U.S. EPA not require rigorous equivalency demonstrations for state/local requirements.

MEMORANDUM—AIR RESOURCES BOARD

To: John D. Dunlap, III, Chairman
From: James D. Boyd, Executive Officer
Date: February 7, 1995
Subject: Additional Title V Issues

In response to your request for additional Title V issues that were not addressed in the National Governors' Association/Environmental Council of States issue paper, I am enclosing suggestions for administrative fixes to improve Title V implementation. These administrative fixes would not require amendments to the federal Clean

Air Act because they are within the administrative authority of the United States Environmental Protection Agency (U.S. EPA).

Please let me know if you have any questions regarding this matter.

CALIFORNIA AIR RESOURCES BOARD—ADDITIONAL TITLE V ISSUES

The U.S. EPA regulation requires state/local agencies to provide to the U.S. EPA all applications, proposed and final permits. We recommend that the U.S. EPA accept application summary forms and require the entire application only upon U.S. EPA request. We also recommend that the Title V program scope be limited to "major" sources to minimize the number of applications, proposed and final permits that must be provided to the U.S. EPA.

The U.S. EPA regulation requires public notice of all permits and "significant" permit modifications. We recommend that U.S. EPA accept existing state/local requirements for public notice as fulfilling Title V requirements.

The U.S. EPA regulation requires permit renewal to be as complex as the initial permit process. We recommend that the U.S. EPA allow the administrative carryover of unchanged parts of previous applications and permits. We also recommend minimizing the procedures for review of unchanged permit provisions.

The U.S. EPA requirements for the "significant" permit modification process duplicate existing state/local New Source Review processes. We recommend that the U.S. EPA accept existing state/local New Source Review processes as fulfilling Title V requirements.

The U.S. EPA requires redundant federal testing, monitoring, recordkeeping, and reporting. We recommend that the U.S. EPA accept existing state/local testing, monitoring, recordkeeping, and reporting requirements as fulfilling Title V requirements. We also recommend that the U.S. EPA eliminate rigorous equivalency demonstrations for state/local requirements.

The U.S. EPA's AIRS/AFS data system duplicates existing data systems. We recommend that the U.S. EPA accept data from existing state/local data systems. The U.S. EPA should not require compatibility with the federal data system. This is not a requirement from the federal Clean Air Act.

The U.S. EPA requires all federal requirements to be included in the permit, including duplicative and unnecessary less-stringent requirements. We recommend that the U.S. EPA allow flexibility to state/local agencies to include the most stringent requirement as determined by the state/local agency and to only reference the less stringent requirements. This would help to make the permits less confusing and more enforceable.

FACILITATING TITLE V IMPLEMENTATION IN CALIFORNIA

Below are three lists which identify fixes that would facilitate Title V implementation in California. The first list identifies easy administrative fixes that the United States Environmental Protection Agency (U.S. EPA) could implement to facilitate Title V implementation. The second list identifies more difficult administrative fixes for the U.S. EPA. The third list identifies changes to the federal Clean Air Act (Act) that would facilitate Title V implementation.

Easy Administrative Fixes

1) Accept local/state programs based on performance criteria. U.S. EPA should not require exact conformance with its prescriptive regulations (e.g., regulations, source test procedures, and monitoring and recordkeeping requirements).

2) Eliminate federal requirements to implement U.S. EPA regulations prior to their final promulgation. If implementation is mandated by federal law and the U.S. EPA has not promulgated final regulations, provide local/state permitting authorities flexibility to implement federal law (e.g., toxics new source review under 112(g)).

3) Separate Title V program requirements from other programs mandated by the Act. Don't use Title V to force local/state permitting authorities to accept delegation of other federal programs the states are not mandated to implement by the Act (e.g., accidental release program under Title III).

4) Improve communication between various groups in U.S. EPA in order to avoid conflicting information on interpretations of federal requirements (e.g., Title III vs. Title V).

5) Respond promptly to formal requests for interpretations of federal requirements (e.g., our request regarding field application of pesticides).

6) Review and approve local/state prohibitory rules for inclusion into the State Implementation Plan (SIP) as quickly as possible. This would avoid the need to put outdated SIP requirements in Title V permits.
7) Minimize the administrative burden on local/state permitting authorities (e.g., reporting requirements and data submittal).

More Difficult Administrative Fixes

1) Eliminate demands for local/state permitting authorities to include conflicting requirements in Title V permits which result from differences in federal requirements, differences between federal and more restrictive state requirements, or delays in approving rules into the SIP.
2) Further delay inclusion of minor sources in Title V programs to minimize the administrative burden on states.
3) Ease the requirements for federal acceptance of local/state operating permits. U.S. EPA has promulgated very prescriptive requirements for acceptance of local/state operating permit programs (6/89). These requirements should be substantially eased.

Suggested Changes to the Act

1) Amend Title V to provide for broad program substitution for states like California that have effective permit programs.
2) Amend Title V to limit application of program to major sources as defined in Title I (criteria pollutants) and Title III (hazardous air pollutants) of the Act.
3) Amend Title V to delete the provision that provides the U.S. EPA authority to veto operating permits issued by local/state permitting authorities.
4) Amend Title V to clarify that state requirements that are more stringent overall supercede less stringent federal requirements in Title V operating permits.
5) Amend Title V to make the establishment of a Compliance Advisory Panel optional for states like California that have effective small business assistance programs.

CONCEPTS FOR CHANGING TITLE V OF THE FEDERAL CLEAN AIR ACT

To facilitate Title V program implementation in California, we recommend the following changes to Title V of the federal Clean Air Act (Act):

- Amend Title V to require the U.S. EPA to provide overall program equivalency for existing permit programs that provide equivalent or greater air quality benefit. The equivalency provisions should apply to both criteria and hazardous air pollutants.
- Amend Title V to limit the scope of the program to major sources as defined under Title I (criteria pollutants) and Title III (hazardous air pollutants) of the Act.
- Delete the provisions under Title V which provide the U.S. EPA authority to review/veto every Title V permit. Replace these provisions with language specifying that U.S. EPA authority is limited to auditing permit programs and conducting enforcement actions.
- Specify that Title V requirements shall not go beyond the minimum requirements of Titles I and III of the Act.
- Amend Title V to clarify that Title V permits need only contain the most recent state and federal requirements adopted pursuant to Titles I and III of the Act. This will ensure that less stringent or conflicting federal requirements are excluded from Title V permits.
- Amend Title V to specify that states are not required to implement federal requirements via Title V permits until the U.S. EPA has promulgated final regulations (e.g., toxics new source review under 112(g) of the Act).

FEDERAL LEGISLATIVE CONCEPT TITLES

Reform Title V Permit Requirements to 1) streamline delegation, 2) exclude smaller sources from the permit mandate, 3) eliminate EPA authority to override states' permitting decisions, and 4) clarify that more restrictive state requirements supercede a duplicative (yet not identical) EPA permit requirement.

1) California has a longstanding permit program that is more stringent than the Title V permit program. To streamline the delegation process for states like California that have effective permit programs, we recommend that Title V be amended to provide for a broad program substitution option.
2) Title V permit requirements apply to thousands of stationary sources that are already under permit in California. Since the Title V program is administrative in nature, no air quality benefit will be achieved by subjecting thousands of small sources to Title V permit requirements. A possible solution would be to amend Title

V to limit permit requirements to major sources as defined in Title I (criteria pollutants) and Title III (hazardous air pollutants) of the federal Clean Air Act.

3) In addition, Title V provides the EPA authority to veto operating permits issued by states. This authority is unnecessary for states that already have comprehensive operating permit programs. Title V should be amended to delete the EPA veto provision.

4) Title V requires operating permits to contain all applicable requirements, including less stringent federal requirements that may conflict with state requirements. Including less stringent or conflicting requirements in Title V operating permits would be confusing to sources and difficult for states to enforce. A possible solution would be to amend Title V to clarify that more stringent (yet not identical) state requirements supercede less stringent federal requirements in Title V operating permits.

Mr. FOX. Finally, I would ask, you suggested in your testimony that it may be best in some respects to have a delegation of some environmental programs to the States.

Mr. STROCK. Yes, sir.

Mr. FOX. And we would like to hear more about that.

Mr. STROCK. Thank you. As you know, under most of the environmental regulatory statutes, there are provisions whereby the Federal Government delegates the programs to the States who then implement them.

The States have begun to have increasing difficulties in recent years because both for statutory or sometimes regulatory reasons, the delegations are so prescriptive that it makes it difficult for us to take the programs, and what is more, the criteria used for delegation, because they differ among the statutes or regulatory programs, make it difficult for us to innovate, say using grant moneys in different ways or permitting various things together that we would like to do. And we hope that it might be considered by Congress to look at this and to perhaps update the relationship.

Mr. FOX. Very well. I have no further questions, Mr. Chairman. Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Fox.

Mr. Gutknecht, do you have any questions for the witness?

Mr. GUTKNECHT. Mr. Chairman, it is a bit off the subject but I might just ask, have you had a chance to visit with your boss about how he feels about the unfunded mandate bill we are going to——

Mr. STROCK. Oh, yes.

Mr. GUTKNECHT. Will you share that with us, please?

Mr. STROCK. Well, his view on unfunded mandates, in general, is that he is very concerned about them—and very much believes that there ought to be much greater movement to let the Governors have greater authority in governance overall. They should not have their priorities set through unfunded mandates from Washington. That, of course, goes consistently from his work on immigration reform relating to people here illegally, to motor voter issues, on to this area. I would be pleased to submit details from him for the record if that would be useful.

Mr. GUTKNECHT. I would like to have that, Mr. Chairman. Thank you.

[The information referred to follows:]

Office of Governor Pete Wilson

PRESS INFORMATION KIT

CALIFORNIA: Forging America's Future

PRESS OFFICE OF
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A Commitment to Federalist Principles Restructuring the Federal-State Relationship

BACKGROUND

Despite sharing common constituencies and interests, the relationship between the State of California and the federal government increasingly has become one of conflict over responsibilities, priorities, and limited resources. The cause of this conflict is rooted in the fundamental relationship between states and the federal government.

> ***"Governor Wilson believes that the basic blueprint in the U.S. Constitution is one in which California is an equal partner with the federal government in fostering opportunity and meeting the basic needs of its citizens."***

Governor Wilson believes that the basic blueprint in the U.S. Constitution is one in which California is an equal partner with the federal government in fostering opportunity and meeting the basic needs of its citizens. However, whether it is through legislation, regulation or court decision, the federal government has taken the position that the states are subordinate to the federal government.

The subordination of state governments has taken many forms:

- Though the Constitution grants the federal government exclusive authority to set and enforce immigration policy, the federal government has failed to control illegal entry. Even worse, the federal government requires that states and local governments provide and pay for services to a population that is in the country due to federal failure to prevent their entry.
- Though the states have repeatedly demonstrated innovation and creativity in designing anti-poverty programs that are cost-effective, foster self-sufficiency and reduce dependency, excessive federal regulations and court decisions effectively attack and stifle state innovation.
- The federal government continues to impose restrictive mandates on state and local governments. These federal mandates impede the ability of the states to manage and discipline their own workforce, provide incentives for economic development, and design programs and services to those most in need.

- Though the federal government insists on taking primary responsibility for authorizing entitlement programs for the sick, the elderly, and the needy, it has failed to take action to control costs, reduce excessive liability, and direct federal resources equitably among the states.

Governor Wilson believes that the sustainability of the California comeback rests on restructuring the current dysfunctional federal-state relationship. He believes this should be a priority for all governors, and strongly supports the convening of a Conference of the States to send a unified message to Washington that fundamental reform in the federal-state relationship is needed. If the federal government is committed to reinventing itself, it should reform the way it does business with the states, and the first step toward reform is to return to the basic constitutional blueprint of states as partners, not subordinates.

A BLUEPRINT FOR REFORM

The election of a Republican Congress for the first time in 40 years provides the states with a unique opportunity to initiate a dialogue with Washington to reexamine and reform the federal-state relationship. Governor Wilson is committed to working with the new congressional leadership to achieve reform in Washington.

> ***"Federal mandates prevent states from setting priorities and achieving the priorities and goals their citizens want and deserve."***

The Governor believes that the measures outlined below represent the essence of the current problem, and the recommendations represent the basic blueprint for reform of the federal-state relationship. Just as enactment of federal entitlement programs worked to create the dysfunctional federal-state relationship currently in place, congressional actions on the following measures are essential to return to a federal-state relationship based on increased cooperation and a partnership among equals.

Unfunded Federal Mandates

The State of California's well-documented concerns with federal immigration policy is a large component of an even larger problem faced by all states and local governments: burdensome, excessive federal mandates. Federal mandates prevent states from setting priorities and achieving the priorities and goals their citizens want and deserve.

The State of California is estimated to annually spend at least $8 billion to comply with unfunded and underfunded federal mandates imposed by Congress. This estimate does not include all of the costs of mandates that are imposed on the state as a result of federal court decisions that broaden the scope of federal law beyond the intent of Congress, or create new law in the absence of congressional or constitutional authorization.

Both the House and Senate leadership have stated their intent to make federal mandate relief and reform one of their highest priorities in the

104th Congress. Given that the Congress has made passage of a constitutional amendment to balance the federal budget a priority as well, federal mandate relief is essential to ensure that federal efforts to reform spending practices do not result in new mandates on states and local governments.

Governor Wilson believes that any comprehensive mandate reform legislation should consist of three key requirements:

- New federal mandates enacted by Congress must not be enforced unless funding is provided to pay for the full cost of compliance with the mandate.
- New federal mandates caused by a federal court ruling must not be enforced unless federal funding is provided by Congress to pay for the full cost of compliance with the mandate.
- Existing congressional and court-imposed mandates should be subject to a review by a bipartisan commission, with the goal of eliminating burdensome mandates. The commission would make recommendations on how to implement this goal, and Congress would be required to vote on the commission's recommendations. Recommendations would include elimination of mandates that are found to be duplicative, obsolete or unnecessary, as well as a means of funding those mandates not targeted for elimination.

Entitlement Reform

Federal entitlement programs to assist the poor and the sick such as: Aid to Families with Dependent Children, Food Stamps and Medicaid, were designed under the premise of a co-equal federal-state partnership. Though crafted with the best of intentions, these programs have become symptomatic of the larger federal-state problem of state flexibility in program management being unnecessarily stifled by federally required benefit minimums, reporting requirements and "quality control procedures."

"Governor Wilson believes that the most effective way the federal government can "end welfare as we know it" is to end federal restrictions and mandates on welfare altogether."

Welfare

Governor Wilson has undertaken a four-year initiative to reform California's welfare system. The Governor has created a welfare program that promotes individual responsibility, makes work pay, controls unnecessary program growth, strengthens fraud enforcement, and cracks down on "deadbeat dads."

The current federal-state relationship has proven to be the biggest obstacle to long-term welfare reform. Many of the initiatives launched by Governor Wilson first required the federal government's approval for these measures. This federal approval is actually a "waiver," and is

required if the reform initiative would be inconsistent with a federal regulation or statute.

The need to seek federal waivers for even the most basic reforms is symptomatic of a federal system that has become too restrictive of the states' ability to be more responsive to the needs of their citizens. Waivers are approved only through a difficult process and include burdensome and complex administrative requirements. Further, federal waivers are being challenged in federal court, subjecting reforms approved by a governor, state legislature, and the federal agency to the personal agenda of an unelected federal judiciary.

"...courts have turned the Boren Amendment into an expensive procedural straitjacket..."

Governor Wilson believes that the most effective way the federal government can "end welfare as we know it" is to end federal restrictions and mandates on welfare altogether. With the states leading the way on real changes in the welfare system, the Governor believes the federal government can best further that effort by providing a basic block grant and transferring responsibility for Aid to Families with Dependent Children, and other welfare programs, to the states.

Flexibility in Structuring Inpatient Reimbursement

Through several avenues of reform, California is seeking to run its Medicaid program through fiscal and administrative methods more resembling those used in a competitive private sector than a government monopoly. Ironically, one obstacle to this effort has been the "Boren Amendment," which was passed in the early 1980s as a part of a reform package, and designed to give greater flexibility to the states in setting Medicaid reimbursement rates for long-term care facilities.

The Boren Amendment's charge to provide "reasonable and adequate" reimbursement rates based on the costs necessarily incurred by an "efficient and economically operated" provider is one that makes sense in the abstract. Unfortunately, the federal government has failed to provide regulations reducing the abstraction to concrete guidance.

As a result, courts have turned the Boren Amendment into an expensive procedural straitjacket, which has driven both endless costly litigation and upwardly spiraling costs.

Governor Wilson believes that Congress should rewrite the Boren Amendment in a way that will make it possible for states to set inpatient rates in a sensible and competitive fashion, with the certainty that federally approved rate-setting mechanism will not be open to constant second-guessing through the litigation process.

Equitable Funding for States

Medicaid, AFDC, and Foster Care programs are financed with state and federal funds. To determine the federal share, the Federal Medical Assistance

Percentage (FMAP) formula is used. The FMAP formula uses per capita personal income to measure both the need for assistance in a state as well as the resources available to meet that need.

In 1983, 1991 and 1993, the General Accounting Office (GAO) released reports showing that per capita personal income is an inadequate measure of a state's fiscal capacity, and as a result of its use, some states were being undercompensated and some overcompensated by the federal government. GAO recommended modifying the formula, using poverty rates instead of per capita personal income to determine need in a state.

The GAO provided eight options for a new formula in their latest report. Under each option the federal matching rate for California would be increased from its current level of 50 percent. Based on the GAO option that would provide the lowest percentage (54.41 percent), for California, the State is being denied over $600 million annually due to undercompensation by the federal government.

Governor Wilson believes Congress should modify the FMAP formula in accordance with GAO recommendations, to ensure that all states are fairly compensated for Medicaid, AFDC, and Foster Care programs.

Other Entitlement Reforms

In addition to the broad reforms mentioned above, the Governor is proposing specific changes to federal mandates at the federal level as part of his 1995-96 budget. These reforms would give California more flexibility to deal with entitlement programs that are growing in our state at greater rates than our population and tax resources. Such changes include:

- Eliminating federal mandates that require maintenance of states' AFDC grants at their May 1988 level. Currently, states are able to increase their AFDC grant levels (which unilaterally commit additional federal dollars) by notifying the federal government of this program change. However, states are denied the ability to reduce their grants below the 1988 level, unless they receive federal approval under a waiver which requires an elaborate demonstration program. Instead, states should be allowed to adjust their AFDC payment level through submission of "state plan amendments" to the federal Department of Health and Human Services.

- Eliminating federal mandates for states' supplementary payment (SSP) programs, which are tied to the federal Supplemental Security Income (SSI) program, by (1) abolishing maintenance of SSP grants at their 1983 level, and (2) allowing states, at their option, to provide SSP to alcohol and drug dependent individuals who are eligible for SSI. States should have more flexibility in determining the eligibility groups, payment categories, and payment levels for their "voluntary" state supplemental programs.

- Reforming sponsored aliens' eligibility to social service programs (AFDC, Food Stamps, SSI/SSP) and Medicaid by prohibiting their participation for

five years. By excluding those aliens entirely from aid for five years, sponsors (who must agree, as required by federal law, to support these individuals for five years after their entry into the United States) will be held to their financial contract, rather than the taxpayer.

- Revising the process by which states may apply for existing federal Medicaid funding to allow states to test innovative, new approaches for expanded health care coverage for low-income target populations not now served through the Medicaid program. Currently, states interested in expanding access through Medicaid are hampered by the inflexibility of federal entitlement requirements and extensive judicial intervention. By providing states new flexibility to structure approaches consistent with their needs and fiscal circumstances, the federal government can act as a partner with states to meet the common goal of expanded access to coverage for high-priority populations in need of medical care.

> ***"As sponsors, the federal government must meet its legal and financial obligations to support refugees entirely for their first 36 months..."***

Federal Responsibility for Refugee Funding

Of the approximately 1.6 million refugees admitted to the United States since 1975, approximately 600,000 (38 percent) reside in California. The Refugee Act of 1980 provided for the federal government to cover 100 percent of the costs for cash and medical assistance during the first 36 months of a refugee's residency in the United States. Since that time, the federal government began reducing its participation until, by 1991, funding for refugees who are on mainstream public assistance programs funding (AFDC, SSI/SSP and Medi-Cal) had been eliminated.

The federal government has the sole responsibility for determining the number of refugees entering the United States. The federal government's sponsorship (including access to welfare payments and health care) of these individuals is no different than that agreed to by sponsors of legal aliens, who agree to provide support to these individuals for up to five years. To date, the federal agencies setting quotas for refugee entrants provide no coordination with federal agencies responsible for providing resources to states for human service programs. As sponsors, the federal government must meet its legal and financial obligations to support refugees entirely for their first 36 months, rather than placing the additional burden upon states and their taxpayers who have no decision-making role in the quota process.

As part of his 1995-96 Budget, Governor Wilson again calls on the federal government to fulfill its promise to states for 100 percent funding for services to the population for their first 36 months in the United States. Beginning October 1995, 100 percent federal funding for AFDC, SSI/SSP and Medi-Cal services to refugees will save California $102 million.

Illegal Immigration—Federal Responsibility and Fairness to State and Local Governments

California is home to more than 1.8 million illegal immigrants (nearly 5.6 percent of our total state population) and an additional 125,000 cross the border to settle in California every year. California is mandated by the federal government to provide education and emergency health care to illegal immigrants, as well as provide custody or supervision to illegal immigrant felons. In 1995-96, California taxpayers are projected to foot the bill for over $3.6 billion in state costs for services to illegal immigrants. Of this total, $2.65 billion is for federally mandated activities. These costs come at the expense of the State being able to provide much-needed services to legal residents.

The U.S. Constitution designates immigration policy as an exclusive federal responsibility. Yet federal policy, from lax border enforcement to burdensome mandates to provide services, is grossly contrary to constitutional responsibility. And as the most recent election demonstrated, California voters no longer wish to be held captive by this failed federal policy.

In his 1995-96 Budget, Governor Wilson continues his call on the Federal Government to enact comprehensive reform of its immigration policy. This new policy should be based on two principles: full federal responsibility and fairness to state and local governments. This policy should include the following:

- The level of Border Patrol personnel and resources needed to replicate the success achieved by "Operation Hold the Line" at El Paso, Texas.
- Immediate, mandatory custody of illegal immigrants convicted in state courts, or full reimbursement to state and local governments for the costs of providing custody and supervision to illegal immigrant felons.
- A fraud-resistant identification system to enforce federal laws prohibiting employment of illegal immigrants, and to determine eligibility for publicly funded benefits.
- Repeal of all current federal mandates to provide services to illegal immigrants, or full reimbursement to state and local governments for their costs of complying with these mandates.

A number of important developments have occurred during the past year following Governor Wilson's call for federal leadership in the area of illegal immigration. Consensus has been achieved about several key data and estimating methods, for which there was once little agreement. During the last

year, studies on the cost of illegal immigrants in California have been conducted by both the Urban Institute and the U.S. General Accounting Office (GAO). Given that these recent studies have arrived at essentially identical conclusions to California estimates, the issue over how to estimate cost is now resolved and federal attention to provide the necessary reimbursement to states is long overdue.

Senator Barbara Boxer, upon release of the GAO report stated, "There is no question that the people of California, whether they voted for Prop [Proposition] 187 or not believe that our state must be fully reimbursed for costs incurred as a result of the failure to enforce immigration laws." The senator continued, "As a member of the budget committee, where this issue will be debated as we put together next year's federal budget, I believe it is essential that I show my colleagues specific figures that show the true unreimbursed cost to California." The Governor agrees, and believes that the federal government has the data and methodology necessary to determine a funding level necessary to fully reimburse California for the cost of illegal immigration.

Further, due to extensive lobbying by Governor Wilson and others, Congress for the first time provided $130 million to reimburse states for the costs of incarcerating illegal immigrant felons. Though this represents an important first step, the funding amount falls far short of full reimbursement. Congress has had the authority to fully reimburse the states for these costs since 1986, and Governor Wilson once again calls on Congress to provide full reimbursement for 1995-96.

THE STATE COST OF ILLEGAL IMMIGRATION

As exhibited in the adjacent table, illegal immigrants will cost California taxpayers $2.65 billion for education, incarceration, and health care in 1995-96. In addition, illegal immigrants will incur costs amounting to approximately $1.0 billion for their share of general state provided services. These general services include police protection, road and park usage, environmental preservation, and other services from which illegal immigrants also benefit by residing in the State. Because these public services benefit all residents of the State regardless of their residency status, illegal immigrants should bear a proportional share of the cost for providing these services. In total, illegal immigrants will cost California over $3.6 billion during 1995-96. Even when an estimate of state taxes paid by illegal immigrants is considered, the net cost borne by legal resident state taxpayers is at least $2.8 billion.

COSTS OF PROVIDING STATE SERVICES TO ILLEGAL IMMIGRANTS
1995-96
(DOLLARS IN MILLIONS)

Federally Mandated Services:	
K-12 Education	$1,737
Incarceration	503
Health Services	414
Federal Mandate Subtotal	$ 2,654
Other State Provided Services	1,000
Total	$3,654

The above estimate does not include all state costs for services to illegal immigrants. Among the costs that California excludes are costs for child development, adult and higher education, and the cost of the criminal justice system outside of incarceration. In addition, costs of services obtained by illegal immigrants through the use of fraudulent residency documents are also omitted.

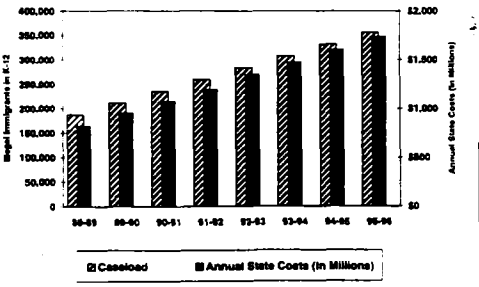
ILLEGAL IMMIGRANTS COST COMPONENTS

Program Category	Costs Included	Costs Excluded
K-12 Education	Operating Cost (average operating cost x estimated students).	Cost of child care, preschool, and adult education.
Incarceration	Operating cost for adult incarceration, juvenile detention, and adult and juvenile parole. Debt service for facility costs is also included. (Average operating cost x estimated inmates + average parole cost x estimated parolees)	Arrest, processing, court and local jail costs; special costs of illegal immigrant felons such as deportation hearing costs.
Health Care	Services for emergency health care and child delivery and program administration.	Cost of health care for non-Medi-Cal eligible illegal immigrants; costs of Medi-Cal services obtained through fraud.
General Services	Operating cost.(Total cost/total population x illegal immigrant population).	Cost of services accessible only by legal residents. Cost of services directly funded by users.

K-12 EDUCATION (ILLEGAL IMMIGRANT CHILDREN)

In 1995-96, California will educate more than 5.5 million children daily in more than 7,000 primary and secondary schools. Based on the most recent INS' findings, the California Department of Finance (DOF) estimates that 355,820 illegal immigrant children will attend the State's primary and secondary school system by January 1996. In order to provide K-12 education to these illegal immigrants, State taxpayers will spend $1.7 billion during 1995-96.

FIGURE IMG-1
ILLEGAL IMMIGRANT K-12 EDUCATION
CASELOAD AND COSTS



This figure represents only a portion of the total cost of educating illegal immigrant children, as it excludes the cost of preschool and child care. Moreover, the $1.7 billion cost estimate represents only a small fraction of the costs that California taxpayers have already paid to educate illegal immigrants, and does not include the educational expenses for those illegal immigrants who participate in adult education programs.

The cost of educating illegal immigrant children has more than doubled from $822 million to $1.7 billion over the last seven years, as shown in Figure IMIG-1. The cumulative state cost of educating illegal immigrant children from 1988 to 1996 totals $10.2 billion.

INCARCERATION

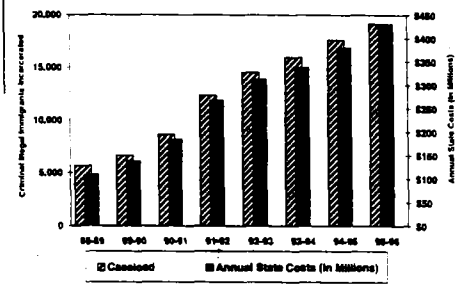
In 1995-96, California taxpayers will bear the cost of incarcerating nearly 19,200 illegal immigrant felons and overseeing the parole of another 12,400 illegal immigrant felons. In total, these costs will be $503 million as categorized in the adjacent table.

STATE COSTS TO INCARCERATE ILLEGAL IMMIGRANT FELONS
1995-96
(DOLLARS IN MILLIONS)

Adult illegal immigrant incarceration costs	$397
Juvenile illegal immigrant incarceration costs	34
Adult illegal immigrant parole costs	9
Juvenile illegal immigrant parole costs	1
General obligation bonds debt services for State prisons	62
Total	$503

The illegal immigrant inmate population for both adults and juvenile offenders has increased dramatically along with costs in recent years as shown below in Figure IMIG-2.The population of illegal immigrants in state facilities has soared by 235 percent over the last seven years — from 5,700 in 1988-89 to 19,200 in 1995-96. During that same period, the total annual cost of incarcerating (including incarceration, parole and debt service costs) this population skyrocketed from $122 million to $503 million, a 310 percent increase. Cumulative state costs for incarcerating illegal immigrant felons from 1988 to 1996 surpassed $2.5 billion.

FIGURE IMIG-2
ILLEGAL IMMIGRANTS: INCARCERATION COSTS
ADULT AND JUVENILE FELONS CASELOAD

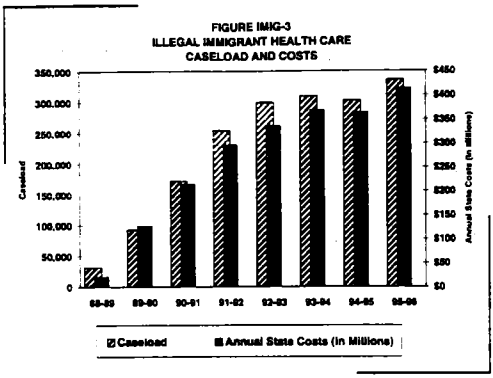


This estimate understates the true State cost of incarcerating criminal illegal immigrants.The $503 million estimate excludes arrest and prosecution costs. In addition, special costs associated with processing and tracking illegal immigrant felons, such as deportation hearing costs, are not reflected.

HEALTH CARE

The Federal Omnibus Budget and Reconciliation Act of 1986 (OBRA) mandates that states provide emergency medical services to illegal immigrants who would otherwise be eligible for such services except for their citizenship status.

Using the most current data, the Department of Health Services estimates that 40 percent of babies born to women in California will receive delivery services at a direct cost to state taxpayers. Of this group, 40 percent of the babies born will be to women who are illegal immigrants. In addition, the State will provide health care to thousands of other illegal immigrants. During 1995-96, more than 304,100 illegal immigrants will receive mandated health



care, costing state taxpayers $413.8 million in non-reimbursed funds. (For 1995-96, this estimate also includes costs for illegal immigrants who are eligible for Medi-Cal under a federal category for pregnant women and infants who are within 185 percent of the poverty level. This group is estimated to cost the State $41.6 million in 1995-96.)

During the last seven years, the cost of providing health care to illegal immigrants has risen astronomically as exhibited in Figure IMIG-3. In 1988-89, illegal immigrants cost state taxpayers approximately $21 million for health care. In 1995-96, illegal immigrants will cost state taxpayers $414 million, a 1,870 percent increase in just seven years. The cumulative cost of providing health care will be over $2.1 billion from 1988 to 1996.

The cost estimates above represent only a fraction of the total cost of providing health care to illegal immigrants. Specifically, it excludes the cost of providing health care to illegal immigrants who are not eligible for Medi-Cal services, such as non-disabled, single adults. Moreover, this estimate excludes the cost of illegal immigrants who obtain medical care through the use of fraudulent residency documents.

OTHER SERVICES

In addition to the $2.6 billion cost for federally mandated services, illegal immigrants will use an additional $1 billion in other state services, such as parks, roads, environmental preservation and police protection. Because these public services benefit all residents of the State regardless of their immigration status, illegal immigrants must be assigned a proportional share of the cost of these services.

Only the costs of services for which illegal immigrants are eligible are incorporated into this estimate. For example, illegal immigrants are not eligible to receive Aid to Families with Dependent Children (AFDC) or State Supplementary Payment (SSP) benefits. Therefore, a proportional share of these program costs are not incorporated into this cost estimate.

CITIZEN CHILDREN OF ILLEGAL IMMIGRANTS

Under the Fourteenth Amendment to the U.S. Constitution, children born in the U.S. are American citizens, regardless of their parents' residency status. As such, these citizen children are eligible for the benefits available to all legal residents. Some benefits, such as education, are delivered directly to the

child. Others, such as AFDC, are nominally for the child but in fact are distributed to the child's parents. These provided services are indirect, but result from illegal immigration.

Costs associated with the citizen children of illegal immigrants are excluded from the State's reimbursement request to the federal government. However, the burden that citizen children impose upon California taxpayers is substantial. Consequently, this section outlines the cost of providing services to citizen children for illustrative purposes for the public in general and individuals in Washington in particular, so that they understand California taxpayers are paying more than their fair share of illegal immigrant costs.

STATE COST OF PROVIDING SERVICES TO CITIZEN CHILDREN
1995-96
(DOLLARS IN MILLIONS)

Specified Services	
K-12 Education	$599
Welfare	278
Health Services	77
Total	$954

In 1995-96, state taxpayers will spend $954 million to provide health care, education and AFDC support payments to citizen children.

Citizen Children Education Costs: Although it is not a complete count of all the citizen children of illegal immigrants in California, using the latest Quality Control Survey, the California Department of Social Services estimates that approximately 255,881 citizen children will access State-administered welfare programs. From this, DOF estimates that over 122,600 citizen children will receive K-12 education at state taxpayer expense. In total, these citizen children impose K-12 education costs amounting to at least $598.5 million for 1995-96.

Citizen Children Welfare Costs: Since 1988, citizen children of illegal immigrants comprise the single fastest growing portion of California's AFDC caseload. For 1995-96, they are at 14 percent of the entire AFDC caseload. The State cost of providing welfare to citizen children for 1995-96 is projected at $278.5 million.

Citizen Children Health Care Costs: The cost of providing health care to citizen children is significant. In 1995-96 alone, citizen children will cost state taxpayers $76.6 million.

LOCAL COSTS

California's local governments also bear massive costs from illegal immigration. Although the State does not maintain comprehensive records with regard to these local costs, several studies conducted by local governments in recent years have estimated local expenditures for illegal immigrants.

One such study by Los Angeles County estimates that the 700,000 illegal immigrants in L.A. county cost taxpayers more than $308 million during 1991-92. Even after the local taxes that they pay were considered, illegal immigrants still imposed net costs in excess of $272 million.

A study by the State Board of Corrections estimates that there are 7,000 illegal immigrants in California local jails. These criminal illegal immigrants cost localities more that $117 million annually.

Another study, commissioned by the San Diego Association of Governments, reported that more than 1,300 illegal immigrants were arrested in San Diego County in 1985-86. The local government cost associated with processing and jailing these illegal immigrants approached $12 million during that year.

The net State fiscal impact excludes these and other local costs. It therefore significantly understates the true costs of illegal immigration to California taxpayers.

1995-96 BUDGET PROPOSAL

Once again, Governor Wilson has made his call to the federal government for full reimbursement of illegal immigrants, a keystone of his 1995-96 Budget Proposal. For 1995-96, the budget assumes federal reimbursement of $732 million for the cost of incarceration and health care benefits to illegal immigrants residing in California. These reimbursements are due to Californians as the cost for illegal immigrants arise exclusively because of the federal government's failure to secure the national borders and enforce its existing immigration laws.

1995-96 IMMIGRATION REIMBURSEMENT PROPOSAL
(DOLLARS IN MILLIONS)

Program	Population	Federal Reimbursement
Incarceration	31,600	$422
Medi-Cal	304,100	310
Total		$732

For 1995-96, the Budget assumes $422 million in federal reimbursement for incarceration: (1) the receipt of $45 million in the first quarter of 1995-96, resulting from the federal 1995 appropriation to states for the costs of incarcerating illegal immigrant felons, and (2) the remaining $377 million represents incarceration costs to the State over the remaining three quarters, beginning October 1, 1995, and assumes that the federal government will provide 100 percent reimbursement to states in the federal 1996 appropriation bill.

For health care costs, the budget assumes nine months funding, beginning October 1, 1995, of $310 million. Full year costs are estimated at $413 million.

Although the Governor continues to call on the federal government to review its options to deal with the $1.7 billion education costs of illegal immigrants, a compelling magnet to illegal entry, the budget does not rely on reimbursement of education costs. Given California's voters overwhelming approval of Proposition 187, Congress should move to enact legislation that repeals the current federal mandate to provide educational services to illegal immigrants. In the interim, until Congress does take action to repeal, the Governor once again calls on Congress to appropriate full federal reimbursement for the costs of education as an interim measure. If federal reimbursement is received, the additional state funding will be available for other high priority education programs such as:

- ❑ Tutoring and mentoring hours to at risk youth,
- ❑ Computers for children in the classroom,
- ❑ New Healthy Start programs to integrate health and social services for children at the school site, and
- ❑ Expanded access for children of low income families to preschool education.

Further, the Governor also calls upon Congress to give states the authority to obtain citizenship information upon enrollment. This would give the State the ability to provide the federal government with the information needed to either reimburse the State or to enforce any future federal policy that repeals the education magnet.

CONCLUSION

California retains its historic commitment to tolerance and compassion. The United States already accepts more legal immigrants than the rest of the world combined, and California has welcomed the courage, diversity, and hard work of legal immigrants. However, the greatest threat to legal immigration is a dysfunctional federal policy that fails to prevent illegal entry and mandates that state taxpayers fund the rewards for illegal entry.

> ***"...California has welcomed the courage, diversity, and hard work of legal immigrants. However, the greatest threat to legal immigration is a dysfunctional federal policy that fails to prevent illegal entry..."***

It is both wrong and unfair to reward people with public benefits for breaking our immigration laws, and especially to do so at the expense of needy legal residents. That's why Californians overwhelmingly passed Proposition 187.

Governor Wilson urges the President and members of Congress not to ignore the clear message of Proposition 187 — Washington must reclaim its constitutional responsibility over immigration policy — it must prevent illegal entry and take full responsibility for its failure to do so. Immigration reform must occur if all levels of government are to have the resources to provide services to needy legal residents, and if there is to be an incentive for those who seek residency in the United States to do so according to the law and in fairness to those already here.

The Washington Post
January 9, 1995

Reining In 'Unfunded Mandates'

Bill Could Ease Burden on States

By William Claiborne and Stephen Barr
Washington Post Staff Writers

For California Gov. Pete Wilson, who was inaugurated for a second term Saturday in Sacramento, the debate in Congress over requiring states to pay for programs without giving them funds to do so is about to transcend theoretical principles of federalism and get down to a more visceral question—the possibility of a tax cut for his constituents.

The Republican push to put on the fast track a Senate bill that would substantially reduce the states' high costs of paying for future programs ordered by Washington could make it easier for Wilson to cut state income taxes by $9 billion, a proposal the Republican governor is to make in his State of the State speech today.

"There's no question that our ability to control priorities that are important to us will be enhanced by relief from unfunded mandates," said Russell Gould, the state director of finance.

Federal laws and regulations that impose costly requirements on state and local governments without giving them money to implement the requirements are called unfunded federal mandates.

The Senate bill, as with other initiatives such as welfare reform and the proposed balanced budget amendment, has accelerated the political debate over the proper roles for the different levels of government. In keeping with the Republican agenda, the bill, introduced by Sen. Dirk Kempthorne (R-Idaho), holds the potential to rein in the power that Washington has held over the states since the start of the Great Society.

Could estimates that federal mandates cost California $8 billion annually, mostly from implementing regulations attached to environmental and health and welfare legislation. After

See MANDATES, A8, Col. 1

entitlements and mandated costs are paid, he said, only 10 percent of the budget is left for discretionary spending.

"If you go through the kind of economic period that we've gone through and you've been looking at every dollar you're spending, you begin to understand why the governor has been pressing for more flexibility in terms of using our resources and setting our spending priorities," Gould said.

For more than two years, governors and big-city mayors have complained that the costs of implementing the federal government's social and environmental agendas at the state, county and municipal levels are driving state spending priorities and bankrupting local budgets.

Their ideas began taking hold in Washington last year, and last week they appeared on the verge of fruition. Kempthorne's bill is supported by 56 senators and the White House. As Sen. Pete V. Domenici (R-N.M.) put it, the Kempthorne bill symbolizes the "start of a fundamental redefinition of the federalism system."

Under the bill, future legislation mandating action costing more than $50 million must include a Congressional Budget Office estimate of the total cost and the federal funding to meet the requirements. If the cost of compliance is not fully funded, then the mandate either would not take effect or it would be scaled back.

The GOP leaders—House Speaker Newt Gingrich (Ga.) and Senate Majority Leader Robert J. Dole (Kan.)—have made curtailing unfunded mandates one of their top legislative priorities. They promised governors on Friday that after passing Kempthorne's bill and a constitutional amendment to balance the federal budget, they would push Congress to approve a constitutional amendment banning unfunded mandates.

Ohio Gov. George V. Voinovich (R) has been one of the leaders in the fight to end unfunded mandates. He said Kempthorne's bill would "cause Congress to be more thoughtful in terms of their actions in passing along costs" and would provide state officials with a forum to meet with federal regulators on the cost-effectiveness and merit of future rules as they are written.

He said that passage of the legislation would not provide a financial windfall for Ohio, but would end the "continued escalation" in pass-along costs of laws enacted in Washington. "It is important that everyone understand that this is not retroactive but prospective," Voinovich said.

Some governors and state legislators have claimed that during the decade state and local governments will spend more than $200 billion to comply with current federal wastewater mandates. A survey commissioned by the U.S. Conference of Mayors last year asserted that 10 selected federal mandates cost cities $6.4 billion in 1993 and will cost $53.9 billion over the next four years.

The Washington Post
1/9/95

The Congressional Budget Office has offered more modest figures, estimating that the financial burden on local governments for the federal programs has risen from $225 million in 1986 to $2.8 billion in 1991. The CBO has said the cumulative cost of new regulations imposed on state and local governments from 1983 to 1990 was between $8.9 billion and $12.7 billion, a range that does not include requirements that must be implemented in future years. Nor do the totals include the states' mandated costs of Medicaid, the shared state-federal health program for the poor, which the National Governors' Association has said rose to $71 billion in fiscal 1994.

Among the most intrusive regulations regularly cited by the governors are the Safe Drinking Water Act amendments of 1986, the Asbestos Hazard Emergency Response Act of 1986 and the 1990 Clean Air Act amendments.

Wilson long has been in the forefront of the states' battle against unfunded federal mandates, gaining attention mostly for his campaign to relieve the state of what he says is a more than $2 billion annual burden of providing health, social, educational and correctional services to illegal aliens because of federal immigration policy.

He recently filed a lawsuit in federal court seeking to bar the Clinton administration from enforcing the federal "motor voter" law that allows people to register to vote when they apply for state driver's licenses or social services. Wilson, who earlier had ordered his state agencies not to implement the law until federal funds were made available to pay for it, estimated that it would cost $35.8 million annually to put the "motor voter" regulations into effect.

Voinovich told senators last week that a recent federal highway law forces states to use scrap tires in highway pavement, something he dubbed the "rubberized asphalt requirement." Voinovich said the mandate will take $50 million a year out of Ohio's highway budget. For the same cost, he testified, Ohio could repave nearly 700 miles of rural highway or fix 137 bridges.

Even though legislation similar to Kempthorne's bill was almost approved by Democrats in the last Congress, uncertainty lingers about how the legislation would be applied.

Sen. Carl M. Levin (D-Mich.), for example, has raised questions about one of the central provisions of the bill—a requirement that the CBO estimate the costs to states and localities that would be imposed by future legislation.

In a letter to Levin, CBO Director Robert D. Reischauer said his analysts would face considerable difficulty in estimating such costs. The costs of some mandates "will be very difficult, if not impossible" to determine, Reischauer said. "Legislation is often broad and lacks the specifics needed to project future impacts at the time the bill is considered," he wrote.

Mr. WAXMAN. Would the gentleman yield since he has some time?

Mr. GUTKNECHT. Yes, go ahead.

Mr. WAXMAN. It is interesting you have already been able to formulate a position on the unfunded mandates, and I understand it is important, but I think this takings issue under H.R. 9 is also important to the taxpayers in California. It changes that the traditional polluter pays to reduce the pollution and requires the taxpayers to do it.

I would like to have you submit to us within a week what Governor Wilson's position would be on this issue. It is coming up pretty quickly, and I would like to know your evaluation of what enactment would mean for the California taxpayers.

Mr. STROCK. Yes, sir, will do.

[NOTE.—Mr. Strock reports that the Wilson administration has not taken a position on this Federal legislation.]

Mr. WAXMAN. Thanks. Thank you for yielding.

Mr. STROCK. If I might add one point, I think too it will be very interesting to look at that because it could be viewed in one way as part of the whole issue of regulatory budgeting, so it is certainly timely. We would like to be consulted.

Mr. MCINTOSH. Thank you very much. Any further questions, Mr. Gutknecht?

We will proceed with Mr. Shadegg.

Mr. SHADEGG. Thank you, Mr. Chairman. Mr. Strock, I apologize. I arrived late and missed the beginning of your testimony and maybe you covered this point, but did I understand that there are some areas where the State of California is prohibited from regulating or imposing environmental restrictions because of Federal law?

Mr. STROCK. Yes. Those relate particularly under the 1990 Clean Air Act on the very sensible notion that some things that are interstate, such as transportation, need to have Federal standards. The issue had arisen that the U.S. agency has missed its Clean Air Act deadlines, and I could submit that for the record, sir, if you would like in promulgating those.

Mr. SHADEGG. I come to this issue with a belief that the people of the States are pretty well suited to protect themselves in many instances and that, in fact, the Federal Government, including the Federal environmental agencies charged with protecting the environment have, for a lack of resources or for excessive burdensome statutes, not been able to regulate the environment in a timely fashion, and I guess one of my questions would be, if in fact there is concern that this moratorium would prevent the State of California from limiting pollutants or protecting its environment to the extent that it felt necessary, could that not be addressed with legislation which would simply be put into this legislation allowing the State of California to take such measures as it felt necessary to protect its environment in this interim?

Mr. STROCK. If I could have a chance to reflect on that a little bit. But clearly, again, I think the issues here—and I would be pleased to submit this to you, sir—relate largely to interstate transportation where the Congress has stated a strong view that the Federal role should be much greater than usual. And what has

happened is that with the Federal Government not meeting a whole series of explicit legal deadlines in the statute it is forcing the States to have to overregulate unnecessarily things in our States to make up for their lack of action here, and that is the particular issue we are concerned about.

Mr. SHADEGG. I come from Arizona, and I understand that in some environmental areas in the East where States are small and close together there may be a need for a unified approach, but there are hundreds of miles—thousands of miles of air between portions of California and portions of Arizona, and I am not certain that the sort of one-size-fits-all application of these statutes makes sense in the West where there are great distances involved.

And I think to a certain degree, when many of these environmental statutes were first enacted, they were done with a view that the States will not take charge in this area.

Again, I come at it with the bias that people can protect themselves, and the States are doing a good job of that, and that lowering the level of that regulation so some could be taken care of at the State would be appropriate.

And if there is some grave danger raised by this moratorium that you would need to take care of some emergency in order to protect the environment of the State of California, I would be amenable to allowing the States and to entrusting them with that authority, at least during the period of this moratorium.

Mr. STROCK. We would very much appreciate the chance to be able to have input on that. In California, I know Governor Wilson shares your concern about this "one size fits all" approach. That has been the cause of a lot of difficulty, such as automobile inspection and maintenance, which I know is of some concern in Arizona, and other issues.

Mr. SHADEGG. I guess some of us are no longer accepting the premise that Washington, DC, is the font of all wisdom.

Mr. MCINTOSH. Thank you.

I notice Mr. Peterson came back into the room. Let me turn to Mr. Ehrlich and then Mr. Peterson—no questions. Would one of you mind checking to see if Mr. Peterson has any questions for the witness?

In this pause, let me again commend you for your efforts. I think you demonstrate that it is possible to put forth an effort that reduces regulatory burdens and still be faithful to protecting the environment and health, and I commend you on your record and accomplishments in the State of California.

I understand that Mr. Peterson has no questions. Thank you.

With that, we will turn to our next panel of witnesses. This panel will present to us the view of small businesses. It includes leaders here in Washington, Tom Donohue with the American Trucking Association and Mr. Vern Garner of Findlay, OH. It also includes Mr. John Motley, vice president of Governmental Affairs for the National Federation of Independent Businesses; and an NFIB member, Mr. Sal Risalvato.

Particular thanks to the gentleman who traveled to Washington today to discuss this issue.

STATEMENTS OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATION; VERN E. GARNER, PRESIDENT, GARNER TRUCKING, FINDLAY, OH; JOHN MOTLEY, VICE PRESIDENT OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES; SAL RISALVATO, OWNER, RIVERDALE TEXACO, RIVERDALE, NJ; AND EARL WRIGHT, VICE PRESIDENT, INVENTIVE PRODUCTS, INC., DECATUR, IL, ACCOMPANIED BY GRANT A. WRIGHT, PRESIDENT

Mr. MCINTOSH. Mr. Donohue, welcome.

Mr. DONOHUE. Thank you, Mr. Chairman. It is a pleasure to be here for your first hearing in this new Congress.

For the record, I am Tom Donohue, president and chief executive officer of the American Trucking Association, the national trade association for the trucking industry.

Let me just tell you again for the record a little bit about our business. Trucking is the largest transportation mode in the Nation. We employ 7.8 million people. We represent 5 percent of the gross domestic product, earning over $312 billion in revenues. And we move 80 percent of the dollar value of all the freight that moves in this country. Eighty-eight percent of all trucking companies are small businesses.

Mr. Chairman, if you are looking for an industry which is essential to the survival of our country yet which is being strangled by overregulation, you can stop your search. In fact, after I complete my testimony, you will hear from Vern Garner, one of our important members, who will absolutely spellbind you with his story of what regulation can do to a small company.

Our industry pays about $8.5 billion annually just to comply with regulations. Some of them are very important and very reasonable and others quite useless. I am convinced that with a more sensible approach to Federal rulemaking trucking could create tens of thousands of additional good-paying jobs for Americans without jeopardizing the health and safety of our drivers or the drivers with whom we share the road. That is why the trucking industry supports H.R. 450, the proposal to freeze the implementation of Federal regulations for a short period of time.

After we put the brakes on runaway rulemaking we can then think, Mr. Chairman, how to move to the second and most important part of this process. That is, setting a system by which every future regulation will be judged. Is it cost-benefit sensible? Does it have a risk assessment? Is it really going to do something for the people it is supposed to help? And does it protect the private property of our small businesses and of our fellow citizens? Those are the questions that must be answered.

We recognize that some regulation will be necessary; and, in fact, this industry often goes to the Congress and seeks regulation to help in safety and clean air. In fact, we have a very strong record in that regard.

We are the people that sought out and had passed the single commercial driver's license. We pushed for random mandatory drug testing of truck drivers. We sought for a long time to get a ban on radar detectors in commercial vehicles. We got the money and regulation that ensures almost 2 million roadside inspections of trucks

conducted in this country every year. We are now paying a large fee to assure that our trucks use clean diesel fuel and have reduced pollution on the highways.

These regulations make sense and achieve their goals in a reasonable and cost-effective manner. Unfortunately, all too often that is not the case.

Let me give an example. I want to talk about alcohol testing, and that is a very emotional issue. Focus for a minute on the facts. The whole area of alcohol testing for truck drivers provides in my view a textbook case of what has gone wrong with Federal rulemaking and why a moratorium followed by permanent reform is so important.

Last October, in the midst of all sorts of confusion, we petitioned the Department of Transportation to delay the implementation of their regulations scheduled to take effect on January 1, that required both preemployment and random alcohol testing conducted by employers.

I need to tell you that we have been through a very interesting pilot test of roadside testing conducted by the Federal Government. For 2 years alcohol use by truck drivers was tested at the roadside in four States around this country. And we set a standard of .02 blood alcohol content [BAC], something none of us could measure up to going home from a cocktail party on Capitol Hill. We stopped truck after truck for 2 years and less than .2 of 1 percent of the truck drivers failed that standard.

Now the rule that we were supposed to have should have been put out by DOT last October 1994, so there is no great rush. They finally brought it out January 1st. And we said, wait, you have yet to issue the explanations that must come in your rule that tell us how to do these tests.

There is also a court case pending on preemployment testing. And, by the way, preemployment testing is a stupidity test. It is not a safety test. We had a terrible holiday because we spent the time with the Department of Transportation trying to get them to make a decision. It wasn't until the 30th of the month that they finally split the baby and said, OK, we won't do preemployment testing until after we put out the testing rules, but you will do random testing. That didn't help us a great deal.

Mr. Chairman, this is an example of what happens when people start writing press releases instead of thinking about the fact that this is going to cost our industry a quarter of a billion dollars in 1 year. And with a little clarification and a little assistance we could do the job, and significantly reduce the price.

Mr. Chairman, my time is up, so I will simply say that we ought to move very swiftly to pass your legislation, making any accommodations we need to be sure that people that need emergency legislation or regulation can get it. The Congress can provide it, and the President can assure it. I would suggest that if we were to do this we could get going in a very orderly way on full regulatory reform.

In my written testimony there are three suggestions for additions to the rule that would protect some of these issues. Thank you.

We want to work with you to make it happen. We don't want to duck the rules. We want sensible rules that make sense, that are cost-effective and realistic. Thank you.

Mr. MCINTOSH. Thank you. We ask that the rest of your testimony be submitted into the record so we could consider those suggestions. I will ask each witness to make their initial presentation and proceed for questioning.

[The prepared statement of Mr. Donohue follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS, INC.

I. INTRODUCTION

A. ATA REPRESENTS THE TRUCKING INDUSTRY

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations (ATA), the national trade association of the trucking industry. The ATA federation includes over 34,000 motor carriers, an affiliated association in every state, and 11 conferences representing individual segments of the industry. The ATA federation represents every type and class of motor carrier in the country.

Thank you for moving ahead on the proposal to freeze the implementation and promulgation of federal regulations. This freeze is absolutely essential to give Congress the window of opportunity needed to fulfill the promise made in the Contract with America to fundamentally improve Federal rulemaking. ATA is committed to work with you to enact the freeze and to require cost-benefit analysis, risk assessment with good science, and private property protections in all regulations issued at the Federal level.

I know the leadership of the new Congress is committed to fulfilling all planks of the Contract with America. But, in our view, there is nothing you could do this year that would leave a stronger legacy for our country or produce more economic opportunity for our people than regulatory reform.

B. THE TRUCKING INDUSTRY SERVES AMERICA

Trucking is the nation's largest freight transportation mode. The trucking industry employs 7.8 million people throughout the economy in jobs that relate to trucking activity—a number that exceeds the population of 42 of our 50 states. The industry has gross freight revenues equal to nearly 5% of the Gross Domestic Product—a total of $312 billion in 1993. Trucks account for 78% of the Nation's freight bill and transport 45% of total tonnage shipped by all modes—3.1 billion tons of freight annually.

C. THE TRUCKING INDUSTRY IS HEAVILY REGULATED

This year alone, government regulations will cost the trucking industry $8.5 billion (an average $6,571 per truck, or 7.5% of the truck's annual gross receipts). The Federal government regulates virtually every aspect of how we operate our business, focusing on three major areas: safety and engineering, the environment, and labor and human resources. There are rules telling us how to mark our trailers, how to maintain our trucks, how to determine if our drivers are qualified, and how our drivers must operate their vehicles. There are even regulations that make truckers responsible for water pollution caused when it rains on our properties.

The trucking industry is committed to safety and a clean environment—and we have a record of voluntary action to prove it. ATA has consistently supported reasonable regulations such as the Commercial Drivers License, random drug testing of drivers, and clean air provisions. We recognize that in the pursuit of those goals some regulation is necessary. However, our industry cannot sustain the burden of continued excessive regulation that does nothing to improve safety or productivity. Nor can the country.

Right now, the U.S. Department of Transportation (USDOT) has more than 500 people who work just on trucking issues. They write rules, publish rules, enforce rules, and change rules. Similar people are working at a host of other Federal agencies that have the power to regulate the trucking industry, including: the Department of Labor, the Interstate Commerce Commission, the Environmental Protection Agency (EPA), and the Internal Revenue Service, to name just a few.

Equipment standards alone cost the industry over $430 million a year. New emission standards to meet clean air requirements will raise the price of a vehicle 10

to 20 percent, costing our industry $2 billion a year. And if the government mandates anti-lock brakes for heavy trucks, you can add another $120 million in annual expense.

In addition to these truck-specific costs, there are others—like labor costs—which all businesses share, but which fall harder on labor-intensive industries like trucking. We suffer disproportionately the cost of complying with regulations governing employment, workplace safety and health, and benefits.

Because 75% of the nation's communities depend exclusively on truck for their freight, the economy cannot prosper without a healthy trucking industry. Trucking companies, on average, eke out just a 2% profit margin. Overregulation is especially difficult for the 88% of trucking companies that are small businesses.

II. ATA Supports Swift Passage of H.R. 450

A. ATA SUPPORTS THE MORATORIUM

ATA supports H.R. 450, which would freeze promulgation and implementation of federal regulations from November 9 until June 30 and delay deadlines by five months. This freeze would provide Congress the time to consider and enact comprehensive regulatory reform that would require agencies to make sure that the benefits of the regulation will exceed the costs and that there will be an assessment of risks that incorporates peer review and good science.

Let me give you some examples of the kinds of foolish and short-sighted regulations that have been promulgated or will be made effective between November 9 and June 30th that directly affect the trucking industry.

1. Random Alcohol Testing Required Before the Rules were Written.

On January 1, 1995, trucking companies with over 50 drivers were required to begin randomly testing drivers for alcohol. Unfortunately for the industry, USDOT had not finished writing the rules establishing what kinds of devices would be used to screen for alcohol use.

This has led to confusion and unnecessary costs. Motor carriers have been forced to implement an expensive testing system when decisions made in the next few months could allow a much cheaper—and just as effective—solution.

USDOT had been petitioned in October to delay implementation for all types of alcohol testing until the rules were finished. The Department did not act on that petition until the 11th hour—just two days before implementation of the regulation—and they did not publicize their action until January 5. USDOT agreed that its failure to finalize the rules was justification for delaying the beginning date for pre-employment alcohol testing until May 1, 1995, but did not agree to delay random testing, which must be done by motor carriers at their own expense.

USDOT's response to these objections was illogical and would not survive a cost-benefit test. We have given DOT a reasonable option by supporting random, roadside testing, which proved successful in a four-state pilot program in 1993.

2. Documentation of Forbidden Tests.

If you're looking for a prime example of the contradictory and confusing nature of federal rulemaking, consider this: on December 2, 1994, USDOT prohibited trucking companies from using blood to test for alcohol impairment. This decision went against our recommendation and left thousands of motor carriers with fewer options to use to test their drivers.

Yet USDOT went a step further by requiring companies to document the name, address, and telephone number of blood testing facilities they could have used if USDOT had allowed it. Over 500,000 trucking companies will be required to uncover this information and produce it at any time that they are unable to use a breath testing device for reasonable suspicion or post-accident testing. Of course, because USDOT prohibited blood testing in the first place, the number of testing facilities carriers can find does not reflect what would be available if blood testing were permitted!

We believe that freezing this requirement and then subjecting it to cost-benefit analysis would reduce our costs without impairing safety.

3. Micro-managing Physical Activity.

OSHA is planning to issue new regulations on ergonomics in the near future. OSHA had sought in the last Congress to obtain specific legal authority for a provision that would require employers to redesign or completely eliminate work-related tasks that cause so-called "repetitive strain injuries," or "cumulative trauma disorders." Congress did not act favorably on the legislation, so the agency is now using its regulatory powers.

Among the tasks that OSHA could require employers to eliminate is lifting more than 25 pounds. My briefcase weighs more than 25 pounds and I imagine yours does too, Mr. Chairman. Such an intrusion into the operations of American business is unprecedented. Even the Americans With Disabilities Act doesn't go that far. In fact, we believe that if issued, OSHA's ergonomics standard will be one of the most costly and complicated regulations ever issued by the federal government. We estimate the costs of compliance to the trucking industry alone will be in the billions of dollars—not only in direct compliance costs, but also in additional costs associated with workers' compensation claims.

We believe that this regulation should be delayed and should be subjected to a rigorous assessment of the science behind the risk and a demonstration that the benefits of this regulatory intrusion are worth the costs.

4. Irrational Clean Air Dictates.

EPA is under a court order to issue a "Federal Implementation Plan" for parts of California. EPA estimates these rules will cost the California economy $6 billion a year. The "FIP" that was proposed by EPA earlier this year would require trucks to drive out of California and return before they could make a second pick-up or delivery. It would cut back on the number of aircraft flights by 1/3 and even require the gas from cows eating grass to be controlled.

I am pleased to say that last Friday EPA indicated that they had agreed with the plaintiff environmentalists to seek a two year delay in the effective date in the start of the FIP. If nothing else, this gives California's state plan, which contains many features supported by the industry, a chance to go forward. However, EPA still intends to issue final rules by February 15 that will, in effect, put the industry in a hostage situation if the government fails to approve the California plan.

B. THE CONGRESS MUST ACT QUICKLY

We urge Congress to enact H.R. 450 as soon as possible. We understand that H.R. 450 would freeze regulations that were promulgated or made effective even before the bill becomes law. However, as each day goes by, the number of regulatory burdens on industry increases. We do not want to incur the problems and the costs of complying with these new regulations if the impact of the regulatory reform provisions will require them to be totally reanalyzed.

Some may argue that a freeze is too bold a step and that Congress should allow the agencies to continue regulation "as usual." We disagree and urge you to go forward. We believe that the bill that you have presented responds to concerns that could otherwise be raised and gives the President the ability to act for true emergencies or to act to reduce real regulatory burdens.

III. Additional Loopholes to Close

We fully support the bill that you have drafted as a means to freeze regulations. However, if your schedule allows further amendments, we have three suggestions that would expand the scope of the freeze or help insulate the bill from court challenges.

A. INCLUDE REGULATIONS CREATED BY FEDERAL GRANTS

There are two ways the government imposes requirements: the first way—and the one the Committee has addressed—is when the government writes a regulation that imposes fines or sentences on people who don't comply. The second kind is when the government withholds money that people are entitled to unless they jump through certain hoops.

The introduced version of the bill contains a definition of "regulatory rulemaking action" that specifically excludes rules that are connected with grants (see page 5, line 17 of the January 9th version). ATA urges the Committee to include grant programs in the moratorium. The Federal transportation program has numerous examples of burdensome regulations imposed on states, local governments, and industry by placing general conditions that must be met to obtain transportation grant funds.

For example, DOT awards states $20 billion of fuel tax money a year for highways and projects. To qualify for that money, states must accept several statutory "unfunded mandates." One such mandate is the use of crumb rubber in pavement, which has been shown to accelerate the deterioration of roads.

Excluding grant programs would create a significant loophole for federal regulators and interfere with the ability to achieve comprehensive regulatory reform. ATA urges the Committee to prevent regulators from adding more eligibility limitations on the disposition of grant money during the moratorium. This could be done by merely deleting the term "grants" from the exclusion.

B. INCLUDE REGULATIONS NOT PUBLISHED

The definition of what is a "regulatory rulemaking action" is limited to actions on rules "normally published in the Federal Register". (See page 4, lines 18 and 19.) This is a major loophole, because many agencies, such as Occupational Health and Safety Administration (OSHA) and EPA, use "guideline" documents that are not published in the Federal Register but can result in sanctions when they are not followed.

The current language would appear to allow an agency that uses the guideline approach to continue to issue these kind of backdoor regulations. We urge the committee to look closely at the language to see if the loophole can be closed.

C. STRENGTHEN LANGUAGE ON COURT DEADLINES

We fully support the thrust of section 4(b) that applies the moratorium to regulations required by court order.

We urge you to look carefully at the current draft to make sure that you have anticipated questions about the Constitution's separation of powers between the legislative and judicial branches. While Congress certainly has the ability to amend an underlying statute, questions could be raised about the ability of the Congress to act directly to extend a judicial decree.

We have provided draft language to the committee staff that addresses this problem by applying the extension to the underlying statute relied on by the court, rather than on the court's order itself.

IV. CONCLUSION

ATA supports H.R. 450 which would freeze promulgation and implementation of federal regulations until July 1 and extend deadlines for five months. We encourage the Congress to move swiftly on this legislation. We also urge you to close loopholes in the legislation and to strengthen the language on court deadlines.

Let me underscore a point I made at the outset. If you do nothing else this year, enact the moratorium followed by all the planks pertaining to regulation contained in the Contract with America. This would be far more significant than any tax cut because it would permanently change the relationship between government and business. Change that relationship, and you will trigger an explosion of economic opportunity for Americans without compromising health or safety.

That would be a real revolution.

Thank you for the opportunity to testify. I would be pleased to answer any questions.

Mr. MCINTOSH. Next I would ask Mr. Garner to present his testimony.

Mr. GARNER. Good afternoon. I am Vernon Garner, president of Garner Trucking, Inc., headquartered outside Findlay, OH. Garner Trucking is a small, family owned truckload carrier founded in 1960 by my wife and myself. Last year, our company operated 85 company trucks and had revenues of $9.7 million.

I support a moratorium on Federal regulations because I want Congress to take a look at what existing laws and regulations have done to businessmen like myself. I hope you will be able to stop new rules long enough to find a way to bring some sanity to the compliance costs we already face. Here are a few examples of what I mean.

First, under the Clean Air Act the Federal Environmental Protection Agency is regulating the rain that falls on my property. The specific burdens under these rules depend on whether EPA is doing the regulating directly or have turned the job over to State agencies as in Ohio. In my case, in 1991, I had to dig a pond for my main terminal grounds at a cost of $85,000 to capture the storm water that runs off my trucks and parking areas. Annual maintenance costs come to $7,500. It was predicted the pond wouldn't flood more than once in 100 years. We used the environmental engineers, and the pond was constructed to their specifications. In the

first 10 months it had already flooded twice; so, obviously, it released anything that was in the pond into the neighboring farmer's field. So, with that, we didn't have to test the pond anymore because testing was not necessary because the thing floods. The pond is not completely useless though because we do allow our volunteer local fire department to use it for fires in our area, being that we are out in the township.

It is not as if I had been pouring oil all over the ground before that. In 1989, we installed an oil/water separator with a complete overhead roof enclosure. In addition, we connected all maintenance shop drains to a separator at a cost of $126,000 to prevent any spills, leaks, or unknown disasters that might happen from causing harm to the environment. That system costs roughly $6,000 a year to maintain.

Second, the Resource Conservation and Recovery Act has let the Federal and Ohio EPA make it prohibitively expensive to keep using the nine underground storage tanks that I had at various terminals. Last year, I had to either install monitoring wells and make the tanks corrosion-resistant, which was much too costly for the volume of fuel that we use, so obviously I had to dig them up. I could have probably done that job with my own people using our equipment for around $14,000, but I was required to use a certified contractor to dig them up, dispose of them, test the soil under a State inspector's supervision and fill the holes with the right kind of clean dirt. The bill came to approximately $14,000 for each tank. By the way, not one tank was found to have leaked a drop. If I have time later, I would like to give how I think this should be handled.

I replaced the tank in my main terminal with an above-ground tank, which I had to surround with a concrete wall—a dike in other words. Before, I was getting truckload deliveries of fuel, which gave me a volume discount compared to less than truckload deliveries or purchases at truck stops. But the State fire marshal said I couldn't install an above-ground tank big enough to store a full truckload because I am 4 miles beyond the city water lines and supposedly didn't have an adequate water supply, even though I have just installed a pond that the fire brigade finds adequate for fire fighting.

So now I have spent $126,000, destroyed nine tanks that were not leaking, plus $10,000 to build an above-ground tank that is smaller than I want, plus $5,000 to build a dike around the tank. In addition, I now pay an additional $25,000 a year more for fuel at my main terminal because I have to pay the higher less-than-truckload price, and I pay $30,000 a year more for fuel on the road than I was paying to fuel my trucks at my own other terminals.

I realize these costs are not all direct results of Federal regulations. But because of how EPA has either implemented these two laws directly or allowed Ohio to enforce them, I have incurred one-time costs of $352,000 and annual costs of $68,500 at no benefit to myself or anyone else except the local fire department and a few ducks and geese.

My final example came about as a result of the Clean Air Act regulations. In October 1993, EPA required all trucking companies to start using low-sulphur diesel fuel. This conversion cost us un-

told dollars and downtime during the severe cold weather snap in January 1994. Even with additives, the low-sulphur diesel would not allow our engines to operate. We had 10 units that had injector pump failures at the cost of approximately $500 per pump—plus lost revenue to downtime.

Perhaps I could understand the need for this if I had been in violation or something, but I have never been cited for any environmental offense. I have already put a lot of money into equipment, recordkeeping and training to comply with environmental rules.

I just want to know, when is it going to stop? I hope the answer is, as soon as this bill passes.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Garner.

Now I would like to introduce a friend to all of us here, Mr. John Motley with NFIB. Welcome.

Mr. MOTLEY. For the record, I am John Motley, vice president of Governmental Affairs for the National Federation of Independent Business, NFIB. And on behalf of our 600,000 members across the country I want to thank you for the opportunity to appear today to testify on the subjects of regulatory reform and, in particular, on H.R. 450, the Regulatory Transition Act of 1995, which would impose a moratorium on government regulations or issuing of government regulations until June of this year.

If I can, I will submit my testimony for the record and summarize it.

With me today is Sal Risalvato, who is the owner of Riverdale Texaco, who will testify after me as to the impact of government regulation on his individual business.

Government regulations, rules, red tape and paperwork are the bane of small business owners across this country. They are a hidden tax that makes it much more difficult to start a small business but, probably even more important than that, for the small business to survive for its first one or two critical years in operation.

In a study done by the NFIB Foundation called "New Business in America" and released 3 or 4 years ago, the one thing that was surprising was that most small business owners didn't understand the impact of government rules, regulations and red tape; and they were very unprepared to deal with it; and it was a major cause of their failure during their first 2 years of operation.

Government regulation has been the major focus of the 1980 and 1986 White House conferences on small business, and it is showing up as a major problem in the recommendations coming from State meetings from the 1995 five White House conference on small business.

After the 1980 White House conference on small business, Congress enacted the Regulatory Flexibility Act to help small firms deal with government regulations and also the Paperwork Reduction Act, two of the high recommendations which came out of that conference.

Tom Gray, the former Chief Economist for the U.S. Small Business Administration, estimated that the cost of government regulation to the American economy was over $1 trillion a year. The direct costs to the business community have been estimated between $500 billion and $800 billion a year. And the administration's own

National Performance Review put the cost to the private sector at $430 billion or 9 percent of GDP.

In our study, Problems and Priorities, in which we asked small businesses to prioritize 75 leading problems for small businesses, which was released in 1992, government regulation was No. 8, government paperwork was No. 11.

And in another publication of our foundation called Small Business Economic Trends, which is a monthly publication, taxes and regulation have fought back and forth over the last year for the No. 1 and the No. 2 spot. So it is a major problem.

Small business owners, we believe, bear a much heavier burden than anybody else in society because regulation is a fixed cost of doing business. Therefore, the same amount or the same cost of regulation spread over the smaller resources or the smaller output of small businesses is a much larger proportion of their bottom line and, therefore, much more difficult for them to deal with.

Small business is simply not equipped, because they don't have the resources; they don't have the lawyers; they don't have the accountants; and they don't have the people to read the regulation or to fill in the paperwork and send it in to the Federal Government. That is why NFIB strongly supports H.R. 450, which imposes a moratorium until the end of June. In fact, we would like to see the moratorium imposed even longer.

It is like a tourniquet. It stops the bleeding of increased costs imposed on the business community. And, too, it sends a very important signal we believe to small business owners across the United States that Congress is finally serious about dealing with the problem of overregulation of the business community.

They will understand it. They may not understand the standards or judicial review or risk assessment or regulatory budgets, but the one thing that they will understand is a moratorium, and we urge you if you possibly can to make the moratorium even longer.

NFIB members also enthusiastically support the entire regulatory reform agenda that is contained in the Contract with America and the Job Creation and Wage Enhancement Act. Specifically, we are very much in favor of the judicial review provisions being added to the Regulatory Flexibility Act.

Agencies have ignored or played very loosely with the small business impact analyses which are required under the act which leaves small business owners no recourse. Therefore, we need to have the right to challenge those analyses in court so that we can prevent some of the overregulation which has taken place.

We also strongly support the reauthorization and the strengthening of the Paper Reduction Act. Paperwork follows regulation like night follows day. If you have a regulation you need the statistics gathered by the paperwork to implement the regulation. And one is just as important as the other to small business owners. Therefore, we would suggest that you put in the Paperwork Reduction Act that paperwork should be reduced to 10 percent a year for 5 years, which is a 50 percent reduction overall, and that then you impose a paperwork budget on new issuances of paperwork out of Federal regulations, and make it a zero sum game.

If you are going to add a new regulation, take one away somewhere. I don't think you will have difficulty finding where to take it away.

We also strongly urge that you include third-party paperwork in the strengthening of the Paperwork Reduction Act.

Let me conclude, Mr. Chairman, by saying, the way NFIB views regulatory reform, our hope is that the regulatory reform effort goes in in three tiers. No. 1, is the moratorium, which will send the signal that small business owners are looking for that we are finally serious about dealing with these problems. Two, the systemic reforms that are needed—risk assessment, judicial review, possibly even sunsetting regulations every 3 to 5 years so that we take the old ones that are not needed any longer off the books. And, finally, a review of all the current laws that are out there and the regulations which may very well be causing damage and are not needed any longer.

We, like the truckers, look forward to working with you as you perfect this legislation in the future and as you approach the larger regulatory agenda. Thank you.

Mr. MCINTOSH. Thank you.

[The prepared statement of Mr. Motley follows:]

PREPARED STATEMENT OF JOHN J. MOTLEY III, VICE PRESIDENT, FEDERAL GOVERNMENTAL RELATIONS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS [NFIB]

Mr. Chairman, my name is John Motley and I am the Vice President of Federal Governmental Relations for the National Federation of Independent Business (NFIB). NFIB is the nation's largest small business advocacy organization, representing more than 600,000 small business owners in all 50 states and the District of Columbia. The typical NFIB member employs five people and grosses $250,000 in annual sales. NFIB's membership mirrors the nation's industry breakdown with a majority of its members in the service and retail sectors.

I want to thank you Mr. Chairman and the subcommittee for having me here today to discuss one of the most frustrating and aggravating problems facing small business owners today—government paperwork, red tape and regulation. But before I go into the horrors of regulation, it is important for the subcommittee to understand the composition of the business community and some demographics of small business owners.

First it is important to look at the business community as a whole. One inaccurate perception in this country is that all business is big business. This is not correct. There are five million employers in the United States today. Of those five million, 60 percent of them employ 4 employees or fewer and 94 percent employ fewer than 50 employees. These figures illustrate a fact that is typically lost during debates on the impact of certain legislation and regulations—small business by pure volume dominates this country's economic engine.

Another misleading perception is that a small business is a smaller version of a big business. Nothing could be further from the truth. For example, one-half of small business owners start their business with less than $20,000, most of which is from personal or family savings. Most small business owners do not make a lot of money (40 percent earn less than $40,000); they survive on cash flow not profitability. Start-up small businesses are the most vulnerable. Of the 800,000 to 900,000 businesses that start each year, half will be out of business within five years. Many small business owners will tell you that the burden of regulation has much to do with whether they survive or perish. While it is rough going at the start, the small businesses that do make it are the major job generators in this country. From 1988 to 1990 small business with fewer than 20 employees accounted for 4.1 million net new jobs, while large firms with more than 500 employees lost 501,000 net jobs.

Many in Washington have a consensus on a great number of issues facing this country. There is growing bipartisan agreement about a phenomena that is taking place in America's small business sector—the burden created by federal regulation falls predominantly and disproportionately on the very people who we rely upon to create jobs, small business owners. To that end, I would like to focus on four topics

today. First, I will describe to the subcommittee the frustration of dealing with regulations. Second, I will explain why NFIB believes a regulatory moratorium is the right policy to adopt in the beginning of the 104th Congress. Third, I will discuss broader efforts to accomplish regulatory reform that NFIB has supported for years, many of which are part of the Contract with America. And finally, I will share with you NFIB's reasons why outdated laws and regulations need to be reviewed and changed.

THE COSTS AND HORRORS OF REGULATIONS

Small business owners across this country are being trampled by the costs and burdens associated with regulations. The evidence is abundant and also easily convincing. NFIB has gathered it from our own research, others in Washington researching this issue, and most importantly from individual members who are struggling to comply with the federal government's web of regulations.

The NFIB Education Foundation, NFIB's research arm, published in 1992 an extensive survey entitled "Small Business Problems and Priorities". It looked at and ranked the top 75 problems facing small business. And to the surprise of many, problems relating to regulation and government paperwork were the fastest rising area of concern in the entire survey. In the most recent data available from the NFIB Education Foundation's monthly "Small Business Economic Trends," taxes and regulations were the top problems facing small businesses in America.

Another NFIB Education Foundation study ("New Business in America") clearly illustrates the impact regulations have on new businesses, which create about one-third of the new jobs in the economy. The study found that of all the challenges faced by a new business, owners are least prepared to deal with government regulations and red tape, and are generally surprised by the extent to which government plays a role in their business.

When looking at the data it is easy to see why regulations are the fastest growing concern to small business owners. The dead-weight loss to society from regulation is estimated to be more than $1 trillion dollars per year. By dead-weight I mean that the losses due to regulation exceed the benefits of the regulation by more than $1 trillion per year.

According to studies done by Thomas Hopkins of the Rochester Institute of Technology, and William G. Laffer, III and Nancy Bord of the Heritage Foundation, the direct costs of regulatory compliance to businesses that are associated with regulatory compliance are somewhere in the range of $500 billion to $800 billion dollars. The current Administration pointed out in its National Performance Review that the compliance cost imposed by federal regulations on the private sector were at least $430 billion per year or 9 percent of GDP.

Complying with regulations costs our economy dearly. The hidden tax of complying with regulation is no less a tax than any other government levy. And when it comes to businesses, this hidden tax is regressive; it hits the "little guy" the hardest.

There are several reasons why smaller businesses bear a heavier regulatory burden than larger businesses. One reason has to do with the fixed cost aspect of regulation. Almost all regulations have some fixed costs. Fixed costs are independent of output, i.e., any company affected by the regulation pays the same fixed cost. An example of fixed costs would be a requirement that every firm complete a lengthy quarterly report submission to a regulatory agency. It would cost every firm the same amount to complete the report. But larger firms can spread the fixed costs over large quantities of output. The average fixed cost or fixed cost per unit of output is low, therefore, and it has only a small effect on price. The smaller company with the same fixed cost, but lower levels of output, has a much higher fixed cost per unit of output. If the smaller firm passes the cost on to the consumer by raising prices, fewer will buy the product at the higher price and profits will fall.

This is a technical explanation, but simply put, small business because of economies of scale is not equipped to deal with federal regulations. Walk into any small business and look for the accounting department, the legal counsel, or the human resources division. You will not find them.

Unfortunately, the case I just made has never been understood by bureaucrats. The avalanche of regulation continues to pummel the small business owner. Case in point, there were 64,914 pages in the Federal Register in 1994, this is compared to 44,812 pages in 1986—an increase of 20,102 pages. Just remember how small the print is on each page of the Federal Register and one can begin to conceptualize the burden of the regulatory avalanche.

The letters we receive from NFIB members speak louder than statistics. For example, a small construction company inquired about bidding on a small remodeling project at a post office in South Dakota. The owner says he received 34 pages of

plans, 400 pages of building specs and a 100 page book of bidding instructions. Of these instructions, this small business owner wrote in a letter to the U.S. Postmaster, "If [your] goal is to discourage prospective bidders, I'm sure [you have been] successful."

Then there is the woman from Connecticut who used her and her husband's family savings to open a small manufacturing business. She says, "While these regulations start out with good intentions, the end result is that many become confusing and too onerous for a small business owner like myself to deal with effectively. As a result, the employees also suffer. The money we spend simply trying to comply with these rules could be better spent on the growth of our business, creating more jobs and benefitting our current employees."

As an example she points to certain OSHA rules. "There's the lockout/tagout requirement that needs a manual to basically say if a machine is not functioning properly, turn it off, pull the plug and make sure nobody else uses it until it's fixed. Of course, in a small shop like ours, with few machines, everyone knows when a machine is broken, and the machine is fixed immediately or we can't produce. There is the Material Safety Data Sheets, which is a listing for various types of hazardous materials which must be kept track of. Yet, after some searching, I am still unable to find someone knowledgeable on these substances and where they are found exactly."

Then there is the small business owner who is confused by immigration forms [I–9].—She writes, "It reads something like a Chinese food menu."

Yet another example is the woman small business owner from Florida who comments on small business's inability to secure financing because of government regulation, ". . . red tape or paperwork is the single biggest obstacle in securing small business financing today. Business owners are often totally discouraged and disgusted with the amount of paperwork required for lines of credit, small business loans, home equity loans, etc. And the costs involved in closing a loan due to regulations that must be enforced are staggering. Commercial appraisals have risen from approximately $1,000 to $2,500. Documentary preparation fees have risen from $0 to $250. A recent small business loan of $300,000 secured by real estate had closing costs of a whopping $8,600 or 2.9% of the loan value—all attributable to new regulatory guidelines."

Finally, a small business owner from Maryland illustrates what is wrong with the system, he states; "Under current operating rules, OSHA representatives cannot consult or advise us—if they come on our job sites they can only write citations. You must certainly understand that this engenders an 'us vs. them' mentality if we are visited." He goes on to explain, "Currently, even the smallest error in safety can result in an expensive fine or many hours of letter writing, meetings, lawyers and management hours expended. This is so because in the present context OSHA has admitted that the penalty structure is designed not to improve safety but rather to raise revenue."

NEED FOR REGULATORY MORATORIUM

There are many things that can be done to ease the burden of regulations on the backs of small businesses. A great place to start, would be a regulatory moratorium. It would stop the bleeding and allow the federal government to take a step back and look at what is really necessary and what is not.

NFIB strongly supports the efforts of you, Mr. Chairman, and your colleague, Congressman Tom DeLay to pass H.R. 450, The Regulatory Transition Act of 1995. You are to be commended for your efforts to craft legislation that will allow the government to stop the steady flow of new rules that frustrate small business owners, while at the same time allow the promulgation of needed regulations to continue.

Under H.R. 450, a regulatory moratorium would be imposed, beginning November 9, 1994 and ending June 30, 1995, on new rule making actions by the federal government. The President would be required to publish a list of all regulatory rule making actions covered by the moratorium 30 days after the date of enactment.

Many onerous regulations that could harm small business would be put on hold and have to be reevaluated. Examples of these include three from OSHA alone; its efforts to regulate indoor air quality, seatbelt use and repetitive motion injuries (Ergonomics). And one potential regulation that could be held up regards a proposed rule to require certain fish from Mexico to retain heads and tails intact in order to protect the endangered Totoaba.

The Ergonomics regulation would require a written plan from employers on how to best guard their employees from incurring repetitive motion injuries. Employers may also have to go as far as changing certain work stations and assembly lines.

A recent article in the Washington Post described this as ". . . one of the broadest health and safety regulations in modern government history . . ."

The opponents of H.R. 450 paint this as a draconian tactic to stop the government from meeting its responsibilities under the law. They portray its effect as harmful to public health and safety. That's not H.R. 450's intent. It's meant to stop the bleeding and force the regulators to step back and reevaluate the impact of their actions on small business owners and over other regulated, frustrated citizens.

Much thought and effort went into drafting H.R. 450. It exempts certain needed regulations from the overall moratorium, including any rule that would streamline or reduce regulatory or administrative action, as well as license and registration approvals.

More importantly, H.R. 450, allows for "Emergency Exceptions; Exclusions". In other words, "Exceptions" could be granted in response to written requests from agency heads via Executive Order by the President because of an "imminent threat to health or safety or other emergency" or "for the enforcement of criminal laws." Surely, this allows government to continue to operate to protect the public welfare.

These "Emergency Exceptions; Exclusions" are important to small businesses as well. Indeed some regulation is required. Small business owners care about the environment in which they do business. The land that surrounds them is part of their community and their employees are like family, so their health and safety is a top priority. And it is more than just their personal relationship with their employees that motivates their actions. As one small business owner from Maryland said, "Put bluntly, the market place demands a safe workplace. You cannot afford to do otherwise."

H.R. 450, the regulatory moratorium, is the first big step needed to reduce the growing impact of regulation on small business owners.

BEYOND THE MORATORIUM: THE NEED FOR BROAD REGULATORY PROCESS REFORM

There are many other reforms that would help reduce the impact of the regulatory burden. Many of the reforms that NFIB has been fighting for are included in the Contract with America. NFIB supports all of the reforms outlined in the Contract with America, particularly the ones allowing for judicial review in the Regulatory Flexibility Act and the strengthening of the Paperwork Reduction Act.

The Small Business Regulatory Flexibility Act was enacted in 1980 to help ease the regressive impact of "one-size-fits-all" regulations on small business. It was intended to force regulators to consider the differences between big and small businesses. Unfortunately, the Regulatory Flexibility Act doesn't work because there is no way to challenge the compliance of the regulators.

Under the law, regulators are supposed to analyze the impact of the regulations they produce on small business. Unfortunately, many bureaucrats ignore this provision because they know it cannot be challenged in court. In other words, the law lacks judicial review. With a judicial review provision an agency that failed to adequately consider the economic impact of a regulation on small business could be challenged in court. Judicial review would make agencies think twice when they try to exploit loopholes in the Regulatory Flexibility Act.

Under Congressman Tom Ewing's and Senator Malcolm Wallop's leadership, the 103rd Congress overwhelmingly approved judicial review to the Regulatory Flexibility Act. Unfortunately, the Competitiveness Act, which was the vehicle for this needed reform, never made it to the President's desk. Still, during the debate on judicial review, the Administration went on the record in favor of this reform.

In this new Congress, we are hopeful the President will live up to the tone he set in his letter to the Senate last year. In that letter, he stated "my Administration will continue to work with Congress and the small business community next year [1995] for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute." His support for strong judicial review was also relayed in letters sent by the Small Business Administration Administrator, Phil Lader and by the President's Chief of Staff, Leon Panetta. NFIB is committed to ensuring small business owners receive strong and effective judicial review under the Regulatory Flexibility Act and look forward to the President signing a bill into law that will accomplish this.

As for the Paperwork Reduction Act (PRA), let me start by making one thing clear—paperwork is regulation and regulation is paperwork. This Act enacted in 1980 like the Regulatory Flexibility Act, addresses the problem of growing paperwork burdens. The law created within OMB the Office of Information and Regulatory Affairs (OIRA) to review and approve—or, if too burdensome or unnecessary, disapprove—all paperwork requests agencies want to impose on the American peo-

ple. However, because of a dispute between Members of Congress over the scope of its role, this paperwork reduction office has not been reauthorized since 1989.

The law was further weakened by a Supreme Court decision, *Dole* v. *United Steelworkers,* which exempted from review any government forms that do not have to be returned to the federal government (such as I–9 forms). The third party requirements account for about one-third of all paperwork requirements. There has also been a problem with agency noncompliance with the Act.

Lengthy negotiations in both Houses of Congress finally produced a compromise reauthorization bill last year. It would have reasserted a central role for OIRA to act as the government's clearinghouse for paperwork and overturned *Dole* v. *United Steelworkers.*

This year NFIB hopes Congress will go even further to control and reduce the avoidance of government paperwork burying small business owners. First, government paperwork demands on small business need to be reduced by 10 percent per year. After five years of 10 percent reductions—an overall 50 percent cut back—we need to impose a paperwork budget. The only way government would be allowed to create new paperwork requirements would be to eliminate existing requirements—quite simply, a zero sum game.

Beyond these two very important regulatory reforms there are many others that should be considered. For example, Congress should strengthen private property rights protections and restrict takings. With federal land regulation continuing to increase, small business property owners are increasingly denied the use of their land by government enforcement of environmental laws. The language of the U.S. Constitution's Fifth Amendment must be reaffirmed: The federal government may not "take" private land without paying the owner fair market value. In a recent NFIB "Mandate Ballot", 81 percent of NFIB members said landowners should be compensated when federal actions' reduce the value of property.

Another effective tool in the war against excessive regulation is requiring federal regulators to use risk assessment/cost benefit analysis or a regulatory impact analysis when writing their rules. The federal government often implements new laws and regulations without any thought or recognition of the costs imposed on local businesses and jobs. Congress must ensure that no new requirements are put on the books unless the benefits clearly outweigh the costs of the action and there should be a clear understanding of what the nation is getting in return. NFIB believes that any new laws or regulations must provide benefits that outweigh costs and that the methods used to calculate the impact are reasonable and responsible. Moreover, NFIB members overwhelmingly support the concept of a regulatory impact analysis that is included in the Contract with America.

One way to get a grip on the skyrocketing costs of regulations is to establish a regulatory budget. A regulatory budget should be established that would require federal agencies to disclose the costs their regulations will impose on both businesses and individuals. NFIB strongly supports the proposal in the Contract with America that ensures that the growth and cost of regulation is curtailed.

Finally, agencies should be required to sunset regulations every five years. The federal government has on its books a large number of regulations that have long since outlived their effectiveness. Regulations should not have a life of their own. A requirement to sunset and reauthorize all government regulations would force Congress and agencies to review each program's merits and effectiveness before it can be reestablished.

NEED FOR REVIEW OF CURRENT LAWS

Many of the regulations and paperwork requirements that have frustrated small business owners come from laws which are dated and need to be reviewed, or by laws that simply restrict small business owners for no good purpose. One simple way for Congress to ease the regulatory burden is for it to review and even rewrite laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), the Americans With Disabilities Act (ADA) and Superfund, to name just a few.

For example, the FLSA is one of the worst in terms of the paperwork regulation it imposes on small employers. NFIB continuously hears complaints from our members regarding wage and hour reporting requirements. The administrative and paperwork burdens caused by this law should be reduced so that small employers can comply more effectively and avoid costly mistakes that could shut down their businesses.

In many ways the FLSA does not work well in the small business workplace of the 90's. One particular regulation that has come from the Department of Labor (DOL) called the "pay docking rule" limits an employer's flexibility within the work-

place. The "pay docking rule" prevents an employer from giving managerial and professional employees leave for less than a day unless unlimited paid leave is provided for such absences. If the employer provides unpaid leave on a partial day basis, all of the employees, including those who never take such leave, lose their exemption under federal wage and hour laws and must be paid overtime. This effectively prevents many employers from providing any partial day leave to their employees. In a workforce that is increasingly comprised of working parents and employees who care for their parents, employers face growing pressures to provide flexible leave policies to allow employees to meet their personal family needs.

To make things worse, very few employers have been aware of this policy because it is not clearly stated in any Labor Department regulation. At the same time, DOL is demanding that businesses who violated this unwritten rule pay time and a half overtime to salaried employees. The potential liability in the private sector for such back pay awards has been estimated by the Employment Policy Foundation to be as high as $39 billion.

Another example of how the FLSA is outdated is the overtime requirements it imposes. Unlike public sector employers, private sector employers may only provide extra financial compensation to employees for overtime work. To many employees, additional time off is at least as valuable as extra money. Yet, the law prohibits employers from offering time-and-a-half compensatory time instead of time-and-a-half monetary premiums. NFIB believes that Congress needs to fix this dated regulation that restricts both employer and employee.

A final example is the vagueness of the FLSA in defining employee exemptions. Small business owners can face massive liability for overtime payments to well-compensated employees because of uncertainties regarding which employees fall within the "white collar" exemption. Vague rules defining the "duties" those employees must perform and how their salary must be paid are causing employers to cease paying employees fixed salaries and instead shifting them to hourly employees whose income is dependent upon the amount of overtime worked.

All of the laws mentioned have examples of regulations that are not small business friendly or sensitive. They, and a host of other old statues, need to be reviewed and rewritten where needed.

CONCLUSION

Mr. Chairman, NFIB small business owners spoke loudly on November 8. Their message to Washington was plain and simple—get government off our backs, out of our pockets, and off our land so we can do what we do best: build businesses, create jobs, provide for our families and make meaningful and constructive contributions.

A regulatory moratorium, H.R. 450, is a great place to start to help them. But please do not stop there. I strongly urge this subcommittee to act quickly on the regulatory reforms in the Contract with America and those that I have outlined that move beyond it.

The regulatory situation for small business is approaching crisis proportion. More and more small businesses are being literally overwhelmed by regulations. I have given you the horrifying statistics on the out of control regulatory freight train. Please do not let this train wreck another small business and keep it from being the engine of our economy.

Thank you Mr. Chairman for allowing me to testify today on behalf of NFIB's 600,000 small business owners. I thank you for the work you have done in this area already and I thank you in advance for your leadership on this issue in the 104th Congress.

Mr. MCINTOSH. Now let us turn to Mr. Risalvato.

We appreciate your coming. As I was looking through your prepared remarks I am looking forward to hearing your saga of you and your brother, Vinnie, against the Federal regulators. Please share with us your experiences.

Mr. RISALVATO. Vinnie is back holding down the fort now.

Thank you for having me because some of these things have frustrated me for a number of years, and it feels good to be able to come to Washington and tell somebody what I think. I will be as polite as possible. In fact I will be very polite.

I am Sal Risalvato. I own Riverdale Texaco. I am a long-time member of the National Federation of Independent Business, and

I thank you for having me here. I would like to make three points, and I will try to be brief.

I would like, first, for you to know what regulation has cost me in actual dollars. Then I would like you to know the benefit that has been lost to me personally, from an economic point of view, to employees and potential employees and to what I think is actually the economy on a whole. Because, certainly, I am a small portion of the economy, but if you multiply me a number of times the net effect has to be a positive one in the economy.

I would also like you to understand how a small businessperson can make what is a seemingly intelligent business decision and have it be rendered an absolutely stupid one by unforeseen government regulations.

I will start by telling you that I am in the service station business since 1978. In 1986, the first location that I owned I lost because of the real estate boom of the 1980's. It became too valuable to be operated as a service station, and the landlord evicted me. I was left virtually broke since my business that I had been trying to pay the bank off for 9 years I no longer had. I had accumulated a few dollars and was determined to get back into business with my brother as my partner. We searched for a location for over a year, determined to find our own property so that we could never be evicted again.

In the 1980's, environmental concerns were starting to rise, so we had to be certain to find a location that would make us comfortable environmentally. We purchased a location that had brand-new tanks with 30-year guarantees installed a year prior to our purchase. That seemed like a real good decision under the circumstances of environmental concerns. In fact, we paid a premium for that because those tanks were so new.

Well, the Federal Government started to get involved and out came all these new tank regulations, and they started to put these burdens on our Department of Environmental Protection to administer them. And within 5 years I wound up spending about $95,000 to make adjustments to the new tanks that were installed when I bought the property.

In fact, at one point we had to pull pipe out of the ground that looked like it was put in the day before. It was sparkling, brand-new. I almost cried. And we had to replace it with what I feel is inferior to what was there, a double-walled fiberglass pipe. That money is spent. That is gone.

But I have to tell you that right now the Federal Government has a shotgun pointed right at the Governor of the State of New Jersey. She is sitting in her office. It is pointed at her, loaded, ready to go. Because the Federal Government has asked our Department of Environmental Protection to come up with a new inspection program to test emissions, and if the State of New Jersey doesn't comply we are going to lose $217 million on that day that the Department of Transportation is going to take away from us. So the Governor is in a real bad spot.

One of the things that this regulation is going to do, it is going to make me have to purchase equipment that will at the least cost $35,000 and has been estimated to be as high as $100,000.

The emissions equipment that I have now, gentlemen, tests emissions quite well. It will tell you if the car that you are testing is polluting the air or not. There is no need for any of these new regulations. We are doing very well in the State of New Jersey testing emissions; and, in fact, we have the best auto inspection system in the Nation because we also do a safety check that is second to none.

So right now the State is being faced with losing its safety inspection program because of the time that it is going to take to inspect a car just on the new emissions system alone. The State is going to have to invest millions of dollars. We are going to test the cars now every 2 years instead of every year because of the length of time it is going to take to inspect cars and the amount of private centers like myself that currently do inspections that will probably drop out of the program because they will be unable to afford the equipment.

So the number of cars that are going to need to be inspected is going to be so great that they are going to do inspections once every 2 years instead of every year. It doesn't make sense.

I would like to tell you the benefit that the economy would have if the government had not imposed any of these regulations. A quick calculation of the numbers adds up to $135,000—to $200,000.

When I bought my location, one of the reasons that we bought it was we looked at some potential. We had every intention of adding on at least three service bays, an employee room, some office space. We have been unable to do that because of the money that we have needed to put into environmental regulations that I feel have been totally unnecessary. The employment that we would have right now would be at least four full-time workers more, and that has to be a plus to the economy.

So these are the kinds of things that your committee needs to look at when addressing regulatory reform. And, as John said, 6 months is really not much. This needs to be looked at and needs to go further than 6 months.

Mr. MCINTOSH. Thank you very much. I appreciate your testimony and coming here today to share that with us.

[The prepared statement of Mr. Risalvato follows:]

PREPARED STATEMENT OF SAL RISALVATO, OWNER, RIVERDALE TEXACO, RIVERDALE, NJ

Good afternoon. I am Sal Risalvato, owner of Riverdale Texaco, a gasoline service station in Morris County New Jersey. I have been in the service station business since 1978 and have been affected by many Government regulations. These regulations have touched every aspect of my business from the sale of petroleum products to the service we provide in our repair shop.

Thank you for allowing me the opportunity to explain to you about the need and the effect of regulatory reform. Although we are here today to discuss only a moratorium on any regulatory rule making, the net result may be to alter future burdensome regulations. I would like to accomplish two things. First I would like to tell you about the most costly regulations Congress imposed on me and the negative effects they have had on me. Second I would like to describe to you a positive scenario that would likely exist if these regulations had not been imposed upon me. I would also like to point out to you how a decision that seems intelligent at any point in time, can be rendered a stupid one, by government regulatory curve balls, that can not be detected with anything less than a crystal ball.

In 1986 the service station that I had been leasing for the previous eight years was lost to the real estate boom of the 80's. My lease was up with the landlord and the property was too valuable to remain as a service station and the owner evicted

me and built a group of retail stores. I lost my business. I spent the next year along with my brother Vinny, who had become my partner, looking for a suitable and affordable location. Of course there wasn't any way I was going to lease again. After looking at over 100 locations in northern New Jersey, my brother and I finally found a location that met our requirements. Due to rising environmental concerns, one of our most stringent requirements was that the integrity of the underground storage tanks at any location we investigated must not be compromised. Making what seemed to be an intelligent decision, we purchased a location that had new underground tanks installed one year prior to our purchase. We paid a premium price for the location because it had new tanks. Our crystal ball was not working correctly when we made that decision.

Within five years, unexpected government regulation altering the standards and requirements for underground storage tanks, picked my pocket for $95,000. Please keep in mind that after losing my business in 1986, I was left with virtually nothing. At the time I lost my business I still had six months left to pay on the note that I owed the bank when I purchased the business nine years earlier. When I purchased the second location in 1987, I had to borrow from family members and banks using my dad's home as collateral. Finding $95,000 in order to meet new EPA regulations was not going to be easy. Fortunately, between borrowing more money from family members, and funds advanced by Texaco in exchange for a supply contract, I obtained the money to meet the new government regulations. This really amounted to extortion, since I would not have been allowed to remain in business had I not met these requirements. In fact many service stations have been forced to close or have stopped selling gasoline simply because they could not find the capital necessary to meet the EPA requirements.

One would think that the EPA has inflicted enough pain and torture on my business. Not so. The new regulatory agenda is now attempting to blackmail me, my Governor, the motorists of my State, and my fellow service station owners in New Jersey.

The State of New Jersey probably has the best motor vehicle inspection system in the nation. Presently motorists must have their cars inspected on an annual basis by either a State Inspection facility or a licensed private repair facility such as mine. Vehicles are inspected for safety items such as brakes, lights, tires, and mirrors. Inspection of the vehicle emissions system are also conducted. Presently, New Jersey is faced with losing its inspection system because the regulators at the EPA are demanding a tougher emissions test be performed on all vehicles.

What does this mean? It means that in order to meet EPA requirements, the State of New Jersey will have to invest millions in new equipment at the State inspection facilities. It also means that if private facilities are to be permitted to continue performing inspections, they will have to invest in new equipment valued at $40,000 to $100,000. This decision making process has been in the making by EPA for the past two years and has paralyzed the decision making of the owners of private repair facilities. Once again, a faulty crystal ball that tries to unravel the logic of the bureaucrats and regulators could prove costly.

One concern of the State is the length of time it will take to perform the new type of inspection. So far, estimates of the time needed to fulfill EPA requirements, will cause far more lengthy lines at State run facilities. Also, due to the amount of time required to perform the emissions tests, the safety inspection that is the class or the nation will have to be eliminated.

Since there will obviously be a large number of private inspection facilities that will be unable to meet the capital requirements needed to purchase the new mandated equipment, more motorists will be forced to visit the State facilities, thereby lengthening the already longer lines. The net result is this. Motorists will be far more inconvenienced than they already are. They will be expected to pay more for an inspection, including inspections at the state lanes which are currently free. Their time and money will be rewarded with less value since now there will not be a safety inspection. Small businesses such as mine will be forced to either give up an important profit center, or make purchases of equipment that are virtually unaffordable. I am running out of family members that have any capital, and those family members that do have it are running out of it, always loaning it to me.

The new Governor of New Jersey, Christie Whitman, has been negotiating with EPA in order to lessen the burden on our State. Presently she is being forced to make a hasty decision because EPA is threatening to impose sanctions against the State. If the State does not adopt an inspection system that is suitable to EPA by February 2, 1995, then the Department of Transportation will withhold $217 million of Federal Highway funds.

Aside from the debate that is held trying to decide if the public interest is being served by any of these regulations, there is an awful lot of good that can be had

without them. Let's assume that the previous regulations regarding underground storage tanks were less stringent. Let's also assume that the current threat of EPA regulations governing motor vehicle inspections are eliminated. A quick calculation gives my business between $135,000 and $195,000 to expand. Make no mistake about it, when we purchased this location, our dream was to add on three or four service bays and a sales room, employee room, sufficient storage space, and sufficient office space. Presently, in order to utilize space inside the main building, our offices are housed in an office trailer on the side of my building. This has caused great stress with the municipal fathers, and twice in seven years we needed to receive temporary variances from the local Board of Adjustment in order to keep our office. Each time we appease the Board by promising to expand the existing building. We explain to them that if not for costly government regulation, we would already have had the expansion complete. Our most recent appearance before the Board was this past November. We received temporary and final approval for another two years. I did not have the courage to tell them the EPA was holding another gun to my head. I pray a lot.

If our physical facility was expanded to the size we wish, there would be employment for at least 3 more full time technicians, and 3 part time assistants. There would also be a position for at least 1 full time office person.

Please do not think that I have little regard for the environment. That would be false. I drink the same water and breathe the same air as everyone else. I have no desire to see the quality of either jeopardized. I do believe however, that the downside of burdensome regulation must be properly evaluated relative to any benefits that may be derived from it. I am convinced that in my case the bad effect has outweighed the benefits.

Mr. MCINTOSH. There was one other member of the panel who was not in the room at the time we started. If he is able to join us now to provide his testimony, we would include Mr. Earl Wright. He is the inventor of many items. One in particular has been subject to regulation by the Food and Drug Administration, and it would be important for him to share his experiences working with that agency.

Mr. EARL WRIGHT. Good afternoon. I am glad to be here. And, like Mr. Peterson said, sometimes I wonder why I am here giving the testimony.

I have my son, Grant, beside me. He is president of the corporation. I am going to take 2 minutes and turn the rest of my time over to him.

I am Hershel Wright, and I am 64 years of age. I was born in Decatur, IL, and have lived there all my life except two services in the U.S. Navy.

The last 30 years of my life have been spent inventing, developing and selling new products. When I developed my first product in 1963, I called the FDA, and they said, "Put it on the market, and maybe some day we will check it." That was the face powder made of microporous cellulose or, in other words, a corn cob. That product is still on the market today under the name of CornSilk.

When I invented the Sensor Pad—and for you gentlemen who have not seen this little thing, it is about as simple as you can get—it was never meant to be a medical device. It was meant to merely act as a replacement for soap and water for breast self-examination. In other words, self-examination is a result of reducing friction of the fingers over the surface that is being examined.

This, we tested, reduces the coefficient of friction more than water, more than soap. We have done studies to prove that this thing does improve sense of touch, even though we do not claim that or want to claim that. It was to get women to use an aid for breast examination, to get them to do the exam. Because the prob-

lem is the women don't do the exam. So that was the reason for the product to start with.

After spending $2.5 million on this product, our company today is broke, and we must face the reality of shutting the doors. We have spent hundreds of thousands of dollars doing studies, some of which the FDA requested and then ignored. We have also spent over $300,000 in legal fees to protect ourselves from the FDA in court. We don't object to running a study, another study, but we have been asked to run a study and a study and a study.

As you can see, we are not only financially broke—actually, our spirit is broken. I have served this U.S. Government as a young man. Today, it is my worst enemy.

Dr. Susan Alpert came on board recently at the FDA. She is a breath of fresh air, and I believe that she is making changes, but I think her hands are tied from making many of the changes that she herself would like to make.

But I am telling you today that we are only one of hundreds of small companies and inventors out there that have faced this same problem. It is not the regulation so much as many times it is the attitude of the enforcer. That is where the problem lies.

Are we scared to be here today? You are damn right we are. We are fearful of retaliation. We have seen it. It happens. But we came anyhow because maybe we can help someone else down the line and get this mess straightened out and get rid of these government regulations.

And I want to turn now to Grant. He told me it is enough.

[The prepared statement of Mr. Earl Wright follows:]

PREPARED STATEMENT OF HERSHEL EARL WRIGHT, VICE PRESIDENT, INVENTIVE PRODUCTS, INC., DECATUR, IL

Good morning. My name is Hershel Earl Wright. I am 64 years old and was born in Decatur, Illinois, where I have lived my entire life with the exception of being in the U.S. Navy twice.

The last 30 years of my life have been spent inventing, developing, and selling new products and it afforded me a very good living.

When I developed my first product in 1963, I called the FDA and they said, "Put it on the market and maybe someday we'll check it." That was the face powder made from corn cobs known today as CornSilk.

But, when I invented the the Sensor Pad—a very simple product—it started a nightmare I could not believe.

To begin with, I have never considered the Sensor Pad to be a medical device. It was merely a replacement for soap and water. It was meant to be used as an aid to get women to do breast self-examination by making it easier and more comfortable and helping them with the sense of touch.

But, after 10 years of struggle, this very simple, cost-effective product that could have helped saved lives is still not on the market.

And, after spending two-and-a-half-million dollars, our company today is broke; and we must face the reality of shutting the doors.

We have spent hundreds of thousands of dollars doing studies—some which the FDA requested. We have also spent over three-hundred-thousand dollars in legal fees to protect ourselves in court from the FDA. Now, they (the FDA) has asked for one more study. While we don't object to running a study—it could cost an additional three-hundred-thousand-dollars. As you can see, we are not only financially broke, but our spirit is broken as well. And, some days we wonder if our government isn't our worst enemy!

Dr. Susan Alpert who came on board recently at the FDA in charge of the Office of Device Evaluation has been very cooperative and very helpful. We have asked informally to be allowed to go to market while the study is being run. This could give us at least some hope and allow us to find additional money for the study. This could be the only hope for getting our product into the hands of American women.

But, I am here today to tell you we are only one of many who have the same problem.

I would like for my son Grant Wright, President of Inventive Products, to fill you in on some more details.

Mr. GRANT WRIGHT. Thank you.

I was somewhat reluctant to come here today, as I was not sure how our comments could help. But after 10 years I still believe what we are doing is right, and I think it is worth the effort. If our case will help shed some light on regulation and how it affects health care, a small company, the consumer and the industry, then I feel it is the least we can do to help.

I came here not to point fingers or place blame but to try to contribute to help make the system work better for everybody. Our product is a good example of how a good idea gets lost in the regulatory shuffle.

In FDA's 1976 amendments it requires that all products that are not substantially equivalent to a pre-enactment device automatically be classified as a class III device. A class III device is defined as the most stringent category reserved for devices that are life-supporting, life-sustaining or of substantial importance in preventing impairment of human health. Malfunction of such a device would pose a potential unreasonable risk of illness or injury to the patient. Manufacturers of devices assigned to class III—which we are—must therefore obtain premarket approval from the FDA before their devices can be entered into the marketplace. Less than 5 percent of every product in the market is required to undergo a PMA.

The first part of the problem I see is if less than 5 percent of everything that is in the market since 1976 is new where did we get all the new technology? It had to come from somewhere. Part of the problem has to do with the amendment calling for substantial equivalence, but a basketball can be a substantial equivalent to a house in that they are both used for recreation. It can also be not substantially equivalent in that one is round and one is square. It is a judgment call.

Mr. MCINTOSH. Thank you. If you could summarize, we could get into more details in the questioning.

Mr. GRANT WRIGHT. I think the bottom line is regulation is needed. The agency is out there and does a good job. The problem is, we have become overburdened.

Three things—it adversely affects us because, as a small company, you can't afford to fight the regulatory burden, the longer it takes to get; as a consumer, because it stifles innovation. New products don't get to market, and when they do get to market, which is why we are having the health care crisis, the cost goes up. Three, the medical industry—because, as I said earlier, most of the companies that are in it, and it is mostly small companies, can't afford the regulation. So they take the technology oversees. We are the last one to benefit from our own technology.

Something has to change. Like I said, I was very uncomfortable coming; but I think, at my age, I need to look; and if I can't contribute then something is wrong with the system.

Mr. MCINTOSH. Thank you. And you can indeed contribute. I appreciate you coming here today and being part of this.

[The prepared statement of Mr. Grant Wright follows:]

PREPARED STATEMENT OF GRANT A. WRIGHT, PRESIDENT, INVENTIVE PRODUCTS, INC., DECATUR, IL

I was somewhat reluctant to come here today as I was not really sure how our comments could help. However, after ten years, I still believe that what we are doing is worth the effort. And, if our case will help to shed light on regulation and how it is affecting our healthcare—as a small company, as consumers, and as an industry—then I feel it is the least I can do to help. I came here today not to point fingers or place blame, but to try to contribute and help make the system work better for everyone.

Our product is a good example of how a good idea gets lost in the regulatory shuffle. In FDA's 1976 amendments, it requires that all products not substantially equivalent to pre-enactment devices be automatically classified as Class III devices. According to the 1976 amendments, a Class III device is: "the most stringent category, reserved for devices that are life-supporting or life sustaining, or of substantial importance in preventing impairment of human health. Malfunction of such devices would pose a potential unreasonable risk of illness or injury to the patient. Manufacturers of devices assigned to Class III must, therefore, obtain premarket approvals from FDA before their devices may be introduced into interstate commerce." Less than five percent (5%) of all medical devices are placed in this category.

The first part of the problem is that with less than 5 percent of all medical devices today Class III requiring a PMA, how in the world did we get all the new technology? Part of the problem with the 1976 amendment is that substantial equivalance is subjectively decided. (A basketball can be decided to be substantially equivalent to a house since both are used for recreation! Or, they can also be decided to be not substantially equivalent because one is round and the other is square!)

Every medial group, including NIH, NCI, HHS, have recommended soap and water in the shower to reuce friction in BSE. This is what the Sensor Pad does. But, since there was no product to reduce friction for BSE prior to 1976, we were automaticlaly put in a Class III high risk category. This is a deterrent to developing new technology. It is not to say that some new technolgy shouldn't be Class III. However, to dump all new technology in Class III seems counter productive to innovation. And, since small companies produce the biggest part of new technology in the medical field, this is an extreme burden that seems unjustified for a product such as ours.

So, the bottom line is, some regulation is needed. However, over-burdensome regulation adversely affects all of us:

1—The small company, because, they just can't afford to fight the regulatory battle and the long time it takes to get approved.

2—The consumer, because innovation is stifled and new products don't get to the people who need them, and

3—The medical device industry, because many in the industry can't afford the increasing cost and scope of regulation in this country. So, new technology is lost, and so are the jobs and tax dollars that might be created.

There need to be changes to simplify the process as well as a renewed commitment to cooperation between the regulatory agencies and the medical device industry so everyone benefits—the public, the regulatory agencies, and the industry.

Mr. MCINTOSH. Let me, before I start my questioning, repeat my statement from my opening statement that if I hear of any instance where a Federal regulator has used their position to seek retribution against somebody that participates with this committee, I will use everything in the power of this committee and this Congress to make sure that person is held fully accountable.

It is an outrage that anyone who works for the U.S. Government would seek to abuse their power against an American citizen. Rest assured that you will receive full protection of this committee for participating in our hearing here today.

And you are not alone. Many other people have expressed that reservation in coming forward with their stories, and we are going to put an end to that. We have whistleblower legislation that will address it in a systematic way, but I will use the prerogatives of

this committee, to the fullest extent possible, to assure that doesn't happen.

Let me begin with Mr. Donohue. You had mentioned several areas of regulation that were problematic for your business. Let me repeat what you said because it came home personally to my wife and me when we were being moved from Washington after the 1992 elections.

The person who was moving us in their truck was not a big businessman. He and his wife owned the truck, and it was their only asset, and they spent tireless hours on the road moving us, and it truly was a family business. I asked what was your biggest headache, and they said that Federal regulations were the biggest concern.

One regulation you mentioned was OSHA's ergonomic regulation, and I wanted to check with you on what the nature of those burdens were, because that is one that would be affected by this moratorium.

Mr. DONOHUE. Thank you, Mr. Chairman. May I suggest to the members of the committee that they listen carefully to the answer because the first piece of business of this Congress was to place you under these same rules and regulations. I have often thought if OSHA goes into some of the congressional offices there will be a serious problem.

But in terms of the proposed regulations that OSHA has been considering in ergonomics there are two matters I would call to the committee's attention. One deals with repetitive motion injuries, which is something that has found its way not only into the concern of government but into the interest of lawyers. And you remember the injuries that people get using computer keyboards and carpal tunnel syndrome.

But what OSHA wants to say now is that a truck driver who moves a wheel of his truck like this is doing a repetitive motion; and, therefore, we have to look at another way to drive the trucks. One of our companies figured that in California alone if that regulation as discussed was passed it would cost them in excess of $3 billion to conform.

Now that is technical, so let me get to something that is not technical, that every member of the committee will appreciate. Under these discussed regulations no employee of any of our companies or may I say of the Congress now would be able to pick up anything by themselves that weighed more than 25 pounds. Mr. Chairman, I have had the occasion to see your briefcase and I know that it weighs more than 25 pounds on occasion.

Mr. MCINTOSH. It is all these regulations.

Mr. DONOHUE. That is right. We would have seen some of that regulation sooner—it is not formally issued yet—were it not for some of the actions taken during and at the conclusion of the election.

I am not saying that is a partisan issue. I am saying there was a focus on overregulation. I could go on for hours.

The rules that we have just heard discussed on the environmental area with storm water runoff and underground tanks, are well-intentioned, but the way they are implemented is in such a

way as if the small businesses had unlimited amounts of money to meet somebody's technical definition.

What regulation really needs to do, Mr. Chairman, is to be performance-based, not design-based. If it said we shall organize and design our trucks to minimize repetitive motion injuries, that we should work out systems of moving freight that minimize injuries from back injuries, et cetera, all of which we are doing, that makes sense.

But when you have a design rule that says you can't pick up anything that weighs more than 25 pounds, you have this kind of pipe or that kind of pipe, you have to dig up a tank to find out whether it is leaking or not—do these people have any sense of the small margins that all of these small business people here today operate under? In our business, the profit margin is between 2 and 3 percent, and you can eat it all up with one regulation that just doesn't make sense.

We want safety regulations. We want clean air. But we have got to get rid of this mentality that a regulation thought it up in the laboratory, and is going to write 1,700 pages about it and send it to a small business. Do they think that anybody reads it or can understand it? I have lawyers that wouldn't know what it means.

Mr. MCINTOSH. I am sure the average American wouldn't.

Let me ask one quick question of Mr. Motley and then a question for the two gentlemen who are business owners.

Would you be willing to submit a proposal how we might extend the moratorium or limit regulations coming out the other end? It is not in our bill, but if it is something you believe strongly in, I would be interested in seeing your views on that.

Mr. MOTLEY. We would certainly be willing to take a look at it and to share with you anything that we could come up with. I don't have anything in particular now.

I want to comment on Tom's comment for a second. If I wasn't allowed to pick up 25 pounds, I could have never put myself through college because that is the industry that I worked in, and it would have never worked.

Mr. MCINTOSH. It is totally impractical, obviously.

Mr. Risalvato—may I refer to you as Sal, if you don't mind? You mentioned that there were four people that you estimated were not hired as a result of these regulatory costs. And I wanted to check with Mr. Garner. Would you estimate that there were any people who either you had to let go or were not hired as a result of these regulatory burdens?

Mr. GARNER. Definitely. We were not able to add over-the-road equipment that we could have put more people to work. We had to spend that money for complying with these rules, and that would have bought—that money would have bought several either over-the-road tractors or trailers that we could have put more people to work with.

Mr. MCINTOSH. My time has expired. I have several other questions, but will allow my colleagues to inquire.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

Apparently, I am the only Democrat that is on this bill, but this panel is the reason that I am on this bill.

Before I got into politics I owned small businesses. And I am a CPA, and my clients were in my office telling these horror stories to me every day. And when I was in the legislature my partners basically made me retire because I wasn't working enough, and then when I was defeated I went back and worked in the CPA business.

I can tell you just in 8 years it was astounding how much more complicated the CPA business had become and how much more difficult it was to make any money or make sense out of things. So I sympathize with what you gentlemen have brought before us. This is why I want this bill to get out of these regulations that are costing us more than a ton of money.

I used to have a lot of trucking clients, and 1987, 1988 and 1989, when I was out of politics, they were digging up tanks. The same story you told us Mr. Garner. A complete waste of money in my opinion. So I am very sympathetic.

The questions that I have been asking and the discussion I have had with the chairman is that I am concerned that we do something here that is going to actually get at this problem and not get us bogged down in more bureaucracy.

I was a member of the 1980 White House conference on small business, and I was involved in some of this stuff. I was author of the Regulatory Flexibility Act in Minnesota. I know it is hard to do this. So I am concerned that we don't get ourselves into some bureaucratic quagmire here and don't accomplish what we are trying to accomplish.

The Paperwork Reduction Act, frankly, has created in some cases more paperwork and bureaucracy than it has reduced, and that is kind of my concern. I think a lot of this—you talk about the attitude of these people. I have a bill to put term limits not just on Members of Congress but on the staff of the Congress, and I think if we could do that we would solve a lot of problems.

My question is, we have had a moratorium back in what—whenever it was—1992, I guess it was, there was a 90-day moratorium. Can any of you tell me of any impact that came out of that 90-day moratorium?

Mr. DONOHUE. Two comments. One, the moratorium was very well intended, but at the end of it they didn't do what you are talking about doing now.

Mr. PETERSON. That is my concern, and I guess that is why I have been raising these issues in this process because I am concerned that we are going to go through this. I realize we have no people in charge. But it is very hard to do, so I want to make sure that we don't allow this thing—let the administration tie this up into a bureaucratic thing that in the end we don't accomplish anything.

Mr. DONOHUE. John would like to extend this beyond 6 months. We agree on almost everything. However, I don't want to extend it beyond 6 months. I want to fix it now.

There is in the discussion that has been brought before this new Congress a very clear way of making productive change that says that any new regulation and any pending regulation has to meet three simple tests: Is there a cost benefit to it? Does it meet a seri-

ous risk assessment analysis? And does it protect the private property of little companies?

The sooner we get over the delay, the stay of execution, and get on with fixing this, the sooner you will make a contribution that will never ever be changed in this government and in this country.

I consider this more significant than tax relief. I consider it more significant than almost anything proposed by this new Congress because every future regulation must stand the test of those three qualifications. If it doesn't, it can be stopped by the courts and by the Congress and by others. I very much encourage that instead of delaying that we get on with that new piece of legislation. If you do that, people will be sitting here 20 years from now saying those fellows in 1994, those ladies and gentlemen of that Congress, fixed that matter.

Mr. MOTLEY. We don't disagree on this.

I have in front of me a list of six regulations that would be stopped that we think would have a dramatic impact on small business. They would probably all go forward 6 months from now, and that is what happened the last time. I guess we just don't have as much faith that you are going to be able to do all this in 6 months.

Mr. PETERSON. That is where I am coming from. I am, at least from my point of view, amenable to looking at a longer period of time as well. In exchange for that, maybe we could look at getting some of this extraneous stuff out of this debate. And that is what I have been trying to do, working with OMB and other folks, is get the routine stuff out. And there is 1,800 regulations that are under question and actually only 70 have any substance. Maybe we can structure this in a way where we can make this extend longer until we get at these issues and then take this other part out of it so we can actually get something done, and we don't get bogged down in a bunch of bureaucratic jargon.

Mr. MCINTOSH. The gentleman's time has expired.

If there is unanimous consent, I yield myself 1 minute to continue the discussion.

Perhaps we need to have an end of moratorium when there has been enactment of provisions in H.R. 9 or something like them where you have—that perhaps would solve your problem, Mr. Motley.

Mr. MOTLEY. Not just enactment but when it goes into effect.

Mr. DONOHUE. Mr. Chairman, Mr. Peterson is on another significant issue that the committee must look at.

During the Reagan administration when they had the moratorium they found out that there were very significant regulations that, as you correctly said, nobody wants to mess around with—changes in patterns in the air traffic control system and those kinds of things. We cannot impede that for a very long period of time. Then people will have a way to criticize and to ridicule the delay.

Mr. MCINTOSH. Let's work on that. We are going to hear from the bill's principle sponsor, Mr. DeLay, after this panel; and maybe he will have some thoughts on that as well.

Let me continue now with my colleagues on questions for this panel. Mr. Fox of Pennsylvania.

Mr. FOX. Thank you, Mr. Chairman.

It seems part of the problem, hearing these panelists today, is that Congress passes a bill and then bureaucrats establish regulations which go way beyond the bill and maybe not in the contemplation of what Congress wanted trying to make business easier. It seems to me, Mr. Wright, that you have a product that is basically soap and water, and the FDA is attempting to regulate it.

Mr. GRANT WRIGHT. That is correct. Right now, soap and water is not sold for breast exams. But NCI, Health and Human Services, the National Cancer Institute all will put out a flyer and tell you, do a breast exam in the shower because it reduces friction. The same thing is what you do with this product.

The only thing is, I am convinced that when they came up with instructions for self breast exam a man came up with them. Because it is three parts: You stand up. You do the exam in the shower. True, you can do it with soap and water.

Now you are supposed to lay down with a pillow under your shoulder so the breast tissue spreads out. They said it is easy. Get a lotion. You just took a bath.

The third part is to be done in front of the mirror. All this did was to make it convenient for the woman to do when she remembered to do it.

Mr. FOX. How many FDA studies were required to this point?

Mr. GRANT WRIGHT. We filed a 510–K in 1985. We filed a PMA in 1989. We are still required to file another PMA. They want one more study. They said it can be a small study. I put it out for bid—it is $300,000.

Mr. FOX. Is part of the problem misclassification of your product, possibly? You said it was a class III device, and maybe it is misclassified?

Mr. GRANT WRIGHT. That is part of the problem. But the product fits in a place that a lot of simple products fit and that is if it is a substantial equivalent it can be 510–K'd to something that was on the market prior to 1976. If it can't, it is automatically high risk.

Now, you can ask to get it reclassified, but dropping down to a classification II, you still have the problem of what is it substantially equivalent to? So you are right back to class III. So it is a problem of I can't get out of a catch-22 situation.

Mr. FOX. Sounds to me like you shouldn't even be at FDA at all.

Mr. GRANT WRIGHT. That was my initial thought, but I tried to do the ethical thing and go to the small manufacturers' assistance group and say, look, is it a medical product or isn't it?

I don't want to make any claims. One, I have two brothers that are doctors who wouldn't put out that kind of a product. Two, you couldn't handle the kind of liability if you started making lump claims. The idea was to do some good with it, not to do harm, but the product has grown to something it is not.

Mr. FOX. Let me ask you this, Mr. Wright, is it available in Europe?

Mr. GRANT WRIGHT. It was cleared in Canada in 30 days in 1985. It has been cleared in most of the European countries. My problem is I am a small manufacturer. Why can't I do business in the United States?

Mr. FOX. How many women in the United States could be able to use this if it was available?

Mr. GRANT WRIGHT. Actually we did distribution on it through hospitals for a year. Over 500 hospitals, over a quarter of a million of them never had a complaint from anybody other than the government. It is not a replacement for a mammography. It is not a replacement for the physician's visit, but the biggest problem is right now I have got women I have talked to that say, look, I went and had a mammogram, I am good for another year.

I am saying, look, use the physician, use the woman, use the mammogram. None of them are 100 percent but, man, it makes good sense and as much as we are talking about breast cancer, I think the government would be coming out giving me $300,000 to go run the study.

Mr. FOX. Well, I think that your case is poignant. Hopefully, we will make some changes based on your testimony.

Mr. GRANT WRIGHT. I don't want to get into the agency because I think they are as frustrated with some of this as we are. Dr. Albert, I know when I talked to her said, look, my hands are tied; I don't know what else to do. But somewhere we are not the only product out there and we are talking about health care and welfare reform and everything else. You get to the health care, you are right back to talking dollars when you talk about what it costs to get this product on the market. It is all escalating prices. It is no wonder you go get a prescription, it costs you $62 for 30 pills.

Mr. FOX. You are absolutely right. I just want to continue with one more witness.

Mr. Motley, I just want to ask you a couple questions based on your testimony. Just quickly, it seems from reading your testimony and hearing you today that one of the things we need is plain language for government—whatever regulations we have, to be put in plain language so you can probably have 10 less lawyers.

Mr. MOTLEY. The confusion factor is very high. Small business owners simply don't understand the language that the government uses to promulgate regulations, and in addition to that, the government seems to think that they are going to read them, and they don't.

It would certainly help if we did use plain language.

Mr. FOX. One final question. On your testimony, you said we could also reduce third-party paperwork reduction. What did you mean by that?

Mr. MOTLEY. Well, there was a Supreme Court case, United Steel Workers versus the United States, which basically said that all third-party paperwork, such as the I9 forms which are filed for immigration, that does not have to be sent into the Federal Government, but the employer has an obligation to fill out the form and to keep it on file in case the immigration service ever comes in and checks on the status of one of his employees, that is not included under the Paperwork Reduction Act. And we believe that that is at least a third of all of the paperwork requirements in the country and certainly should be included under the Paperwork Reduction Act.

Mr. FOX. I have one final question. Mr. Donohue, after the moratorium is put into place that the chairman has suggested along

with Congressman DeLay, this committee will begin work on a regulatory reform bill. What are the most significant issues we could address to alleviate the burdens your industry faces?

Mr. DONOHUE. Thank you, Mr. Fox. If your bill was simply written that everyone understood and it said first, there must be a cost analysis done, that it is worth the money we are spending, do we get the benefit. Second, there must be a risk assessment, that is, is there any decent science behind it, is there any medical analysis, is there anything that says we ought to spend this money. Third, it ought to say, just a minute, before the Federal Government thinks about taking somebody's private property and makes it worthless, they ought to think about the fact they will have to pay for it.

And if those three things were there, I promise you that you would have a totally different regulatory process in this country and the whole society would benefit.

Mr. FOX. Because of your three-prong test. Thank you very much.

Mr. MCINTOSH. Thank you very much. The gentleman's time has expired.

Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I did not know that Mr. Wright was going to be here to testify earlier when I made my comments, and my crack staff quickly came, and I am distributing to the other Members a copy of an editorial which appeared in one of my newspapers just this week about how the FDA can cost lives, and, as a matter of fact, Mr. Speaker or Mr. Chairman, I want to call attention, I believe it was 20/20, or was it 20/20 or 60 Minutes, one of the news programs, that your problem was illustrated with a number of other problems relative to the FDA; am I correct?

Mr. GRANT WRIGHT. That is correct.

Mr. GUTKNECHT. And I just want to mention this for the benefit of the committee and the people that are here. One of the points that is made in this column that appeared in one of my newspapers just this week, based on a study that was done by the Washington Legal Foundation about the FDA and the approval of drugs.

Now, this is much more complicated than the approval of a relatively simple technology, as I referred to earlier, and I did not know you were going to be here at that time. But to carry out its mission, the agency has set up a review process which tests all new drugs, and I think that is good.

In the early 1960's this process took an average of about 2½ years and cost in inflation-adjusted terms between $16 and $20 million for each new drug. Today, from laboratory to pharmacy, a new drug takes about 12 years and costs upwards of $250 million. That is inflation adjusted both ways.

I think we do have a responsibility to protect the health and safety of the American consumer. But I think the Wright story and all of the other stories, and I do hope we will bring more people in, and I also hope that the chairman will do everything possible to keep from any kind of retribution for you and others, but I think the Americans are being harmed. Ultimately, it just reinforces what I said earlier about how much of this technology is now available in other places and more and more inventors or people who

are developing new processes are saying, hey, I am not even going to worry about the United States, we will do the testing, we will get the approval in other countries, and then maybe 1 day, we will work back into the American market. That just seems to be a shame.

That is more of a speech than it is a question, Mr. Chairman, but I would like to hear from either the Wright family with regard to other technologies, or any other comments you have.

Mr. GRANT WRIGHT. There is plenty of simple technology out there. I mean, the cardio pump that they talked about, resuscitating the patient, which was also on the 20/20 program, perfect example, how are you going to get consent from a person that is clinically dead?

Now, in my opinion, you ought to be able to sit down with the agency and come up with some kind of study that makes good sense for both of you. I don't think anybody in the industry—and I know we are not; we are not opposed to being regulated. I am also a consumer and I want good product on the market, but some of the stuff we are going through with this thing is a literal nightmare. If you look at it, one of the problems the agency has with our product is what happens if you mask a lump.

Now, I have run the studies that say there is no decrease in sensitivity. Sensitivity is actually better. I have run studies on newly blind kids, teaching newly blind kids to read Braille. I said, OK, even if you got a problem and you want to throw out a hypothetical and you say, OK, what happens if it did mask? OK, I will label it so that the woman first does the exam with her hand, then she does it with a pad, now she has got twice the chance of catching it early. No, because women won't read the labeling. I said, well, why in the world do we label drugs then if they won't read it?

I can understand some of it, but it is to the point with this product of being—I mean, I don't want to see another medical product when we get done with this one. At my age, at 34, I should not feel like that, as an American, I don't want to be in business, but that is exactly part of the problem we have got with society. You look at the younger generation, what do they have to look forward to?

Mr. MCINTOSH. Thank you very much.

Would the gentleman yield?

Mr. GUTKNECHT. Yes.

Mr. MCINTOSH. Earlier today there was some question regarding the panel on the heart pump about what that had to do with the moratorium, and I wanted to put into the record so everyone would know that there is a fair amount at stake there.

The FDA is currently considering new regulations on good manufacturing practices that some people have estimated could add an additional $80 billion in costs onto your industry on top of the current problems that you have. So there is a great deal at stake in this area as well as many others, and the moratorium would serve to help put that on hold, so that the relevant committee could look into the area and reform the entire system.

I have no further questions under my——

Mr. GUTKNECHT. Mr. Chairman, if I could, I will just share a story. Some of you may have heard it. I think it was in the Union Pacific Railroad Engineers Manual and I was reminded, any time

anyone from Washington or in our case St. Paul, says, well, our hands are tied, I am always reminded of a story where it said that if two trains should approach each other on the same track, both shall come to a complete stop and neither shall advance until the other is passed. That is what we see happening with the Federal Government is that we have these trains sitting on the track looking at each other and saying, we can't do anything about it.

And as a result of that, lots of small business people and American consumers it seems to me are being harmed in the long run, and I do want to apologize for some of the Members on the other side who really needed to hear this testimony. It was very excellent.

Mr. MCINTOSH. Thank you, Mr. Gutknecht. Mr. Ehrlich has been waiting patiently.

Mr. EHRLICH. I will also indulge Sal, if you don't mind the informal nature. Let me put you on the spot because the chairman read my mind. What I would like to do, whenever we hear any story along these lines and, as you have heard today, we hear them all the time, is ask you to quantify job loss.

Now, you earlier stated that because of the story which you relate to us, you were unable to hire four additional employees. When were those decisions made? They were a function of what occurrences? Who do you have working for you now, how many employees do you have working for you now?

Mr. RISALVATO. Including myself and my brother, 10, 5 full time.

Mr. EHRLICH. Average salary? I don't want to get into your business, but this is important.

Mr. RISALVATO. $25,000 to $30,000.

Mr. EHRLICH. $25,000 to $30,000. Now, the decisions you have made across time with respect to employment, can you relate to us just one instance related to your story that you gave us earlier.

Mr. RISALVATO. Very easily.

Mr. EHRLICH. OK.

Mr. RISALVATO. OK, when we looked at the location to make the purchase, the best thing about this location was the tanks. This place was a virtual junkyard. We knew we knew how to correctly operate the business and build it.

We, when we first came there, cleaned the location up sufficiently that the town fathers allowed us to do something that they won't allow anybody in town to do other than me, and believe me, people point fingers at me, and that is to use an office trailer on the site of our building as an office so that we don't have to utilize space inside for that very purpose.

Our plan right from the day we bought the place was to add on at least three service bays, probably four if we could afford it, sufficient storage space to store more inventory to do a higher volume, and to add on offices because I could probably sell a lot more business if I wasn't stuck in the office.

In our office trailer we can't even have people, clients, customers. It is difficult to bring them in because we have to dance around each other. I am kind of wide as it is, so that makes it even tougher. But we had anticipated adding on these service bays and of course making equipment purchases that go along with each of those service bays.

Well, I can't add on service bays and purchase equipment for them without employing people to work in them. There would be no reason for me to do that. Our original projections when we purchased our location, we had anticipated to be doing twice the amount of repair volume that we are doing now. That would require three more technicians. It would require my presence in the front office to sell that work. It would then require office personnel to do what I do now. It would probably require two or three part-timers to do assisting type of work, cleaning, getting parts and driving customers home, those kind of things.

So without a doubt, I mean, when we—and it is 7 years ago we bought this place, and I will tell you what, I borrowed just about every penny to get into it. I have had to borrow all of the money to do these regulations, and I am faced with right now, I mean, literally at this very moment, I am faced with having to borrow money to stay in the inspection business which creates a lot of volume of repair work for me. So if I don't go and borrow this money, how do I get this equipment and stay in the business?

Mr. EHRLICH. Thank you. Mr. Motley, I know you address this issue all the time and I know it is difficult to quantify things that have not occurred because of government regulation, but what has your organization done in the ways of conducting studies with respect to the issue of job loss due directly to government overregulation? I understand that is a subjective term. Do you have any of those numbers with you?

Mr. MOTLEY. I think the best thing that we could give you was a rather unique study that our foundation did about 3 or 4 years ago called small business in America, and what they did is they took a certain number of small businesses that were created each year and followed them all the way through the birth and then growth cycles and what happened to them, and we could probably take that and show the impact that unexpected government regulation dealing with paperwork has had on causing those businesses to go out of business.

Usually 1 out of every 2 small businesses that are created fail within 5 years. A significant portion of that is due to the unexpected burden, the hidden burden of government regulation, because the owner generally does it themselves. I mean, Sal is doing it now for his own business and he has been in business quite some time. But in a small business, I mean, you don't have accountants. You don't have lawyers, you don't have—you have got to read the regulations yourself. You have got to interpret them.

Maybe you belong to a trade association and you get some sort of a bulletin, so it means a tremendous amount of unproductive effort on your part when that should be going into the business, and that is most critical in the first 2 years because sweat equity is most critical in the first 2 years. So I think the thing that we have done would be to point that out and to help make the case would be the small business in America study.

Mr. EHRLICH. Thank you very much.

Mr. DONOHUE. Mr. Ehrlich, may I just say, you talked at great length today about the California FIP. There is a whole range of numbers of what it will cost. The government says it will cost the economy of California $6 billion annually. Any reasonable estimate

of what would happen if you reduce air flights by 30 or 40 or 50 percent, if you don't bring ships into the harbor and so on, is probably more like $50 billion annually to the economy in California.

If you begin to look at the number of jobs, you could be talking as much as 1 million jobs. Now, we all know it is not going to be that bad when they get finished because the idea that you would cover every car in California to collect the gas, they probably wouldn't cover all of them, just some of them.

The point is, we are talking about billions of dollars, lost productivity, lost jobs and an absolute position by government that takes no interest in where that is going. The Governor does care, the Senators do, the Congressmen do because they are there, but this bureaucracy, under a court order, put out a rule that is so absurd that it would take the sixth largest economy in the world and bring it to its knees.

Mr. MCINTOSH. The gentleman's time has expired.

Mr. DONOHUE. The 12 New England and Middle Atlantic States could also be pushed into these regulations.

Mr. MCINTOSH. Thank you.

Mr. EHRLICH. Excellent panel, Mr. Chairman.

Mr. MCINTOSH. I agree totally. Mr. Waxman.

MR. WAXMAN. I have no questions.

Mr. MCINTOSH. Thank you all for coming. I can't tell you how much I personally appreciated your testimony. I think it was invaluable to our effort to show the real effects of many of these regulations.

And let me assure you, we will be working tirelessly to solve these problems in this committee and this Congress and we may be calling on you some more, because I think this is an endeavor which will require not only the Members of Congress, but also the American people, to make the changes. I appreciate the grassroots efforts and information that goes along with those changes, so thank you for appearing today and informing us of your situations.

Mr. DONOHUE. Thank you very much, Mr. Chairman.

Mr. MCINTOSH. I believe what we will do is combine the next panel. Mr. Miller is not able to be here. He had a previous engagement. If there is no objection, I would submit his testimony for the record and ask Mr. Gray to join us and there is my colleague, who is a cosponsor of this bill, the Majority Whip, Mr. DeLay, who was to testify earlier this morning, but we were unable to work him in because of the delays in the hearing.

I think the process we will use for this panel is I will ask Mr. DeLay to make his comments and respond to questions and then he can return to the other pressing matters that he is working on at the moment.

Thank you very much for joining us, Mr. Delay.

STATEMENT OF HON. TOM DeLAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DELAY. Thank you for being very patient with me, Mr. Chairman, and accommodating my schedule. I have to lead off by saying how proud I am to see you sitting up there as chairman of this subcommittee. It has been a long time coming and it is a wonderful circle that you have come around to that reinforces that old

saying, what goes around, comes around, and so I am just excited about this committee and particularly this subcommittee and the work that you are going to do. I particularly like to see Mr. Peterson up there as ranking member. I know Mr. Peterson has been an ardent advocate of as few regulations as possible, and I am very pleased that you are holding these hearings.

I listened to the testimony of Ms. Katzen, the Director of OIRA, and I listened to half of the testimony of your last panel, and there is not much I can add, except to say, I would like to enter my statement into the record and just spend my 5 minutes commenting on what I have heard.

I would like to start by saying, I am totally confused about what is going on in this town. As the chairman and the committee know, the majority leadership of both the Senate and the House sent a letter to the President back in November asking him to put on his own moratorium so he could fashion it the way that he wanted to take care of all the problems and the horror stories that Ms. Katzen laid out in her testimony.

If the President had worked with the majority leadership of both Houses and had any intention of doing something about the overregulation of this country, he could have controlled the whole process. He chose not to do that and that is why we are here today. That is why I, along with you, Mr. Chairman, introduced this bill; we feel that we have a mandate from the American people that regulations are abusive in this country and we need to do something about it. To give us time to do something about it, we must have a moratorium to stop any mischief that may be caused by overzealous regulators and bureaucrats.

Having said that, Ms. Katzen said only 800 rules were of any significance in the unified regulatory agenda. That is the mind-set we are trying to change in this town. These 800 rules and regulations have a direct impact on American citizens and on their standard of living. She also said that they don't promulgate any more regulations than are needed.

Well, I would just like to read a quick list of a few regulations from the unified regulatory agenda that she says are needed: Alien fashion models—these are employment requirements for using aliens as fashion models. Now, they don't say what kind of aliens, but—washing machines—clarification of procedures for testing clothes washers. Fresh cut flowers—implementation of fresh cut flowers promotion and information orders. Airplane flights in and out of California, which is a radical cutback in the number of flights allowed in and out of Southern California under the EPA Federal Implementation Plan.

Fruit and nut trees—a special disease set-aside program for fruit and nut trees. Ethical conduct—principles of ethical conduct for the Interior Department. Indian art and jewelry—protection for products of Indian art and craftsmanship. Birds, safe ones and endangered ones, additional wildlife areas open to hunting and fishing, another rulemaking on endangered and threatened wildlife and plants. Coal moisture—proposed rule by the Office of Surface Mining Reclamation and Enforcement on coal moisture.

This one really gets me—definition of light bulbs. The Department of Energy wants to define certain fluorescent and incandes-

cent light bulbs. Now, none of these, I think, are of such earth-shattering necessity that they can't be put off for just a few months while this Congress acts on the way that regulations are promulgated.

I am shocked at all the horror stories I've been hearing; we need some reasonableness here. I do think we need to do something on a tax exemption in the bill. The moratorium bill affords the President the authority to decide which regulations are necessary for health, safety, and law enforcement.

But I think the American people, particularly people in Texas, and now I am hearing from California and Illinois and other States, want some sort of moratorium on the Clean Air Act and its implementation, particularly in the emissions testing sections. We need to take another look at indoor quality regulations—the rule to require restaurants and other buildings to implement comprehensive indoor air and ventilation plants plans that could cost businesses $8 billion. I could go on. Sunglasses labeling—labeling sunglasses? The creativity of bureaucrats and regulators just boggles the mind.

Let me finish by saying, this isn't protecting the rich. We are not talking about protecting business. What we are talking about is protecting the standard of living of the American family. Every one of these regulations, every one of them, costs a business greatly and therefore costs the American family through higher prices of goods and services.

Now, the American family may want some regulations, and we certainly need some regulations, and they may be willing to pay for those regulations, but they ought to be able to know what the cost or the benefit is, what the risk assessment is and many other things we have in the regulatory reform package of the Contract with America.

Make no mistake about it, if you add up all the taxes, mandates, and regulations from local, State, and Federal Governments, over 53 percent of the American family's income goes to the cost of government. We need to get that down.

The other side of the aisle is always talking about the standard of living, the cost of living of the American family, and they want to do things to help them. One way you can help them is to cut down on regulations overburdening the American family. I thank you, Mr. Chairman.

[The prepared statement of Hon. Tom DeLay follows:]

PREPARED STATEMENT OF HON. TOM DELAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for this opportunity to testify in support of H.R. 450, the "Regulatory Transition Act of 1995," which establishes a moratorium on federal regulations. It is certainly a pleasure to be here today.

Regulations are out of control, and are only going more so under this Administration. Measured by the number of pages in the Federal Register, in which all new regulations are published, each of Mr. Clinton's two years in office have seen the most regulatory activity since President Carter's last. The number of "actual pages" (not counting corrections and blank pages) in 1994 was 64,914 pages, the third highest total of all time, and an increase from 1993's count of 61,166 actual pages. Despite rhetoric to the contrary, regulatory activity under the Clinton administration is increasing, not decreasing.

This corresponds to an increase in the number of regulatory bureaucrats. From 1985 to 1992, regulatory staffing increased by over 20 percent, to almost 125,000

employees. However, the number of federal government employees devoted to implementing regulations was 126,815 in 1993—an all-time record. And the Administration's budget for fiscal year 1995 proposed increasing that number to 129,648.

It is truly unfortunate that the average American had to work full time until July 10 last year to pay the costs associated with government taxation, mandates, and regulations. This means that 52 cents of every dollar earned went to the government directly or indirectly.

On November 8, 1994, the American people sent a message to Washington. They voted for a smaller, less intrusive government. An important step toward reaching this goal is curtailing these excesses of federal regulation and red tape that are now estimated to cost the economy over $500 billion annually. Small businesses—the job-creating engines of our economy—spend at least a billion dollars a year filling out government forms, according to the Small Business Administration. This burden leads to job loss, slower productivity growth, reduced competitiveness, and higher prices for consumers.

Although regulations are often well-intended, in their implementation too many are oppressive, unreasonable, and even irrational. I've given these examples before, but I'd like to give them again because they make my point so well:

- One company that inadvertently wrote a name on line 18 rather than line 17 was fined $5,000 by the EPA.
- A drycleaner was fined for not posting a piece of paper listing the number of employee injuries in the last 12 months, when in fact there were NO injuries during that time.
- Detailed safety data sheets are required for such dangerous materials as Joy dishwashing liquid, chalk, and even air.
- OSHA has classified children's teeth as hazardous waste.

The last thing the government should be doing is making it harder for Americans to pursue their dreams of entrepreneurship. Rather, we should be facilitating it, so that Americans can provide for their families free of regulatory roadblocks, which will result in a continued high standard of living for the whole country.

And that brings me to something which is not pointed out often enough. Regulatory costs that are imposed on businesses—both big and small—have to be paid, but they are not paid by the business. Instead, these costs are passed directly on to the consumer, increasing the prices for the goods and services they buy and lowering our standard of living. Every American needs to realize that excessive regulation affects their family and their personal lives directly.

Just after the November elections, the Clinton Administration released its Unified Agenda of Federal Regulations, which outlines its plan to pursue over 4,300 rulemakings in the next fiscal year. Between October 1994 and February 1995 alone, the Administration is scheduled to propose at least 682 regulations.

It is difficult to believe that all of these 4,300 rulemakings have to be completed and implemented before the 104th Congress can take the opportunity to consider regulatory reform. The American people will not tolerate a rush to new regulations by the entrenched bureaucracy before the 104th Congress can even attempt to make appropriate changes in the law.

Proof of this sentiment is evident in the recently-formed Project Relief; a broad-based, non-partisan coalition of over 300 organizations and individuals representing businesses, trade associations, citizen advocacy organizations, social groups, think tanks, minority groups, state and local officials, and others. These various interests have come together in this push for comprehensive reform and are working closely with both the House and the Senate on this front.

In order to have the opportunity for orderly consideration of regulatory reform issues by the whole Congress—Republican and Democrat Members alike—the new majority leadership respectfully asked the President on December 12, 1994, to order a moratorium on all federal rulemaking, with appropriate exceptions. Sadly, the President declined to issue such an order.

We have, therefore, no choice except to deal with the regulators ourselves, and we do so with this legislation. H.R. 450 proposes the moratorium that the President refused to order, indicating that it is to be "business as usual" in the federal bureaucracy. That is not the message sent by the American people in the last election.

H.R. 450 gives us some breathing room to pursue the process reforms that are embodied in the Contract with America, such as cost/benefit analysis and risk assessment. Those reforms will then apply to those regulations that were suspended during the moratorium period, so that no new regulations since the election will have been promulgated without having gone through the tests of sound science and proper cost and risk analysis.

The Administration and others now have the opportunity to justify why all of the regulations placed into effect since the date of the last election should remain in full

force without the possibility of reconsideration as a result of any regulatory reforms enacted by the 104th Congress.

I would like to make clear that the bill does not suspend any existing or new regulation that responds to an emergency or is necessary because of an imminent threat to health or safety, or which is essential to the enforcement of criminal laws. The President, acting on the written request of an agency head, is charged with the responsibility for making this determination.

Additionally, the bill does not suspend regulations that reduce or streamline regulatory burdens rather than imposing new ones. The intent of this bill is to put a hold on harmful regulations but at the same time allow the "good" ones through.

In the absence of legislation, too many bureaucrats have been legislating through regulation in a way that is both intrusive and burdensome. It seems they forget that it is the Congress that makes the laws, delegates the power to issue regulations implementing the laws to the agencies, and controls the standards and processes by which the regulations are made by the agencies. It is time to remind them.

Make no mistake. A federal regulation is a law that can affect life, liberty, and property of Americans. Fairness, justice, and equity must be reflected in the laws of the land, including federal regulations.

The 104th Congress should undertake a thorough review of federal regulations, starting with the way they are made and enforced, and make such adjustments to the statutes of this land as are necessary to reflect the mandate of the American people. No such thorough review has been possible for some forty years. It is a daunting but welcome task. It cannot be achieved overnight, nor even in the first 100 days of this Congress, but we can make a start. That start will be impeded if legions of new regulations go into effect before even the initial consideration for regulatory reform and relief can be given.

I would like to thank Chairman McIntosh for all of his hard work on this issue, and urge strong support for this bill. I would be happy to answer questions.

Mr. MCINTOSH. Thank you very much, Mr. DeLay for joining us here today. I don't have any questions for you. However, let me just state though for the record, that without your leadership in this area over many, many years, the situation would be much worse than it is now. On behalf of the consumers and the American middle class, thank you for your previous efforts and thank you for taking the leadership role on this piece of legislation and others, to make sure that we are able to do something in this Congress to address that problem on behalf of the American middle class and to remove that hidden tax.

Mr. DELAY. Thank you, Mr. Chairman. Let me just also say, I am honored to be sitting at the same table with Boyden Gray, who I consider one of my heroes in this area.

Mr. MCINTOSH. Thank you.

Mr. Peterson, do you have any questions for our colleague?

Mr. PETERSON. Well, I just welcome Mr. DeLay to the committee, look forward to working with him. I don't know if you have heard some of my comments today about my concerns that we are going to get ourselves tangled up by including some routine kinds of regulations and the tax issue and so forth, as this moves ahead, I hope that we can work together and do whatever we have to do to get those out of the mix.

What I am interested in is I think what you are interested in, is getting cost-benefit analysis into these regulations, risk assessment so that we don't hear these kind of horror stories like we just heard from this last panel where they are being asked to do things that make no sense.

Mr. DELAY. Mr. Peterson, I tell you, I am looking forward to working with you. The things that I heard you say are very legitimate questions about the legislation, and I think are easily cor-

rected to take care of your concerns. I am more than looking forward to doing that with you.

Mr. PETERSON. Thank you.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you.

Mr. Ehrlich, do you have any questions for Mr. DeLay?

Mr. EHRLICH. No.

Mr. MCINTOSH. Mr. Waxman, do you have any questions for Mr. DeLay? Seeing none, thank you again for coming and thank you for your tireless efforts in this area.

Mr. DELAY. Thank you, Mr. Chairman, and good luck.

Mr. MCINTOSH. I see that Mr. Miller has joined us and would welcome him to the witness table at this time. I did see him. Perhaps someone can bring him in. Let's proceed with the next panel.

STATEMENTS OF C. BOYDEN GRAY, PARTNER, WILMER, CUTLER & PICKERING; AND JIM MILLER, COUNSELOR, CITIZENS FOR A SOUND ECONOMY

Mr. MCINTOSH. The first witness is a former colleague of mine when I served in the Bush administration and someone who has been working in this area since the first days of the Reagan administration when he was counsel to then Vice President Bush.

Perhaps he more than any other individual has been able to track the history of efforts to review regulations and make sure that we have a systemic effort at having a cost benefit approach to our regulatory process and someone who is steeped in the knowledge of the Administrative Procedures Act and all that that entails, someone who I definitely look up to as a mentor in this area, and I really appreciate his willingness to come and share his views with us here today.

Mr. Boyden Gray.

Mr. GRAY. Thank you very much, Mr. Chairman. I will be as brief as I can because I got to make time for Jim here, who taught me a lot, although I think I taught him too.

Mr. MILLER. Yes.

Mr. GRAY. Just three quick points. A time out on regulation always helps. In 1981 and again in 1992, it permitted the White House to tell the agencies, look, take a look at all the existing rules that you haven't revisited in a decade or two or three and redirect some of your attention, at least for a little time, on reevaluating existing rules. Circumstances do change. Technology changes. It cannot be that a rule that was designed 30 years ago still makes sense. It is just not logical. It just cannot be that that rule does not need to be revisited.

Second point I want to make, is that a time out doesn't hurt. I am not aware of any great public health or safety difficulties that arose out of the 1981 freeze or the 1992 freeze, and I don't see why there should be any problems arising out of this moratorium. It, of course, would be easier if the executive branch managing the freeze would be endorsing it. That would make it a lot easier obviously, but there is no reason why the exceptions you built in can't work.

Finally, there is new legislation which has been discussed which ought to be brought to bear on the pending calendar. There are a

lot of existing regulations in the pipeline that will be caught. You have heard discussion of a lot.

One of the ones that I want to mention briefly which you raised earlier on, Mr. Chairman, and which one of my colleagues in this endeavor sitting to my rear made comment on, with whom I have been in countless discussions at EPA is the question of California car. I am talking about Mr. Hawkins who is behind me. The California car is a very, very expensive proposition and there is no reason why it should be so expensive.

Calculations based on data provided by the industry themselves, and even if you discount the data by 50 percent or more, it is still horrendous. These calculations show that if car companies are permitted to buy emission reductions in the way utilities are today in the very successful acid rain program, that the rule will cost about $4.5 billion more than it needs to cost by the year it kicks in fully in the year 2007. Now, $4.5 billion for the economy of the Northeast, which affects this region, is an awful lot of money to pay, and I can see no reason in the world why the regulatory straightjacket that EPA so far has placed on this rule should go forward.

The irony here is that emissions trading, whether it is from the lead phase-down program that Jim remembers from the early 1980's or the chlorofluorocarbon limitations or the heavy duty emission truck trading or car trading, what acid rain shows is that not only do you cut costs dramatically; you also accelerate the environmental benefit.

The EPA has what they now call an RE factor, rule effectiveness factor. That is, an ordinary command control regulation must be discounted in the ozone, nonattainment arena by 20 percent—that is, you are only going to achieve 80 percent of what your target is.

What we find from the acid rain program is that its costs have been cut by three-quarters or more, and the cleanup has accelerated by 40 percent. So that is almost a doubling of the environmental benefit for one-quarter or less of the cost. Any time you get a bargain like that, assuming that the regulation initially made sense, it is something you ought to take advantage of.

The permitting rule which may or may not have gone final during the moratorium, is related to the California car rule in the sense that the permitting rule is designed to encourage these very efficient environmental approaches, but if, in fact, the trading is stymied because the market can't develop, then the permitting rule has indirectly been gutted and that is a rule that I hope you will take a look at as well.

There are many other rules that I am not familiar with enough to say that on the basis now of what I know that they are worthy of congressional rejection, but they certainly are worthy of congressional review, and I think you are doing a service to do this, and I think it can be managed in a way that will not in any way endanger the public health or safety.

I would yield to Jim who ushered in the first regulatory reformer back in 1981.

[The prepared statement of Mr. Gray follows:]

PREPARED STATEMENT OF C. BOYDEN GRAY, PARTNER, WILMER, CUTLER AND PICKERING, AND CHAIRMAN, CITIZENS FOR A SOUND ECONOMY

Good afternoon. Mr. Chairman and Members of the Subcommittee: My name is C. Boyden Gray, and I am a partner at Wilmer Cutler & Pickering, and I am Chairman of Citizens for a Sound Economy, a 250,000 member nonpartisan, non-profit consumer advocacy group that promotes market-based solutions to public policy problems. Thank you for inviting me here today to discuss the importance of regulatory reform and the Regulatory Transition Act of 1995 (H.R. 450). Regulatory reform has a long history of bipartisan support, as was evidenced by efforts in the previous Congress to reduce the regulatory burden on consumers and businesses in the United States through sound risk assessment and other regulatory reforms. The new 104th Congress continues these reform efforts in the Contract with America, which calls for a number of specific regulatory reforms. H.R. 450 includes a temporary moratorium on new regulations so that agencies may more carefully assess the impact of their regulatory agendas, while ensuring that new regulations are not excessively burdensome. From November 9, 1994 through June 30, 1995 all new rulemakings would be on hold while agencies took stock of their current regulatory agendas.

A REGULATORY TIMEOUT

The annual regulatory burden in the United States is more than $500 billion, or $5,000 per household. This amounts to nearly one-half of the typical family's annual federal tax burden. However, the regulatory burden is a hidden tax that does not receive the public scrutiny reserved for regular tax increases. Consumers pay the costs indirectly, through higher priced goods and services and through a restricted choice of products available in the marketplace. Although hidden from the typical consumer, the regulatory burden has real impacts on the consumer's quality of life.

It is useful to have a regulatory moratorium to provide agencies the opportunity to review existing regulations to ensure that their benefits continue to exceed costs in light of changing circumstances and advances in technolgy. A regulatory moratorium provides the time needed to revisit outdated regulations.

Both the Reagan and Bush Administrations endorsed a regulatory moratorium to review the regulatory agenda before moving on to new regulations. During President Bush's regulatory moratorium, which was announced in his January 1992 State of the Union, a number of regulatory improvements were made, including: accelerated approval of new drugs by the FDA, improved regulation of biotechnology products, and the development of market-based incentives to comply with the Clean Air Act. Without a specified moratorium, it is difficult to divert resources from the production of new regulations toward a review of the existing regulatory agenda.

AN IMPROVED REGULATORY PROCESS

At the same time, the new Congress is moving forward with a number of initiatives that would enhance the regulatory review process. Important issues such as risk assessment and the use of sound science, enhanced cost-benefit requirements, a stronger Paperwork Reduction Act, and a regulatory budget are under consideration. A moratorium would also allow any new procedures to be used in the current rulemakings.

For example, cost-benefit analysis was the key component of the centralized regulatory review process established by President Ronald Reagan under Executive Order No. 12291. The Office of Information and Regulatory Affairs was tasked with reviewing regulations issued by the agencies. Executive Order No. 12291 was an integral part of the rulemaking process, ensuring that federal agencies only regulate in those cases where information was available on the impact of regulation, and only in those cases where the benefits of regulation exceeded the costs. In addition, agencies were required to choose the least-costly alternative when issuing regulations. Establishing these requirements created a more reasoned approach to regulation that limited undue burdens on consumers and businesses.

President Bill Clinton continued the tradition of centralized regulatory review through his Executive Order No. 12866. Although the new executive order expands the definition of benefits to include "distributional impacts" and "equity," cost-benefit analysis with centralized regulatory review continues to be an important tool of regulatory oversight. In addition, President Clinton called on agencies to use risk assessments and market incentives where possible. (Another benefit of a regulatory moratorium would be the possibility to determine the extent to which the federal agencies are implementing market incentives and risk assessments required by President Clinton.)

The new Congress understands the importance of such tools; risk assessment and other regulatory reforms will be introduced as a means of further reducing the hidden tax of regulation. Establishing a risk assessment process that incorporates the best available scientific knowledge while clearly explaining the underlying assumptions will provide an important addition to cost-benefit analysis that can be used to reduce the burden of excessive regulations that provide marginal reductions in negligible risks at very high prices. Consider, for example, an EPA hazardous waste listing for a wood preservative at the cost of $5.7 trillion dollars per one premature death prevented.

A regulatory moratorium provides the opportunity to move forward with refinements in the regulatory process. Congressional initiatives for regulatory reform can be debated and enacted before the end of the moratorium. In turn, these new regulatory tools would be in place to review the regulations on hold during the moratorium. This would facilitate the identification of potentially costly rules while providing the public with greater information concerning the benefits of any given rule. With enhanced tools for regulatory review, the rules under discussion during the moratorium can be implemented in a more beneficial manner.

IDENTIFYING SUBSTANTIVE REGULATIONS

Some examples of current rules that would benefit from the review and application of new procedures are as follows:

The California car regulation for the Northeast, issued by the EPA just before Christmas and thus covered by the proposed moratorium, is a rule that demands careful scrutiny whether or not the moratorium is enacted. It is one of the most cost-ineffective, anti-competitive, and anti-market rules ever issued by any agency at any time. It ignores the regulatory lessons of the last two decades, especially the experience with the Acid Rain program, and it violates the spirit of the 1990 Amendments to the Clean Air Act.

The rule mandates that the Northeast require the sale of the so called California car. In so doing, it encourages the car companies to trade their resulting emission reduction responsibilities among themselves, but prohibits them from trading with utilities, who are elsewhere encouraged also to trade among themselves, but not with the care companies. By thus artificially fragmenting these emission markets, EPA has engineered one of the costliest rules in history.

The leading broker in SO_2 allowances under the Acid Rain Program, CACM, has calculated the costs as follows, using data published by the car companies, oil companies, and utilities themselves. By the year 2007, when the California car rule will be fully effective, the cost to the Northeast will be $4.7 billion a year. The cumulative cost to that date will be $20 billion. CACM calculates, however, that if the car companies could purchase their reductions in the marketplace as utilities are entitled to under the Acid Rain Program, the California car would cost only $157 million annually beginning in 2007. This represents a savings of $4.6 billion per year.

Obviously, this rule could not pass the cost-benefit test of the Contract with America. The measure of both the costs and the benefits in this case is the same: that is, the cost per ton of pollutant removed. Given the wide disparity in costs, the rule as finalized by EPA flunks by a very wide margin.

By ignoring the lessons of the Acid Rain Program, the EPA rule will also lose all the benefits of innovation that market incentives provide. It is thus a throwback to 1960s-style command and control regulation, and a most discouraging precedent for those seeking the most cost-effective solutions to environmental problems.

A preliminary list of additional burdensome regulations should also include (among others):

1. The Great Lakes Initiative Clean Water Quality Guidance. This EPA rulemaking would establish uniform water quality standards for eight different states. EPA estimates the costs between $190 million to $505 million per year, although some economists predict the costs could be as high as $2.7 billion. In addition, many have raised concerns that this rulemaking will not provide significant environmental benefits. The rulemaking has a court-ordered deadline of March 13, 1995.

2. California Clean Air Federal Implementation Program. The EPA is working to meet a judicial deadline of February 15, 1995 to implement a $17 billion rule to bring California into compliance with the Clean Air Act of 1977. The costly rulemaking will have significant employment impacts, with the State of California estimating job losses of 165,000. Other economists estimate 115,000 jobs lost in the Los Angeles area alone.

3. Race and Gender Disclosure Requirements. The Federal Reserve Board would not be allowed to move forward with a requirement that thrifts and banks collect

race and gender information for business loans less than $1 million. The rulemaking has its origins in the Community Reinvestment Act; however, it contradicts other Federal Reserve requirements that prohibit collecting such data on loan applications.

4. Clean Air Enhanced Monitoring Rule. The EPA is working to meet an April 30, 1995 deadline to complete a rulemaking that would revamp 25 years worth of state emissions monitoring standards. The EPA estimates compliance costs of $1 billion per year, but private sector economists suggest the costs will be much higher.

5. OSHA Ergonomics Protection Standard. A Notice of Proposed Rulemaking is expected this spring that would implement dollar rule new standards to reduce repetitive motion injuries. Among other things, this multi-billion dollar rule would require employers to modify work stations and develop written plans.

6. Indoor Air Quality. The Occupational, Safety, and Health Administration would not be able to move forward with indoor air quality rulemaking that was first proposed in April 1994. The rule would require restaurants, retailers, and others to implement indoor air quality programs and ventilation plans. The rule is estimated to cost over $8 billion per year.

7. Clean Air Permitting Rule. The moratorium would keep EPA from finalizing a costly permitting rule that goes far beyond the congressional purpose behind Title V of the 1990 amendments to the Clean Air Act. Changes made by EPA over the last two years make this a prime example of a costly and burdensome regulation. While providing few, if any, environmental benefits, the rule would stifle industrial innovations, impede economic growth, and empower state and federal bureaucrats to micro-manage industrial production.

A regulatory moratorium would allow these rules to be re-assessed in light of the regulatory review initiatives being considered by Congress. This will allow the agencies to improve their rulemakings, ensuring Americans that identifiable and harmful risks are being addressed, and that the regulations to control these risks generate benefits commensurate to their costs.

CONCLUSION

Both regulatory reform and the Regulatory Transition Act of 1995 are crucial for ensuring that consumers do not face unnecessary and costly burdens. The regulatory burden has been steadily increasing over time. Improved risk assessment and other regulatory reforms will help agencies avoid imposing undue burdens on consumers. The regulatory moratorium provides the time necessary to introduce new tools for regulatory review while allowing agencies the time to review their current regulatory agendas. I will be happy to answer any questions you have on these issues. Thank you, Mr. Chairman and members of the Committee.

Mr. MCINTOSH. Thank you very much, Mr. Gray, and we will proceed with the regular order and ask both witnesses to present their testimony and then have the panel question them. Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. I have a written statement which I would submit for the record, if you would so receive it?

Mr. MCINTOSH. Certainly.

Mr. MILLER. I would like to make several points. I think the idea of a moratorium is a very good one and it is a shame that you have to do it legislatively since the President has rejected the inquiry or the request from the congressional leadership. But for the reasons that Boyden just outlined, I think it is a good idea.

I don't think there is anything that is compelling that has to be done that would be delayed but a moratorium would shake up the system and shake up people and focus people's attention on what they are doing, and is there a better, more cost-effective way of doing it.

It will give Congress a chance to act. I think that you ought to pass legislation. I am very much in favor of a regulatory budget. I have advocated it for some time. That is, you have the agencies competing with each other over resources, financial resources that are incorporated in a budget that goes from the President to Con-

gress. Congress deliberates repeatedly over issues, adds here, subtracts there, makes a decision and the agencies are limited in what they can spend.

On the regulatory side, they are not so limited. Agencies can impose costs without much accountability. There is no tradeoff.

When I was Budget Director, an agency would come in and say, we need more money. But to give another agency more money, you need to make some tradeoffs. Well, this is more important than that. With regulatory agencies, agencies make decisions willy nilly.

It is very much like the budget process was before 1922, before there was a budget act, before there was an Office of the Budget over in Treasury. I mean, agencies just submitted their budgets directly to Congress. It is worse now because agencies don't submit regulatory budgets. If you had a regulatory budget, it would be very much like the fiscal budget and it would result in a much more efficient allocation of resources.

My former colleague, Tom Hopkins, now a professor at Rochester Institute of Technology, has estimated that just the Federal portion of regulation imposes $400 billion in costs on the economy every year. Well, $400 billion, when he made this estimate, was about 28 to 30 percent of the total spending budget.

We are talking about sizable resource allocation, and I think for the Federal Government or the Congress to authorize activity, it ought to have much closer supervision. I am in favor of a regulatory budget, and this is not a bipartisan issue. Don't get that impression.

I think we ought to memorialize the requirements of the Executive order. My feeling is the new Executive order, while it has some good intentions, gives too much wiggle room to the regulators, and doesn't have the direct requirements that Boyden and I wrote down in the draft for President Reagan. These are simple things.

Don't regulate unless you have sufficient information, to the extent the law allows. Don't issue regulation unless you show the benefits exceed the cost. Choose the most cost-effective way of achieving any given regulatory objective.

These rules make sense to me and I think if you gave these dicta to agencies and, moreover, gave private parties the right to sue if agencies didn't meet those requirements would be good policy. I think it gives you a chance to change the basic statutes and then in those areas where agencies are far beyond the pale, it gives you an opportunity to tell them no, you simply don't allocate appropriations for the purpose to which they have pursued excessively. It gives you a chance to do risk assessment or require the agencies to do risk assessment.

Mr. Chairman, you know better than I and Wayne Brough sitting back there knows better than I, that the agencies differ in terms of their approaches to issues. You find opportunities for reducing tremendous risks that are passed up, you focus attention on truly de minimis risks, and for that reason you have a terrible waste of the regulatory effort.

You could accomplish much, much more for a given amount of regulatory resources if you focused on risk or alternatively, you could achieve the same reduction in risks for a lot less money. That needs to be done.

In any event, it seems to me that the regulatory moratorium is conducive to these goals, and I urge your favorable consideration of such an initiative. Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Miller. I appreciate you joining us here today to testify on this bill.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF JIM MILLER, COUNSELOR, CITIZENS FOR A SOUND ECONOMY

Good afternoon. Mr. Chairman and Members of the Subcommittee: as you may know, I am Counsellor to Citizens for a Sound Economy (CSE), a 250,000 member nonpartisan, non-profit consumer advocacy group that promotes market-based solutions to public policy problems. Also, as you may know, I was the first Administrator of the Office of Information and Regulatory Affairs, a post established under the Paperwork Reduction Act.

Thank you for inviting me here today to discuss the importance of regulatory review and the Regulatory Transition Act of 1995 (H.R. 450), which would impose a moratorium on new rulemakings from November 9, 1994 to June 30, 1995. On behalf of the members and supporters of CSE, I urge Congress to take favorable action on H.R. 450.

Americans currently face an estimated regulatory burden of $500 billion annually—just for the federal part—that is, excluding the effects of state and local regulations. In addition, federal information requests impose a burden of more than six billion hours on consumers and businesses. Excessive paperwork and burdensome regulations can thwart economic growth and hamper the global competitiveness of the U.S. economy. Recognizing the potential adverse effects of excessive regulations, President Bill Clinton issued Executive Order 12886, "Regulatory Planning and Review." I must tell you, however, that my colleague Boyden Gray and I, the chief authors of the President Reagan's Executive Order 12291, which Order 12886 replaced, have serious misgivings about the new order's approach. In my opinion, it is much too inexact in its requirements and allows the regulators much too much discretion to promulgate regulations that are ill-conceived and impose costs far exceeding benefits. Thus, I would urge you to consider enacting additional regulatory review procedures to ensure more sensible and cost-effective regulations.

The new Congress has under review a number of improvements in the regulatory process, including risk assessment, enhanced cost-benefit analysis, and amendments to strengthen the Paperwork Reduction Act. A regulatory moratorium would provide Congress the time necessary to enact new tools for regulatory review while giving agencies the time to review the existing regulatory burden in order to identify excessively burdensome regulations. After the moratorium, these rules can be revisited using the new requirements for regulatory review.

THE IMPORTANCE OF REGULATORY REVIEW

As the federal government has grown in size and complexity, centralized regulatory review has become an integral tool of the executive branch's efforts to ensure that policies are consistent across agencies and reflect the administration's views. Increased levels of congressional oversight have made the White House regulatory review process even more important. President Richard Nixon's Quality of Life review was the first effort to coordinate regulations across agencies. These efforts at White House review were continued under President Gerald Ford through the use of Inflation Impact Statements. President Jimmy Carter then established the Improving Government Regulations Program, which relied on a number of offices within the Executive Office of the President to evaluate the impact and cost-effectiveness of regulatory activities. A requirement for regulatory analysis on any rule with an impact of more than $100 million on the economy was established under President Carter.

In addition to establishing a regulatory review group, President Carter signed legislation that would tackle the rising paperwork burden arising from federal information requests. In 1980, former Senator Lawton Chiles and former Representative Frank Horton introduced the Paperwork Reduction Act with wide bipartisan support. The act was signed into law by President Carter, the last such act he signed. Under the Paperwork Reduction Act, all agencies are required to submit paperwork requirements to OMB's Office of Information and Regulatory Affairs (OIRA) for review. Where paperwork is excessively burdensome, the law provides OIRA the authority to deny the agency's information collection request. Since 1981, OIRA has

eliminated 600 million hours annually of unnecessary paperwork, saving consumers and businesses more than $6 billion annually, by conservative estimates.

When President Ronald Reagan was elected, he established a more formal procedure for regulatory review and analysis, based on an executive order Boyden and I drafted for him while working for the Reagan-Bush transition. Executive Order 12291 required, to the degree permitted by law, that agencies base their regulatory decisions on simple rules; that they have sufficient information on which to base their decisions; that when alternative ways of securing a regulatory objective are available they choose the least-costly method; that when benefits do not exceed costs they do not go forward; and so forth. Executive Order 12291 was the foundation for regulatory review and analysis conducted throughout the 1980s and early 1990s.

Prior to President Reagan's executive order, regulatory analysis consisted of a description of the economic consequences of a rule, a description of alternative approaches to achieve the same regulatory purpose, and an explanation of why the chosen alternative was selected. President Reagan's review process provided the initial enforcement measures to require cost-benefit analysis as an integral part of the rulemaking process.

Both the Paperwork Reduction Act of 1980 and President Reagan's executive order played a substantial role in reducing the regulatory burden between 1980 and 1986. One proxy for the level of regulation—the number of pages published in the Federal Register—decreased from 87,011 pages in 1980 to 47,418 pages in 1986. At the same time, regulations reviewed by OIRA dropped from 2,765 to 2,007. However, these trends reversed in 1986 as Congress mounted pressure for additional regulations and as agencies learned to "game" the system. Federal Register pages now have climbed to more than 67,000 pages. In 1991, rules reviewed by OIRA had reached 2,388. Major rules—those costing more than $100 million, or those with significant impact—jumped more than 64 percent from 1991 to 1992. During most of the Bush Administration, OIRA did not have a permanent Administrator, which may account for some of the increase in regulation. The Competitiveness Council, headed by Vice President Dan Quayle, eventually moved to provide regulatory guidance for the administration, filling the void in leadership.

To achieve further reductions in the regulatory burden, more tools are needed. In addition to benefit-cost analysis, a sound risk assessment policy is an important step toward reasonable regulations. Benefit-cost analysis has been particularly effective in eliminating inefficient economic regulations. However, in recent years, health and safety regulations have made up the bulk of the regulatory program. For these regulations it is important to ensure that agencies allocate scarce dollars in their most effective manner. This requires identifying risks before regulating to ensure there are benefits to consumers. There was bipartisan support for risk assessment in the last Congress, and the Clinton Administration noted the importance of risk assessment in Executive Order 12886. The new Congress already has included risk assessment in H.R. 9 along with other major regulatory reforms, including strengthening the Regulatory Flexibility Act and the Paperwork Reduction Act, a regulatory budget, and greater protections for private property rights.

THE NEED FOR A REGULATORY MORATORIUM

In addition to the current regulatory burden, the Administration's Regulatory Plan and Unified Agenda of Federal Regulations, issued November 14, 1994, identifies more than 4,300 rulemakings within federal agencies. During a moratorium, it will be possible to identify specific regulations that entail substantial costs while providing minimal benefits. A successful moratorium would conclude with a list of regulations that can be re-examined using improved regulatory tools.

With over 4,000 rulemakings underway, it is difficult for agency personnel to allocate resources to a review of the current regulatory program. A moratorium provides federal agencies with the opportunity to assess their current regulatory agenda without the pressure of moving forward with new regulations. This would be the ideal time to identify those rules that are no longer effective due to changing circumstances or technological advancements.

Moreover, Congress will be working to enact more effective regulatory review procedures concurrent with the moratorium. At the conclusion of the moratorium, the federal agencies will be able to revisit rules catalogued during the moratorium with enhanced capabilities for ensuring regulations do not impose excessive burdens on consumers.

There are a number of rulemakings to consider during the moratorium. The EPA's California Federal Implementation Program, OSHA's Indoor Air Quality Standards, OSHA's Ergonomics Standards, EPA's Great Lakes Water Quality Initiative, and the EPA's California Car requirements for the northeast will impose billions of dol-

lars annually on the U.S. economy. The moratorium provides the time necessary to take a closer look at these rules to ensure that they provide benefits commensurate to their costs.

Mr. Chairman and Members of the Committee, Citizens for a Sound Economy supports efforts to strengthen the regulatory review process, in order to make needed regulations more cost-effective and to eliminate excessive costs. A regulatory moratorium provides the opportunity to focus on the current regulatory burden and to improve the regulatory process. We urge you to pass the Regulatory Transition Act of 1995.

Thank you.

Mr. MCINTOSH. I would ask a quick question of you in the area of the regulatory budget. Some people have mentioned to me that it is very difficult to quantify the costs and the benefits and therefore they are somewhat skeptical about the ability to do that. Did you have any experience in that area when you were at OMB or perhaps at the FTC, and is it something that we could realistically ask the system to do?

Mr. MILLER. Well, first let me say to be analogous to the financial budget, we would have to measure benefits because in the financial budget, you only measure costs. That is what you appropriate. You talk about benefits and you make decisions about whether the benefits of these expenditure programs make sense, the same way that you would do the cost of regulation, would the cost of these programs make sense, would they generate a lot more benefits than cost.

The determination of costs would obviously be much more difficult than is the case in financial programs, although a lot of times you find out programs cost a lot more than was intended. But you can make some good approximations. They are done all the time. They were done by the Carter administration with their regulatory analysis program. They were done by the Reagan and Bush administrations. They were done by the Clinton administration in their program's regulatory review under President Clinton's new Executive order.

Any cost assessments are subject to criticism. Some say they are too low. Some say they are too high, but the point is you make better decisions by having something and aggregating the costs and thinking through the process than by ignoring them and pretending the costs don't exist.

Mr. MCINTOSH. Thank you. I appreciate that. A quick question for Mr. Gray. One of the concerns that I have heard expressed, although to be honest only indirectly, regards the moratorium that was put into place in 1992. Apparently there were some additional costs to the government or perhaps the private sector that have resulted from that. Do you recall that being the case?

Mr. GRAY. I have seen the administration's response to the initial letter from the House and Senate leadership, and I don't know what additional costs are being referred to.

Mr. MCINTOSH. Thank you. I have no further questions.

Mr. Waxman, do you have any questions for the panel?

Mr. WAXMAN. I do. Thank you very much, Mr. Chairman and I welcome Mr. Gray and Mr. Miller to our hearing today.

Mr. Miller, let me just ask you this philosophical point. We hear a lot of discussion about devolution of responsibilities to the State. Let's say we decided we weren't going to have all these regulatory burdens coming out of Washington and we let the States decide

how much regulation they want to clean the air, make their water safe, whatever, all these regulations, especially those that are geared to protecting the public health and safety or workers' standards or whatever.

Aren't the States under competitive pressures to lower those standards in order to attract businesses to provide jobs, and won't that mean that States will want to weaken their regulations in order to make it more attractive for businesses to locate? Isn't that a clear pressure on the States and won't that be the result? And if that is the result, should we let States be put in competition with each other for reduction of standards to protect the public? Aren't some of these regulations important for the public protection?

Mr. MILLER. Mr. Waxman, we might identify and separate regulations that have extra-State boundary effects. For example, you dump pollution in a river that moves right across into the next State. That is something for which I think there is an argument for the Federal Government having some—or at least encouraging the States to have some compact, some broader group of States to make those kinds of decisions. But something that affects just the State itself, I think the decision should be made by the State.

Let me give you an example. I once visited a city, had breakfast at a little diner with some of the city fathers and mothers of Amherst, VA. They were telling me they had some EPA regulation that was passed on through the State whereby they had to clean up the runoff from their streets and make the water much cleaner than the water in the local creek out of which they were getting their drinking water, and it was going to mean a tremendous increase in real estate property taxes for that area. They didn't know how in the world they could do that.

Now, that was something that did not affect other States, and it seems to me the people in Amherst, or certainly the people in Virginia can make that decision. It doesn't require the Federal Government's intervention. You may say, would they then offer such juicy opportunities all the time? But they do that financially anyway, and I am in favor of allowing people there to make that decision.

Mr. WAXMAN. Let me interrupt because when that light turns red, I am gone, you know.

Mr. MILLER. I am sorry.

Mr. WAXMAN. We have a budget on allocation of time.

Mr. MILLER. Yes, sir.

Mr. WAXMAN. Now, what if a State decides that they are going to let workers' standards, safety protections of the workplace, just go down to a very, very meager level because business also finds it more attractive just as business will find it more attractive if they have lower wages to pay.

What is that going to mean for our society if we turn these kinds of regulations over and not have a national standard in many cases so that we don't have States put against each other?

Mr. MILLER. Congressman Waxman, that is a hypothetical. I am just saying as a general principle, I think people ought to be able to make that decision for themselves and collectively the State or the locality should make that decision, not the Federal Government.

Mr. WAXMAN. I remember when we were looking at the toxic air pollution problems and we went over to West Virginia and the State said they didn't have the expertise to develop standards, they just didn't know what EPA was doing, they didn't have their own equivalent, they didn't have the expertise, and second, they were fearful because some of the businesses said you start regulating to control toxic pollutants that poison the people in the surrounding community, and we will pick up and leave. We will go to another State, and a lot of States are trying to get those businesses to locate. It is not really all that hypothetical, is it?

Mr. MILLER. Well, I don't know the specific example you are talking about.

Mr. WAXMAN. I am giving you a real world example.

Mr. MILLER. But I would trust the people of West Virginia to make a decision that is in their interest.

Mr. WAXMAN. Well, they may decide——

Mr. MILLER. If it has external effects, if it is pollution in the basin that affects Virginia and affects——

Mr. WAXMAN. It would take a State's rights position if it affects the people in the State?

Mr. MILLER. I think in regulation, like a lot of expenditure programs, the closer you can make the decision to the people who are affected, the better decisions you get.

Mr. WAXMAN. Mr. Gray, do you agree with that?

Mr. GRAY. Yes, I do, Mr. Waxman, and one of the problems with Federal regulation in this arena is that it offers the opportunity for the people who live—or the representatives who represent those areas where there is a heavy concentration of industry that has toxic issues, it induces them to saddle certain restraints on other States that don't have any industry or have very little that is designed to discourage the movement or the origination of industry in those States that are cleaner.

Mr. WAXMAN. Do you feel that——

Mr. GRAY. And this, I think, is really foolish. It is understandable, but if there were more localized, decentralized regulation, it wouldn't happen.

Mr. WAXMAN. Do you feel that the most important objective ought to be to put a moratorium on Federal regulations so that we could devolve some of these laws to the local, State level rather than have even cost-effective national regulations?

Mr. GRAY. In some circumstances, that would be the appropriate response, I believe.

Mr. WAXMAN. You argued, both of you, for a moratorium. In February 1981 President Reagan issued Executive Order 12291 and that was to eliminate unnecessary regulations and he put a hold on those regulations. Then in January 1985—ask unanimous consent for 2 additional minutes.

Mr. MCINTOSH. Seeing no objection.

Mr. WAXMAN. In January 1985, President Reagan issued Executive Order 12498, and I think the purpose of that was to centralize these decisions at OMB. And then when Vice President Bush ran for President in 1988, he said that one of his proudest accomplishments as Vice President was to help eliminate needless government regulations that have stifled our economy, raised prices and cost

jobs, and then when he became President, he set up the Council on Competitiveness which provided business a forum outside the normal regulatory process to appeal rulemaking they disagreed with, and then we also had another moratorium on rules and a direction to agencies to accelerate initiatives that would eliminate unnecessary regulatory burdens.

Now, Clinton came in in 1993 and he has his Executive order. We have gone through this whole period of time with all these moratoria and centralization with Executive orders, why do we have these horror stories? This is something that is not new evidently. Why hasn't this worked in the past or what really have we seen in this whole period of time except the government going pretty slowly in terms of making sure that all the industry concerns are looked at at the agency level, the OMB level, the Council on Competitiveness level and boom, a moratorium to be sure that nothing goes into effect that they might not find satisfactory?

Mr. GRAY. Well, one quick answer is that the price of liberty is eternal vigilance or something like that. As the chairman pointed out in a column that I think I read this morning, de Tocqueville pointed out the susceptibility of this country to be totally strangled by regulations 150 years ago. So it is a problem that has always been with us and is always going to be with us.

One of the points I was trying to make is, all right, say a rule was appropriate. Say some of the rules that you are responsible for were appropriate at some point. It just cannot be, at this point, it cannot be that a rule issued 40 years ago is going to be apt in today's circumstances.

Telecommunications policy, food and drug, and biotechnology is all changing so rapidly that it demands that regulators sit down and say, stop issuing new regulations and go back and look and clean out the stable.

Mr. WAXMAN. Even if they do that and then want to issue a revised regulation, they would be stopped by a moratorium that might well otherwise——

Mr. GRAY. This encourages deregulatory initiatives.

Mr. MCINTOSH. Would the gentleman yield for 2 seconds? Let me just repeat, it is very clear that this bill would allow measures to go through that reduce burdens, and if there is a revision of these regulations that do that because they bring them up to date, they would be exempt.

Mr. WAXMAN. It may not be so clear-cut. It may reduce burdens in one aspect, increase burdens in other aspects to meet new needs, and you would allow, under this legislation, only that set of regulations to go through and not the balance that might be achieved to accomplish updating these regulations to make sense.

Mr. MCINTOSH. There is always July 1st.

Mr. WAXMAN. Well, there is always November 1996, but one election a mandate does not make. We have got Republican administrations and two Representatives from those periods of time where you put a lot of moratoria in place and I am not sure what you accomplished——

Mr. MILLER. Mr. Waxman, could I respond in a couple of ways?

Mr. WAXMAN [continuing]. Could accomplish now.

Mr. MILLER. Could I respond a couple of ways? No. 1, I take issue with your characterization of motives and the effects of some of the initiatives that you described. Let's put that aside.

Second, though, it seems to me that you need to bear in mind that to the extent that the centralized regulatory review process was not able to work perfectly, it was because there was an obstacle there that Congress put in its place. Congress.

Mr. WAXMAN. That is called the law.

Mr. MILLER. Congress frequently mandated that there be no consideration of cost, that some things had to go into effect without any review, and put in timetables that were impossible to comply with for the purpose of centralized review before they went into effect.

We all know what the game—how this whole centralized review process was gamed by the agencies and by Congress and we could talk about that endlessly, probably, but I don't think it is a fair thing to say that since the centralized regulatory review process has not been effective in eliminating all excessive regulation, that somehow a moratorium doesn't make sense.

Mr. MCINTOSH. The time of the gentleman has expired. Thank you both very much for coming today and for sharing with us your testimony.

Undoubtedly, we will be calling on you in the future as we address the other provisions in H.R. 9. Let me also, as you are leaving, commend both of you for your leadership of an organization that I think is highly estimable, Citizens for a Sound Economy, and I appreciate the contributions that that organization has made in this and many debates in this town.

Thank you.

Mr. MILLER. Thank you, sir.

STATEMENTS OF MARGARET SEMINARIO, DIRECTOR, DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, AFL–CIO; DAVID G. HAWKINS, SENIOR ATTORNEY, NATIONAL RESOURCES DEFENSE COUNSEL; AND WILLIAM MATTOS, PRESIDENT, CALIFORNIA POULTRY INDUSTRY ASSOCIATION, MODESTO, CA

Mr. MCINTOSH. Let me now call our final panel of witnesses. Our first witness is Ms. Margaret Seminario, who is director of the Department of Occupational Safety and Health, the AFL–CIO; Mr. David Hawkins, senior attorney with the National Resources Defense Counsel; and Mr. William Mattos, president of the California Poultry Industry Association, who has traveled from California to be with us here today.

I thank you also for making that journey and appreciate your willingness to come and participate in this process. Thank you all for joining us. Let's return to the regular order and I will ask each witness in turn to present their testimony and then open it up for questions from those members of the committee that are remaining.

We will begin with Ms. Seminario.

Ms. SEMINARIO. Thank you very much, Mr. Chairman. My name is Margaret Seminario. I am from the AFL–CIO and appreciate the invitation to come and testify on this legislation. We believe that

H.R. 450, the Regulatory Transition Act, is basically a farreaching bill that would impose an unnecessary restraint on the Federal regulatory process, indeed in our view, it is so broad that it would catch and end up delaying all rulemaking activity in many important areas that are critical for protecting the safety and health of workers in the American public.

We have some very specific concerns about some initiatives that are under way that we have been working on for a very long time with regulatory agencies with the worker safety and health that would be caught up in this time period. Let me say one thing that I think is important as you in this committee look at the whole issue of regulation and look at impact. I think it is very, very important that you look at the impact of regulation not only as it applies with respect to business and small business, and those are very legitimate concerns, but at the benefits of those regulations, what impact they have had and how they have been very beneficial to working people in this country. From the testimony today, some of that is being lost.

I would also ask that you look at the regulatory process. For those of us who do a lot of regulatory work day in and day out, we know that the process now is one that is cumbersome and lengthy. It doesn't work well for anyone, for workers or business, in terms of a process.

When I look at the moratorium and I look at H.R. 9, I look at a process that will essentially become unworkable to basically deal with important issues of American workers and the American public. I think that is a responsibility to keep that in mind. I can tell you horror stories in terms of what we have gone through in the last 24 years to get the Federal Government to act to deal with very important worker safety and health problems.

You talk about impacts of the moratorium. One of the rules that was caught up in the 1981 moratorium was a proposed rule to deal with explosions in grain elevators. In Wisconsin, we had workers in 1978 and 1979 and 1980, 70 to 80 workers a year being killed. That rule got caught up in the process. There was a delay, and there was a reexamination. It was not actually issued, I believe, until 1986; and in the process a lot of workers were killed.

That is what we are afraid will happen now with this regulatory moratorium and review of regulations, that in this process the very real needs of workers will be lost, and there will be delays that are beyond those which have already occurred.

We have some very real concerns on the issue of the OSHA ergonomics rule, which is causing an epidemic of cumulative trauma disorders. We have very real concerns about some serious mine safety and health issues that are now being examined by the Mine Safety and Health Agency. So we think it is important to look at these very real problems that the government has a responsibility to address and to look at how this legislation and other legislation would impede the protection of the American working people.

Thank you.

Mr. MCINTOSH. Thank you very much.

[The prepared statement of Ms. Seminario follows:]

PREPARED STATEMENT OF MARGARET SEMINARIO, DIRECTOR, DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today on H.R. 450—the "Regulatory Transition Act of 1995". This far-reaching bill would impose a six-month moratorium on the development of all federal regulations, rules and statements of agency policy. The result of the legislation would be to halt all federal rulemaking activity, and delay important protections for workers and the public.

H.R. 450 prohibits any government regulatory rulemaking action until July 1, 1995. The scope of the prohibition is almost total. It includes "the issuance of any substantive rule, interpretive rule, statement of agency policy, notice of inquiry, advance notice of proposed rulemaking, or notice of proposed rulemaking." The legislation would suspend all rulemaking actions taken since November 9, 1994, and all final rules not yet in effect and override all judicial and Congressional deadlines.

Moreover, it would prohibit "any other action taken in the course of the process of rulemaking (except a cost-benefit analysis or risk assessment, or both)." It is unclear whether agencies could continue to devote staff time or resources to researching or developing regulatory initiatives or whether the legislation's intent is to shutdown all government regulatory programs for the next six months.

It is noteworthy that the legislation exempts from its scope any regulations which apply to approval of products, financial structures, ratemaking, licensing, or permits for new technologies. The primary target of the bill appears to be those regulations which are designed to protect the interests of the public.

The AFL-CIO believes that the proposed moratorium is an unjustified and unnecessary measure that will prevent executive branch agencies from carrying out their statutory responsibilities. The stated purpose of the proposed legislation is to promote the efficiency and proper management of government operations and to conduct an inventory of federal rulemaking activities. But under Executive Order 12866, agencies are already required to compile and publish an inventory of all rulemaking actions as part of their semi-annual regulatory agenda. That executive order also directs agencies to develop rules that are cost effective and that minimize the burden imposed. A regulatory impact analysis must be developed for all proposed and final major rules which are reviewed by the Office of Management and Budget before they are issued. We believe these measures and requirements imposed by the Administrative Procedures Act have been more than sufficient to screen out rules that are unnecessary or unjustified.

It is important to note that H.R. 450 is a very broad measure and applies not only to rules which impose new requirements, but also to rules designed to interpret or implement laws enacted by Congress. The legislation would prevent the development and issuance of rules to implement such recently passed legislation including the Military Employment Rights Act which gives re-employment rights to veterans and the Social Security Domestic Employment Reform Act which limits several security obligations with respect to domestic employees.

These statutory obligations will still remain but there will be no guidance or procedures as to how they should be met.

One of the most significant impacts of H.R. 450 and the proposed moratorium would be to halt important government regulations necessary to protect workers and their families.

The legislation would delay the February 6 effective date of the final regulations implementing the Family and Medical Leave Act, the federal law which permits eligible workers to take unpaid leave to attend to health-related family concerns without fearing the loss of their jobs. The Family and Medical Leave Act has been law since August 5, 1993. The Department of Labor has reported a very small number of problems or disputes arising from the implementation of the law since that date. Most employers are complying with the law with minimal difficulty and cost; and workers are learning that they no longer need fear the loss of their jobs when they must take time off for childbirth, adoption or to care for an ill family member.

H.R. 450 and the delay in the Family Medial Leave Act rules will disrupt the outreach and educational efforts which have produced massive compliance and accommodation with this law by America's employers. A moratorium on these well crafted regulations will send a message of insecurity to workers and instability to employers.

The United States has lagged behind other industrialized nations in adopting a family and medical leave job standard. Delaying its final implementation now would be unconscionable.

The moratorium will stop a number of key rules to protect worker safety and health, meaning that workers will unnecessarily be injured, diseased and killed on the job.

At the Occupational Safety and Health Administration, a proposed rule on ergonomics, which is already overdue, would be further delayed. This ergonomics rule is designed to prevent crippling sprain and strain injuries which are caused by repetitious work and poor job design. These disorders represent the largest single source of workplace injuries and illnesses. Figures released last month by the Bureau of Labor Statistics indicate that cumulative trauma disorders continue to increase at epidemic rates. The number of these disorders has increased 770 percent over the past decade with 300,000 new cases of cumulative trauma disorders reported last year alone.

There are no federal or state standards regulating ergonomic hazards which cause these cumulative trauma disorders. Education, consultation and other voluntary measures have not been sufficient to alleviate the problem. This fact was recognized by former Labor Secretary Elizabeth Dole in 1990 when she committed OSHA to the development and promulgation of an ergonomics standard, and by her successor Lynn Martin when she initiated rulemaking in 1992.

It is clear that an ergonomics regulation would make a difference in this area. In the few industries, such as meatpacking and auto assembly, where OSHA has developed guidelines and conducted enforcement activities, the rates of these injuries have begun to decline. The proposed ergonomics regulation would apply to all industries where work-related cumulative trauma disorders are a problem. That proposal would be issued for public comment and refined. But a moratorium will prevent public discussion and halt work on this much needed standard. More workers would be unnecessarily injured and disabled as a result of this delay.

There are other standards at OSHA, designed to protect hard working Americans, which would be delayed by the moratorium. For instance, a standard lowering the permissible exposure limit for methylene chloride, a cancer causing chemical, is currently being review by OMB and is due to be issued as a final rule in February. This standard has been in development for almost ten years. OSHA is also on the verge of issuing a standard to protect workers from four compounds, known as glycol ethers, which cause cancer and birth defects. This standard, already nine years in the making, would also be unnecessarily delayed.

Safety and health rules to protect this nation's miners would also be stopped by this regulatory moratorium. A final rule is due shortly to improve underground ventilation in mines. This standard addresses one of the most critical safety hazards in the mining industry, the build up of explosive methane gas and emergency procedures in the event of explosions. The new MSHA rule will correct deficiencies in existing rules. But H.R. 450 will stop this rule and other measures needed to prevent injuries and deaths in this very dangerous industry.

The moratorium's reach back provision would suspend an important safety and health rule issued by the Environmental Protection Agency in December, which provides workers and the public information on toxic chemicals into the environment. This rule added 286 toxic chemicals to the Toxic Release Inventory (TRI) mandated by the Congress in the 1986 Superfund Reauthorization. This legislation was enacted after the toxic gas leak in Bhopal, India and similar releases here in the United States. Information that has been collected and disseminated under the initial TRI rule has been instrumental in efforts to reduce toxic releases and exposures and has spurred major efforts by industry to voluntarily lower emissions. The suspension of this new TRI rule will delay the collection of information on additional hazards and delay action by industry to reduce the emissions of these toxic chemicals.

The moratorium would even stop those rules which have been developed at industry's request. In October, OSHA issued a rule to protect workers in the logging industry, where 158 workers were killed and one in five workers injured in 1992. These rules were sought and supported by both the logging industry and labor and were years in the making. But under H.R. 450 the effective date of these requirements February 9, 1995, would be delayed until July 9, 1995. According to OSHA's estimates, 46 workers will die and more than 3,000 workers will be injured as a result of the delay in this critical rule.

Unfortunately, the proposed regulatory moratorium appears to be simply the first stage of a well devised plan to dismantle the federal regulatory process. This subcommittee will soon consider portions of H.R. 9, the so-called "Job Creation and Wage Enhancement Act". This agreeable sounding legislation would undermine existing federal safety, health and environmental legislation, scale back or revoke safeguards, and create a regulatory system so convoluted that all efforts to protect the public would be effectively paralyzed.

Today's hearing does not provide the opportunity to discuss the "Job Creation and Wage Enhancement Act" in detail, but the impact of this legislation would be enormous. The proposed regulatory moratorium would serve as a place holder until these more draconian measures could be put in place.

A considered and thoughtful review of regulatory requirements and procedures may be in order to determine how regulations can be more effective and how the regulatory process can be improved. However, the "meat cleaver" approach to regulatory relief contained in H.R. 450 and H.R. 9 is neither justified nor honest. The fine print of the "Contract With America"—highlighted by initiatives such as the legislation before us today—means fewer worker safety protections, ineffective pollution prevention laws, weak protections against childhood threats such as lead poisoning and dangerous toys, and the elimination of food safety protections. It means that the federal government will not act to address new hazards in the future.

Providing basic rights and protections to workers and the public is an important government responsibility. Legislation which suspends or destroys these existing contracts with the American people is not in the nation's interest.

Mr. MCINTOSH. Our next witness will be Mr. Mattos.

Mr. MATTOS. Good morning. I am Bill Mattos, and I am the president of the California Poultry Industry Federation. I thank the chairman and the members of the subcommittee for the opportunity to appear today to discuss the potential impact of H.R. 450 on a matter of great importance to the poultry industry as well as to American consumers. It is not often that I sit on this side of the table with my colleagues, so this is a new job for me.

The California Poultry Industry Federation represents the poultry producers in the State of California. Many of our members also produce poultry in the States of Oregon and Washington and sell poultry throughout the Western United States. We are one of the largest employers in California, with 25,000 workers, and the largest market for poultry in the world.

For several years, in-State producers have been increasingly alarmed at the large national companies that have been shipping chicken into our State over long distances at rock hard temperatures, placing it in supermarket cases where it thaws out and selling it as if it were fresh. Consumers are willing to pay more, as much as $1 a pound more, for chicken that is recently slaughtered and that has never been frozen. By labeling their frozen chickens "fresh" these producers are able to undersell our truly "fresh" California grown chicken and dupe consumers.

Now, we can all agree that the government should avoid excess regulation that puts a burden on society in excess of its benefits. We can also agree that some government regulation is appropriate and desirable. Of particular interest today, is the U.S. Department of Agriculture's recently proposed regulations to address the situation I just described, that will protect American consumers in an area of great importance to us. The impact of H.R. 450, therefore, would be a negative one in this area.

California is known for being in the forefront when it comes to consumer protection. In 1933, the California Legislature unanimously adopted the California fresh poultry consumer protection law, which prohibited the labeling and sale of poultry that had ever been frozen to temperatures below 26 degrees—which is the freezing point of poultry—as fresh. We of the California Poultry Industry Federation were happy that our State's representatives acted to assure the consumers in our markets were not victimized by misleading labeling and advertising.

But the National Broiler Council and the National Poultry Lobby, acting on the part of big national producers, came into our State and sued the Federal District Court to stop the California fresh poultry consumer protection law from taking effect. The court ruled that, regardless of the merits of the State legislature's action, it was preempted by the Federal Poultry Product Inspection Act, which says that only the U.S. Department of Agriculture can make rules about what can and cannot be put on poultry labels. The law says that there must be uniform labeling laws for the entire country, and no State can adopt different rules—even if they are more protective to consumers.

Here is a situation where the State wanted to handle an issue by itself but is being stopped from doing so by longstanding Federal statute.

So I don't run out of time, I want to briefly say we appealed the Federal District Court ruling and there have been a number of different issues and developments in this case since we appealed that ruling. But the outcome of the most recent one has not changed. A few weeks ago, the Ninth Circuit Court of Appeals affirmed the lower ruling that California may not adopt poultry labeling rules, only the USDA can do so.

One of the judges was so frustrated by that result that he wrote: "Congress has given a federal bureaucrat the power to order that frozen chickens be labeled 'fresh,' and we affirmed this absurdity . . ."

A survey of Californians and U.S. consumers show that more than 80 percent of the consumers in this country believe in our act. In addition, all the California delegation—Democrats and Republicans—have supported us in our endeavors, and now we are under a 60-day comment period. A final rule could be expected this spring if this moratorium were not in effect.

Finally, consumers in California and other States would stop paying more for something they are not getting. Consumers are losing millions of dollars every year because of this labeling fraud.

I will stop now.

Mr. MCINTOSH. Thank you very much. Perhaps we can expand in the questioning period.

[The prepared statement of Mr. Mattos follows:]

PREPARED STATEMENT OF BILL MATTOS, PRESIDENT, CALIFORNIA POULTRY INDUSTRY FEDERATION

Good morning. My name is Bill Mattos and I am President of the California Poultry Industry Federation. I thank the Chairman and members of the Subcommittee for the opportunity to appear today to discuss the potential impact of HR 450 on a matter of great importance to the poultry industry and to American consumers.

The California Poultry Industry Federation represents the poultry producers in the state of California. Many of our members also produce poultry in Oregon and Washington and sell poultry throughout the Western United States. We are one of the largest employers in California with 25,000 workers in the largest market for poultry in the United States.

For several years, in-state producers have been increasingly alarmed as the large national companies have been shipping chicken into our state over long distances at rock hard temperatures, placing it in supermarket cases where it thaws out, and selling it as if it were fresh. Consumers are willing to pay more—as much as a dollar a pound more—for chicken that is recently slaughtered and has never been frozen. By labeling their frozen chicken "fresh" these producers are able to under-sell our truly fresh, California grown chicken and dupe consumers.

Now we can all agree that the government should avoid excess regulation that puts a burden on society that is in excess of its benefit. We can also agree that some government regulation is appropriate and desirable. Of particular interest to us today, the U.S. Department of Agriculture recently proposed a regulation to address the situation I just described, that will protect American consumers in an area of great importance to us. The impact of H.R. 450, therefore, would be a negative one in this area.

California is known for being in the forefront when it comes to consumer protection. In 1993 the California legislature unanimously adopted the California Fresh Poultry Consumer Protection Law, which prohibited the labeling and sale of poultry that has ever been kept at a temperature below 26 degrees—the freezing point of poultry—as fresh. We at the CPIF were very happy that our state's representatives acted to assure that consumers in our markets were not victimized by misleading labeling and advertising.

But, the National Broiler Council, acting on behalf of big national producers, came into our state and sued in Federal District Court to stop the California Fresh Poultry Consumer Protection Law from taking effect. The Court ruled that, regardless of the merits of the State legislature's action, it was preempted by the federal Poultry Product Inspection Act, which says that only the US Department of Agriculture can make rules about what can and cannot be said on poultry labels. This law says that there must be uniform labeling laws for the entire country and no state can adopt different rules—even if they are more protective of consumers!

Here is a situation where the state wanted to handle an issue for itself, but it is being stopped from doing so by a long standing federal statute.

The Poultry Product Inspection Act was adopted in 1957 to govern the way poultry is handled and inspected in this country. The Law itself says nothing about "fresh", of course, and USDA has allowed poultry to be labeled as fresh so long as it has been frozen no lower than 1 degree fahrenheit—it can be as hard as a bowling ball and still be called fresh.

We appealed the Federal District Court ruling and there have been a number of different issues and developments in the case. But the outcome on this most important aspect has not changed. A few weeks ago (Dec. 14), the Ninth Circuit Court of Appeals affirmed the lower court ruling that California may not adopt poultry labeling rules—only USDA can do so. One of the judges was so frustrated by the result that he wrote: "Congress has given a federal bureaucrat the power to order that frozen chickens be labeled "fresh". We affirm this absurdity . . ."

A survey of Californians found that 75% think there should be a government rule to force poultry to be labeled correctly, but the will of the people and their state representatives has been frustrated by the federal law.

The good news is that this controversy caused USDA to reconsider its policy. After a year of review of scientific literature, three all-day public hearings held across the country, tests conducted at the Agricultural Research Service lab, and the receipt of thousands of letters from irate consumers, USDA just this week proposed a new national rule on the labeling of chicken. It mirrors the standard California tried to adopt—chicken that has been chilled below 26 degrees cannot be labeled fresh. It has to be labeled "previously frozen.

After a 60 day comment period, a final rule could be expected to go into effect this spring. Finally, consumers in California and other states would stop paying more for something they are not getting. Consumers are losing millions of dollars every year because of this labeling fraud.

HR 450 threatens to prolong the wait even more. Its effect would be to put this proposed regulation, so long overdue, on hold. Consumers could be forced to wait as much as another full year with no way to tell which poultry in their market is fresh and which has been previously frozen.

Let me reiterate, we have no objection to allowing every state to make it's own rules about consumer labeling. There are many areas in which states are allowed to adopt their own—sometimes more stringent—rules than exist at the federal level. But the Court has found that the need for uniformity with respect to food labels is such that states cannot act for themselves. I urge you to consider the adverse consequences that HR 450 would have for truth in labeling. Thank you very much for your attention and I am happy to answer any questions you may have.

Mr. MCINTOSH. And now for the final witness on the panel, Mr. Hawkins.

Before you start, let me say I particularly appreciate your participating in this hearing and want to assure you that I would like to continue to work with all of your groups on this. I know we may

not see eye to eye on every issue, but I am definitely open to divergent views, and where we can reach consensus, I think we can makes changes that will benefit everybody. So thank you all for coming.

Mr. Hawkins.

Mr. HAWKINS. Thank you, Mr. Chairman. We will look forward to finding areas where we can work together.

As a citizen organization, Natural Resources Defense Council has always been interested in finding ways to make the government responsive, make it perform to serve the needs of the people. That is what the purpose of government is.

We do oppose the enactment of H.R. 450. We do so because, Mr. Chairman, we believe that it shoots at the wrong target and hits many innocent bystanders in the process.

The concept of a moratorium is fundamentally incompatible with the objective of reasoned analysis of decisions. It catches up rules that are good. It catches up rules that are bad. It doesn't distinguish between any of them. It catches up rules where there has been a negotiated agreement, and everyone wants it to move forward to resolve uncertainties.

Business costs are imposed by a lot of factors. One is uncertainty. Business planning needs certainty. A moratorium will not deliver that certainty. What it will deliver is uncertainty.

The litigation provisions in the H.R 450 have been discussed before. They are a prime example of uncertainty. Even if you, I, all the members of your committee, the agencies involved, the regulated communities and any other person involved agreed that an exemption should be given for a provision that needed to go forward, any other person could file suit in a court to stop it and create months of uncertainty while that issue was litigated.

The California FIP has been brought up. The California FIP is a product of litigation. It is an example of why it is a good idea to avoid litigation. It is an example of why it is a good idea to not let things go to a point where they are polarized and create the kinds of reactions and controversy that prolong disputes.

I think that is where a moratorium and the broad sweep that this legislation represents would beat us. Past efforts to deal with legitimate problems in the existing body of regulations have often been mired in controversy and polarization because of the broad sweep of the attack on those regulations. Persons who depend on those regulations for their health and safety have legitimately felt threatened just as previous witnesses in today's testimony have felt threatened and frustrated by the impact of rules on them. When that happens there is a response, and anything we can do to limit polarization will help solve the problem.

Mr. Chairman, H.R. 450 will not do that. It will produce the opposite result, and I would ask you to consider a more reasoned approach. Thank you.

Mr. MCINTOSH. Thank you very much for your testimony.

[The prepared statement of Mr. Hawkins follows:]

PREPARED STATEMENT OF DAVID G. HAWKINS, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Thank you for inviting NRDC to testify today on H.R. 450, the Regulatory Transition Act of 1995. NRDC is a national membership organization dedicated to environ-

mental protection. In our work we have sought to improve the effectiveness and responsiveness of all levels of government in dealing with environmental threats to human health and enhancing the quality of our environment.

As we read H.R. 450, it would bar federal agencies from taking any regulatory rulemaking action, other than specifically excepted actions, until July 1, 1995. In addition the bill would suspend the effectiveness of regulatory rulemaking actions taken since November 9, 1994.

The bill would halt not only final rules but also advance notices of proposed rulemaking, notices of inquiry, notice of proposed rulemaking and by other action taken in the process of rulemaking (except a cost benefit analysis or risk assessment). The bill would override deadlines in existing law and even attempts to override existing court orders, setting the stage for one court ordering an agency to act while another orders it not to act.

Mr. Chairman, NRDC respectfully opposes enactment of H.R. 450. We oppose the bill because it prevents the government from protecting the public against identified harms. We oppose it because it is the wrong tool to improve regulation, new or old.

We acknowledge that anecdotes of apparently unneeded or unduly complex requirements in existing rules abound. But the case has not been made that the "peril" of scheduled rules is so great that it justifies a declaration of martial law against programs to protect the public. A reality check is in order. In many respects, America has the best environmental quality in the world and it has achieved that status in large part because of rules; rules that cannot be frozen without damaging their effectiveness. America also is in its fourth quarter of economic recovery; strong evidence that the recent pattern of government rulemaking has not done the damage claimed by some of H.R. 450's supporters.

Congress did not act in haste in its decisions to attack remaining problems, like toxic air pollution, ozone depletion, or drinking water contamination. For example, reauthorization of the Clean Air Act consumed the attention of five Congresses between 1981 and 1990. Elected officials, including President Bush were persuaded that additional actions by the federal government were needed to make progress on clean air. Actions called for by Congress in 1990 are among the regulations that would be affected by the moratorium in H.R. 450.

The supporters of H.R. 450 have not identified the particular problems the moratorium is intended to address or described how the moratorium will solve or ameliorate these problems. The impacts of the moratorium are unknown. Will Congress know before it votes on H.R. 450 what desirable rulemaking actions would be delayed by the moratorium? Will Congress know what adverse impacts such delays would cause?

Federal regulations serve important needs for which every opinion survey shows continued strong support. Clean drinking water, food that is fit to eat, lakes and streams where it is safe to swim, boat and fish, air that we can breathe without harm, workplaces where employees are free from discrimination and unreasonable risks of physical injury—these are just a few of the qualities of daily life that Americans depend on their governments to help them secure.

H.R. 450 would do harm by delaying needed protections and it would even stall new streamlining actions. I will provide a few examples. But members should ask themselves and be prepared to answer, how many other important actions would be affected by this sweeping bill that have not even been identified.

DELAYING BETTER PUBLIC PROTECTION

Cryptosporidium Drinking Water Contamination—The Milwaukee Mauler.

Cryptosporidium is a parasite that has caused several major waterborne disease outbreaks in the U.S. including a 1993 outbreak that made over 400,000 people sick and killed over 100 people in Milwaukee, Wisconsin. This parasite has been found in 80 to 90 percent of the surface waters used for drinking water tested in the United States, and is currently not regulated.

Under a negotiated rulemaking, representatives of State and local governments, the water industry, and public health and environmental organizations agreed in 1994 to the issuance of an "information collection rule" that will require nationwide testing for cryptosporidium and certain other dangerous contaminants. The purpose of the rule is to gather enough data to inform policy makers and the public about the extent of the problem, so that final controls can expeditiously be adopted for this waterborne menace. EPA is now working to put its 1994 proposal in final form.

H.R. 450 would bar EPA from taking any interim steps to complete this rulemaking (e.g. sending a draft final rule to the reg neg participants or to OMB for review) and would delay EPA's final rule, resulting in water systems missing the early 1996 testing cycle. This would cause a year or more delay in issuance of final

rules to protect the public from cryptosporidium, which is widely agreed to pose a serious public health threat.

Already the private sector recognizes public concern about cryptosporidium is great enough to warrant prompt action. I've attached a copy of a half-page ad that appeared in Tuesday's New York Times, urging people to drink bottled water. Is this the brave new world of better government?

Should we just post a sign at EPA: "Let them drink designer water, the government's closed until further notice."

Unfortunately, there are many families who have not and cannot plan to make room in their budgets for the expense of bottled water. They have paid their taxes and expect something in return; at the very least, tap water that's safe to drink.

Meat and Poultry Inspection

Two years ago, in response to the deaths of four children from eating meat at a fast food restaurant, USDA began a review of its meat and poultry inspection system. Proposed rules are scheduled in the next two months to implement:

1) Basic sanitation requirements
2) Short-term interventions to reduce contamination (such as rinsing and sampling).
3) Hazardous Analysis and Critical Control Points Identification and Plans to require each processing plant to identify hazards in their operations (chemical, physical and microbiological-bacteria), identify points where these hazards might be controlled, and create plants to control the hazards.
4) Microbial testing and monitoring.

If implemented, these rules would help prevent or reduce the 20,000 illnesses a year and 500 deaths a year from E. Coli. But this important rule would be delayed by H.R. 450.

Medical Waste Incinerator Toxic Air Emissions

Currently medical waste incinerators, if regulated at all, are subject only to a patchwork of state and local rules that fail to cover important toxins. This important rule would result in large reductions in dioxin, lead, mercury, soot, and carbon monoxide. Dioxin is a pollutant that is persistent in the environment and causes adverse reproductive and developmental effects. This proposed rule is scheduled for publication in mid-February.

Municipal Waste Incinerators

Municipal waste incinerators also have spotty requirements for control of air pollution. EPA has proposed a rule to reduce dioxin, mercury, cadmium, lead, and soot from these large sources. EPA's final rule is scheduled for September 1995 but would be delayed because H.R. 450 bars EPA from taking the steps needed to meet that schedule.

Petroleum Refinery Air Toxics

Refineries release large quantities of toxic air pollutants and smog-forming compounds. This rule will substantially reduce those dangerous pollutants. The final rule is scheduled for June 1995 but would be stalled by H.R. 450.

Municipal Landfill Emissions

Municipal landfills are large sources of smog-forming and other toxic air pollutants. To the extent rules for these sources are delayed States may have to regulate other smaller sources more strictly. EPA's final rule is scheduled for February 1995.

Community Right to Know

The Toxic Release Inventory—an EPA database documenting pollution discharges to air, land, and water—has been hailed by industries, state governments and citizen groups as a useful vehicle to promote voluntary prevention and control of pollution. On November 30, 1994, EPA issued final rules to ease reporting requirements for small emissions sources, and to require reporting of some 286 additional toxic chemicals, including pesticides, water pollutants, and air contaminants. The final rules would provide communities with basic information about discharges of chemicals to the air residents breathe and the water they drink, while reducing the reporting burden on industries that release only small quantities to the environment. H.R. 450 would suspend the public's right to receive this information.

DELAYING RULE REFORMS

Ironically, H.R. 450 will also suspend and delay adoption of rules that do streamline existing regulations. To exempt a rule from the moratorium an agency head must certify the rule is "limited to" repealing, narrowing, streamlining, or reducing

regulatory burdens. However, many rules that on balance greatly streamline existing rules, may also contain some provisions that create new or additional duties. The resulting rule may be a big improvement for the regulated community but under H.R. 450, if it is contaminated by any added requirements it cannot be adopted. H.R. 450 also allows any person to file suit for a transgression of the moratorium; so even if all parties to the rulemaking, OMB, and your committee agree that the rule should go forward, a single individual can go to court to stop it. Here are a few examples.

Revised Acid Rain Allowance Rules

EPA's initial acid rain rules were challenged by both the electric utility industry and environmental organizations. In May 1994 all parties—industry, EPA, and environmental groups—reached agreement on several key provisions for compliance with the law's sulfur dioxide allowance requirements. EPA issued a final rule incorporating this negotiated agreement on November 22, 1994. While it contains some streamlining provisions, it is not purely "deregulatory" and probably would be snared by H.R. 450. Suspension of this rule could both increase pollution and create costly compliance uncertainties for electric utilities.

Two additional acid rain settlement agreements have been reached between industry, environmental groups and EPA but the EPA rulemaking to implement these agreements would be delayed by H.R. 450.

Permits Applications for Sewage Treatment Plants

This revision to permit application forms would reduce the transaction costs of state permitting programs, creating a "one-stop-shopping" information transmittal system, to replace two or more un-coordinated ones (one for sludge, one for sewage, another for combined sewer overflows).

States and POTWs have had significant input into the drafting process for these revisions to the permit application. However, the rule cannot be styled pure "streamlining" or burden reduction because it asks for certain new information on toxics and other matters that will help to establish better permits. The proposal is scheduled to be proposed about March 1995.

Definition of Wetlands

EPA plans to revise the definition of wetlands subject to Clean Water Act regulation. The clarifications would exempt from CWA coverage certain artificial waters, and non-tidal irrigation and drainage ditches that are excavated in uplands.

These clarifications will help to avoid regulatory confusion and battles over wetlands regulation. They cannot be characterized as "streamlining" exclusively, because they will be implemented through revised delineation procedures. But their net effect will be a reduction in regulatory burden on those whose waters will be exempted from current definitions. Scheduled to be proposed in March 1995, it would be delayed by H.R. 450.

H.R. 450: THE WRONG TOOL FOR THE WRONG PROBLEM

One of the themes of current political discourse is that Congress should legislate when the case has been made that a new law is necessary and after due consideration that the new law is appropriately designed to remedy the problem it addresses. H.R. 450 is at odds with both these principles.

Let me touch on a few of the justifications we have heard for the moratorium.

Too Many Pages

H.R. 450's advocates say there are too many pages in the Federal Register. Let's hope there are more reliable indices of the impacts of regulation, good and bad, than this. As you know, the typical Federal Register is made up of three types of documents: notices of meetings, Presidential documents, and rulemaking documents. In the rulemaking documents each agency explains why it is proposing or adopting a rule and responds to comments on its proposals (the "preamble") and then prints the proposed or final rule.

I am not aware of any exhaustive survey that compares the length of the explanatory material in the Federal Register to the length of the rules themselves but the rules I am familiar with almost always take more space to explain the rule, provide information on which the rule is based, and respond to comments, than they do to print the rule itself.

Counting Federal Register pages to prove an excess of regulation suggests that the lengthier the government's explanation of its actions, the more abusive government is. However, most of the regulatory reform initiatives of the past two decades have encouraged or required the government to provide more information and anal-

ysis to justify its decisions. A summary of those analyses and discussion of comments appears in the Federal Register so it is no surprise that preambles have increased in length. One can argue about whether this is good or bad—a long explanation is not necessarily a good one—but it seems off the mark to assume that preamble page length is a sign of an abusive rule.

Wacky Rules

I have mentioned the tales of apparently stupid rules. Doubtless there are provisions in existing rules that are not effective or are needlessly complex. We are being treated to many examples by supporters of the moratorium and I do not propose to debate these "horror stories." Rather, let me put a more fundamental question: how will a moratorium on new rules help identify and fix defects in existing rules? Some will point out provisions in pending new rules that they disagree with and claim should be stopped or modified. But a moratorium on all new rules except pure deregulatory actions (and rules the President finds are needed to address "imminent threats") is a meat axe approach that is no model for good government.

For existing rule defects, the challenge is to come up with a reasonable and workable process to fix provisions that legitimately require change. A moratorium on new rules simply is a distraction that makes actual reform more controversial and adversarial than it needs to be. Past invitations to nominate rules that should be changed have produced a feeding frenzy from regulated interests that lumped together critically important rules that the public supports with provisions that both agencies and the public would agree could be changed. This approach has generated controversy but not as much change as could have occurred.

For pending new rules, moratorium supporters have not made the case why existing regulatory comment and review procedures are inadequate to deal with their concerns. All rulemaking actions go through notice and comment procedures and important rules are subject to executive branch review processes at both the proposal and final rule stages. Judicial review of final rules is also available. Moratorium supporters seem to argue that these safeguards are not good enough but they have not shown why.

Sending a Message

The last argument for H.R. 450 is that it will send a message. The question is whether it will be the one its supporters intend. NRDC opposes the moratorium because it is bad policy. But others could just as easily oppose it as bad politics.

H.R. 450 would send a message that the new Congress can't be bothered with such niceties as an intelligent discussion of which new rules, if any, warrant more extensive review than that provided under current law. Based on claims that some new rules may contain problems, H.R. 450 would lock up all new protections against health, safety, and environmental threats; and not only new final rules but also all initial steps to develop future rules except for certain favored analytical techniques.

The message H.R. 450 would send is that Congress is willing to call a five-month halt to all efforts by the government to carry out existing laws to protect the public, without knowing what important health, safety, food, drug, and environmental protections may be delayed.

By encouraging sweeping efforts that ignore the value of "good" rules, previous regulatory relief campaigns have prevented attention from being focused in the right place. Public attention and agency resources have been devoted to defending the many important rules under assault, not to supporting changes in the rules that make up industry's "horror stories." By being more discriminating, regulatory critics will have a chance of hitting legitimate targets.

Enactment of H.R. 450 is exactly the wrong way to pursue legitimate reform objectives. A law that tells government employees who are paid to protect the public to do nothing for five months will do little other than harm citizens and waste their tax dollars.

Mr. MCINTOSH. Let me ask a couple of questions and then proceed to the other members of the panel.

Ms. Seminario, very briefly, could you respond to Mr. Donohue's earlier comments about the effects of the ergonomic regulation? He expressed concern about steering suddenly being defined as a repetitive motion and therefore dramatically affecting his industry and the inability to lift 25 pound packages as a result. Perhaps you have the benefit of coming later, and he won't be able to respond to you, but I would like to hear your response to that.

Ms. SEMINARIO. Just to be clear, the OSHA ergonomic standard has not been proposed, so we don't know what it will do. It is under development at the agency, and they have been having a lot of discussions with a lot of outside groups trying to get feedback on what it should look like. So we are at a stage where it is soon to be ready to go through the review process at OMB, to come out so we can comment on it. So we don't know what is in it.

What Mr. Donohue might have been responding to is things that he heard that might be in it, because there is no proposed rule. What we would like to have—because this is a very important area. It is a new problem that is emerging with changes in the workplace, changes in technology, and it is one that is different in terms of the kind of problem that it poses. We think it is important to get the rule out so people can discuss it.

It is a difficult issue. There aren't sort of clear prototypes of regulations that work on chemicals and work on some safety hazards. So it is going to be, I think, a difficult issue, but we can't get to the point of discussing what it should be until there is something out there. So we would like the proposal to go forward so that discussion and that dialog can begin.

Mr. MCINTOSH. So the objection is that the proposal will have to be delayed until July 1st?

Ms. SEMINARIO. It has already been delayed, so that is a concern—that we would like it to move forward so there could be the beginning of a public discussion of what should be in the rule.

Mr. MCINTOSH. In your written testimony, you mentioned there were new regulations in the logging industry and that you were fearful that their delay could potentially result in 46 deaths during that time. Looking at the math quickly, it looked like that was based on the assumption that those new regulations would bring the risk of death in that industry from something like 152 a year down to nearly zero. Is that the projected benefit of those rules? And, if so, why haven't they been put in place a long time ago?

Ms. SEMINARIO. That is a good question. Where those numbers come is the risk assessment that OSHA did as part of the rulemaking, developing their numbers, the best estimates as to what impacts would occur in this industry as a result of this rulemaking. So that is where the numbers came from, and they were published in the Federal Register, and they were developed as part of the rulemaking.

The rule was supposed to go into effect on February 9th, and looking at your bill that would be about a 5-month delay and 5/12 of whatever the number of annual lives saved is in my testimony. So that is where those numbers do come from.

We are concerned with that rulemaking, which has gone forward, which is final, which was supported by the industry and the union, they would like to see that rule in place. The reason that it takes so long to do these rulemakings is because the Federal regulatory process and rulemaking process is a very inefficient one, a very cumbersome, a very lengthy one. We would like it to be more efficient and effective.

The concerns that I have with some of the legislation we are looking at, the moratorium and H.R. 9, is that it will make us more frustrated that the process isn't working for anyone.

Mr. MCINTOSH. I was sort of skeptical that the risk went from a significant number of deaths a year in that industry down to virtually none. But, nonetheless, if there is a chance that you could have one less life lost it is worth pursuing. Certainly that would fit into the category of imminent threat when you are talking about 46 lives at risk in a 6-month period.

We have plenty of time before this is actually enacted to work with the administration to make sure that on the same day that it is clear to everyone that that is an exemption.

Ms. SEMINARIO. That would be helpful, because OSHA has an imminent danger and emergency rule that can come under their statute, and under their statute this isn't imminent so you would have to reconcile your definition of what is imminent——

Mr. MCINTOSH. We need to work with OSHA to move something like that into the more imminent category, I would think, if you are talking about that many lives. Thank you.

Mr. Mattos, would you describe the regulation that you are proposing, which I assume the solution was a change at the Federal level of the definition of what fresh is?

Mr. MATTOS. I am sorry. I missed the last two pages of my testimony. I can bring you up to date.

We were sued. We appealed. The Appeals Court said that we were preempted by the Federal Government.

In the meantime, when all this was happening in court, we initiated the rulemaking on ourselves because we wanted to bring this to an end. In 1988, it was brought up. We are not a politically active group. It was brought up. Six months later, the National Poultry Lobby got into the Department of Agriculture and killed it.

Mr. MCINTOSH. Would there be objection to me yielding myself another 2 minutes?

Mr. MATTOS. So in 1988 that happened. So 2 years ago we said we are going to take a proactive stance and change a rule that we don't think is right or fair or right to business or right to the consumer. So we initiated the rulemaking process a year ago. We held hearings across the United States basically saying that in order to call something fresh it needs to be 26 degrees or higher. Anything under 26 degrees cannot be called fresh.

The USDA came out with their rule I believe Tuesday of this week, so we have a 2-month comment period now that we are staying on top of. We hope to come to a final rulemaking by the spring.

That has cost millions of dollars, a lot of time, a lot of energy and a lot of effort to improve the system, in our opinion. And now we are finally there after almost 2 years, and this moratorium comes up. It is devastating to everything that we have done. We don't think we can wait 5 months. Because of what happened in 1988, we think we need to stay on top of it and see USDA carry this rulemaking through in its 2-month period. And that is where we are.

Mr. MCINTOSH. Would you characterize this as a rule that reduces the burden on your industry in California?

Mr. MATTOS. We don't think it places any burden. You are basically going to have to put—you can't put fresh labels on a product is what it says. The USDA rule says you need to put previously frozen on anything under 26 degrees. If that comes to fruition, yes, there will be that extra label that goes on the product. However,

they were putting fresh on that product before. So we don't see a big cost-benefit problem at all on this issue.

Mr. MCINTOSH. For producers in your State, but the producers sending them in from other States would have an additional burden of having to label the product?

Mr. MATTOS. If they are not currently labeling the product, right.

Mr. MCINTOSH. Thank you. I have no further questions.

Mr. WAXMAN. Will you yield?

Mr. MCINTOSH. Certainly. Let me recognize Gil, and then I will get to you.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

I am not clear. So the chickens aren't being labeled at all right now or being sold? What would happen for the next 5 months?

Mr. MATTOS. Chickens can be sold as fresh if they are hard as a rock at 1 degree F. You can keep a chicken for 20 years and sell it as fresh under USDA law right now. That is what is happening right now. And so for the next 6 months they would continue to be sold that way.

Mr. GUTKNECHT. But no danger is being done to the American public?

Mr. MATTOS. Exactly.

Mr. GUTKNECHT. Thank you.

Mr. MCINTOSH. Mr. Waxman.

Mr. WAXMAN. I just want to tell the chairman how pleased I was at your willingness to look at expanding this legislation to deal with this imminent hazard. I think it is too narrowly drawn, and if you are willing to look at letting a lot of regulations to go forward where safety and lives may be at risk I thank you for that——

Mr. MCINTOSH. My view is it is covered by the language. If there is a problem, we can talk about specifics.

Mr. WAXMAN. I think there is a problem, but maybe we mean the same thing, and we can find some common ground.

Mr. MCINTOSH. Now we will proceed with questions from other members of the committee. Mr. Peterson.

Mr. PETERSON. Thank you.

Mr. Gutknecht, you could have sat in and learned—we had a hearing on this issue. We got to bowl frozen chickens and had all kinds of fun.

By the way, our chicken producers in Minnesota are very much opposed to this rule. It is going to cost us market share. Anyway, that is really what it is all about.

Mr. MCINTOSH. That is very magnanimous of the ranking member to bring Mr. Mattos——

Mr. PETERSON. I just thought it was something people needed to realize.

Just so I get a better understanding of how this bill works—apparently, in your situation, Mr. Mattos, if this passes this process gets put on hold. And so you can't even talk about this until June 30th, and then it starts up again, and then there will be some period of time after that. Is that how this works?

Mr. MATTOS. That is how we understand it. We think it is very important to continue on a very proactive effort right to the end. Whatever the final rule says, we think we need to stay on top of this issue because too many times in the past it has gotten lost.

Mr. PETERSON. One of the problems some groups have is that you can't even talk about this while this goes on, and it is kind of in a holding pattern.

Mr. MATTOS. That is true.

The other issue is the fact that I don't know how many other business entities are in our position with this, but we have taken a proactive stance to do something positive in our opinion and spent lots of money to do it and to get it to this point where we finally have a rule to look at. That is why we think this retroactive situation is unacceptable.

Mr. PETERSON. My other question—were you all here for the other testimony?

I think the thing that is driving this issue are these crazy regulations that get—I don't know how they come about, but the underground tank situation. I don't know whose law that was. Maybe it was your law, Henry. I don't know, but nobody takes any credit for that?

But, that is a particular case I think of—a good idea that when it got implemented just drove people crazy. We wasted tons of money, did a lot of stupid things. And this is the kind of thing that is driving this moratorium issue and driving people like me to support it.

So my question is, you don't like this approach—which I see as an approach to try to put a hold on some of these crazy regulations until we can get cost-benefit risk analysis into the process which we are starting to get in, but not fast enough. Have your groups been working—Mr. Hawkins, have you been working to try to stop some of this craziness that goes on out there? Part of the trouble you are having with environmental regulations is some of this stuff, when it finally gets down to being implemented, just is not defensible and doesn't make any sense.

Mr. HAWKINS. Thank you for asking the question.

We spend increasing amounts of time working with the people that live with complying with regulations. Because the controversy over complying with regulations is slowing down whatever improvement in quality that the American public wants. So it is important for everyone to hear what are the concerns that people have when they are asked to comply with a regulation and try to figure out frictionless ways to deal with it.

So, yes, I have spent the last 2 years as a part of an advisory group with EPA trying to figure out ways to streamline their permitting process, and this has been meeting after meeting.

One of the things that we encounter is that the resources from the unorganized public really aren't up to the task of being able to staff these meetings to the degree that it would be nice to do so. The typical meeting that I attend is me, two or three State people and 40 industry lawyers. That is fine as far as I am concerned, except it reflects something problematic with the system.

I don't have a proposed way to deal with it, but I know that the kinds of remedies that are being considered by this Congress are not going to help the situation. Instead, they are going to cause people like me to have to spend time figuring out ways to try to persuade people that some of these proposed remedies are so extreme and so damaging, and all of my time is going to be focused

on that agenda rather than on the agenda of trying to deal with some of the wacky rules that people have been identifying.

I am going to have to stop attending some of these meetings where we are trying to streamline regulation because the focus of attention is going to have to be in dealing with what are overreactions and extreme remedies.

Mr. PETERSON. Some of this problem in my judgment is people problems, mind-sets of some of these folks in these regulatory agencies. I don't know why it happens, but it is a lot of the problem.

In my area, I have a full-time person on the road doing economic development, and we hear about this stuff all the time. The biggest problem they have is not with regulations. It is with—that the agencies won't make decisions. And you can't get them to decide what to do, so you are sitting there for 2 years trying to figure out what it is they are going to decide, if they ever do, and that drives a lot of this frustration.

That was one of my other concerns with this bill, that if we get this in place and do this wrong we are going to end up just making that situation worse. So I don't know—it is one of the things I think the more you learn about it the less you know.

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. Hawkins, do you have a response?

Mr. HAWKINS. An observation, if I might.

Many of these provisions are experiments in behavior modification, and I think your concern is very legitimate. These provisions are basically telling the Federal Government it is OK not to perform. In fact, you are better off if you don't perform. That is not a message that is a good one to send.

Mr. MCINTOSH. Thank you.

Mr. Fox, do you have any questions at this moment?

Mr. FOX. I will pass for now.

Mr. MCINTOSH. Mr. Waxman, do you have any questions for the panel?

Mr. WAXMAN. Yes. Thank you, Mr. Chairman.

That is an interesting observation—that you are frustrated when they do act and you are frustrated when they don't act.

I know that when we wrote the Clean Air Act we looked at the fact that the administration then in power didn't really want to move forward on legislation like this. We looked at Anne Gorsuch Burford when she was head of EPA and those whose views were antithetical to doing what was required, that we wrote specifics into the law to force action. That is not always the best way to do it, but we felt it was necessary.

Other times, Congress passes laws that are so general we leave it up to the agencies to make the decisions, and we delegate a lot of power to them, and that can be problematic as well.

Mr. Hawkins, I want to give you a chance to talk about this issue of the California cars, the 49 State car that has been mentioned a number of times. What is your observation?

Mr. HAWKINS. Thank you for that opportunity.

The Northeast State issue that has been brought up before is a curious example to bring up because what that program is is a way of empowering States—it is a way of letting States band together and seek the assurance of the Federal Government that if they

take action to deal with their consumers it will not be frustrated by the fact that a neighboring State declines to take action, even if there is a clear interstate transportation and pollution problem.

So what the provision allows the States to do in the Northeast is it allows those 13 jurisdictions to send their representatives together and meet as a body called a commission and to vote on uniform regional measures which they believe should be adopted by all 13 jurisdictions. They considered the benefits of the California low emission vehicle program, and they voted last February by 9 to 4 to recommend to EPA that this be a regional measure that the States would adopt. So this is a State initiative.

EPA's only role in this proceeding was to not get in the way, and the decision that EPA announced was that it was not going to get in the way, that there was no reason for disapproving that request by those States; and, therefore, it was approving it. Which then sets a calendar for the States to adopt these programs so that all have security that if I in Pennsylvania adopt a program for low emission vehicles I won't be frustrated by commuters buying cars in New Jersey and undoing the benefits of cleaner air that I want to have. And you can make the same analogy with respect to any other jurisdiction.

This is a classic case where the Federal Government can help empower States by allowing individual State decisions that would otherwise be frustrated to be turned into something productive by giving some security that the State actions will in fact be reinforced because they provide some security that other States will have the same programs that they will implement.

Mr. WAXMAN. We are always trying to figure out what is the best way to approach these problems, at the State or Federal level. Sometimes it is a combination.

The Clean Air Act envisioned States to run their program—to adopt implementation plans to accomplish the result in their State under Federal guidelines, which are basically to protect the health of everybody.

There ought to be standards that ought to be met everywhere, but we leave it to the States to decide, given the individual circumstances.

Ms. Seminario, I asked Mr. Miller a while ago his view, and his view is let States decide for themselves and have very little Federal restrictions on it. What do you think would happen if States were trying to get businesses to relocate and businesses say I will come to your State, but I want lower standards for worker protections or there won't be jobs at all?

What do you think the choice will be if people have to take lousy working conditions because the States wanted jobs to locate there or no jobs because they have gone somewhere else? Does devolution to States on these kinds of lines reduce standards lower and lower because States are competing with each other for jobs to locate?

Ms. SEMINARIO. I think that is correct. You will have some States where demands of the public are such that they will go ahead, and you will have a higher standard, and then some States won't.

One of the areas where we see that—because there is a program that has remained with the States—is in the area of workers compensation. If you look across the country you see a very different

level of benefits and eligibility, and it is a very big factor with respect to where firms locate. And they will go to those States where there are lower benefits, lower Worker Comp costs, and it is pushing workers compensation down.

So we have a situation with very unequal protection across the country, basically, as a result of an economic pressure to keep those costs down. And, as a result, workers are differentially compensated depending on what States they work in. And the same thing would happen with respect to worker safety and health and environmental protection as well.

Mr. WAXMAN. I just think we have to look at these things carefully and decide some things ought to be State-level exclusively and some a combination Federal and States.

Mr. Mattos gave us an example. If we are going to be sensible, we shouldn't just stop regulation. Because sometimes rules and regulations allow greater competition and more honesty from which the consumers will benefit.

That is why I am troubled by a bill that says, I don't care what the proposal may be. Let's just stop it. Let's put a moratorium on it.

The best I can gather is that the moratorium is to accomplish something, but in the past moratoria didn't particularly produce the results argued for, which are the same arguments we are hearing today. I am a little frustrated because it seems there are no easy answers, and when people think they have an easy answer they are usually wrong on whatever philosophical point they may be coming from.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Waxman.

Mr. Fox, do you have questions?

Mr. FOX. Yes. I understand the testimony with regard to the cautionaries that have been raised. I will ask you to consider how you might recommend—not that it is your job, but we are trying to make the Federal Government work better—what suggestions you might have for reviewing those regulations which may be duplicative of State action or overly burdensome without having the benefit that was intended in any area of the Federal regulation. Anyone can answer.

Ms. SEMINARIO. I think one of the things that is frustrating is the regulatory process, because it really doesn't work very well for anybody.

What concerns me about H.R. 9 is it is a bill that is really focused on process, and I think it makes the process work. I think we have to look at how we regulate and what those regulations do and is there a better way to do it. I don't think what is contained in H.R. 9 really gets to those issues.

It is not easy. We have issues at OSHA where, on one hand, industry will come in and say, we don't like specification standards. Don't tell us specifically what to do. Give us a performance standard.

OSHA gives them a performance standard. They say, this is too vague. This is too general. How are we going to comply? Why don't you tell us what we have to do?

There is a contradiction. On the one hand, do you want a general performance rule which people say we don't know what the compliance requirements are? Or do you want something that is more specific? And people say that is too specific, and we can do it a different way.

Those are very real issues that come up in virtually every rulemaking. I would like to urge the committee to look at how regulations should be developed, formulated, what kinds of things are useful to industry to help them comply with regulations. Those are the kinds of things we have been grappling with as to how to make these regulations work better, and I think that has to be a focus of the committee and not just looking at the process itself because the process is really very screwed up, but I don't see this bill as fixing it at all.

Mr. HAWKINS. Mr. Fox, one thought I would offer is some form of effective screening mechanism to allow you to reach the targets that you want to hit.

One of the problems in the past with reviews of existing regulations is that everybody throws in everything, including the kitchen sink. And the best represented—and by that I mean the most aggressively represented—large corporations typically crowd out the agenda, and you wind up with a long list of rules that people feel very deeply about dominating the agenda, and they never get to some of the issues that deal with small business's ability to understand and figure out effective ways to comply with rules that really do have a significant impact on their day-to-day business.

And the regulation writers, their focus gets focused on how do we deal with this objection from this large automobile company that has made large contributions in every Presidential campaign and I know has access to the White House because I keep getting phone calls from the White House about this asking me to schedule meetings to get with them. And they never get to deal with the people that are underrepresented.

Mr. FOX. Two questions. It occurs to me from prior testimony that part of the problem in regulation is we don't have it in plain English so people have to hire huge staffs or lawyers to interpret the regulations. Maybe a plain English requirement would be helpful. What do you think about that?

Mr. HAWKINS. I am certainly in favor of simplicity, and I think that a statement to that effect does no harm. But many of these issues involve very technical details where you are discriminating situations.

And if you will allow 30 seconds—I have often said that there are three attributes to a rule and you can only maximize two: effectiveness, simplicity and flexibility. Thou shalt not kill is a simple rule. It is also effective. In the sense that it doesn't have any exceptions in it, it isn't very flexible.

The tax code has lots of flexibility built into it and all sorts of options, but it isn't simple. And a statement try not to kill is simple and flexible, but it isn't very effective.

You do have this problem. As we increasingly try to build in options for compliance into rules, you have to deal with all the scenarios that are created by those options, and the rule starts to get complicated.

Mr. FOX. As the country gets further and further under the toe of all these regulations, wouldn't the McIntosh bill be an appropriate answer at this time inasmuch as it still provides for emergency legislation and regulations that are needed to address some of the concerns outlined in your testimony?

Mr. HAWKINS. I don't think the imminent exception is any solution to the overkill problem of this approach. The imminent threat exception will be litigated. To the extent that it is useful, it is going to cause agency people to try to figure out imaginative ways to call something an imminent threat or call it streamlining when, in fact, the typical rule that improves a situation will be a combination of streamlining complemented by some additional requirements that are necessary to make the system work.

I point out one where we have negotiated for months with the electric utility industry lawyers—we have reached agreements with the States—the electric utility lawyers, the environmental groups and EPA. It is in the Federal Register on November 22d and would be suspended by this bill.

Mr. FOX. I would urge everybody to try to look to making the bill better as opposed to merely opposing it.

Mr. MCINTOSH. The time of the gentleman has expired.

Mr. Tate, do you have questions for the witness? None. Thank you.

Mr. Gutknecht, do you have questions for the panel?

Mr. GUTKNECHT. A couple of observations.

First, Ms. Seminario, you said something that struck me wrong. You said what this country wants is more effective and efficient rulemaking. I am not certain from my section of the world that that is what they want from the Federal Government. I think what we want is more reasonable regulations.

I know that it is not fair sometimes to use some stories we have heard. For example, I have been told that in 1992 the OSHA promulgated new rules relative to disposal of potentially biologically hazardous materials. Included on that list were teeth. So I am to assume that when my youngest daughter left her tooth under her pillow that in some respects she was in violation of OSHA laws. We hear this all the time.

I made the point earlier that we tend to create $50 solutions to $5 problems, so I am not sure we really want more efficient—and I am not totally unsympathetic to the problems that you face on that side of the desk. But, on the other hand, how do we go about getting more reasonable regulations out of the Federal Government?

Ms. SEMINARIO. I think that is a very good question, something that all of us who work in the regulatory process try to do, quite frankly.

It isn't easy because you have agencies like OSHA, EPA set up with a statutory responsibility to protect workers and to protect the public. That is a very serious responsibility, and they take it very seriously.

So when you see things coming forward from those agencies, I think you understand that they are not out to stick it to somebody, but they do take their responsibility of providing a high level of protection with respect to public health or workers very seriously,

and the rules reflect that. So they do provide a very high level of protection. I think all of us would say that is basically a good thing.

Then the question comes, how do you do that in a way to make sense? I think that is the issue, and I agree that we have to struggle with how do you basically make these rules, put them in a form that they basically make sense, provide the kind of protection that we want and are ones that can be complied with by big businesses and small businesses.

One thing that may be useful for the agencies to do is to look at the array of rules. And you can look at what are model rules, are there things that really work, that people think this is a good thing, and begin to look at those things that maybe there is some consensus are the kinds of things we should do rather than looking at examples that people take to the extremes who don't like the rules.

So I would say look at the positive things. Ask the businesspeople what are examples of things that you think are good rules and try to do those kinds of things as opposed to some of the things that people think are not the way to go.

Mr. GUTKNECHT. Mr. Chairman, I think the real genesis of this bill is let's take time out and try to sort this out.

You used a very important word in your discussion here and that is the word responsibility. I think somehow what the American people are asking for is a balance between government responsibility and personal responsibility. I think there is a growing sense—at least I feel this sense in Minnesota—that the government has assumed too much responsibility for too many things, including even regulations.

And we hear, for example—again, this is an anecdote and may not be true—but by today's standards we couldn't build the Metro that moves people around the city of Washington because people could fall off the platforms right in front of a train. There is nothing to hold them back. There are no seat belts.

You look at all the possible things that we could protect people from you and you begin to realize that in the final analysis people have to take some responsibility for themselves, whether we are talking about OSHA or EPA or anything else.

Finally, I would like to pursue something that has been brought to my attention by my county board relative to municipal waste incinerators. Because in my home community we built a state-of-the-art waste energy incinerator and put in the latest technology. It was a very expensive facility. Now I was told by my board 2 weeks ago that they are going to be required to install between $8 million and $12 million worth of new equipment if the new rules go into effect.

Mr. Hawkins, you said these are the kind of regulations the American people want. That may not be exactly what you said, but that is what it said to me.

I am not certain whether the people of my area really want to spend another $8 million to $12 million for that facility which, as I say, was state-of-the-art just a few short years ago. But the bar has been raised. And, as I understand it, that has basically been the process, that every several years we just raise the bar again whether or not there is effective cost-benefit analysis done.

The question that I want to get to is have you been doing some cost-benefit analysis relative to the waste incinerators that are already out there and how much it will cost to retrofit them?

Mr. HAWKINS. Every EPA rule goes through substantial cost analysis and also analyzing the benefits in terms of emission reductions, and this one has gone through substantial cost analysis as well. It is clear that different incinerators will be at different points in their lifetime, and if there were no cost associated with these regulations it would be because they were achieving no benefits.

The reason that there is a cost is the equipment that is going to be installed is going to reduce emissions which were not reduced and adequately controlled when that incinerator was built. Incineration is a rapidly moving technology, and it is important that we get strong Federal regulations in place so that we don't perpetuate problems associated with inadequate regulation of those very important sources.

Mr. GUTKNECHT. Thank you.

Mr. MCINTOSH. The gentleman's time has expired.

I think that will draw to a close this committee hearing. I appreciated the panelists who came, particularly those who attended from places outside Washington and made the effort to come present their views to us.

I want to thank my colleagues on both sides of the aisle. You did a tremendous job in eliciting the different views and positions on this bill.

I want to particularly thank the staff, both minority and majority staff, for the numerous hours they spent late into the night preparing for this. Undoubtedly, it will be just the first of many such occasions, but I want to extend to each staff member my personal thanks for doing that and say a job well done.

So thank you, and this subcommittee will stand adjourned, seeing no objection.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

[Additional information submitted for the record follows:]

PREPARED STATEMENT OF AMERICAN AUTOMOTIVE LEASING ASSOCIATION

I. INTRODUCTION

The American Automotive Leasing Association (AALA) is a national trade association representing the commercial automotive fleet leasing and management industry. AALA's members lease and manage the majority of sales and service vehicles—over 3.5 million—used by both large corporations and small companies. More than two-thirds of the nation's corporate fleet vehicles are leased. In addition to leasing corporate fleets, AALA members provide a myriad of managements services to their clients. They help clients' fleet managers make decisions about vehicle selection, control maintenance and fuel costs, provide training and safety programs, and remarket used fleet vehicles. Additionally, AALA members provide total fleet management to businesses which prefer to outsource this corporate function. AALA members employ thousands of highly skilled employees and use state-of-the-art technology to provide superior customer service. The productivity gains made by corporate America in recent years can be directly attributed, in part, to the growing reliance on AALA members who provide a critical business function at the lowest possible cost.

AALA strongly supports H.R. 450, the Regulatory Transition Act and is an active member of Project Relief, a broad-based coalition whose mission is to relieve unnecessary regulations from corporations and individuals. Moreover, AALA commends Representative McIntosh for holding prompt hearings on H.R. 450 and for the commitment both he and Majority Whip DeLay have made to this important effort.

II. REGULATORY BURDENS ON THE FLEET INDUSTRY

Like most industries in this country, the fleet leasing and management industry has not escaped the heavy hand of federal regulators. Because we are responsible for the management of our clients' business vehicles, we are affected by every regulation affecting both light and heavy duty trucks and passenger cars.

The most burdensome regulations the industry has faced to date are the result of the Clean Air Act of 1990 and the Energy Policy Act of 1992. In response to your request for details, let us share with the Subcommittee the following:

A. Clean Fuel Fleet Program: The Clean Air Act Amendments of 1990 established a "clean fuel fleet" program covering ozone and carbon monoxide nonattainment areas in 19 States. This legislation also permitted States to "opt-out" of the fleet program requirements. Some of the States that have indicated an intent to opt-out have taken actions to develop other clean fuel fleet programs which contradict the provisions of the Clean Air Act.

Under the Clean Fuel Fleet Program, centrally fueled fleets in 21 serious, severe, and extreme ozone nonattainment areas and one CO nonattainment area will be obliged to acquire a specified percentage of "clean fuel vehicle" beginning in September, 1997. Such vehicles will operate on clean fuels such as electricity, compressed natural gas, alcohol, reformulated gasoline and "clean" diesel. This program is federally required, but state-administered under the Clean Air Act State Implementation Plan program. Because it dictates what vehicles and fuels private fleets are allowed to purchase, compliance can be expensive. Moreover, the administrative burdens are just as significant.

Under the statute and regulations promulgated by the EPA, the Clean Fuel Fleet program will apply to any centrally fueled fleet with 10 or more vehicles operating in each of the 22 covered areas. Even if a fleet is not centrally fueled, it will be covered—according to EPA—if it is "capable of being centrally fueled." Vehicles garaged at home at night would not be considered "as capable of being centrally fueled," but will be covered if they are actually centrally fueled.

In regulations issued on December 9, 1993, the EPA provided recommendations to the states on what kind of reporting requirements they should require of the fleet industry. If determining whether a fleet vehicle were covered under the program were not complicated enough, the following is what EPA recommended:

An Annual Report from fleets, to include, but not limited to

1) The number and identification of all fleet vehicles classified as "those that are exempt pursuant to section 241(5);"
2) Those that are vehicles garaged at a personal residence at night;
3) All other fleet vehicles by type;
4) Information concerning whether a fleet has 10 or more vehicles that operate in a covered area;
5) Which fleet vehicles can be centrally fueled;
6) The number of vehicles in an entire fleet, by type;
7) The number of vehicles operating in a covered area, by type;
8) The number of "covered" vehicles that operate in a covered area and can be centrally fueled, by type;
9) The identity of those vehicles by vehicle identification number;
10) Trip records of covered fleet vehicles, to include origination and destination points.
11) The number of fleet vehicles operating in a covered area which are centrally fueled 100 percent of the time and their identity;
12) The number of exempt vehicles, by type;
13) The number of centrally fueled vehicles and their vehicle identification numbers;
14) The number of vehicles in the sample fleet by type and their vehicle identification numbers;
15) The operational range of the vehicles in a sample fleet;
16) The dates included in a reported sample week;
17) The total mileage accumulated by the sample vehicles, by sample week;
18) The total mileage accumulated in their operational range by the sample vehicles, by sample week;
19) How mileage was calculated;
20) The ratio of miles from trips that could be centrally fueled to total miles, estimated using sample results;
21) If available, the total mileage accumulated during the sample periods by all nonexempt fleet vehicles that are not garaged at a personal residence at night.

The vehicle fleet leasing and management industry is committed to doing its share to ensure a healthy and clean environment and has, in fact, endorsed the un-

derlying principles of the Clean Fuel Fleet Program. The program was the result of intense negotiations during Congress' consideration of the Clean Air Act. However, it is fair to state that no one anticipated at the time of these negotiations how burdensome the regulatory reporting requirements would be, or what complicated requirements EPA would impose not only on our industry, but on the states who must administer this program. The EPA itself admits in its regulations for only a part of the program, that "the public reporting burden for this collection of information is estimated to be 4,100 hours per response."

Commercial fleet vehicles are better maintained, are more regularly replaced and better managed than the general vehicle population. As such, they are probably the least threatening to the environment than most cars and trucks on the road today. While these vehicles will be subject to the same air regulations that have received more publicity, such as the enhanced Inspection and Maintenance Program, the regulatory burden the fleet industry faces is considerably heavier.

To add insult to injury, many of the states that have "opted out" of the federal Clean Fuel Fleet program are instituting fleet programs with different requirements. Therefore, not only will AALA members be forced to comply with the onerous federal reporting requirements, they will be faced with a panoply of conflicting state and jurisdictional requirements as well.

B. Energy Policy Act: The Energy Policy Act of 1992 also contains a fleet program which is narrower in fuels (e.g., reformulated gasoline is not allowed) and broader in scope (e.g., 100 more cities). The Energy Policy Act fleet mandate covers public and certain specified private fleets such as electric and gas utilities. The Secretary of Energy also has the authority to initiate a 125-city "alternative fuel vehicle" acquisition mandate for private fleets in 1999 if he or she determines that voluntary acquisitions have not met specific goals.

Many states attempting to institute clean fuel fleet programs have indicated uncertainty about how to proceed because of these looming fleet requirements under the Energy Policy Act. We have encountered state proposals which attempted to incorporate the requirements of both of these Acts, despite the fact that the Energy Department has not invoked an alternative fuel mandate for private fleets.

Clearly, an alternative fuel mandate for fleets would impose significant costs on our industry, given that alternative fuel vehicles are priced significantly higher than those which operate on petroleum-based fuels. Moreover, an alternative fuel fleet mandate would provide our customers with an incentive to abandon their fleets for a system of reimbursing their employees for use of their own vehicles.

Beyond the policy and cost implications of this issue, our industry has spent countless hours and untold dollars simply monitoring the regulatory progress of the federal Clean Air Act, the various state proposals, and the Energy Policy Act. The axe will certainly fall when the reporting requirements of the Clean Fuel Fleet program take effect.

III. WHY A REGULATORY TRANSITION PERIOD IS NECESSARY

While H.R. 450 will not have an effect on the Clean Fuel Fleet program regulations, AALA supports its provisions because of the myriad of regulations which will undoubtedly be issued on the automotive and other industries in its absence. Additionally, AALA believes that a thorough review of the regulatory burden which has been imposed on our industry and so many others is long overdue. The regulatory morass has diverted millions of hours and billions of dollars away from more productive activities.

In today's complex business environment, U.S. companies are focusing on the most effective use of resources at the lowest cost. Sales and service forces, managers and others who drive vehicles for business must be assured of reliable, cost-effective transportation to reach their performance goals. AALA members enhance corporate fleets' effectiveness on the road while improving return on investment and manage operating expenses—an essential element to achieving business objectives. AALA's members want to continue to make this contribution to America's productivity and believes that Congress shares our goal.

A transition period, as provided for in H.R. 450, will give us all the opportunity to take another look at the regulatory environment that has stood in the way of our productivity. We hope the members of the Government Reform and Oversight Committee will approve this bill expeditiously and we pledge to assist in that objective.

PREPARED STATEMENT OF LANA R. BATTS, PRESIDENT, INTERSTATE TRUCKLOAD CARRIERS CONFERENCE

January 25, 1995

The Honorable David McIntosh
Chairman, Subcommittee on National Economic
Growth, Natural Resources, and Regulatory Affairs
U.S. House of Representatives
1208 Longworth House Office Building
Washington, DC 20515–0601

RE: H.R. 450

DEAR MR. CHAIRMAN:

On January 19, 1995, your Subcommittee received testimony from Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc., supporting swift passage of H.R. 450, and suggesting that coverage of the bill be enlarged to address other regulations. The Interstate Truckload Carriers Conference (ITCC or Conference) supports Mr. Donohue's testimony in toto and respectfully requests that this expression of support be added to the record.

The ITCC is the only national trade association representing the irregular-route common and contract truckload segment of the motor carrier industry, that is, the segment specializing in full trailerload shipments generally between manufacturer and wholesaler. The Conference represents more than 900 members, many of which are small, family-owned businesses, and include dry van, refrigerated, flatbed, and dump-trailer truckload carriers domiciled in the 48 contiguous states and serving those states, the state of Alaska, Mexican states, and the Canadian provinces.

The segment represented by our members is the trucking industry's fastest-growing and most profitable segment. Unfortunately, that distinction is seriously threatened due to the increasing cost of compliance with the innumerable recordkeepings reporting, and affirmative conduct regulations that are imposed on the motor carrier industry, already one of the most heavily-regulated industries. Of the Conference's members, more than one-third report annual revenues of less than $6 million, thus qualifying as small businesses under the Small Business Administration's definition. The annual operating margin in this business is two percent of gross revenue. Against the slim operating margins are weighed the cost of compliance with federally-mandated regulations that neither enhance highway safety nor simplify carriers' ability to conduct operations or deal with the government, such as:

- A three-year-long requirement that motor carriers locate, document, and report the name, address, and telephone number of every blood testing facility that could have performed a post-accident or reasonable suspicion blood alcohol test when breath alcohol testing cannot timely be performed, even though blood alcohol testing is not authorized.
- Expected ergonomics regulations that will prohibit lifting of objects weighing more than 25 pounds and could classify, as a repetitive strain injury, the act of grasping the steering wheel while driving a truck.

When the costs associated with regulations such as these are added to the costs of compliance with existing regulations, businesses experience not only a financial drain, but also a productivity loss in learning how to adapt to the regulations and ensure full compliance.

Every day H.R. 450 is delayed brings the trucking industry closer to having to shoulder the cost of regulations that have not received the benefit of cost-benefit analysis that is central to the proposed revision of Federal rulemaking. We urge the Congress to act quickly to adopt a moratorium on federal rulemaking. Moreover, we suggest that the moratorium be enlarged to apply (a) to administrative guidelines and rulemaking actions that have not yet been published in the Federal Register; and (b) to regulations that are connected to federal grant programs.

Respectfully submitted,

LANA R. BATTS
President.

PREPARED STATEMENT OF SUSAN E. JOHNSON, EXECUTIVE DIRECTOR, THE REAL ESTATE SERVICES PROVIDERS COUNCIL (RESPRO)

Dear Mr. Chairman and Members of the Subcommittee: On behalf of the Real Estate Services Providers Council (RESPRO), I am pleased to comment on HR 450, the Regulatory Transition Act of 1995.

BACKGROUND OF RESPRO

RESPRO is a nationwide coalition of diversified real estate services providers[1] that was created in 1992 to support a federal and state regulatory environment that allows companies to offer one-stop shopping for home buyers, sellers and owners. RESPRO's membership (see attached membership list) consists of companies from all segments of the real estate services industry, including mortgage, real estate brokerage, title, insurance, and banking. As of today, RESPRO's member companies represent:

- Over 30,000 employees
- Over 200,000 real estate agents and associates
- Who engage in over 2 million home sales transactions
- In over 8000 offices
- In all 50 states

POSITION ON HR 450

RESPRO supports the efforts of the sponsors of HR 450 to delay the implementation of certain federal regulations while the Administration and Congress (1) conduct a review of the costs and benefits of outstanding rulemaking actions; and (2) reassess and revise federal regulatory policies.

RESPRO would particularly like to call the Subcommittee's attention to a particular rulemaking in process by the Department of Housing and Urban Development (HUD) under the Real Estate Settlement Procedures Act (RESPA). The Department's proposed RESPA regulation, published in the Federal Register on July 21, 1994, is an excellent example of how special interest groups attempt to use the federal rulemaking process to obtain regulations to protect them from competition, without needing to demonstrate the costs or benefits of the regulation.

THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) PROPOSED RULEMAKING: AN EXAMPLE

Background

Congress enacted RESPA in 1974 to ensure that home buyers and owners are (1) provided with greater and more timely information on "settlement service" costs; and (2) protected from unnecessarily high settlement charges caused by certain abusive practices (i.e., kickbacks) that Congress thought may unnecessarily increase the cost of certain settlement services.[2] Congress gave HUD the authority to implement regulations under RESPA.

In the late 1970s and early 1980s, providers of various settlement services for home buyers and owners began to expand into ancillary services in order to offer "one-stop shopping", which would allow consumers to buy all or part of their settlement services at one time and in one place. Traditional providers of settlement services responded to this new competition by lobbying Congress to amend RESPA to prohibit or severely restrict joint ventures, partnerships or affiliations between two settlement service providers.

Congress rejected this attempt to prohibit or restrict the development of these so-called "controlled business arrangements", and instead amended RESPA in 1983 to (1) require that a settlement service provider disclose any financial relationship in another provider to whom he/she refers business; and (2) prohibit settlement service providers to require that a consumer purchase one service to obtain another service. Congress instructed HUD to implement regulations under this amendment.

In 1992, HUD issued a final regulation under the 1983 "controlled business" amendment that rejected attempts of traditional settlement service providers to obtain an extremely restrictive interpretation of the 1983 amendments to RESPA. Instead, HUD's 1992 rule allowed companies to continue to diversify into new markets while following Congress' intent with regard to disclosure and anti-tying practices. The Regulatory Impact Analysis (RIA) accompanying the final RESPA rule estimated that it would save the individual homebuyer $150 in settlement costs per transaction. RESPRO's members supported this 1992 final RESPA rule.

In 1993, traditional settlement service providers lobbied the new Administration to reopen the RESPA rulemaking and to issue a new rule that would impose severe restrictions on their diversified competitors. Despite the fact that these companies

[1] "Diversified real estate services providers" are providers of services for home buyers, sellers and owners—including real estate brokerage, first and second mortgages, title services, escrow services, appraisals, and insurance—who offer one-stop shopping through joint ventures, partnerships or affiliations with other providers.

[2] 12 U.S.C. 2601 (a) and (b).

provided no evidence that consumers had been harmed under the 1992 regulation, HUD proposed a new RESPA regulation on July 21, 1994 that would replace the 1992 rule. The comment deadline expired on September 30, 1994, and HUD states that it intends to issue a final regulation during the summer of 1995.

The 1994 Proposed RESPA Rule: Costs With No Benefits

HUD's 1994 proposed RESPA regulation would prevent diversified real estate services providers from offering one-stop shopping programs by restricting them from compensating their own management and employees for generating business on behalf of an affiliate or joint venture partner.

This regulatory restriction would have a widespread impact on the ability of providers to offer diversified services and "one-stop shopping" for home buyers and owners. For example:

- A company that has mortgage, title and insurance subsidiaries would not be able to pay its Vice President for Marketing a bonus that is based on the successful performance of a "financial services" center in which a home buyer can purchase all of the company's services.
- A company that has mortgage, title and insurance subsidiaries would not be able to pay a salesperson of multiple services in its "financial services" center on a commission basis—a traditional method of encouraging productivity of salespersons. Instead, the company would have to pay three separate employees to offer three separate services.
- A bank that is required by unrelated laws to maintain separate mortgage subsidiaries could not compensate a mortgage loan officer in one subsidiary for referring the customer to a separate subsidiary—even if the referral is made to assure the customer obtains the most suitable product in the most suitable location.

By restricting a diversified company from compensating its own management and employees from implementing or developing one-stop shopping programs, HUD's proposed rule would (1) make it far more burdensome to establish and operate such programs; and (2) significantly decrease cost efficiencies within diversified companies that make them such effective competitors of traditional providers.

HUD's reason for restricting the ability of diversified companies to compensate their management and employees to protect consumers from "adverse steering"—from being referred for settlement services based on the financial gain to the referrer, rather than on the highest quality and best price of the services.

Even if one agrees with this goal, however, HUD's approach to this RESPA rulemaking is fundamentally flawed.

HUD is imposing these restrictions on diversified companies without any empirical evidence that its current RESPA regulation has lessened the quality or increased the price of services for consumers. In fact, all empirical evidence that has been submitted to HUD demonstrates that the ability of diversified companies to offer one-stop shopping—in the absence of a restrictive, burdensome regulatory environment—benefit consumers:

- A nationwide economic research firm concluded in December 1994 that diversified real estate services firms charge no more and may even charge 2 percent less than their independent competitors for title closing services, based on an analysis of over 1000 home sales transactions in seven states during september 1994.
- A 1992 survey of title service costs in the Minneapolis-St. Paul marketplace found that diversified providers charge approximately $13 less per closing for a market basket of title services than their independent competitors.
- The same report also found that after all diversified title service providers in Kansas closed down due to the 1989 law that restricted the ability of diversified providers to do business, base closing fees filed in Sedgwick County (the principle place of business of the diversified providers) by independent title companies jumped from $125 to $200—an increase of 60 percent.

Despite the lack of evidence that consumers have been harmed under the current regulatory environment—and in the face of evidence to the contrary—HUD has proceeded with the RESPA rulemaking. In fact, HUD has placed the burden on diversified companies to prove why they must be able to continue compensating their management and employees to promote one-stop shopping, instead of requiring advocates of the restrictions to prove why current compensation practices of diversified companies harm consumers. A regulatory policy that imposes the burden on those to be regulated to show why they should not be regulated inevitably leads to unnecessary, burdensome and costly regulations.

SUMMARY

This rulemaking proceeding, which was implemented at the urging of special interest groups who seek to restrict their competitors, is moving forward despite any evidence to justify the need for additional regulation. Instead, HUD is asking those who would be subject to increased regulation to prove why they should not be regulated.

In light of our experience with the federal rulemaking process under RESPA, RESPRO members applaud the efforts of the sponsors of HR 450 to undertake a comprehensive view of federal rulemaking procedures to assure that they do not lead to regulations whose costs exceed their benefits. We would be glad to assist the Subcommittee in this effort over the coming months.

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