THE FEDERAL REGULATORY CLIMATE IN MARYLAND

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JANUARY 26, 1996

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FRIDAY, JANUARY 26, 1996

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

The subcommittee met, pursuant to notice, at 10 a.m., at Towson State University Student Union, Art Gallery, Osler Drive, Towson MD, Hon. David McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, Ehrlich, and Peterson.

Also present: Representative Radanovich.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, senior policy analyst.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs will come to order.

Welcome to this 10th field hearing. I want to thank you for coming and joining us. The subcommittee has a different approach toward looking at the issue of regulatory relief. We have actively gotten out of Washington and had field hearings all across America to hear from citizens about problems they have with Federal Government agencies and regulatory programs.

We have discovered that there are enormous problems. A tangle of bureaucratic red tape is strangling competition, costing jobs, and costing consumers in terms of higher prices and products that aren't available. We are taking that information back to Washington and pursuing an aggressive legislative strategy. We are working with Speaker Gingrich on his new Corrections Day program to try to address those problems. But your input today is enormously helpful to us in finding out what are the real problems facing real people here in America.

I want to thank some of my colleagues on the subcommittee for joining me. First, Collin Peterson from Minnesota has been kind enough to join us as the ranking Democratic member of the subcommittee. Bob Ehrlich from Maryland is the host today, and I want to thank him, in particular, for helping set this up. He is one of the most outstanding freshmen Members, and I've gotten to know and work with him very well, and you should be very proud of the work that Bob does in representing your interests in Washington and on this subcommittee.

And then, also, I would like to ask unanimous consent of my fellow subcommittee members to allow a fellow freshman, George Radanovich, who is in Baltimore today for the freshman advance, to join us on the panel today. Seeing no objections, George, welcome to our subcommittee.

Mr. RADANOVICH. Thanks, David.

Mr. MCINTOSH. Let me say a few brief words before we begin with the hearing. Last year, we had an aggressive series of field hearings. We're going to continue to do that around the country next year. We're also going to look at completing work on several initiatives that our subcommittee has put forward.

One of them will be a bill to sunset regulations which the subcommittee and full committee have passed. We're working to bring that up again this year on the floor of the Congress and working with the Senate to get it passed, and have signs that President Clinton, who spoke about the need to cut back on regulations in his State of the Union address, would be willing to accept certain versions in that bill.

A second initiative will be on allowing flexibility. You know, in the State of the Union, the President sent a challenge to industry that, if you can do a better job of protecting the environment and safety and complying with the requirements in regulations, but you can do it in a better way, go ahead. And we're going to work on some legislation that will allow citizens to be able to do that and present that to the President as a way of fulfilling his challenge and removing some of the regulatory burdens that make it hard for American citizens to be able to have that flexibility.

We're also going to be looking at overall regulatory reform, to say, let's put common sense back into the regulatory process. That bill has passed the Congress. The Senate has a version that they are working on. And I am confident that, by the end of this year, we will be able to have a version that can be sent to the President and, once again, get back to the principle of using common sense in making regulations that are needed in Washington, so we don't go too far.

One of the things that we've heard—and every time I go back to my home State in Indiana, I hear a new example of problems with regulations—but you continually hear examples from people where they just don't make any sense.

I come from a farming community. One of the witnesses we had at our hearing was a farmer named Kay Whitehead, who talked about a regulation that governed what she could do with the manure that her pigs produced. Normally, farmers spread that on their fields and use it to fertilize the crops. Well, one agency told her that she could spread it on top of the fields. Another agency came in and said, "No, you can't spread it on top of the fields, you have to plow it in."

Kay said, "I don't really care which regulation I follow, just tell me which one I need to do when I get rid of this manure." Now, she did confide that her neighbors had a strong preference for her plowing it in. [Laughter.]

But you see that type of thing day in and day out, where government regulations give you conflicting signals, they put requirements on people that don't make sense, don't help the environment,

don't help health, don't help safety, but do cost a lot of money and end up costing us jobs, when companies can't afford to hire new employees because of the red tape.

Well, without further said on that issue, because I think we will hear a lot of testimony today about it, let me now turn to my colleague, Collin Peterson, who is one of the now famous Blue Dogs, or coalition Democrats. He has been an enormous help to us in our effort to root out regulations and, more recently, has been working with freshmen and the other Republicans in trying to get to a balanced budget.

Collin, do you have any comments?

Mr. PETERSON. Thank you, Mr. Chairman. I want to thank you for continuing to hold these hearings out in the real world. I do, in addition to being ranking on this committee, represent the Blue Dog wing of the Democratic party. We think that Federal regulations have gotten out of control. And I think that these hearings that we have held around the country are an important way to help us get the Federal Government regulatory process back under some control.

Every time we have one of these hearings, you know, we hear all kinds of incredible stories from ordinary folks that are in small businesses, farmers that are being driven crazy by Federal regulations that they find confusing and overwhelming, a lot of times, and a lot of times just plain stupid, you know. But I think it's really the airing of these stories that's helping us move along some of this process, although it's been more difficult, I think, than a lot of us expected, especially over in the Senate. We need some Blue Dogs over in the Senate.

John Kasich we've been working with on the budget, and he told a story about when he was first working with Senator Dole on the budget and telling him that he was working with the Blue Dogs, and Dole said, "Blue Dogs," he said, "we don't have any Blue Dogs in the Senate. We've got some hot dogs," he said. [Laughter.]

And he said, "I think we maybe even have Snoop Doggy Doggy." [Laughter.]

So Kasich thought Dole was pretty cool. He's gearing up for his MTV appearance.

Anyway, I think that agencies need to know when their regulations have become obstacles, and I think that this committee has helped bring some message to some of the agencies. And I'm encouraged. I think the agencies are starting to get the message a little bit.

Last year, the administration initiated a reinventing OSHA program. I've had an opportunity to meet with Joe Dear a couple times. I really think his heart is in the right place, and he's moving things in the right direction. It's a tough job because of all the institutional problems that I think are in these agencies, but I think we're making some progress. One of the witnesses today, we're going to hear him talk about some of the changes that have happened as a result of this initiative that are moving, it looks like, in the right direction.

So there's a lot to be done, but I think that we're making some progress, and these hearings are important. I think the more we can spend time doing oversight and keeping the heat on people, the

more progress we will make. So I look forward to the hearing today. I am maybe going to—it depends on how long-winded all of you get—I may have to leave a little early. It's not because I'm not interested, but I've got some things I've got to get to doing this afternoon.

So, again, thank you for holding the hearing, and I look forward to hearing from the witnesses.

Mr. MCINTOSH. Thank you very much, Collin.

Let me now ask my colleague, Mr. Ehrlich, if you've got any opening remarks. And, again, thank you for setting this up and hosting it.

As I said earlier, you all should be very proud of the work that Bob does in Washington. He's done an excellent job of representing you.

Mr. EHRLICH. You read what I wrote very well, David, thank you.

Before I begin—I'll be very short—I'd like to recognize for a very few brief remarks, Mr. President, my friend, Hoke Smith, and our host here today.

Hoke.

Mr. SMITH. Thank you very much.

We're very pleased to welcome you here today. We're very proud of Congressman Ehrlich and his support of higher education and the reputation that he has made for himself in his first year.

Towson State University is a university of about 15,000 students. It's the second largest university in the State of Maryland. We're very proud of the fact that we have a very high graduation rate while we operate in a cost-effective manner, getting something like—in the Northeast, we were ranked 129th out of 141 of the dollars we spend per student, and yet we're in the top 10 percent in academic reputation.

The sign behind you of Metropolitan University, I think shows our focus. Our outreach programs, whether we're talking about where our nurses train, our occupational therapists, our teachers, our interns in mass communication, some of whom are in the room with the press today, focus on the metropolitan area and the problems that are in a metropolitan area, which is really the central city plus the suburbs around it and their interaction.

I appreciate the task that you have today. I will switch hats just for 30 seconds and say that, as an institution with 1,200 employees and 15,000 students, that is covered by a wide range of regulations, I appreciate the task that you have. In that capacity, I would make one comment.

One of the things I think confronts those of us who are confronted by a multiplicity of regulations is prioritizing it. And there is a difference sometimes in the good-faith effort to comply and the letter of the law. We do not have enough money to comply with all regulations, to the ultimate degree, at the same time.

I think one of the important things for both the Government and those who are trying to comply with the social purposes of those regulations is to establish a common sense priority of where we get the greatest public benefit for our investment. So I appreciate the difficulty of the task that you have. We welcome you to campus.

And, again, thank you, Bob, for bringing them.

Mr. EHRLICH. Thank you very much. We need to expand the football stadium, so we'll be talking to a few of you about hitting you up for some money about that, too; right?

Mr. SMITH. That's another regulation, because we do not have public bathrooms, and this is one of the things. I appreciate your support. [Laughter.]

Mr. EHRLICH. I'll be very brief. I'd like to thank my staff and the subcommittee staff for the wonderful job they all did in putting this thing together.

Congressman Peterson, I'll just make one real quick point about the budget. The Blue Dogs came to the freshman meeting yesterday, and when the Blue Dog presentation was finished, I think they received the largest ovation that anyone, with the exception of the Speaker, has received in our freshman class meetings. And that's a compliment to you all, by the way.

I'd like to thank David, who is just a wonderful friend and a good guy and a great leader of our class. The guy to my left, George, for some reason, not apparent to me, wants to be the new president of the class. George Radanovich is also a wonderful friend and a great leader of our class, and I suspect will be the next president; and you will be seeing him on the national shows. I'm actually doing his nomination speech.

Just with respect to everyone here, thank you so much for coming out. You know that the No. 1 issue in my campaign for Congress was talking to you about what Government is doing to your business, particularly in the way of job creation. The bottom line for all of us here, Republican, Democrat, liberal, and conservative is to create jobs, to get Government out of the way of job creation.

That's the reason for this hearing. We want to hear from the real world, from the real life—fortunately, now, for the 2d District of Maryland, thanks to David—what you are going through on a daily basis and what we in Washington can do to make your life better; to help you earn a better buck; and when you do earn that better buck, to create that extra job or 2 or 5 or 10 or 100 that keeps this economy going.

You are familiar with the numbers. Four out of every five new jobs created in this country are created by small business folks, businessmen and businesswomen who go out, take a risk, put the house on the line, maybe their life savings on the line, to live the American dream. Now, what we're about in this Congress is not class warfare but celebrating what you do. We want you to be successful. We want you to make a buck, to create jobs, and that's why we want to hear what you have to say today.

With that, I will be quiet, David. I know George wants to make a very brief opening statement, as well. Thank you all very much for your support and for being here today.

Mr. MCINTOSH. Thank you, Bob.

George, welcome to our subcommittee.

Mr. RADANOVICH. Thanks.

Mr. MCINTOSH. I hope you will be joining us on other occasions, as well, if you have an opportunity. I think you will find it very enlightening as we get to hear from people outside of Washington about the problems of the Federal Government. Would you like to make any opening remarks?

Mr. RADANOVICH. Thank you, Mr. Chairman, and also thank you for allowing me to sit on this panel, not being a member of the subcommittee.

I am also very proud to be in my friend Bob's congressional district. He's going to have to come out to California, too, to visit mine.

I would like to say something briefly—and Dave, your comment about the manure spreading in Indiana really kind of brought this to my attention. And I just want to make sure that people realize that overregulation stretches clear out to California, as well, with some of these crazy stories. It's almost as though, if this gets to be too crazy, that, you know, business can come to the point where they can say: why don't you just step in and run the business, if you have to go in so far as to say, spread your manure around your farm in a certain way.

We've had situations like that in California over water policy where farmers are having to submit crop plans, and government people are deciding what type of crop you can plant on your land. It gets to be, at some point, where you almost have to question who's really doing the management of the business anymore. I think what we're here to say is, you know, that the best kind of regulation is self-regulation, and that's what we're encouraging, and that's what we want to see returned back to the American people.

I hope that we'll be able to spread that word. By learning today on some of these examples of too much intrusion in business, we can kind of take that on the national scene, and I think that's our hope.

Again, thank you very much, David. Thank you for the opportunity.

And, Bob, it's wonderful to be here.

Mr. EHRLICH. Thanks, George.

Mr. RADANOVICH. This guy's a great guy. You've got a good man.

Mr. EHRLICH. We set this one up well, didn't we.

Mr. MCINTOSH. Thank you, George.

Let me now begin with testimony and call forward the first panel of witnesses. I understand from the staff that Mr. Paul Abenante, who is president of the American Bakers Association, will be accompanied by William Paterakis, who is with H&S Bakery, and John Morrison, vice president of human resources at Schmidt Baking Co.; Alvin Manger, and Edward Lauer. If you all could please come forward and take a seat at the table here.

One of the things that we have at the hearings is a session that we call the open mic session, so that people who are here who are not part of one of the panels will have a chance to have their say, if you would like. Let me ask you now, if anyone would like to testify when we get to the open mic period. Karen Barnes, who is the young lady in blue there waving her hand, if you can talk to her, get a number, and then we can make time available for you during that open microphone session later on in this hearing.

Gentlemen, if you would all please rise. It's the policy of the full committee to swear in all witnesses before this subcommittee and all subcommittees. If you would please repeat after me.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that each of the witnesses answered in the affirmative.

Let me now turn to Paul Abenante. Please share with us your testimony. Feel free to summarize your points and submit additional materials for the record. And thank you for coming today. I know you've been very engaged in a lot of these regulatory issues.

STATEMENTS OF PAUL ABENANTE, PRESIDENT, AMERICAN BAKERS ASSOCIATION, ACCOMPANIED BY WILLIAM PATERAKIS, H&S BAKERY; AND JOHN MORRISON, VICE PRESIDENT OF HUMAN RESOURCES, SCHMIDT BAKING CO.; ALVIN MANGER, PRESIDENT, MANGER PACKING CO.; AND EDWARD LAUER, OWNER, LAUER'S SUPER THRIFT, REPRESENTING THE FOOD MARKETING INSTITUTE

Mr. ABENANTE. Thank you, Mr. Chairman, and members of the subcommittee.

My name is Paul Abenante. I'm president of the American Bakers Association, and it's truly a great pleasure and privilege to be here at Towson State University this morning to discuss the critically important topic of government regulation and its impact on the wholesale baking industry.

First, let me say the ABA commends Chairman McIntosh and the subcommittee for its unrelenting efforts to examine the proper role of Federal regulations in the Nation's economy, and we are particularly pleased with the leadership that Chairman McIntosh and Congressman Bob Ehrlich have demonstrated, trying to ease the suffocating layer of red tape that engulfs American businesses. These issues have long been ignored by the Congress, and it is refreshing to see so much attention be given to them.

By way of background, the American Bakers Association is a trade association that represents 80 percent of the Nation's wholesale baking industry. The ABA consists of more than 350 baker and allied members throughout the United States. Its membership consists of companies ranging from family owned companies to firms that are affiliated with Fortune 500 companies.

We are pleased to have with us today Bill Paterakis from H&S Baking Co. and John Morrison from Schmidt Baking Co., representing two of Baltimore's finest corporate citizens and two of ABA's most active members.

The wholesale baking industry is committed to maintaining it's strong reputation for providing a high-quality and nutritious product line, protecting its valuable and skilled work force, and its stewardship over the environment. We are responsible citizens, and, therefore, we are here today, Mr. Chairman, to discuss responsible Government regulations.

The ABA believes that all levels of government have an important role in ensuring a safe and healthy food supply, safe and healthy workplace, and a clean and healthy environment. However, most Americans have no idea of the immense scope and magnitude of the regulatory burden placed on baking companies and other American businesses.

I have brought with me a chart illustrating some of the Federal, State, and local agency regulations that H&S, Schmidt, and other

baking companies must cope with when they open their doors every day. There are 55, and that is not inclusive; it is simply a sample.

Taken individually, some of these laws and agency regulations may not pose an overly excessive burden, but, as a whole, the burden is enormous. The drain on one company's resources, let alone the entire economy, is a giant wet blanket on economic growth and development. Every dollar that a company spends to fill out reams of government forms, install environmental clean-up equipment of marginal value, or fight a senseless OSHA paperwork violation is a dollar that cannot go into hiring new employees, training existing employees, buying a more efficient bread oven, building a new bakery, or developing a new product for our consumers.

What is particularly troubling to the baking industry is the inflexible "one size fits all" structure of most government regulations. The Federal Government traditionally treats all companies the same in its regulatory framework. Another major problem in the regulatory process is the lack of risk assessment, scientific review, and cost-benefit analysis.

In no situation is that more clear than the Clean Air Act of 1990. The Clean Air Act treats all manufacturing facilities virtually the same, regardless of what substance is being emitted or the amount. Thus, bakeries are lumped together with steel mills and oil refineries in how they must tackle air emissions.

The root of this problem is due to trace amounts of ethanol, a product of yeast fermentation being released into the air. The oxygen in the ethanol is a minor contributing factor to smog on hot summer days in urban areas. The EPA solution is to have bakeries spend $500,000 per oven to scrub the sweet aroma of our Nation's air.

I have attached an article from the Wall Street Journal that eloquently points out how ludicrous this is. To put it bluntly, companies are forced to find savings to pay for this equipment; ultimately at the expense of its employees, through lost wages, benefits, or even jobs.

The Occupational Safety and Health Act is another prime example of the Federal Government creating barriers to employment, capital investment and, in some cases, safety and health. The original intent of the act was to ensure safety of every worker to the maximum extent feasible. The agency has had some beneficial impact on safety and health in the workplace. It has, however, strayed from being feasible and cost-effective.

Now, many baking companies have two safety plans: one developed in conjunction with the workers' compensation carrier to reduce injuries and thus reduce workers' compensation rates; and yet another system to meet all the paperwork requirements mandated by OSHA. The myriad of OSHA standards impacting our industry is so complex, contradictory, and confusing that even OSHA inspectors have difficulty interpreting and applying them.

One ABA member recently received an OSHA inspection focused on the maintenance garage for its delivery trucks. A mechanic was looking in the engine compartment of a delivery truck, checking gauges while the engine was running. The OSHA inspector walked up to the mechanic and informed him that he was in violation of an OSHA lock-out/tag-out regulation.

This well-intentioned regulation requires the locking or tagging of machinery and electrical equipment if it is malfunctioning or being maintained. The mechanic asked the inspector about the regulation, and the inspector said that he had to turn the engine off or risk an OSHA citation. The mechanic then asked the inspector how he would propose to tune up the truck without it running.

One of the major concerns the baking industry faces with OSHA is something called the general duty clause. The provision sounds simple enough, requiring employers to provide a safe and healthy workplace. OSHA uses the general duty clause to cite bakers and others if they have no standard covering the alleged hazard, have slim evidence of potential hazard, and can recommend a remedy.

One ABA member after another has been a victim of OSHA's drive-by shooting policy. One case in particular stands out. An ABA member recognized the need to address a potential ergonomics problem in a couple of plants. They invested time and money to correct the problem, and the results were positive. OSHA inspected these plants and determined that the company's ergonomics efforts did not go far enough. OSHA could not, however, tell the company what it should do to correct this perceived problem.

When the company resisted, it was cited under the general duty clause and fined over $900,000. What is particularly frustrating is that OSHA has no ergonomics standard. There is no consensus on potential risk or possible correction. OSHA has no solution to the hazards it has identified. The company has to spend tens of thousands of dollars fighting this citation and awaiting an OSHA Review Commission judgment. Obviously, it is a major company and can afford to pursue its legal rights, but many baking companies do not have the resources to fight OSHA and thus end up settling regardless of guilt.

The ABA is particularly pleased that the House passed comprehensive regulatory reform. The ABA is hopeful that the Senate will also pass common-sense reform on the regulatory process. Such reform must contain provisions to give companies flexibility in meeting Federal standards, have assessment of real risk, and true cost-benefit analysis. Passage of this reform remains ABA's top legislative priority.

The ABA also supports comprehensive reform of OSHA. OSHA should be helping companies who want to operate in the safest way and save its enforcement strength for those companies who put their workers in harms way.

Another issue which the subcommittee should be aware of is the growing need for skilled employees in the baking industry and the private sector as a whole. Many baking companies are starting to feel the pinch from the lack of young people with proper skills. Training programs take on an added importance in bringing new hires up to speed. This issue is one that does not require congressional response or action, but it does challenge our industry, as well as others, to face this endemic problem and have a sense of self-examination to better the situation.

The entire area of food regulation under the FDA umbrella needs to be reformed. The ABA is pleased that the Congress is poised to undertake FDA reform in 1996. The ABA recommends that four areas of FDA reform be carefully considered: national uniformity,

Delaney Clause reform, enhanced health claims, and the direct food additive petition approval process. These should include principles of regulatory reform, sound science, risk assessment, and cost-benefit analysis to greatly benefit the overall processed food industry, including the wholesale baking industry.

Mr. Chairman, as the representative of the wholesale baking industry, I am frequently asked by people, what kind of regulatory issues could bakers possibly be interested in? As you have heard, the baking industry is impacted in every way possible by Federal, State, and local regulations. Over the years, even the most well-intended regulatory schemes have added to the increased burden of the baking industry.

Mr. Chairman, simply put, the regulatory pendulum has swung too far and needs to be brought back to a sense of greater pragmatism. We are glad that the Congress and your subcommittee have decided to address the issue of overregulation. We have included numerous suggestions for governmentwide and agency-specific regulatory reforms for your examination.

Thank you, Mr. Chairman, for having given us this opportunity to appear before you this morning. I would be glad to answer any questions you may have.

[The prepared statement of Mr. Abenante follows:]

AMERICAN BAKERS ASSOCIATION

STATEMENT OF
THE AMERICAN BAKERS ASSOCIATION

SUBMITTED TO
THE HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES AND REGULATORY AFFAIRS
OF THE
HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

January 26, 1996

Mr. Chairman, Members of the Subcommittee,

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First, let me say that the American Bakers Association commends Chairman David McIntosh and the Subcommittee for the unrelenting efforts to examine the proper role of federal regulation in the nation's economy. We are particularly pleased with the leadership Chairman McIntosh and Congressman Bob Ehrlich have demonstrated in trying to ease the suffocating layer of red tape that engulfs American businesses. These issues have long been ignored by Congress and it is refreshing to see so much attention now being given to them.

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The wholesale baking industry is committed to maintaining its strong reputation for providing a high quality and nutritious product line, protecting its valuable and skilled workforce, and its stewardship of the environment. We are responsible citizens and therefore we are here today, Mr. Chairman, to discuss responsible government regulations.

The ABA believes that all levels of government have an important role in ensuring a safe and healthy food supply, safe and health workplaces, and a clean and healthy environment. However, most Americans have no idea of the immense scope and magnitude of the regulatory burden placed on baking companies and other American businesses. I have brought with me a chart illustrating some of the federal, state and local agencies and regulations that H & S, Schmidt's, and other baking companies must cope with when they open their doors every day.

Taken individually, some of these laws and agency regulations may not pose an overly excessive burden. As a whole, the burden is enormous. The drain on one company's resources, let alone the entire economy is a giant wet blanket on economic growth and development. Every dollar that a company spends to fill out reams of government forms, install environmental cleanup equipment of marginal value, or fight a senseless OSHA paperwork violation is a dollar that can not go to hiring new employees, training existing employees, buying a more efficient bread oven, building a new bakery, or developing a new product for the consumer.

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What is particularly troubling to the baking industry is the inflexible, "one-size-fits-all" structure of most government regulations. The federal government traditionally treats all companies as "the same" in its regulatory framework. Another major problem in the federal regulatory process is the lack of risk assessment, scientific review and cost benefit analysis. In no other situation is this clearer than the Clean Air Act of 1990.

The Clean Air Act treats all manufacturing facilities virtually the same regardless of what substance is being emitted or the amount. Thus, bakeries are lumped together with steel mills and oil refiners in how they must tackle air emissions. The root of this problem is due to trace amounts of ethanol, a product of yeast fermentation, being released into the air. The oxygen in ethanol may be a minor contributing factor to smog on hot summer days in urban areas.

The EPA solution is to have bakeries spend $500,000 per oven to scrub the sweet aroma from our nation's air. I have attached an article from the Wall Street Journal that eloquently points out how ludicrous this is. To put it bluntly, companies are forced to find the savings to pay for this equipment, ultimately at the expense of employees through lost wages, benefits or even jobs.

The Occupational Safety and Health Act is another prime example of the federal government creating barriers to employment, capital investment, and in some cases safety and health. The original intent of the Act was to ensure the safety of every worker "to the maximum extent feasible." The agency has had some beneficial impact on safety and health in the workplace. It has, however, strayed far from being feasible and cost effective.

Now, many baking companies have two safety plans. One developed in conjunction with their worker's compensation carrier to reduce injuries and thus reduce workers compensation rates. And yet another system to meet all of the paperwork requirements mandated by OSHA. The myriad of OSHA standards impacting the industry is so complex, contradictory and confusing that even OSHA inspectors have difficulty interpreting and applying them.

One ABA member recently received an OSHA inspection focused on the maintenance garage for its delivery trucks. A mechanic was looking in the engine compartment of a delivery truck, checking gauges while the engine was running. The OSHA inspector walked up to the mechanic and informed him that he was in violation of OSHA's lock-out/tag-out regulation.

This well intentioned regulation requires the locking or tagging of machinery and electrical equipment if it is malfunctioning or being maintained. The mechanic asked the inspector about the regulation and the inspector said that he had to turn the engine off or risk an OSHA citation. The mechanic then asked the inspector how he would propose to tune up the truck engine without it running.

The worst problem that the baking industry faces with OSHA is something called the "general duty clause." The provision sounds simple enough, requiring employers to provide a safe and healthy workplace. OSHA uses the general duty clause to cite bakers and others if they have no standards covering the alleged hazard, have slim evidence of potential hazard, and can recommend a remedy.

One ABA member after another has been a victim of OSHA's drive by shooting policy. One case in particular stands out. An ABA member recognized the need to address a potential ergonomics problem in a couple of plants. They invested time and money to correct the problem, and the results were positive. OSHA inspected these plants and determined that the company's ergonomics efforts did not go far enough.

OSHA could not, however, tell the company what it should do to correct this perceived problem. When the company resisted, it was cited under the general duty clause and fined over $900,000. What is particularly frustrating is that OSHA has no ergonomics standard, there is no consensus on potential risk or possible correction, and OSHA has no solution to the hazards it has identified. This company has spent tens of thousands of dollars fighting this citation and is awaiting an OSHA Review Commission judgement. Obviously, it is a major company and can afford to pursue its legal rights, but many baking companies do not have the resources to fight OSHA and thus end up settling regardless of guilt.

The ABA is particularly pleased that the House, under the leadership of Chairman McIntosh and Congressman Ehrlich, passed comprehensive regulatory reform. The ABA is hopeful that the Senate also will pass common sense reform of the regulatory process. Such reform must contain provisions to give companies flexibility in meeting federal standards, have assessment of real risk, and true cost benefit analysis. Passage of this reform remains ABA's top legislative priority.

The ABA also supports comprehensive reform of the OSH Act. OSHA should be helping companies who want to operate in the safest way and save its enforcement strength for those companies who put their workers in harms way.

The ABA would encourage the Subcommittee, in conjunction with the House Economic Opportunities Committee to examine the whole of workplace policy. Many labor and employment laws were enacted during the Depression and need to be reviewed in the context of the coming of the next century. How can laws like the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) be updated to meet the changing workplace?

Another issue of which the Subcommittee should be aware is the growing need for skilled employees in the baking industry. Many baking companies are starting to feel the pinch from the lack of young people with the proper skills. Training programs are taking on added importance to bring new hires up to speed. The Subcommittee should examine possible incentives to encourage training by businesses.

The entire area of food regulations under the FDA umbrella needs to be reviewed. The ABA is pleased that Congress is poised to undertake FDA Reform in 1996. The ABA recommends that four areas of FDA Reform be carefully considered: national uniformity; Delaney clause reform; enhanced health claims, and a direct food additive petition approval process. These should include the principles of regulatory reform (sound science, risk assessment and cost-benefit analysis) to greatly benefit the overall processed food industry including the wholesale baking industry. This reform should assist industry with development and delivery of new products to serve the public

and provide American consumers with products in a more timely, productive and cost efficient manner.

National Uniformity - National labeling uniformity is needed to ensure that varying state food law regulations are not in conflict with requirements prescribed under the Federal Food Drug and Cosmetic Act. If Congress provides for significant food law reform but does not address the national uniformity issue, there will be doubt and confusion as to whether state requirements should be deemed pre-empted by federal law or regulation. As you know, in 1990 Congress recognized the importance of uniformity by including language in the Nutrition Labeling and Education Act (NLEA) which would pre-empt any state labeling requirement not identical to those required by the NLEA. It is ABA's hope that in their FDA Reform Package, Congress will include language for national uniformity of state requirements that are not identical to requirements imposed under the authority of the Federal Food, Drug and Cosmetic Act.

One example illustrating the need for labeling uniformity involves the State of Arkansas with shelf stable pies (pumpkin pies, custard pies and filled breads). States commonly accept FDA opinions of acceptability for exemptions for refrigeration in display cases based on FDA data. On March 24, 1995, the Arkansas Department of Health notified FDA that it would no longer issue exemptions because of the State's lack of technical capability and laboratory support to verify such claims. Arkansas asked FDA if it was performing verifications of such claims and if so, for the data to be shared with the state so that exemptions could be granted. Arkansas also asked FDA for a list of manufacturers and products to whom they had rendered direct opinions on

this subject. FDA has not responded to Arkansas, placing an enormous economic burden on bakeries and retail stores in that state. Particularly hard hit are small grocery and convenient stores that are not equipped to place all custard type pies in refrigerated display cases. FDA's unwillingness to promptly respond to such requests is a true breakdown in the system that not only hurts the industry but impacts choices for the consumer.

The FDA also is unresponsive to private sector inquiries. The ABA receives calls on a daily basis from frustrated bakers who do not have answers to months old inquiries. This non-communication costs our industry money and wastes effort. Additionally, FDA does not respond to company complaints regarding labeling violations by competitors. The FDA, however, does have time to set up in-house contests for FDA employees, complete with prizes, for finding the most "egregious" labeling errors.

Mr. Chairman, I think FDA needs to get their priorities in order and remember that private sector industry is their constituency and are dependent on FDA's decisions and actions.

Delaney Clause Reform - It is widely accepted that the Delaney Clauses in the food additive, color additive and animal drug provisions of the Federal Food Drug & Cosmetic Act prevent FDA from relying on sound science and instead dictate a non-science, zero risk policy for evaluation of new additives. There is no more important FDA reform than that of a statutory determination that food substances may not be prohibited on the basis of safety where the substance has been proven to present only a negligible or insignificant risk to human health.

Enhanced Health Claims - On December 21, 1995, FDA took positive action when it issued it's proposal and response to the earlier ABA healthy petition which provides opportunities for the industry to move in the direction of making health claims for grain products. This proposal by FDA removes the obstacles that the industry faced regarding "health claims".

The FDA's intent was clear in that it had not intended to preclude such foods as enriched bread from bearing health claims. FDA went on to say that such foods in fact can contribute significantly to a balanced and healthful diet and to achieving compliance with the Dietary Guidelines for Americans. This proposal also included other positive food labeling changes that provide greater flexibility for food companies. These changes will benefit public health by encouraging manufacturers to use health claims and nutrient content claims that will assist consumers in making wise food choices and in maintaining a healthy diet.

Still, in the past FDA has acknowledged that it lacks authority to establish procedures for authorizing health claims not explicitly approved by the agency. As a result, we urge Congress to include in the FDA reform package, a removal of the total ban on health claims on food labels not specifically approved by FDA. This approach is consistent with the broader theme of FDA reform that permits reliance on objective third-party scientific review as an alternative to slow, bureaucratic prior approval.

Direct Food Additive Petition Approval Process - Reform in this area is needed to quickly reduce the backlog of petitions and expedite decision making on future petitions. The establishment of performance standards, a more collaborative review process

between FDA and industry, and contracting out authority to speed new product approval times are good initial steps. However, additional action-forcing mechanisms at FDA are needed to ensure that FDA meets Federal Food, Drug and Cosmetic Act statutory time frames within which to reach decisions.

Third party scientific review and action-forcing mechanisms should be core components of any meaningful food additive reform initiative. Not only would outside expertise provide substantial scientific input into the evaluation of new food additives, but it would also reduce materially the resources spent by FDA on any particular petition. Once a file has been assembled and favorably acted upon by the scientific body, there would be a presumption of approvability within a specified time unless FDA rejected the additive and advised the petitioner in detail of the basis for the rejection.

The June 22 and 29, 1995, hearings held by the House Government Reform Subcommittee on Human Resources and Intergovernmental Relations provide an excellent record of FDA's discouraging history on this process. It is ABA's understanding that later this month the same subcommittee will call for major reform in the food additive approval process and lay the foundation for further congressional action during the first part of 1996. Mr. Chairman, I hope your subcommittee will carefully review and will consider endorsing this very positive development for meaningful reform.

Inspector Training - ABA members are often perplexed by the lack of training and authority that local FDA inspectors have when they visit plant facilities. Often, bakery personnel must spend extra time with inspectors to educate, correct and prove/show

correct documentation to inspectors that their interpretation of regulations are not correct. As you can imagine, this is very frustrating to plant personnel and again, wastes time and money.

Although food regulations for the baking industry for the most part are regulated by the FDA, there are commodity issues and nutrition issues that fall under the Department of Agriculture that are of concern to our industry.

Agriculture Research Service - ABA works closely with USDA's Agriculture Research Service on applied research and development of better and even new breeds of wheat and grain. This is critically important in assisting the baking industry with wheat quality and "bake-ability". Underfunding and lack of resources for such focused research projects creates an impediment to economic growth in our industry.

Nutrition Education - On a positive note, ABA has actively been involved with several nutrition education activities over the past year. ABA's comments on USDA's 1995 proposal to revise the school lunch program dietary requirements resulted in an updated final rule that increased bread and grain servings for school aged children by almost 50 percent in keeping with the USDA Dietary Guidelines for Americans and the Food Guide Pyramid.

ABA has also enlisted as a partner with USDA in Team Nutrition, a new USDA program which encourages children to learn from the beginning and to be involved in making healthy food choices for themselves.

Lastly, ABA is pleased to see that the most recent, Fourth Edition of the Dietary Guidelines for Americans released by USDA and HHS on January 2, 1996, positions inclusion of grain products in a healthy diet as a priority message, as it should be.

CONCLUSION

Mr. Chairman, as the representative of the wholesale baking industry, I am frequently asked by perplexed people, "What kind of regulatory issues could bakers possibly be interested in?"

As you have heard, the baking industry is impacted in every way possible by federal, state, and local regulations. Over the years, even the most well intended regulatory schemes have added to the increasing burden on the baking industry. We are glad that Congress and your Subcommittee have decided to address the issue of over-regulation. We have included numerous suggestions for government-wide and agency-specific regulatory reforms. I can tell you that regulatory reform is the highest priority of the baking industry.

Thank you for this opportunity to share the wholesale baking industry's views with you, Mr. Chairman, and with your Subcommittee. I will be happy to answer any questions that you might have.

THE WALL STREET JOURNAL WEDNESDAY, APRIL 13, 1994

An Illegal Pleasure: The Smell in the Air Of Bread Being Baked

* * *

Big Bakeries Emit Ethanol, A Pollutant That States Are Being Pressed to Cut

By Bridget O'Brian
Staff Reporter of The Wall Street Journal

FORT WORTH, Texas – Here at the pristine new plant operated by Mrs. Baird's Bakeries Inc., schoolchildren on tiptoe gaze into the windows of a gleaming, 93-foot-long oven, watching some 2,000 loaves of bread glide by.

At the end, the tour guide, a great-great-granddaughter of the founder, selects a hot loaf of whole wheat to be sliced, buttered and shared with visitors.

There's a faint aroma of baking bread inside the building that's far more pronounced outside, where delicious smells from the oven's vent stack waft across Interstate 35, giving an odd homeyness to an impersonal industrial corridor.

Come fall of 1995, pleasant bakery smells may be a thing of the past here and in many communities throughout the country as they comply with deadlines set by the 1990 Clean Air Act to have industrial plants cut their emissions. The smell of baking bread, it turns out, is a form of air pollution.

Unwanted Ethanol

Bread may be the staff of life and the stuff of poetry. But knead together flour, water and yeast, and apply heat, and you get not just bread but ethanol, a nontoxic substance that contributes to ozone formation. Ethanol is a "volatile organic compound," or VOC in environmentalist parlance. It is vaporized and released when the internal temperature of bread reaches 174 degrees Fahrenheit, just the point in the baking process when the schoolchildren were peering into the ovens.

The "yeast police," as bakers call the Environmental Protection Agency, want the nation's biggest bakers to spend millions of dollars to install new emission controls. Doing so will limit the VOCs – and the bread smells.

In Texas, which has some of the nation's dirtiest cities, just how bad for the environment can a bakery be? State regulators admit that the ethanol emission of the average bakery "is not very much," says Steve Davis, a spokesman for the Texas Natural Resource Conservation Commission, which oversees air, water and waste matters. "But when you're looking at the state reductions that have to be made, you have to look at everything."

Indeed, all sorts of polluters are changing their ways as states put into effect plans to reduce ground-level ozone 15% in urban areas by 1996 in compliance with federal law. Dry cleaners have invested in new exhaust systems, and products ranging from windshield-wiper fluids to oven cleaners are being reformulated to reduce alcohol content and solvents. States and the EPA are going after relatively minor polluters because regulators have already achieved the biggest and easiest pollution reductions, such as limiting emissions from chemical plants and refineries.

A Palatable Trade-Off

The American Bakers Association thinks it can do its share without curtailing baking smells. It is offering to convert its fleet of 120,000 delivery trucks, one of the nation's largest, to cleaner-burning natural gas and propane. That, they say, could cut auto emissions enough that bakers might not need to muzzle their ovens. But state and federal regulators have yet to agree that that will suffice.

Finding in favor of the bakeries might well be a popular decision. "There is no smell in the world of food to equal the perfume of baking bread," wrote the late James Beard in his 1973 book "Beard on Bread." In Houston, Mrs. Baird's is adjacent to the playground of Inwood Elementary School. "I smell the bread and my stomach starts to growl," says eight-year-old Courtney Wisnoski, a third-grader.

Here in Fort Worth, nearly 6,000 people wrote in to describe their fondest memories of Mrs. Baird's 1938-vintage Summit Avenue bakery when it closed down two years ago. "Nearly everyone said what they'd miss most was the aroma," says Allen Baird, the company's chairman. "When we lost that, I think we lost a huge advertising tool."

When the late Ninnie Baird began her business in 1908, she baked each Monday for her eight children, neighbors and friends and put the warm bread on her windowsill to cool. Now, at Mrs. Baird's 11 highly automated bread and cake bakeries in Texas, 1,500 pounds of dough is mixed at a time in huge vats. The dough is then kneaded by machine, flattened and rolled on an assembly line that drops the mixture into loaf trays.

"You can make bread now without touching it at any point," says Mr. Baird, the 71-year-old grandson of the founder, noting that his braided white bread is still shaped by hand. The smell of cinnamon buns wafts through his messy wood-paneled office, where workmen are in the midst of installing new carpeting.

The disarray will suffice as a symbol of what may happen once proposed environmental rules become final in November. The EPA wants commercial bakeries to install catalytic oxidizers – nine tons of steel the size of a pickup truck – at each bakery. Mr. Baird projects that it will cost his company $4.5 million for the equipment and $2.5 million a year for maintenance.

Whether spending all that money will achieve the environmental results the EPA is looking for "is very debatable," says Mr. Baird, who has been working with his engineers and the bakers' group to find cheaper alternatives to catalytic oxidizers. Like many Texas employers, Mrs. Baird's has staggered shifts so workers don't come all at once and contribute to rush-hour smog, and it is encouraging car pooling. But that isn't enough to meet EPA requirements. It also has changed its baking a bit, by adding yeast later in the mixing process in order to cut ethanol emissions.

It was the bakers who came up with the idea of converting their trucks instead of their ovens. Anne Giesecke, a former EPA analyst and now a lobbyist for the bakers' association, sums up the idea this way: "When you take ethanol out of the air, you satisfy the technical air act by reducing ethanol, but it's nontoxic, unlike, say, benzene from cars. The EPA," says Dr. Giesecke, "ought to learn: *It's the cars.*"

Actually, the EPA *has* learned, it's just that the offer is being batted around a big agency intent on meeting a May 1 deadline for emission-control plans. (After that, the EPA can say yes or no to the plans.) "Conceptually," converting the trucks in lieu of buying the oxidizers could be done, "but it's up to the state," says Rob Brener, director of the EPA's Air Office in Washington. But when Texas proposed letting bakeries cut emissions by just 30%, a move that includes the truck conversion, the EPA office that oversees Texas insisted on 80%. That gives the bakers no leeway.

An EPA spokesman says bakery emissions "are in and of themselves a source of VOC's and subject to provisions of the Clean Air Act."

Mr. Baird squirms a bit about having to dicker with the EPA. "Anything that has to do with the clean-air situation and . . . EPA rules that have come upon the scene, we've looked upon it as another ingredient we have to put in our product mix," he says. But "when you think of the smell of baking bread, you don't think about polluting the

Mr. MCINTOSH. Thank you very much, Mr. Abenante, and thank you, also, Mr. Morrison and Mr. Paterakis for joining us. Why don't we hear from the other two witnesses on the panel, and then I do have several questions for you, things you mentioned that would be worth exploring.

But let me also say, thank you for bringing this chart and request if we could have a copy for use in the subcommittee, to take back with us. I think that would be something that, if we showed that to our colleagues on the House floor, would really help make the point about the problems of regulations and their cumulative effect.

Let me turn now to Mr. Manger, if you would like to share with us your testimony. The staff has reminded me that we have requested that people sum up in about 5 minutes, then we will make sure we have time for everybody. David is keeping time, and when you hear the ding, that's 5 minutes. But if it goes over, we're not going to be real strict on the clock, but help us out in that way. Mr. Manger.

Mr. MANGER. Thank you, Mr. Chairman and members of the committee, for this hearing and the opportunity to speak.

My name is Alvin Manger, a member of a family who has been in the meat business since the mid-1800's. We're striving to stay in business during these times of transition; however, as more and more changes come, we are being diverted from our normal business activities to concentrate on matters such as proposed regulations, which, as you know, is very time-consuming.

Our greatest problem with the change currently being put in place by the USDA is the lack of information available in a form that we fully understand. Where the agency has offered meetings for explanation, they have been in places that were some distance and costly for small companies to attend. We are, of course, concerned about the actual cash outlay, but, even more, we cannot afford the time from our business as most of us are personally involved in the production of product, particularly in the fall.

Even if attendance is possible, the program, as I understand it, has been geared to the larger operation who would have people learned in the fields of regulation and science. Thus, we need information, at the local level, during times such as Sunday afternoons and evenings, in a form designed for the small operator's understanding, with an opportunity for questions.

This is of particular importance to small plants, as they have their own unique distinctions, which often tend to confuse the operator. Most of us have talked to our inspectors, who, as you may know, are on our premises daily, finding that they are no more informed than we are on the actual proposals of this so-called "megaregulation."

It is very alarming to us that this very large change will be placed on top of the ones that we now operate under. Already, this part of the chain, from farm to table, is the most regulated, with regulations currently numbering in the thousands, with all their subregulations. You can imagine the confusion and misunderstanding that will occur.

Of course, rumor is to follow any proposal such as this, and we understand the USDA is unable to answer all of them, but placing

every proposal before those who will use them would help. Of particular concern to me is the talk of a system that will include fines for infractions. My experience is that most of the differences between inspector and operator are misunderstandings, employees who do not fully comprehend, or interpretation, that are usual minor and unintentional. Fines could, of course, be an incentive to upscale these.

The impetus to make change, as I understand it, was the E. coli outbreak of a few years ago. This, of course, must be researched and resolved, where possible. However, as a personal observation, it seems to me that this additional regulation will not do what must be done to eliminate or reduce the chance in the future.

A model is already in use that works well. Trichinae in pork was a problem several years ago. The USDA, very wisely, searched for the source, working first to determine the cause, then, over a period of time, almost eliminated it. At the same time, a very concerted effort was made to teach the public to cook their pork products fully to kill any Trichinae that may be there.

This was so successful that we almost never hear of it today. The meat processing plants were required to bring any item offered for sale that may be considered prepared to eat, and having pork in it, to a temperature above the safe level. The same approach, I believe, will give safer and more complete results than the current proposal.

One other consideration I would hope you would view is that smaller plants have many employees who have trained in our plants but have lesser education. The new program, we are told, will require more recordkeeping, which most of these employees will not be able to properly handle. There is no doubt in my mind that most of them will have to be replaced, leaving them out among the unskilled and unemployed. This would be the greatest tragedy. So I would urge you to consider this group.

I also would like to remind you that the kosher operations will have a particular problem in this new change, if it goes the way it is currently considered, in that their methods would be hampered if not stopped.

I will close with the thought that the meat inspection program now works but may have need of some refining as changes in technology show the need. However, massive changes or additions will adversely affect the small meat plant.

Thank you.

[The prepared statement of Mr. Manger follows:]

TESTIMONY OF ALVIN MANGER
BEFORE THE
SUBCOMMITTEE ON NATIONAL ECONOMIC AFFAIRS,
NATURAL RESOURCES & REGULATORY AFFAIRS

OF THE

HOUSE GOVERNMENT REFORM
AND OVERSIGHT COMMITTEE

ON THE

"FEDERAL REGULATORY CLIMATE IN MARYLAND"

JANUARY 26, 1995

Good morning. My name is Alvin Manger, a member of a family who has been in the meat business since the mid 1800's. We are struggling to stay in business now during these times of transition. However, as more and more changes come, we are being diverted from the normal business activities, we are spending more time on matters such as this, which as you know, is very time consuming.

I want to thank you, Mr. Chairman and members of this Subcommittee, for calling this important hearing and the opportunity to speak. I am appearing hear today on my own behalf at the suggestion of my congressman, Robert L. Ehrlich Jr.

Our greatest problem with the change currently being put in place by the USDA is the lack of information available in a form that we fully understand. Where the agency has offered meetings for explanation, they have been in places that were at some distance and costly for small companies to attend. We are, of course, concerned about the actual cash outlay, but even more, we cannot afford the time from our business to attend, as most of us are personally involved in production of product, particularly in the fall.

Even when attendance is possible, the program, as I understand it, was geared to the larger operations who would have people learned in The Fields of Regulation and Science. Thus, we need information, at the local level, during a form designed for the small operators understanding, with an opportunity for questions. This is of particular importance as small plants have their own distinctions which may tend to confuse the operator.

Most of us have talked to our inspectors, who are on the premises daily, and have found that they are no more informed than we are on the actual implementation of the new regulations, which are currently being called Mega-Regs.

It is very alarming that this very large change will be placed on top of the ones that we

now operate under. Already, this part of the chain from farm to table is the most regulated, currently numbering in the thousands with all their sub-regulation. You can imagine the confusion and misunderstanding that will occur.

Of course, rumor is to follow any proposal such as this, and we understand the U.S.D.A. is unable to answer all of them, but placing every proposal before those who will use them would help. Of particular concern to me is the talk of a system that will include fines for infractions. My experience is that most of the difference between inspector and operator are misunderstandings, employees who do not fully comprehend or interpretations, and usually minor and unintentional. Fines would of course be an incentive to upscale these by some people.

The impetus to make changes, as I understand, is the E Coil outbreaks of a few years ago. This, of course, must be researched and resolved where possible, however, as a personal observation, it seems to me that this additional regulation will not do what must be done to eliminate or reduce the chances in the future. A model is already in use that works well. Trichinae in pork was a problem several years ago. The U.S.D.A. very wisely went to the source, working first to determine the cause, then over a period of time, almost eliminating it. At the same time, a very concerned effort was made to teach the public to cook their pork products to kill any Trichinae that my be there. This was so successful that we almost never hear of it. The meat processing plants were required to bring any item of feared for sale that may be considered prepared to eat, and having pork in it, to a temperature above the safe level. The same approach will, I believe, would bring safer and more complete results than the current proposal.

The smaller operators have many employees who have been trained in our plants, but have lesser education. The new program, we are told, will require much more record keeping which most of these employees will not be able to properly handle. There is no doubt in my mind that most of them will have to be replaced, leaving them out among the unskilled and unemployed. This would be the greatest tragedy. So, I would urge you to consider this group.

I will close with the thought that the meat inspection now works, but may need some refining as the change in technology show the need. However, massive changes or additions will adversely effect the small meat plants.

Mr. MCINTOSH. Thank you, Mr. Manger, I appreciate that. I'm hoping Mr. Peterson will be back during the questioning period. He has worked a lot on this issue, both on our committee and in his seat on the Agriculture Committee, and is in full agreement with the thrust of your statement that this new regulatory approach really doesn't make much sense. So I hope Mr. Peterson will be able to join us when we get back to the questioning parts, because he will have some insights there.

Finally, for the third witness on this panel, Mr. Edward Lauer, with Lauer's Super Thrift store. Thank you for joining us.

Mr. LAUER. Thank you. It's nice to be here.

Good morning. My name is Edward Lauer, and I am president of Lauer's Super Thrift. I am here this morning on behalf of the Food Marketing Institute, abbreviated "FMI." FMI is my national trade association, representing the supermarket industry.

I deeply appreciate the opportunity to participate in this hearing. As a supermarket operator, I am very familiar with the vast number of Federal rules and regulations that affect my business. Most Federal requirements make sense, but there are quite a few regulations that have become outdated or have outlived their usefulness.

To this end, I wish to commend Chairman McIntosh and Congressman Ehrlich for your hands-on work and commitment and reducing the burden of regulations that no longer make sense. As a result of your efforts, Congress has begun to address this problem. I am referring to the Corrections Day calendar whereby consensus legislation can quickly be approved to relieve the private sector of costly and unnecessary regulations.

As you know, two separate pieces of legislation, one dealing with the archaic, 40-year-old Labor Department regulation relating to balers, and the other to replace a redundant saccharin warning sign requirement by the Food and Drug Administration, were overwhelmingly approved by the House of Representatives on the Corrections Day calendar this past year. Both of these bills are very important to our industry.

Without question, the Corrections Day calendar is a great start, in terms of dealing with antiquated and costly Federal regulatory requirements. But what is needed is a more comprehensive approach to review and rescind those regulations we simply don't need. Now, I understand Congress is considering such a bill, and it has the supermarket industry's strong support for the following reasons.

For example, did you know that the Federal Communication Commission, FCC, wants to mandate that all workplace telephones must be hearing-aid compatible. It doesn't matter to the FCC if an employer doesn't have any employees with hearing impairment. The FCC still wants all noncomplying telephones to be replaced. Failure to comply can result in fines up to $10,000 per day. Our industry doesn't understand the need for this FCC regulation, because we are already providing special telephones to our employees under the American With Disabilities Act.

The Consumer Product Safety Commission, CPSC, is pressuring grocery stores to install child safety seat belts in all new shopping carts. Our industry contends that such an idea will be counterproductive to the goal of child safety and reducing injuries. Our so-

lution is not for a CPSC directive of this kind but a more comprehensive educational campaign involving the media, schools, parents, and our industry to help prevent injuries.

Finally, I want to bring to your attention an extremely serious problem facing our industry. In October 1994, the USDA began a sampling program for E. coli in ground beef at the store level. I emphasize "at the store level." Now, this might sound very reasonable, in terms of protecting the consumer. But such is not the case.

Under the USDA sampling program, it takes 6 days for laboratory confirmation that E. coli is present in ground beef. By that time, a grocer has already sold the product, and it has likely been consumed. There is no way for a grocer to do a recall on ground beef. Yet, if the USDA testing finds E. coli present in the ground beef, the adverse publicity that follows could cause financial ruin to a supermarket, and this is just not fair.

Mr. Chairman, what we need here is for the USDA to test at the source, using state-of-the-art science and technology. We also need more research and public education to each consumers to cook the product thoroughly. If you cook ground beef, E. coli will not survive. But sampling and testing at store level is not the solution.

This concludes my statement, and the supermarket industry thanks you for the opportunity to make a presentation.

[The prepared statement of Mr. Lauer follows:]

GOOD MORNING. MY NAME IS ED LAUER, AND I AM PRESIDENT OF LAUER'S SUPER THRIFT. I AM HERE THIS MORNING ON BEHALF OF THE FOOD MARKETING INSTITUTE (FMI). FMI IS MY NATIONAL TRADE ASSOCIATION, REPRESENTING THE SUPERMARKET INDUSTRY.

I DEEPLY APPRECIATE THE OPPORTUNITY TO PARTICIPATE IN THIS IMPORTANT HEARING. AS A SUPERMARKET OPERATOR, I AM VERY FAMILIAR WITH THE VAST NUMBER OF FEDERAL RULES AND REGULATIONS THAT AFFECT MY BUSINESS. MOST FEDERAL REQUIREMENTS MAKE SENSE, BUT THERE ARE QUITE A FEW REGULATIONS THAT HAVE BECOME OUTDATED OR HAVE OUTLIVED THEIR USEFULNESS.

TO THIS END, I WISH TO COMMEND CHAIRMAN MACINTOSH AND CONGRESSMAN BOB ERLICH FOR YOUR HARD WORK AND COMMITMENT IN REDUCING THE BURDEN OF REGULATIONS THAT NO LONGER MAKE ANY SENSE. AS A RESULT OF YOUR EFFORTS, CONGRESS HAS BEGUN TO ADDRESS THIS PROBLEM. I AM REFERRING TO THE CORRECTIONS DAY CALENDAR WHEREBY CONSENSUS LEGISLATION CAN BE QUICKLY APPROVED TO RELIEVE THE PRIVATE SECTOR OF COSTLY AND UNNECESSARY REGULATIONS.

AS YOU KNOW, TWO SEPARATE PIECES OF LEGISLATION, ONE DEALING WITH AN ARCHAIC 40-YEAR OLD LABOR DEPARTMENT REGULATION, RELATING TO BALERS, AND THE OTHER TO REPEAL A REDUNDANT SACCHARIN WARNING SIGN REQUIREMENT BY THE FOOD AND DRUG ADMINISTRATION, WERE OVERWHELMINGLY APPROVED BY THE HOUSE OF REPRESENTATIVES ON THE CORRECTIONS DAY CALENDAR THIS PAST YEAR. BOTH OF THESE BILLS ARE VERY IMPORTANT TO OUR INDUSTRY.

WITHOUT QUESTION, THE CORRECTIONS DAY CALENDAR IS A GREAT START IN TERMS OF DEALING WITH ANTIQUATED AND COSTLY FEDERAL REQUIREMENTS, BUT WHAT IS NEEDED IS A MORE COMPREHENSIVE APPROACH TO REVIEW AND RESCIND THOSE REGULATIONS WE SIMPLY DON'T NEED. NOW, I UNDERSTAND CONGRESS IS CONSIDERING SUCH A BILL, AND IT HAS THE SUPERMARKET INDUSTRY'S STRONG SUPPORT FOR THE FOLLOWING REASONS.

FOR EXAMPLE, DID YOU KNOW THAT THE FEDERAL COMMUNICATIONS COMMISSION (FCC) WANTS TO MANDATE THAT ALL WORKPLACE TELEPHONES MUST BE HEARING AID COMPATIBLE?

IT DOESN'T MATTER TO THE FCC IF AN EMPLOYER DOESN'T HAVE ANY EMPLOYEES WITH HEARING IMPAIRMENTS. THE FCC STILL WANTS ALL NON-COMPLYING TELEPHONES TO BE REPLACED. FAILURE TO COMPLY CAN RESULT IN FINES OF UP TO $10,000 PER DAY. OUR INDUSTRY DOES NOT UNDERSTAND THE NEED FOR THIS FCC REGULATION BECAUSE WE ARE ALREADY PROVIDING SPECIAL TELEPHONES TO OUR EMPLOYEES UNDER THE AMERICANS WITH DISABILITIES ACT (ADA).

THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC) IS PRESSURING GROCERY STORES TO INSTALL CHILD SAFETY SEAT BELTS IN ALL NEW SHOPPING CARTS. OUR INDUSTRY CONTENDS THAT SUCH AN IDEA WOULD BE COUNTERPRODUCTIVE TO THE GOAL OF CHILD SAFETY AND REDUCING INJURIES. OUR SOLUTION IS NOT FOR A CPSC DIRECTIVE OF THIS KIND, BUT A MORE COMPREHENSIVE EDUCATIONAL CAMPAIGN, INVOLVING THE MEDIA, SCHOOLS, PARENTS AND OUR INDUSTRY TO HELP PREVENT INJURIES.

FINALLY, I WANT TO BRING TO YOUR ATTENTION AN EXTREMELY SERIOUS PROBLEM FACING OUR INDUSTRY. IN OCTOBER OF 1994, USDA BEGAN A SAMPLING PROGRAM FOR E. COLI IN GROUND BEEF AT STORE LEVEL. NOW THIS MIGHT SOUND VERY REASONABLE IN TERMS

OF PROTECTING CONSUMERS, BUT SUCH IS NOT THE CASE. UNDER THE USDA'S SAMPLING PROGRAM, IT TAKES SIX DAYS FOR LABORATORY CONFIRMATION THAT E. COLI IS PRESENT IN GROUND BEEF. BY THAT TIME, A GROCER HAS ALREADY SOLD THE PRODUCT, AND IT HAS LIKELY BEEN CONSUMED. THERE IS NO WAY FOR A GROCER TO DO A RECALL ON GROUND BEEF, YET IF USDA TESTING FINDS E. COLI PRESENT IN GROUND BEEF THE ADVERSE PUBLICITY THAT FOLLOWS COULD CAUSE FINANCIAL RUIN TO A SUPERMARKET. THIS IS JUST NOT FAIR.

MR. CHAIRMAN, WHAT WE NEED HERE IS FOR USDA TO TEST AT THE SOURCE, USING STATE OF THE ART SCIENCE AND TECHNOLOGY. WE ALSO NEED MORE RESEARCH AND PUBLIC EDUCATION TO TEACH CONSUMERS TO COOK THE PRODUCT THOROUGHLY. IF YOU COOK GROUND BEEF THOROUGHLY, E. COLI WON'T SURVIVE. BUT SAMPLING AND TESTING AT STORE LEVEL IS NOT THE SOLUTION.

THIS CONCLUDES MY STATEMENT. THANK YOU.

Mr. MCINTOSH. Thank you very much, Mr. Lauer. I appreciate your joining us and sharing that testimony.

Let me open up the questioning, actually, and offer either Mr. Morrison or Mr. Paterakis, if you had any additional comments you would like to add to the record based on things you know at your particular facilities. Welcome. If you've got any good examples of problems you've had on regulations.

Mr. PATERAKIS. I would say, more recently, the Clean Air Act has been a particular burden to the baking industry. We not only have a facility here in Maryland—actually, we have three in Maryland—but we also have facilities in 10 other States. I guess, because of my exposure to the Environmental Committee at the ABA, I've had the opportunity to sit in on a lot of the State process to develop the regulations.

I would say that, on Maryland's behalf, that Maryland has been very cooperative, being sensitive to the business needs of the community, and allowed us to be a part of their regulatory lawmaking process, which was very unique. Actually, it was the only State we were allowed to sit in and voice our concerns. In other States, it has been a complete disaster.

Mr. MCINTOSH. Paul mentioned the figure of $500,000 for a scrubber. Let me ask, how does that compare to the overall cost of the capital that you would have to put in to build a new oven? What percentage of that does it represent?

Mr. PATERAKIS. A new oven would probably cost between $1 million and $1.25 million. So it's significant.

Mr. MCINTOSH. OK. So you're adding as much as 50 percent to the cost.

Mr. PATERAKIS. And the average production line may recapitalize, invest in their production line about $2 million to $3 million in a year. So it's significant. Something else is not going to be spent. Something else is not going to be included.

Getting back to the clean air though, probably, the last 2 years, 25 percent of my time has been dealing with the Clean Air Act. I've also added staff to deal with the permitting requirements, also trying to prove why we necessarily don't belong and be included in the Clean Air Act.

We've also spent hundreds of thousands of dollars with consultants, professionals, and attorneys, at times to help us with the permit process because it's so—I've received applications for permits with manuals that are an inch and a half thick on how to fill them out. And we just don't have the expertise or the time to be able to do that. So we end up now going to consultants. Title V is completely over the average businessman's head. It doesn't belong in bakeries. And we are suffering. We have hundreds of thousands of dollars on the line every year just to deal with Title V.

I think one accomplishment we had in Maryland when we worked with the State—really two accomplishments: one was innovative technology. They were willing to lower the standards if we came up with innovative technology. That has actually become something that the other States are now looking at and what Maryland has done.

Also, we put in an exemption for small bakers, so that they weren't burdened by all this paperwork and regulations that they

had really had no business being involved with. And they were very cooperative, so we were able to eliminate the mom and pop type of stores that are out there in the market.

Mr. MCINTOSH. You know, in my hometown of Muncie, Colonial Bakery just had a shop that they closed in the last 6 months, and ended up having to lay off about 100 people. I had not made the connection before, but I need to now go back and look and see, maybe these new Clean Air Act requirements were making it unprofitable for them to continue operating at that facility. It would be an interesting thing.

I might ask you, Mr. Abenante, to help me facilitate, if that happens to be the case, to find that out.

Mr. ABENANTE. I'll be glad to, Mr. Chairman.

Mr. MCINTOSH. Mr. Morrison.

Mr. MORRISON. Yes. Not to reiterate what Mr. Paterakis said, but H&S and Schmidt have worked very closely with the State of Maryland on this issue, and we're very appreciative of the fact that the State of Maryland, as Bill had mentioned before, has been very willing and has worked with us. And that's a first.

One of my major concerns for the Schmidt Baking Co. is that when, in fact, we are truly a small business, or maybe a medium-sized business, depending how you look at it. But the way I look at it, in the realm of the baking industry, we are small. We have 1,100 employees, approximately. We serve six States. We have three bakeries, two of which are in Maryland. We service the mid-Atlantic area—hadn't mentioned that—with approximately 600 employees, in total, here in Maryland. So we're a fairly decent-sized employer.

We are family owned. In fact, what Bill had mentioned with regards to incineration or scrubbers, or whatever you would like to call it, it is a considerable cost to comply with the Clean Air Act. And, in a company of our size, without a parent company, such as some bakers are associated with, parent companies who have deeper pockets, it really comes down to a situation in the board room, what do we give up? What can't we do? Do we not grow our business? We need to enhance our fleet, et cetera. What do we do?

Ultimately, what it really comes down to, frankly, in the last ditch effort—and we try to avoid it—is jobs.

Mr. MCINTOSH. Now, exactly, that's what we're really concerned about.

I've got some questions on the E. coli issue, but before we do that, let me ask my colleagues.

Collin, do you have any questions?

Mr. PETERSON. Well, I apologize for having to leave, but the farm bill has been expired since January 1st, and last night they decided they are going to mark it up on Tuesday. So all heck is breaking loose right now.

There are a couple things—and I maybe missed explanation—but the problem you're having with the Clean Air Act you said has to do with ethanol?

Mr. ABENANTE. Yes, sir. It's a VOC, a volatile organic compound.

Mr. PETERSON. Right. My area produces a lot of ethanol, and we've had a big, huge fight over this with the oil industry, who is trying to eliminate ethanol and push MBE and all that monkey

business that's been going on. I also have a letter here from you to the EPA, complimenting them on the work that they had done. So I'm a little unclear just where it's at right now. This was from 1993.

Mr. ABENANTE. The letter that you have from me to the EPA, complimenting them on the work they have done, is exactly what Mr. Paterakis was talking about. After they pulled a gun on us and loaded it up and we were up against the wall, we said, could you back off a little bit and give some of the small business people an exemption, and can you give us some flexibility in some of the equipment and the timing that this was going to be implemented in various States. So that was the letter complimenting them on finally begining to work with us to get some pragmatism into the regulatory process.

Mr. PETERSON. But it still is a problem, a significant problem?

Mr. ABENANTE. Congressman, it is a major, big time problem.

Mr. PETERSON. How does the ethanol come about in this process? Maybe you explained that, and I missed it.

Mr. ABENANTE. Bill can tell you better than I.

Mr. PATERAKIS. When yeast and sugar are exposed to the temperatures that they are exposed to in the fermentation process, the yeast actually breaks sugar down into carbon dioxide and ethanol, and it's released in the oven. At 177 degrees, ethanol as a liquid turns to vapor, and it's released through the oven stacks.

Mr. PETERSON. So it ends up burning?

Mr. PATERAKIS. Excuse me.

Mr. PETERSON. The ethanol burns in this process?

Mr. PATERAKIS. No.

Mr. PETERSON. No?

Mr. ABENANTE. It's emitted.

Mr. PETERSON. It's emitted. Isn't there a way to capture this and try to sell it?

Mr. ABENANTE. We could have them put it in our trucks.

Mr. PETERSON. I mean, you know, in a lot of my—you know, like for the sugar beet industry in my area, they have developed a good income stream by taking some of what used to be a problem and turning it into a product that they are now selling to the gasoline companies. Maybe this isn't feasible. That's my question.

Mr. ABENANTE. Well, I think the long and short of the answer to your question is, this is an industry that's fundamental in its scope, producing a 1-pound loaf of bread, getting it on a truck, and getting it out to sell.

Mr. PETERSON. You don't want to be in that business.

Mr. ABENANTE. The technological resources—we're not a high-tech industry. But one thing I would mention is that, in California, this industry spent literally millions of dollars of its own money to do computerized-airshed modeling tests in the San Francisco Bay area, and from that airshed modeling to determine what the impact of VOC ethanol was on the ambient air quality. We were less than one-half of 1 percent in impact.

And when we brought that to regulators, they said, the numbers don't mean anything. Go ahead and spend the millions of dollars, despite what the data shows. We said, you know, it was just absolutely preposterous.

Mr. PETERSON. Yes. Well, we know there's all kinds of examples in different areas. But so you just emit a little, tiny bit, but they've got you captured in this whole deal; that's what the problem is. And you can't get an exemption or a—well, maybe we can look at that.

I've got a bill that I just am working through for the Corrections Day process, where the EPA was requiring, under the right-to-know when they were burning sulphur dioxide, they had to notify the community, even if it's a 1-pound release, which is ridiculous. So there's all this paperwork, and there is no threat to anybody.

For 6 years, the EPA has been trying to—you know, we've been trying to get them to do something with this, and they won't do anything. And they all agree that it's ridiculous what they're doing, but they won't change it.

Mr. ABENANTE. You've got it.

Mr. PETERSON. The E. coli situation, you know, I serve on the livestock subcommittee, and we've been dealing with this issue. And it's ridiculous the way some of my colleagues and some others scare the hell out of people. They don't know what they're talking about. And we've tried to deal with this.

But it's my understanding that the Secretary has kind of put all this on hold, and we're working through this, as I understood. That's not true?

Mr. MANGER. They're still taking samples in our wholesale plant, looking for it. Our penalty will be, if they find it, our name will be placed in the newspaper, even though we don't—everyone agrees.

Mr. PETERSON. USDA is doing this?

Mr. MANGER. We're a USDA meat inspector plant.

Mr. PETERSON. And their inspectors are doing that?

Mr. MANGER. Oh, they take samples, periodically, yes. Although we do not slaughter, we buy from slaughtering plants and just grind and package the meat, we are responsible for E. coli under those rules.

Mr. PETERSON. But as I understood it—you know, they had this megaregulation which they put on hold.

Mr. MANGER. That's the one I'm here for.

Mr. PETERSON. Pardon?

Mr. MANGER. That's the one I'm personally here for, yes.

Mr. PETERSON. They put that on hold.

Mr. MANGER. Well, they're still coming.

Mr. PETERSON. Well, the Secretary has personally guaranteed me, and his people, that they are not going to layer this on top of the existing system. And they have personally guaranteed Steve Gunderson and I that that will be the case. And they put on hold what they were moving ahead with until we can get this sorted out. So I think that there are some positive things happening there.

I understand your concerns, and we have the same concerns. I mean, I've got a huge poultry industry in my district, you know, and we're concerned that they are going to layer this on top of what we have. Not only is it not going to work, we're going to end up adding a whole bunch of cost that isn't going to solve anything. The real thing we need to do is get people to cook the meat, you

know. And there's nothing you can do about this, frankly. I mean, you're right.

Mr. MANGER. In the retail end, your hands are tied.

Mr. PETERSON. Unless you want to just have people quit eating ground beef, if they aren't smart enough to cook it, you know.

I think that there is a sensitivity now. I mean, I think Secretary Glickman is the best Secretary of Agriculture we've had in a long, long time, and I think that he's gotten this under control and reined in whatever his name is there that was way out ahead of himself. And the chairman here helped us with some of this. So I think we've got it moving in the right direction.

There are a number of us that are on top of this. We understand the problem. We're going to watch.

Mr. MANGER. Just to let you know how frightening it is. We had a roving inspector brought into the area several times, this didn't happen to me, but one of our plants was cited for having leaves on its roof. You can imagine how we come up to a regulation that's a megareg. The people who will enforce this have no idea what their bosses are talking about, and they do layer it. People our size are finished.

Mr. PETERSON. I understand. But they have promised us that they are not going to let this go forward unless they get this sorted out first. We're going to attempt to hold the Secretary and the administration to that, and if you think that that's not happening, we'd like to know about it. I understand that you're still worried about it.

Mr. MANGER. Well, I'd just like to see them come around areas like this and let us start knowing what's going to happen before they give us that 90 days to respond. Because you give us a book this thick, we don't have the time, in 90 days, to analyze it.

Mr. MCINTOSH. The new procedures on E. coli, have those happened in the last 6 months? You mentioned an inspection there.

Mr. MANGER. They've picked up in volume. They started some time before this, looking at it, making decisions, and changing ideas. But now they've picked up. They do come into our plant, and they do go to the retail stores and pick up samples. As Mr. Lauer says, by the time you get there, it's over.

Mr. PETERSON. Aren't they doing this to try to figure out if they can find out how to do this? I mean, isn't that part of what they're up to right now?

Mr. MANGER. Well, the threat that we have is that they're going to publicize they found E. coli in Lauer's Super Thrift. Man, that would be devastating to us. We don't want the E. coli, but the E. coli occurs at the plant where they slaughter the cattle. And I suspect, if efforts were applied in the right direction, technology would help solve the existence of E. coli in the process, a matter of slaughtering, that the feces of the animal gets on the product.

Mr. PETERSON. That's what HAACP is supposed to help us do, although I have some questions about it.

Mr. MANGER. As do I, because my understanding, at this point, it would be one sample per one specie per 1 day. Now, we have plants in this area that will kill approximately 10 head of cattle, and we have 1 that kills 25. He will turn in 1; the 10 will turn in 1. We have another that kills 100; he will turn in 1. Out in the

West, they kill 2,000; they will turn in 1. How do you solve that problem?

Mr. PETERSON. Well, that's just one point in the process. What HAACP is all about is trying to get each of these plants to develop a control mechanism within their plant that is basically self-regulated. I mean, that's the purpose of this: for them to have these critical points in the process so that they can catch this.

Mr. MANGER. Meat inspection already has that.

Mr. PETERSON. Pardon?

Mr. MANGER. Meat inspection already has that.

Mr. PETERSON. No.

Mr. MANGER. There's a meat inspector on board.

Mr. PETERSON. Well, the inspector, but he's not doing this on a scientific basis; he's doing this on sight and smell, and taste—not taste, but feel, you know. That's how they are doing it. There is no scientific testing going on, except where plants have, on their own, implemented a HAACP plan, which some of the bigger plants have.

Frankly, if you look inside of all of this, 98 percent of the plants are not going to be any problem, because they've got this in place. It's the small plants that haven't got the scientific kind of things in place, and it will probably put them out of business if you ask them to do this. We understand that. I've got a lot of them in my district. But, frankly, that's where your danger is going to come, more so than in one of the big plants, and the statistics bear that out, if you look inside at where the problems have come from.

So it's a complicated issue, but I really do think, though, that we have slowed down the department. We have gotten their attention. I think the industry feels like, you know, at least the poultry industry, the Cattlemen's Association, and so forth, feel like they have at least gotten some attention here, and we're hoping that this doesn't get out of hand.

But I just have to tell you, if somebody gets sick from E. coli in your store, you're going to get bad publicity. I'll guarantee you this, and the public is not going to understand it, but that's just how it is. I mean, Jack-In-The-Box is a good example of that. It's a difficult situation.

We should get him to come down and talk to Louise Slaughter for a while.

Mr. MCINTOSH. She's a microbiologist.

Mr. MANGER. But Jack-In-The-Box's problem was undercooking, was it not?

Mr. PETERSON. Absolutely. But you can't get anybody to understand that. I mean, we had people on our committee saying that the Government should be able to protect people that don't cook their meat at home. I mean, it's ridiculous. You know, at some point, people have got to take responsibility for their own lives and their own situation. But there are people out there that think the Government can go into people's homes and protect them from themselves. I mean, it's beyond me.

There are Members of Congress on our committee, on this subcommittee, that think that.

Mr. EHRLICH. Frightening.

Mr. PETERSON. Yes. Well, they're not Blue Dog Democrats.

Mr. MCINTOSH. Let me now turn to Representative Ehrlich.

Mr. EHRLICH. You just heard why we like the Blue Dogs so much, I guess.

I asked you all to be quick because I know we have four panels, and I promised about an hour per panel. Our time is just about up with this panel, but I do want to ask one question.

John, you brought my bottom line up. Real quickly, two questions: What percentage of a typical loaf of bread, the retail cost of a typical loaf of bread, do you all attribute to Federal regulation? Second, with respect to everything we've talked about today, not just the Clean Air Act, but everything—OSHA, the whole 9 yards—give us, real quickly, the impact on your bottom line, with respect to job creation and what it costs your business.

Mr. MORRISON. That's an excellent question. You know, can I take this loaf of bread and say how many slices is Government regulation? I probably could, but I wasn't really prepared to do that today.

But what I will tell you is that the margins in the baking industry are very, very tight, probably tighter than most industries, and Bill can attest to that. What it really comes down to is that, again, we don't have a parent company. We've had some difficulty in the past; we're beyond that now. But $500,000 to correct some emission situation off an oven, frankly, is a lot of money for us. And we have to grow.

You also have to remember, I think, more importantly, that we are competing with—and it's a very competitive business, very price-sensitive, too, to the consumer—but we are competing with larger bakers in the country whose plants may not be in such a sensitive area, in terms of the environment. So they might not be required to put that scrubber on, or whatever the case might be, because of the air quality in their area. However, their bread is coming into my backyard, and I have to deal with it, and I have to stay competitive.

Frankly, what it really comes down to, ultimately, is, this is what it's going to cost per week—that's the way we look at it—this is the annual, this is a week, how can we get that money? How can we still remain—be the low-cost producer, where can we look? Where can we cut? And the last thing we want to do is cut jobs, because if you cut jobs, you start cutting growth. We want to grow our business, not only in the mid-Atlantic but in perhaps even other areas, but in doing so, obviously, that's job creation.

However, not only the Clean Air Act, which is a big one for us, but we're also looking for OSHA reform. I think, frankly, our company, Schmidt Baking Co., has a responsibility to its employees, to the general public, to society and, of course, ultimately to itself, from a moral perspective and doing the right thing. Sometimes it seems like no good favor or deed goes unpunished, especially when an OSHA inspector walks through the door, and you can't do anything with it.

Mr. EHRLICH. Bill.

Mr. PATERAKIS. We, in fact, did a study in New York and New Jersey, when we were trying to argue our case as to why we were being overregulated. And utilizing a 3 percent profit margin, which is the standard in the baking industry—actually, it's 2 to 3, but we utilized the 3 percent profit, and we showed the impact on those

profits. And it ranged anywhere from 15 to 35 percent of our profits were going to be observed by operating a catalytic oxidizer.

Mr. MCINTOSH. That's just one regulation.

Mr. PATERAKIS. One regulation. And also, to support what John is saying, we have just recently built a bakery in Mississippi, and we're planning on building two more in the next 4 years. The first priority on the list of where we locate is, where is there clean air? So all that is doing is moving jobs away from the urban areas out to metropolitan areas.

Mr. EHRLICH. Good point. Thanks. Thanks for making that point.

Mr. MCINTOSH. Thank you all very much.

George, do you have a question?

Mr. RADANOVICH. Yes. I want to get an indication, if you can share with me, regarding the VOC ethanol. I'm assuming you're all doing business in Maryland as well as other areas. Can you give me an idea of the level of State law that you're dealing with, with regard to air quality, as well?

Mr. MORRISON. Bill, I'm going to put that to you; you're more the expert.

Mr. RADANOVICH. I'm curious about duplicity.

Mr. PATERAKIS. In regard to dealing with the Federal Government and the State government?

Mr. RADANOVICH. Exactly. And your State government regulations.

Mr. PATERAKIS. How they overlap?

Mr. RADANOVICH. Yes.

Mr. PATERAKIS. In Maryland, it wasn't so bad, because Maryland acted almost like a go-between for us. In States like New Jersey, we were actually fined by the Federal Government, Region II. Before we even understood that we were captured by the Clean Air Act, we had a fine; all the bakers were fined. And the State didn't prevent that from happening, nor did they come to our defense. In fact, they just washed their hands of it, and only recently are they starting to listen again.

So we do run into this, yes.

Mr. RADANOVICH. Thanks.

Mr. MCINTOSH. Let me ask two real quick things.

Paul, would it be possible to put together some of the data on the question Bob was asking about—and I know it's difficult to assess this always—but the cost of all the different regulations on an average loaf of bread, or how many slices out of a loaf of bread?

One of the problems we've had is in communicating the message to the average person: What is the effect of regulations on your life? Because everybody is in favor of a cleaner environment, a healthier workplace, safety, but they don't realize the cost of needless regulations. And reaching those goals is important, but without imposing costs that don't really help achieve those goals.

One way I've looked for is examples of how those do have an impact on each of us, as consumers, as people who are working and looking for jobs. So if that data could be accumulated, it would be enormously helpful to us.

Mr. ABENANTE. We will make every effort, Mr. Chairman, to put that together for you and Congressman Ehrlich.

Mr. EHRLICH. Thanks.

Mr. MCINTOSH. That would be great.

Mr. ABENANTE. We agree with you. I think it would be very instructive.

Mr. MCINTOSH. One other quick question: Have either of you heard of the process of cold pasteurization? They sometimes call it irradiation.

Mr. MANGER. The public hasn't accepted that. We make pork sausage, for instance. When they look at pork sausage, they expect it to be a certain color. This would destroy that.

Mr. MCINTOSH. Oh, it changes the color.

Mr. MANGER. Oh, yes, it changes all that.

Mr. MCINTOSH. It doesn't heat it up, but it does irradiate it to kill off all the bacteria.

Mr. MANGER. Our product moves rather fast, you know. Pork, particularly, doesn't run into problems, because the public has learned to cook, from way back. And so I don't get into quite as much as some of the other people do.

Mr. MCINTOSH. Well, thank you all for coming. I really appreciate your testimony. It's been very, very helpful.

Let me now call our second panel of witnesses. We've got two witnesses on this panel. The first is Mr. Joseph DeFrancis, who is president, chairman, and CEO of Pimlico Race Course. Welcome, Mr. DeFrancis.

And then with him is also Mr. Timothy Capps, who is the executive vice president of the Maryland Horse Breeders Association.

I appreciate both of you joining us today. Thank you and welcome. If you could raise your right hands and repeat after me.

[Witnesses sworn.]

Mr. MCINTOSH. Please let the record show that both witnesses answered in the affirmative.

I appreciate your coming. This is an area that is new to me.

Mr. DEFRANCIS. Welcome to Maryland, Mr. Chairman.

Mr. MCINTOSH. Although we do have a racetrack that was just built in my district, in Anderson. It's owned by Churchill Downs. And so it's something that I'm going to become familiar with. But thank you, and please share with us your testimony.

STATEMENTS OF JOSEPH DeFRANCIS, PRESIDENT, CHAIRMAN, AND CEO, PIMLICO RACE COURSE; AND TIMOTHY CAPPS, EXECUTIVE VICE PRESIDENT, MARYLAND HORSE BREEDERS ASSOCIATION

Mr. DEFRANCIS. Thank you very much, Mr. Chairman. Good morning. We very much appreciate the opportunity to be here and appear before the subcommittee, and want to thank you and thank the rest of the subcommittee, especially Maryland's great friend, Congressman Ehrlich. It's a real pleasure to be here this morning.

My name is Joe DeFrancis, and I am the president and CEO of the Maryland Jockey Club. The Maryland Jockey Club is the corporate parent entity of Pimlico and Laurel Race Courses here in Maryland that conduct thoroughbred racing. And maybe I could just take a moment or two and share with you a little bit of the background and tradition that we have here in Maryland that surrounds thoroughbred racing, because we're very proud of it.

The Maryland Jockey Club is the oldest sporting organization in all of North America. It was originally chartered in 1743 and has been in continuous existence ever since. We celebrated our 250th birthday just a couple of years ago. So horse racing and horse breeding—the gentleman to my right, Tim Capps, is the executive vice president of the Maryland Horse Breeders Association—horse racing and horse breeding have been really integral parts of the Maryland economy and of Maryland's culture going all the way back, literally, to precolonial times. So we do have a very long and very proud tradition of racing in Maryland.

Obviously, an integral part of racing, horse racing, is gambling. And usually, when you say that word, everyone sort of perks up and their eyes open. Gambling on horse racing results in very different economic impacts and economic effects than really any other kind of gambling that you can do, whether it's bingo, the lottery, casino gambling, you name it. The reason for that is in the nature of horse racing.

Our gambling product, it's not ping pong balls flying out of a machine or cards being dealt across a table, our gambling product is horses running around a racetrack in order to earn purses, in order to earn prize money. And that prize money is funded by a portion of all of the dollars wagered on the horse race.

So, as a result of this economic arrangement, the existence of horse racing and gambling on horse racing, creates a market for horses. It creates an economic demand for horses. Because a horse is a very large and complex animal, it literally requires dozens upon dozens of different kinds of jobs to initially breed and grow and feed and sustain and train a race horse.

The Department of Economics—it is now called the Department of Business and Economic Development—it went through several prior iterations here in Maryland—has done a number of studies of the economic impact of horse racing on the community of Maryland, horse racing and horse breeding. And the industry, collectively, sustains roughly 20,000 jobs and contributes annually over $1 billion to the economy of Maryland.

Now, out of those 20,000 jobs, only about 1,000, really 5 percent, directly work for us, are employed at the racetrack in selling tickets, and as security guards, and food service workers, and maintenance workers, and so forth. The other 19,000, 95 percent of the total, are people who have jobs because there is a demand for horses. They are either involved in breeding the horse, or in training the horse, or in taking care of the horse when he's sick, or there are accountants and lawyers that are involved in syndicating horses. The number of ancillary spin-off jobs multiples on and on and on.

So, as a result, the gambling that takes place on horse racing produces far greater ancillary spin-off economic benefits than any other form of gambling.

The gambling, of course, is very heavily regulated by the individual States. And we are regulated right down to the point where, if we want to change the price of the racing program, we have to go before a regulatory body and get approval. So our ability to respond to changes in the marketplace, changes in consumer de-

mand, is very greatly hamstrung as a result of the extensive State regulation that we are subject to.

But that really is not the subject that I'd like to speak with you about today, because the issue of Federal regulation and really the absence of a proper amount of Federal regulation in one very specific area is having tremendously far-reaching on the horse racing industry across the country. It has not yet hit us here in Maryland for reasons that will become apparent in a moment, but it is a critical issue to the rest of the horse industry throughout the United States, and that is the question of Indian gaming.

Indian gaming is regulated on the Federal level, pursuant to the Indian Gaming Regulatory Act of 1988. When I say "regulated," I use that term loosely. This is an area where, as a result of the creation of a very loose Federal regulatory structure, the ability of the States to effectively regulate a critically important policy area, in my judgment, is dramatically undermined.

The Indian Gaming Regulatory Act essentially permits an Indian tribe to conduct gaming on Indian lands. And the gaming operations under the act are divided into three classes: class one, class two, and class three.

Class one includes social games for prizes of minimum value. Class two—and I'll just read the definition quickly—includes bingo, electronic bingo, pull tabs, lotto, punch boards, and tip jars, if played at the same location; excludes any banking card games, i.e., baccarat, blackjack, or electronic games of chance, or slot machines. The reason I went through that rather cumbersome definition is, class three gaming is everything else.

The way the law has been interpreted, if a State, within its borders, conducts any form of class three gaming, then under IGRA, under the Indian Gaming Regulatory Act of 1988, the State is obligated to negotiate a compact—of course, there are some complex definitions of what is an Indian tribe and what are Indian lands—but without getting bogged down in that, if a State conducts any form of class three gaming, which is everything other than what I just read, then the State is obligated, under IGRA, to negotiate a compact with an Indian tribe that has Indian lands in that State; to allow them to conduct all forms of class three gaming.

So, for example, in Maryland, where we have a State lottery and horse racing, because those are class three gaming under this definition of the act, were there to be a recognized Indian tribe that would have recognized Indian lands, under the definitional section of the act and the regulations pursuant to it. The State of Maryland would be obligated, under Federal law, to negotiate a compact to allow that Indian tribe to build a full-scale Las Vegas style casino on that land, regardless of the desires of the citizens of Maryland, regardless of the desires of the General Assembly or the Governor of Maryland, regardless of the needs or desires of the particular State.

That, to me, is—you talk about misregulation, that is misregulation in its grossest form. There are several bills pending before the Congress right now that would attempt to correct the situation. One is House bill 1512, the Fair Indian Gaming Act; the other is House bill 1364, the Indian Gaming Regulatory Act. Both

of those pieces of legislation would attempt to correct what I believe is just a ludicrous situation.

So I would urge you, when you get back to Washington, to consult on the status of those bills with your colleagues and to support them, because here is one area where Federal regulation has resulted in complete miscarriage of anything that approximates economic justice.

Mr. MCINTOSH. Thank you, Mr. DeFrancis, I appreciate that. It is, as I say, a new area to me. I'm surprised the Federal regulation is that involved in that area. I now see how the consequences could be extended beyond just the Indian tribes.

Let me hear from Mr. Capps, and then we will open it up for questioning.

Mr. Capps, if you could share with us any remarks you have on the questions of Federal regulation.

Mr. CAPPS. Let me first thank you for having us here. I was asked by Joe to accompany him, basically, I think, for political balance. Mr. DeFrancis is an ardent Republican. You might want to take note of that, take his business card with you. And I am the token Democrat, probably one of only two or three in the entire horse industry, as far as I'm concerned. So thank you for letting me be here.

Mr. EHRLICH. As Collin demonstrates, we discovered there are a lot of good Democrats.

Mr. CAPPS. And, Congressman Peterson, we'll have lunch later. We'll be the only ones in town.

I was interested in your earlier references to manure, because if you want to know manure stories, you've come to the right place. We know a lot about it. We spread a lot of it around, not just here this morning, but in general. We produce a great deal of it.

My organization represents about 800 members. There are, in the State of Maryland, over 3,500 licensed owners of race horses. We have about 800 members who are breeders and owners. They, together, collectively own properties that probably exceed 250,000 acres of green space, farms throughout the State. There are over 600 farms on which people raise thoroughbred horses. We will produce this year about 1,500 new foals. There are over 200 stallions standing in the State of Maryland.

The economic impact that Joe referred to in his earlier testimony, on the breeding side of the industry alone, in the State of Maryland, is about a half billion dollars a year. So it's a very substantial industry, and it involves all kinds of people. It involves farmers, veterinarians, truckers moving product back and forth, all sorts of ripple industry effects.

I wish, in some ways, the gentleman from the bakery industry, who gave such an extended presentation that was so detailed, had left their chart up here, because a lot of the agencies and a lot of things that they talked about are issues with us. I worked for Joe for 5 years at the race track, and I can tell you that we ran into repeated problems with OSHA, with EPA, and so forth, on all kinds of things.

Frankly, a lot of it was not specific to the agency as much as it was to the constant clashes between the State and Federal regulators. That was probably the biggest single issue that we ran into

was that, when the State decided to come out and take a look at something we were doing, inevitably the Federal guy followed, or vice-versa. They seemed to know what each other was doing, and they tracked each other. And their relationships were not always cordial, shall we say. If one guy found something, the other guy had to find three other things, and vice-versa.

We had an OSHA situation, a MOSHA, Maryland's version of OSHA, an OSHA situation that went on for about a year or so, I guess. It cost us, probably, $200,000 in just legal—not legal fees, because we weren't in court over anything, but just advice, opinions, counsel, engineering surveys, and everything else, and the result was basically nothing.

At the end of it all, they levied a very tiny fine on the race track, because I think they found some paint down in our print shop, or something, but essentially, it was because they came in—as you can imagine, a race track is a pretty complex operation. It's part farm; and it's part public facility. Joe has three stable areas that represent about 3,000 stalls. So he's got, you know, hundreds of acres of barns and race tracks, and everything else.

The manure removal that I talked about facetiously earlier is a major problem. About probably 30 tons or so a day of manure are moved from those three facilities. There again, you get into all kinds of issues between the State and Federal regulators. The State guys say you can't put things in landfills. The Federal guys say, you not only can't go to this landfill, but you've got to take it out of State.

We pay excessive prices, beyond excessive prices, to literally have manure removed out of the State of Maryland. It had to go to Pennsylvania or New Jersey. Now, why they are recipients of Maryland manure, I have no idea. But that became because both the State and Federal guys decided that was the way to do it.

In addition, we were selling it to people who were using it for mushroom farming and other farming purposes. But to get it trucked to them cost us more than we were getting back. So we got into problems again. This was EPA; this was the Maryland environment people, and so forth, but a lot of it came down to clashes between the Federal and the State people, all of whom had their own turf to battle for.

So those are just the kinds of issues where it's OSHA or the local derivative thereof, or EPA, or whatever. But probably our biggest single issue, as an industry, is an economic development one, and it will probably surprise you to learn that it involves the IRS or, specifically, the tax code.

In 1986, the Federal Tax Reform Act, which we call, in our industry, the "Horse Racing Destruction Act," was basically designed, obviously, to reduce marginal rates and, at the same time, reduce preferences in the tax code. The people who invest in horses typically are higher dollar people. Obviously, that was going to impact them to some extent, and their lawyers and accountants sit down with them and say, OK, you shouldn't be doing this anymore; you ought to be doing that. So there was certainly going to be some impact.

We estimate, over the last 7 years or 8 years since the act started to have its full impact, that we've probably seen investment in

horse breeding and horse racing, horses for racing purposes, decline by about 20 or 25 percent. The foal crop in North America has gone from 51,000 down to 34,000 during that period. In the State of Maryland it has declined from 2,400 down to about 1,500. At this point, it appears to be relatively stable, but it's certainly not growing.

A lot of that has to do, not so much with the specifics of what was in the code that caused people to suddenly decide, I've got to go do this instead of that, but with confusion over things in the code. The IRS, of course, is always looking at the gambling side of the business, and they have withholding taxes on us that are very difficult to comply with, in many cases.

But aside from that issue—and Joe could address that separately, as a track owner—the material participation rules in the code are extremely difficult and very complex to understand. Basically, the IRS has, over the years, pretty much refused to really establish for people what they mean. The result is that, when somebody is uncertain of what they are likely to see at the end of the year when they are working on their tax return with the IRS, and we're talking about some pretty substantial investors, then they get cold feet and they pull back, because they don't understand those rules.

What is material participation? As an example, in the old code, essentially 500 hours a year of hands-on participation meant that you were a material participant, and therefore you were no longer defined as hobbyist. You were actually involved in the business, and you could write off appropriately. Under the new code, they would not define the number of hours. So it didn't matter, you pretty much had to prove that you were a material participant.

Well, obviously, somebody who owns a race horse is not necessarily a candidate to go out and ride a race horse. And it was those sorts of things that confused people about what they could do and couldn't do, and what the IRS would let them do and not do, that have become a major issue for the people in our industry.

There are bills in the House and Senate presently, or they were introduced in the last session, that would redress some of that by being more specific about what material participation actually is. I do not have the numbers of the bills. They were introduced, again, surprisingly, by the Kentucky delegation, but they are to change the code to at least clarify what the rules are. It would undoubtedly be a material step—no pun intended—to benefit investment in our industry.

Mr. MCINTOSH. Thank you. I can't resist, at this point, asking you a quick question. What do you think about the flat tax proposals?

Mr. CAPPS. The flat tax proposal—it depends on which one you're talking about. I mean, they've been around for so long. But the latest versions of them, I guess, Mr. Archer has one, and I guess—who else? The Kemp Commission. There's no one—I haven't seen one that I would say is the proposal at this point.

But the theory always was, in our industry, that lower rates hurt us, because it's a high-risk investment and it's a long-term payout type of investment. So it's the type of thing where lower rates would cause people to gravitate toward less risky investments. And

I think, without question, my own opinion is—and I was a money manager on Wall Street for a while—that the reason the stock market is over 5,000 is because of the 1986 Tax Reform Act, because people went to financial investments rather than hard asset types of investments, and horses represent that.

Would lower rates, at this point, make a big difference? A lot of it depends on what preferences are left in the code. Absent a lot of preferential items, it probably would not hurt us very much; it possibly could even help. Because, again, if people don't have other places to go, justifiably, that are going to allow them certain types of write-offs, then they are going to come back to things that will.

This is a farming industry, basically. I mean, Joe will not have product on his race track unless there's somebody out there who's farming. It doesn't matter whether the guy is a millionaire or he's scratching it out, he's still a farmer. And we've got people who run the gamut. We've got people who are billionaires who are in this industry, and we've got people who barely make a living who are in it, but they just happen to love to do it. They are bitten by the horse bug.

So we are a farming-oriented business, and the ability to clarify the tax code so that people can deal with the farming aspects of it is a very important issue. And that does go back to the flat tax, because, if the preferences are not there but, at the same time, the standard things that have applied to agriculture are still there, then I think a lot of people will still participate. But that's a tough one.

Mr. MCINTOSH. It's a little bit off our subject, but I was just very curious, because I think it's going to be a topic next year in Washington that will have a lot of unforeseen ramifications.

Mr. CAPP. Absolutely.

Mr. MCINTOSH. Also, you mentioned agriculture being a very important part of the industry, what I noticed, as they were opening this new track in Anderson, was the farming community around there was very excited because they have an opportunity to sell their products, hay and things there.

Mr. CAPPS. Absolutely. That's accurate. We have probably, in our case—and no one has ever really been able to define this sharply—but probably half of the economic impact is from just that, people growing feed crops and selling them, and people who are transporting horses, transporting feed back and forth. I mean, you can imagine a horse farm with 100 horses on it, they go through a lot of feed in a day; they go through a lot of hay in a day.

We have issues that we deal with just on an operational basis that are sort of mind-boggling. The blizzard is an example. We probably used up more tractors during the blizzard, literally to clear areas for horses to be able to get to water. I mean, I had horror stories from people out there about how tractors got stuck. One guy literally had his—he tried to clear a pond, and of course he lost a tractor in the pond, and they were over there trying to drag the thing out.

So the agricultural part spills over into a lot of other things in the community. And I'm sure, in your district, likewise, that that's what you found.

In Congressman Peterson's district—not his district, but the State—is a good example, going back to Joe's issue, of what Indian gaming can do to the horse industry. Because, basically, the onset of Indian gaming in Minnesota, and nearby, essentially closed the race track there, which was a fledgling track that had only been in existence for a few years, a very nice facility west of Minneapolis, and they closed down. They are back open again because of simulcasting, and, of course, they are trying very hard to get the State to allow them to bring in other forms of gambling.

But this Indian issue, likewise, has certainly spilled over into Minnesota.

Mr. MCINTOSH. Mr. DeFrancis, I appreciate your spending time with us today and hope, at some point, I can come out and see your facilities.

Mr. DEFRANCIS. We would love to have you, Congressman.

Mr. EHRLICH. We can definitely arrange that.

Mr. DEFRANCIS. We would be honored to have you. It's just a short drive from your office on Capitol Hill. So, please, anytime your schedule permits.

Mr. MCINTOSH. Unfortunately—well, not unfortunately, I really actually prefer doing this that way—but, unfortunately, for scheduling purposes, we're usually in Indiana most weekends, unless I just take off from work during the week. But we'll figure out a time to get out there. I appreciate that.

Mr. DEFRANCIS. That would be wonderful. We would enjoy it.

Mr. MCINTOSH. Collin, did you have any questions?

Mr. PETERSON. Well, you know, the irony of this whole situation right now is: the Indians are talking about buying the track.

Mr. CAPP. Joe would, I'm sure, take an offer.

Mr. PETERSON. A couple of things. You know, I'm a CPA, and probably the most horrendous thing that we've ever done in Congress is the 1986 Tax Reform Act. It destroyed a lot of things besides your business. But I've come to the point—and I don't support the flat tax, but I support abolishing the IRS. I mean that. Repeal the entire code and abolish the IRS. That is the only way we're going to be able to get a handle on this.

If you think—well, I mean, it's all right to try this—but if you think you're going to pass a bill to change these material participation rules with the current IRS, I mean, I wish you luck, because I'll guarantee you, by the time they get done, whatever is in this bill, they will have it so screwed up it will be twice as bad as it is today.

The trouble with the IRS is, you can't get an answer out of those people. I mean, they do not know—50 percent of what you do, you can't get an answer. And if they give you one, it will be wrong, most of the time. So, I mean, the whole thing is out of control, in my opinion, and I think we should just get rid of it and write the code over from scratch. Get rid of all the case law; get rid of the whole mess. And, hopefully, these guys will help us do that.

Mr. DEFRANCIS. It sounds like a good idea to me.

Mr. PETERSON. Yes. The other thing, this Indian issue, you said that the States are obligated. I don't believe that's correct. I think the States have the authority to enter into these compacts. I do not believe that they are required to enter into them.

But the underlying problem with this issue is this—and I have three Indian reservations in my district and have lived with this issue, not in gambling, but in hunting and fishing, for longer than I want to remember—and the trouble with this whole area is the court system.

I think it might be right to say that the courts are probably creating an obligation that the States do this. I don't think that the law does.

Mr. DEFRANCIS. That's correct. I think the courts have interpreted the law to create an obligation.

Mr. MCINTOSH. But I think the law came about because the courts were about to give this to the Indians anyway, and people wanted to, you know, get some kind of a handle around this, so they went ahead with this bill which gave the States' Governors the authority to go out and do these compacts. That process was messy at best, and people didn't know what was going on, and it just kind of got out of control.

The trouble now is that you've got all this capital investment out there that, you know, it's not realistic to think that you're going to undo that. I mean, 30 miles north of where I live, in the middle of nowhere, they built a $27-million facility in a town of 1,000 people. There is nothing else there. I mean, it is in the middle of nowhere. It's 80 miles from Fargo, ND, 100-and-some miles from Winnipeg, Canada, and 250 miles from Minneapolis. And in this town of 1,000 people, on Monday morning there will be 5,000 people at that casino, at 8 a.m. I mean, it's unreal.

Mr. DEFRANCIS. I'm not surprised.

Mr. PETERSON. We have 1,200 people working that didn't have jobs, and the welfare rolls have diminished in our area. So there are some good things that happened because of this. And I don't think we're affecting the horse track in Minneapolis. I mean, we have a different situation. But I understand your problems.

The trouble with this issue is that I don't know that the courts are going to allow us to untangle this, even if we wanted to. Again, if we pass the right kind of legislation, there are going to be lawsuits. The Indian tribes see themselves as sovereign States. We basically have given that right. That's why they can claim that, if you have class three gambling, that they should have it, because they are a separate State, and they have the same rights as a State.

And that has not been given to them by legislation so much as it has been given to them by the courts, although a lot of this goes back to the treaties and the establishment of these reservations, and all of that. I think the one thing the Congress could do is to disestablish reservations. I'm not so sure they are anywhere near doing that. But I think that where this thing—it looks to me like the first thing that Congress may deal with is this issue of taxing them. The States cannot tax the Indian tribes, cannot tax.

Mr. DEFRANCIS. Because of their status as sovereign nations.

Mr. PETERSON. Right. However, the Federal Government can, and that, we have not been willing to address up to this point, but I think that that's probably the first place that you're going to see the Congress move. That also gets us a nexus to go in there and take a look at what's happening in these casinos. The biggest casino in my district, the entire tribal council is now under indict-

ment and going to court in April. So, I mean, there is oversight going on. It's a kind of messy way to go about it, but they are.

The IRS has been in there for 2 years under fraud. It would be easier if we had access to their records and we could just go in and do oversight like we do with your race tracks, and so forth. But, I mean, it's a real problem.

The trouble now is that we've got, as I say, all this capital investment, all these jobs, all this other stuff that has developed out there. And the solution that they are looking at in Minnesota now is to add more—to open up gambling at the State level and let private people go into the casino business. I personally think we have too much gambling already, so I don't think that's a good idea, but it's a real problem.

Mr. DEFRANCIS. I think the crux of the problem, if it can be defined this simplistically, is in that definition of class three gambling, because it is—you know, conceptually, looking at the Indian tribes as sovereign nations, it strikes me as fair to allow them to do whatever is allowed under State law to be done. But because of the way class three gaming is defined, as I described earlier, if State law allows a State lottery, then, under the definition of class three gaming, it permits the Indians to build a full-scale Las Vegas casino.

And that then leads to what you were just describing, then a tremendous economic push for the legalization within the State of private commercial casinos to compete with the Indians. And it removes from the State the authority to really develop a comprehensive gaming policy for its particular State, which, given the different economics of a State—for example, we've gone through, in the last 8 months here, a very intensive debate about the issue of casino gambling in Maryland. The racing industry has been one of the strongest opponents of the prospect of casinos.

There was a lot of testimony from Mississippi, for example, as to all the economic good that casinos have brought to Mississippi. And given the unique characteristics of the economy of Mississippi, the absence of an existing horse industry, the absence of the 900 breeding farms that Tim represents and the 19,000 people they employ, perhaps, for Mississippi, the full leap into the pool of casino gambling was a great thing. It resulted in a net increase in jobs, a net increase in economic development, a net increase in tax revenue, and that was great for Mississippi.

For Maryland, it could produce very different results, because, if the casinos put the race tracks out of business and, as a result of the race tracks going under, Tim's farms go under, then for one job being created by the casino, you could lose two jobs in the racing and breeding industry.

So it is a State-by-State matter that is, I think, particularly appropriate for State policymaking and State regulation. And giving this power to the Indians through the definition of class three gaming to interrupt and interfere with that process in such a dramatic fashion is, I think, where the problem is.

Mr. PETERSON. Well, you know, in Minnesota, what opened it up was when we put the parimutuel betting on the ballot. We didn't have any gambling before that. And the voters approved it. That's

what opened up the availability in Minnesota. It wasn't the lottery. The lottery came later.

Mr. DEFRANCIS. Right.

Mr. PETERSON. In our State, even if the lottery wasn't—say the lottery was class two, if we change the definition, you know, we'd still have casinos because horse tracks are class three.

Mr. DEFRANCIS. Exactly. Exactly, and that's my whole point. If the voters—I don't think it makes either logical or economic sense for voters to approve parimutuel and that approval open the door for Indians to have Las Vegas style casinos.

Mr. PETERSON. So what are you saying? So parimutuels should not be considered class three either?

Mr. DEFRANCIS. I think the definition of class three, rather than being this hodgepodge of all other forms of gaming other than what is specifically defined in class two, the definition should be much more specific. And if the State allows parimutuel, then the Indians should be allowed to conduct parimutuel. If the State allows blackjack, the Indians could do blackjack. If they allow slot machines, the Indians can have slot machines.

Mr. PETERSON. I see, so it should be comparable. I see what you're getting at.

Mr. DEFRANCIS. Because the State allows one thing, it shouldn't open the door to these 19 other things that the State may have never envisioned when they were allowing this one particular thing.

Mr. CAPPS. The other part of that issue, Congressman, is that where this got out of the box really was, in 1983, in a dispute that arose in Oklahoma over bingo parlors on Cherokee lands that were reservation lands and had been ceded to them by treaty. And the State was concerned because they couldn't regulate it. What evolved from that, as it got out of the box, because then, all of a sudden, it wasn't just reservation land, you had Indian tribes going out and acquiring property and then saying, "This is our land. We're sovereign."

Mr. PETERSON. But Oklahoma doesn't have reservations. They have a lot of Indians, but they don't have any reservations.

Mr. CAPPS. Well, this was the dispute. The Cherokees said, "This is sovereign land."

Mr. PETERSON. Right. They originally had reservations, and they did away with them.

Mr. CAPPS. Exactly, and what has occurred, as an example, here in Maryland, during this casino debate, we've had a gentleman come in representing an Indian tribe who wanted to acquire land in Western Maryland.

Mr. DEFRANCIS. The Shawnee.

Mr. CAPPS. The Indian tribe was not even a Maryland-based tribe.

Mr. DEFRANCIS. The Shawnee.

Mr. PETERSON. Yes, but your Governor has the authority to stop that, you know, and we have done that out in Minnesota. I mean, initially, they allowed them to go in and put land in trust that wasn't in their reservation. That has now been stopped.

Mr. DEFRANCIS. Right. The Governor has the authority to do that.

Mr. PETERSON. Your State has the ability to control that, and that's part of why they did this. They figured that the Governors could make a better decision about this than somebody up—or the courts. The problem is, I think the Governors were underequipped to understand what they were doing and initially entered into some agreements. There was politics involved in this, all that sort of thing, and it did get out of hand.

But I think, in most States, at least in our area now, they have stopped allowing them to go out and buy land in another place and then put a casino up. I think. Maybe it's going on in other places; I don't know.

Mr. DEFRANCIS. The process to get the land—the land, under the law, has to be taken into trust for the benefit of the Indians, and the process of getting the land taken into trust now is much—the hurdles are much higher than they were before.

Mr. PETERSON. But at the Federal level—maybe we're getting into this too much—but historically, the Department of the Interior has always approved every request to put land in trust, because they have just approached this that—so there's really no stop-gap at the Federal level. If it comes up through the chain and everybody signs off on it, the Federal Government is probably going to go ahead and do it. Now that may be something we ought to try to get the Department of Interior to look at more closely.

The trouble with this whole area is that people don't understand it. You literally have to live with this for 20 years to understand all the history. And the Indians have a point in all of this. I mean, they have been treated badly by this country.

Mr. DEFRANCIS. No doubt about that.

Mr. PETERSON. There's no question about it. We have broken treaties. And they see this as the new buffalo.

Mr. DEFRANCIS. Sure.

Mr. PETERSON. And it has been, in some cases. In my district, all of the money goes back for schools, for infrastructure, water and sewer systems, new housing. They are doing the right thing with it. Down in the Twin Cities, they are getting $600,000 per person payment for nothing, because the tribe is only 180 people, and they get $600,000 a year, every man, woman, and child. If you have a baby, you've got an extra $500,000 of income. It's unreal.

Mr. DEFRANCIS. It's worth having a big family.

Mr. PETERSON. So that is not, obviously, a good situation, you know, potentially. Anyway, we've carried on too long, but maybe we've educated a few folks on this.

Mr. MCINTOSH. Maybe there's fertile ground for a Corrections Day bill in here somewhere.

Bob, do you have any questions?

Mr. EHRLICH. No. I want to thank both these great gentlemen for coming. It just struck me, while you were both testifying, we talk about the various elements of the business environment in any particular State in the country, the tax environment, the tort environment, and the regulatory environment, and you've touched on all three.

One of the reasons we have problems here in Maryland, both with respect to what the Federal Government does, but more particularly with respect to what the State does, is, we have problems

in our tort environment. I hate to see, Joe, the complaints filed, the slips and falls, everything in your business.

Mr. DEFRANCIS. There are people who make a living at it.

Mr. EHRLICH. We know that. The tax environment, the 1986 changes, you've testified on that very eloquently. And the regulatory environment, confusion between States and feds, and what's what. So you are a living example of what we're trying to do in Washington, trying to attack each one of these three elements and make it better for you all to go out and do your thing. So I thank you all very much.

Mr. DEFRANCIS. Well, we greatly appreciate your efforts in Washington and certainly the opportunity to come and chat with you about some of the things that are most important on our minds in these areas this morning.

Mr. EHRLICH. During your testimony, you saw me talk to David. He wrote me a note. There are certain people in Washington who think all forms of gambling are bad, and I've been telling them that horse racing is very good. Now he understands why.

Mr. MCINTOSH. Exactly. I see the benefits to the community.

Let me, also, actually seriously note that if there is a problem with the courts having misinterpreted the statute, it might be worth looking at as something that could fit the definition of a corrections bill. And maybe, Bob, if you want to work with them and look at that, certainly that might be something we could take to the rest of the members of the committee.

Mr. CAPPS. Could we suggest to you that you'd want to abolish the court system as well as the IRS?

Mr. EHRLICH. We can only do so many things.

Mr. PETERSON. Mr. Chairman, I think this is a—I wouldn't say—I mean, some people view it that way, but there's a huge amount of litigation here and case history. This is way beyond a corrections deal, I think.

Mr. EHRLICH. We're trying to expand the parameters of Corrections Day anyway. Thank you both.

Mr. MCINTOSH. Thank you. We appreciate your testimony.

Now, if we could move to the open microphone section of the hearing. There are two people who Karen has indicated have requested time, and I will call on them. If anyone else would like to, feel free to let Karen know, and we can also include you in this.

The first is Rabbi Heinemann, who has requested time to testify. Why don't you come forward, Rabbi Heinemann, and we will swear you in and go forward.

Rabbi HEINEMANN. Is it OK if I solemnly declare or affirm instead of swearing?

Mr. MCINTOSH. Yes, that is fine. Please raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much, Rabbi. Welcome, and we appreciate your coming forward today.

STATEMENT OF RABBI HEINEMANN, RABBINIC ADMINISTRATOR, STAR-K KOSHER CERTIFICATION

Rabbi HEINEMANN. Thank you. First, I would like to thank you for the opportunity to come and testify in front of this important committee.

My name is Rabbi Moshe Heinemann. I am the rabbinic administrator of the Star-K Kosher Certification. It's a nonprofit organization which assures the kosher quality of products. I am involved with the local slaughterhouses that slaughter kosher and basically all the kosher businesses that are here in this Baltimore area. And we are involved with hundreds of businesses that produce kosher all over the country and in many other countries.

There are two kosher slaughterhouses in Maryland that produce kosher, and they are basically the principal slaughterhouses over here in the Maryland area. There are two smaller ones, but they don't slaughter every day. But these slaughter every day. Their business depends, in a very great measure, on the kosher production. As I'm sure you know, kosher slaughterhouses on the East Coast are just closing up. Everything that's left is in the Midwest. In general, meat consumption is on the way down.

There are proposed regulations which will control Salmonella and E. coli and other problems with meat in front of the Government. Now, I know that, as mentioned before, they are on hold. But I'm a little bit worried that, as soon as that hold goes off, something is going to happen. So, therefore, I think it's important that the committee should understand what it means to the kosher industry if these regulations were put into effect.

In order to produce kosher, beside the ritual slaughtering which it has to go through, which is not affected by any of these regulations, the meat, before it can be used, has to be deveined, soaked, and salted. This deveining, soaking, and salting process sometimes is done at the slaughterhouse, but most times is not done in the slaughterhouse; it is done by a different company, sometimes by the local butcher.

J.W. Trueth, which is the largest packing house over here in Maryland, does not have any facilities for deveining, soaking, and salting the meat. Now, according to the regulations, this treatment would have to be applied to the meat within a certain time after the slaughter. It would invalidate the koshering process, which would mean that, if it was done as the regulations say, the meat would not be considered kosher.

In a poultry plant, it is possible to comply, because the salting is done there immediately after the slaughter. It's possible to salt it and apply the treatment after the salting process. It's not exactly the way the regs have it, but I'm sure that they would make this exclusion for them. But in the meat situation, it is not possible to do it the way that it's set up.

I don't want anyone to get the impression that people who eat kosher are not concerned about Salmonella poisoning and about E. coli. We're just as concerned as anyone else. As a matter of fact, the salting process actually takes care of the Salmonella poisoning problem; it does not take care of the E. coli, as far as we know. But the E. coli, if you cook the meat—and most people cook it—I would say 99.9 percent of people cook it, so that wouldn't be any problem.

But there are other ways that would be acceptable to us, but it cannot be done before the salting process, and that is really the problem. It would end the kosher meat over here in this State, in any State, as a matter fact. The truth is that about one-third of the kosher meat is coming from out of the country because of the prob-

lems. And we don't want to see the jobs involved—hundreds of people are involved with this in Maryland, are involved with the kosher trade, and we want to preserve these jobs, and we want to make sure that people have kosher meat to eat.

Now, it's possible to live without eating any meat. I understand that. But, you know, we want to be fair to people. They are Americans, and they deserve to eat meat just like anyone else does.

There's also the issue of the time restraints, that the meat has to be cooled down to a certain temperature. I believe it's 50 degrees within 4 hours, and 40 degrees within 24 hours. Now, also, it's a big hardship for us, if it is at all possible.

Let us say that, for instance, this J.W. Trueth and Sons, they would build a new facility in which they would salt the meat right away, at the place. It's not possible for them to have it cool down to that temperature within the required amount of hours, because the deveining, the soaking, and the salting, even if you have many people working on it, it has to be at least a half hour in the water and at least an hour in the salt. You've got to devein it; you've got to pull it apart. Besides the veins that have to be removed, there are certain fats, membranes, glands that have to be removed before you can do all this.

So, therefore, there is no way—it's not possible to get it done in that time. Therefore, I want to mention that there should be some kind of consideration for those businesses that are involved with kosher meat, that they should be able to have an alternate way of dealing with Salmonella poisoning, and E. coli, or any other thing. We want it regulated; we want to make sure that it's healthy, but not in the way that the regulations have it, in order to that we should be able to have kosher meat over here in this State and in this country.

I want to thank you for giving consideration to my statement and for letting me testify in front of you.

Mr. MCINTOSH. Thank you very much, Rabbi Heinemann. I think this is an excellent example of what we think of as the law of unintended consequences, where oftentimes regulations set out to do a good thing, and because, inherently, the process, when it's remote, in Washington, they can't possibly know all of the consequences. As a result, we see this time and time again, things that really you can't imagine someone ever intending end up being the result. I appreciate your bringing this forward to us as an example of that.

Mr. EHRLICH. I appreciate it as well, Rabbi. We have paperwork and letters on this issue, and we're following it very closely. Thank you.

Rabbi HEINEMANN. Thank you.

Mr. PETERSON. May I ask a question?

Mr. MCINTOSH. Yes, certainly.

Mr. PETERSON. I have a meatpacking plant in my district that slaughters beef, and I toured it here a couple years ago. And they have four or five rabbis that are on premises there all the time. They come up from Minneapolis. I watched part of that process. They mark the animal and they do the initial—whatever the ritual. But I think, at that plant, then that's the end of it. Apparently, those animals go to some other facility to do what you're saying. Am I right about that?

Rabbi HEINEMANN. Yes, you are right. What happens—if they would do it in the plant, it would be possible, not exactly according to the way the regulations have it, but it would be possible to first kosherize—it's already partially kosher—finish the kosherization process and then treat it for the E. coli or the Salmonella, if it would be necessary. It would be possible.

But if it's done in a completely different facility, which sometimes is not a USDA facility, it may be just a local butcher store, so therefore it is definitely a problem. It would really mean no kosher meat anymore, and that's really something that we want to avoid.

Mr. PETERSON. Thank you.

Rabbi HEINEMANN. Thank you very much.

Mr. MCINTOSH. Thank you very much, Rabbi. We appreciate your coming forward today.

The other person who had indicated they wanted to participate at this point was Mr. Joseph DiCara.

Mr. DICARA. Yes.

Mr. MCINTOSH. Welcome. Mr. DiCara, if you could please raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much. Let the record show the witness answered in the affirmative.

Welcome, and please share with us your testimony.

STATEMENT OF JOSEPH A. DiCARA, VICE PRESIDENT, SALES AND MARKETING, GOW INTERNATIONAL, INC.

Mr. DICARA. Mr. Chairman, thank you very much, and members of the committee, Bob and everyone.

I was not planning on testifying; however, I found myself, just as recently as the last witness, knowing some pretty salient points about each of those industries. Our company is GOW International. We are involved in international trade and development. As such, we represent three different types of environmental mitigation products. One is air; one is water; and one is soil stabilization.

The testimony that you heard from the American Bakers Association—I, in fact, testified before their Environmental Committee, introducing them to our product. What I would like to say today really involves something that I think has a negative effect in the intention of the EPA regulations when they are applied. I think we all agree that we want a clean and safe environment, and I think that's just a matter of everyone's feelings, but the problem is a lack of clarity.

It has been talked about here today, particularly with the Bakers Association, you know, what do we do? How do we do it? When do we do it? What is the result if we don't? And I think one of the biggest fears is that, even if moneys are spent for the environmental control equipment, there will not be punitive action against those companies after they have spent that tremendous amount of money in order to mitigate the VOC problem or whatever their discharge may be. And I think that causes a negative impact.

I think we have to be very careful what we say is negative in the environment, because, as you indicated and other members of

the committee earlier on, there is some question as to the viability of what the EPA is saying is injurious to the environment.

The intention of everyone, as I said, was to purify the air, purify the water, and clean the rivers and bays. The other is a lack of communication in a clear and understandable fashion for small business. You need to be an attorney, oftentimes, to understand what those regulations are. And while a person may have intentions of complying, they don't quite understand what that means, so they find themselves in a situation of really not going anywhere.

The EPA has designations: best available control technology and reasonable control technology. And I don't think that the general population of businesses are aware that there is even a designation like that. I've been involved in the past with companies who have spent $300,000, $500,000, $1 million on mitigation. And after they have done that, there have been problems.

Now, it's not the fault of the business; they have sought to comply with the regulations. But instead of the regulators being tutorial or helpful, they have been punitive. That, again, causes people to pull back and, again, really damages our ability to sell our products in the arenas where there really does need to be some safety issues addressed.

So I think that there needs to be some real reform in the whole way of EPA. For instance, if you call Durham or Raleigh, the centers of the EPA in the south, and you ask for certain information, they will give it to you. You meet with those people, and you think you have everything under control. You go to Washington, and there is a lack of communication between Washington and their own offices as to what is effective. So there needs to be some clarification.

With respect to the Rabbi's testimony, I know J.W. Trueth and Sons. I was involved with them several years ago in another matter. They are a small, family owned business that has been in business since before the turn of the century, and they are a major employer in southwestern side of Baltimore County. Each couple of years it seems that they are being confronted with a business-threatening regulation, whether it's on the local, State, or Federal level. And I think that there needs to be some sensitivity, because they can't afford not to.

I've been in the kill room in that facility. I have met the rabbis and seen the procedures, and they are the highest standards. To say that what they are doing is inconsistent or not thorough shows a lack of understanding of the process of koshering. So, again, that's another part of the deal.

I thank you for being able to sort of back up, not intentionally, as I said, but having heard the testimony, sort of reemphasizing. I have no legal or business ties to any of these folks. It's just that I think, in order to have good job creation across this country, we need to have the same playing field that there is across the borders in Mexico and in Canada, in some cases, or force those governments into complying, so it's a level playing field for everyone.

Mr. MCINTOSH. I appreciate your testimony. In fact, as you were mentioning about how, oftentimes, business does want to comply with environmental regulations and other regulations, but find it very difficult to do that in a way that is satisfactory. You may have

read over the summer, there were 17 riders, which are extra measures put on the appropriations bills about the environment, and one of them was a provision that said, if business enters into a self-audit and tries to improve its environmental record, that won't be held against them.

We were finding that people were brushing problems under the rug, hoping nobody would ever notice them, because they were afraid, if they discovered the problem, then they would suddenly be hit with a lot of fines and enforcement actions. It seemed to me, as a very common-sense approach, a way to encourage business in helping us clean up the environment.

Unfortunately, it got wrapped up into the political rhetoric where the President says, oh, you're turning back the clock on environmental enforcement. And he scored some political points with that but did, I think, a great disservice to the effort to actually move forward in a consensual way and get some real environmental benefits for the community.

So there are a lot of frustrations as we deal with these problems, and oftentimes you get people of good will on all sides, and yet they can't move forward because of the political climate that's created in Washington on this.

We appreciate very much your testimony.

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

Mr. EHRLICH. I've heard this before, because I know this character very well, and he's a good man. Joe, I appreciate your coming out today.

Mr. DICARA. Thank you very much.

Mr. EHRLICH. But we'll talk. I'll introduce you to these two later. May I, with your indulgence, make a statement?

Mr. MCINTOSH. Certainly.

Mr. EHRLICH. Joe, thank you very much.

Mr. DICARA. Thank you very much.

Mr. EHRLICH. I know we have two more panels left, and we have a minority witness you may not know about who has signed up.

Mr. MCINTOSH. OK.

Mr. EHRLICH. This gentleman needs to get back downtown in an hour, hour and 15 minutes, for a very important freshman meeting, as I do, as well. I would suggest, Mr. Chairman, that we may call the panels up together or ask everybody who is going to testify not to read their written statement but to basically talk with us.

Mr. MCINTOSH. And perhaps provide a written statement for the full record. Yes. Why don't we do that, if that's amenable to the people who are scheduled to be on the next two panels, if we could bring both of them up together at the same time. Very good idea. Thank you. I hope we have enough chairs for everyone.

Let me mention for the record who our witnesses are going to be: William A. Good, executive vice president of the National Roofing Contractors; Mark Gaulin, president of Magco, Inc., a roofing company; Calvin Coblenz, who is president of Wimpey Materials U.S.A. and also president of the Maryland Associated General Contractors.

With them will be William Popomaronis, who is president of EPIC MD Professional Pharmacies and is the owner of Edwards and Anthony Pharmacy; Hugh Brown, president of the Safeguard

Maintenance Corp.; Michael Stappler, president of Overlea Caterers, Inc.; and Thomas Meighen, who is the safety manager at Stromberg Metal Works, Inc.

Thank you all for coming. If you could all rise, please. And Karen is indicating to me there is an additional witness, Jim Miller, who is with EPIC Pharmacies. If you could all please raise your right hands.

[Witnesses sworn.]

Mr. MCINTOSH. Let the record show each of the witnesses answered in the affirmative. Why don't we go in the order in which I had read off those names, and if you could, really, as Bob mentioned, maybe summarize the key points that you think we should know about, and then we can really open it more into a discussion.

Mr. Good, thank you for coming.

STATEMENTS OF WILLIAM A. GOOD, EXECUTIVE VICE PRESIDENT, NATIONAL ROOFING CONTRACTORS ASSOCIATION; MARK GAULIN, PRESIDENT, MAGCO, INC., AND PRESIDENT, ASSOCIATED ROOFING CONTRACTORS OF MARYLAND; CALVIN H. COBLENZ, PRESIDENT, WIMPEY MINERALS, USA, INC., AND PRESIDENT, MARYLAND ASSOCIATED GENERAL CONTRACTORS; WILLIAM T. POPOMARONIS, PRESIDENT, EPIC MD PROFESSIONAL PHARMACIES AND OWNER, EDWARDS AND ANTHONY PHARMACY; HUGH BROWN, PRESIDENT, SAFEGUARD MAINTENANCE CORP.; MICHAEL STAPPLER, PRESIDENT, OVERLEA CATERERS, INC.; THOMAS J. MEIGHEN, SAFETY AND RISK MANAGER, STROMBERG METALS; AND JAMES MILLER, EXECUTIVE DIRECTOR, EPIC PROFESSIONAL PHARMACIES

Mr. GOOD. Thank you, Mr. Chairman, for the opportunity.

My name is Bill Good, Mr. Chairman. I am executive vice president of the National Roofing Contractors Association. We are a 110-year-old trade association headquartered in Chicago. We have 3,800 members from all 50 States. Our average member employs about 35 people, so this is truly a small business operation. I do have a written statement, Mr. Chairman, that I submitted and I will ask be included in the record, and I will attempt to briefly summarize what we have.

About a year and a half ago, back in September 1994, the House Republican Research Committee's Task Force on Competitiveness held a press conference that we were asked to participate in, and at that time we submitted and distributed what we called our top 10 list of favorite roofing regulations. We got a lot of mileage out of that, because it attempted to show some of the excesses that our members have to deal with.

Just to give you a flavor, Mr. Chairman, of what was on our top 10 list, we have regulations, for example, that require roofing contractors to have AIDS prevention programs in place. We have requirements for roofing contractors to have fire evacuation programs. And I would just suggest that, if you're working on a roof of a building that catches fire, it's probably not the best time to go consult your fire evacuation program. You probably want to take some more immediate steps.

We also pointed out some of the OSHA hazard communication standard requirements that include having employer-conducted training and employer-maintained material and safety data sheets on any substance that an employee may encounter in the work place. And we've had examples of members of ours get cited for allowing their employees to work with hazardous materials like Joy dishwashing detergent, for example, or chalk, or lumber, and are required to keep a lot of paperwork and do a lot of training.

I could go on with excesses. I would rather get to the more serious point. We use the list, of course, to point out the problem, and the problem is that the pendulum has moved to excess, and I think there are three consequences of that that are very serious and very compelling. One is that the excess regulation results in the creation—has resulted, in our industry anyway, in the creation of a black market economy. It becomes very easy for unprofessional contractors to compete, compete favorably, if they simply choose to ignore the regulations. We're seeing that happen every day.

OSHA regulations, for example, don't apply to a self-employed person, and in our industry we have a lot of self-employed people, especially in the residential sector of the market. And if their costs are 10 to 15 percent less than the good contractor, which is what we think they are, we obviously have created a marketplace for them.

Second is, as you referred to earlier, Mr. Chairman, is this law of unintended consequences, and we have seen that happen in our industry. One example I can give you is, we had a regulation come from the Department of Transportation. It has since been corrected, but the regulation was promulgated in final form, and it required—they came up with a good idea, that it would be a good idea to seal all roofing kettles that we use to transport asphalt on the road, so, in the event of an accident, if they flipped over, the asphalt wouldn't spill on the road.

It makes perfect sense except for one problem, which is, when you seal a kettle like that, it will blow up because of the gas accumulation inside the kettle. So we pointed that out to them, after months of attempting to get a meeting, and at the meeting, finally, they said, well, this is exactly why we like to meet with you, so we can get this valuable input, and subsequently changed the rules.

Mr. MCINTOSH. Which agency was that again?

Mr. GOOD. That was DOT.

Mr. MCINTOSH. OK.

Mr. GOOD. Finally, and perhaps most importantly of all, the compliance requirements divert resources. I think that, at least from our point of view, is one of the most telling concerns that we have. And, as Mr. Ehrlich suggested, they cost jobs.

In our industry, we know, for example, the studies that we've seen in our industry suggest that the key to safety in a construction performance is the foreman. The foreman is the most influential person on a job site. And yet there is nothing in any of the regulations about working with the foreman or training the foreman.

So we would like to commit our industry's resources to doing the things that we think will, in fact, help safety and health on the job site. Instead, we're forced to commit our industry resources to contending with regulation, litigating regulation, which this associa-

tion has been forced to do, and helping our members when they get in trouble, which seems to be a daily occurrence.

So we support, certainly, efforts like those you have been undertaking. We think that the constant vigilance of Congress is a necessary component of alleviating overregulation, and we support a number of the legislative initiatives that we know both of you have been involved in to try to give us some relief.

Thank you, certainly, for this opportunity.

[The prepared statement of Mr. Good follows:]

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STATEMENT BY

WILLIAM A. GOOD, CAE

OF THE

NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATURAL RESOURCES AND REGULATORY AFFAIRS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL REGULATION OF THE ROOFING INDUSTRY

JANUARY 26, 1996

The National Roofing Contractors Association (NRCA) represents more than 3,800 members from all fifty states and 48 countries outside the U.S. NRCA members perform approximately 60 percent of all roofing work done in this country, and employ more than 100,000 workers. NRCA was formed in 1886, and is one of the oldest national trade associations in the construction industry.

We applaud the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs for holding routine oversight hearings on federal agencies and regulations. Systematic congressional oversight is crucial to curbing the growth of regulations and removing the stranglehold that overregulation has on small business in this country.

NRCA members have been facing difficult times. The market for roofing work, while generally reliable, is subject to such economic forces as interest rates, office vacancy rates, and new housing starts. Roofing contractors are also vulnerable to the weather, and to a workforce that is more transient than most.

The average NRCA member, in fact, employs about 35 people during the peak of his/her season, and has annual sales of about $3.4 million. Profit margins for roofing companies average only about three percent per year, as the marketplace is highly competitive, and there are few, if any, barriers to entry.

Yet roofing contractors are generally resilient, and find ways to operate successfully even in the face of these difficulties. And they rarely complain.

However, we have heard from our members with increasing frequency in the last few years, because they are simply unable to cope with the volume of federal regulations that they are required to understand and be in compliance with. These include complicated rules issued by the Occupational Safety and Health Administration (OSHA), by the Environmental Protection Agency (EPA), by the Department of Transportation (DOT), by the Department of Labor (DOL), and of course by the Internal Revenue Service (IRS). Most roofing contractors are hands-on managers, who do not have the luxury of hiring safety officers, or any other employees who can be used to help the company be in compliance.

As the regulations have increased, so have the frustration levels of our members, who must now be experts in asbestos regulations from two different agencies (OSHA and EPA), with the Federal Motor Carrier Safety Regulations (DOT), with EPA disposal rules and underground storage tank rules, and with federal procurement policy, just for starters.

OSHA Fall Protection Standard

On February 6, 1995, roofing contractors had to comply with a new OSHA fall protection standard, which resulted in the loudest and longest outpouring of protest we have ever witnessed. Known as the "six-feet-rule," the Subpart M fall protection standard basically said that every

person working above six feet must have either a safety harness on, safety nets, or scaffolding with a walkway and a guardrail. It caused tremendous disruption within the roofing industry, home building industry and many others, and a wave of protest soon swept across Capitol Hill. Countless individuals from the roofing industry called or wrote their representatives.

Hundreds of Maryland roofing contractors *and their workers*, many of them constituents of Rep. Robert Ehrlich, Jr., circulated and signed petitions in support of H.R. 450, legislation that was written in this Subcommittee for a moratorium on all new regulations. NRCA commends Rep. Ehrlich, who spoke about the petitions on the floor of the House on March 1, 1995.

On March 28, 1995, NRCA testified before this Subcommittee in support of H.R. 994, the Regulatory Sunset and Review Act of 1995, where the new Fall Protection Standard was discussed. And on June 15, the House Subcommittee on Regulation and Paperwork held a hearing exclusively on the Fall Protection Standard.

Ultimately, concern over the Fall Protection Standard led the House to attach an amendment to the Labor/HHS appropriations bill (H.R. 2127) directing OSHA to reopen its fall protection rule -- and the Senate was poised to do the same. OSHA was already negotiating with NRCA, and the House amendment sent a strong signal to OSHA to correct the standard.

On December 8, 1995, OSHA issued "Interim Fall Protection Guidelines for Residential Construction" to address, at least in part, concerns that were raised by NRCA since the new Fall Protection Standard became effective. OSHA has also indicated that "it is appropriate to initiate further proceedings" regarding the residential fall protection standard, to "evaluate the alternative methods and procedures suggested by roofing contractors for residential roofing work" and move "expeditiously to develop an NPRM" (Notice of Proposed Rulemaking).

NRCA's Top Ten Favorite Roofing Regs

On September 22, 1994, the House Republican Research Committee's Task Force on Competitiveness held a press conference highlighting overregulation of the roofing industry. The press conference and a special order on the House floor by Rep. Tom DeLay featured NRCA's "Top Ten Favorite Roofing Regs," which is attached.

Please note that the Fall Protection Standard is not on the Top Ten list because it became effective in 1995, after the list was put together. However, vigorous oversight in the 104th Congress brought relief from the Fall Protection Standard, and it is also helping to bring relief from some of the items on the list.

For example, though the Secretary of Labor and OSHA have denied reports that there is a regulation that prohibits gum-chewing while roofing, a January 13, 1995 memo from OSHA's Directorate of Compliance Programs to regional administrators instructed inspectors to refrain from issuing citations under the gum-chewing provision.

OSHA also denied that it issues citations under its Hazard Communication Standard for household products, such as dishwashing detergent. Yet on March 21, 1995, OSHA's Directorate of Compliance Programs issued a memo to regional administrators stating that an enforcement review showed that "citations have been issued for materials such as bricks, rebar, lubricating oils, welding rods and dishwashing liquid without adequate documentation of employee exposure to a specific hazardous chemical or that their use fails to meet OSHA's consumer product exemption."

OSHA's Hazard Communication Standard

One of the most egregious regulatory burdens placed on the roofing industry today is OSHA's Hazard Communication Standard, or Haz-Com, originally promulgated in 1983 for the manufacturing sector. In 1987, OSHA expanded Haz-Com to include construction. The standard requires employers to assess chemical hazards in the workplace; write a policy for the safe handling of these materials including a complete inventory; and provide information and training to exposed employees.

The cornerstone of this training is the Material Safety Data Sheet, or MSDS. It will tell you everything you could want to know about a hazardous material such as the manufacturer's name and address; ingredients; physical characteristics; flammability; reactivity; potential health hazards; precautions for safe handling; and required personal protective equipment.

Regrettably, Haz-Com and its MSDSs are confusing, expensive, and have done little to improve safety within the construction industry. Haz-Com was supposed to provide a single reference source for employers and employees in the event of an emergency involving dangerous substances, but, in fact it is the last place that they would look -- Haz-Com has given us thousands of MSDSs on everything from "air" to dishwashing detergent.

On any given day, contractors must have MSDSs at all job sites for all "hazardous" materials. They must know which of these products are in use at each job site and make sure the correct, brand specific MSDS is available at each job site. No wonder that in 1994, Haz-Com violations comprised nine out of the top twenty most frequently cited OSHA standard violations (attachment) -- they are the easiest to identify because 100 percent compliance is nearly impossible.

OSHA has opened the public record for various parts of the standard, sometimes for long periods of time. A modified final Haz-Com standard was printed in the February 9, 1994 *Federal Register*. Despite the proliferation of paperwork, and the fact that the standard is the most frequently cited by OSHA inspectors (a roofing contractor in Indiana was cited for not having a brand-specific MSDS for caulk), the modified standard makes minor changes that can be found only with a magnifying glass.

The President signed into law the Paperwork Reduction Act re-authorization, which overturned ***Dole v. United Steelworkers of America***, allowing the Office of Management and Budget (OMB) to review third-party paperwork requirements such as Haz-Com. And OSHA's National Advisory Committee on Occupational Safety and Health established a work group to make recommendations regarding the inefficiencies of the current standard, particularly those related to construction and other mobile workforce industries. But the question remains: Will the Clinton Administration seize the opportunity to rein-in Haz-Com? Perhaps the fact that Haz-Com was once again the most frequently cited OSHA standard in 1995 (attachment) illustrates the quandary.

Conclusion

OSHA has been doing business the same way for 25 years, and it is clearly time for change. There are some encouraging signs that OSHA is getting the message, and is making some attempts to work with small businesses and to cut down on paperwork citations. However, it is equally clear that OSHA is much more inclined to move in this direction when it feels congressional pressure to do so.

That is why, even with administrative attempts to "reinvent" OSHA, Congress will need to pass meaningful and permanent OSHA reforms, such as those embodied in H.R. 1834 to ensure that necessary changes take place within the agency.

NRCA's Top Ten Favorite Roofing Regs

10. Have repair truck drivers stop to check for shifting loads after driving 25 miles on their way to a job site 30 miles away.
9. Spray water on roof while taking it off.
8. Require fire evacuation plan for roofing workers.
7. Fine employer if roofer smokes on the job.
6. Fine employer if roofer refuses to wear hard hat.
5. Require prevention plan for AIDS exposure in roofing work.
4. Train employees on hazards of exposure to deadly materials like chalk, lumber and dishwashing detergent.
3. Post sign saying respirators are required even when they are not.
2. Prohibit gum chewing while roofing.
1. Label roofing kettles "Hot."

Most Frequently Cited OSHA Standard Sections
Fiscal 1994

	Standard Section 29 CFR	Standard	Subject	No. of Alleged Violations
1	1910.1200(e)(1)	✓HazCom/General Industry	Written Program	4,728
2	1904.2(a)	Recordkeeping	OSHA Log	3,944
3	1910.1200(h)	✓HazCom/General Industry	Information, Training	3,833
4	1926.59(e)(1)	✓HazCom/Construction	Written Program	3,463
5	1903.2(a)(1)	OSHA Notice	Posting	2,901
6	1926.59(h)	✓HazCom/Construction	Information, Training	2,277
7	1910.147(c)(1)	Lockout/Tagout	Energy Control Program	1,958
8	1910.212(a)(1)	Machine Guarding	Guarding Methods	1,887
9	1910.215(b)(9)	Abrasive Wheel Machinery	Guard Adjustments	1,737
10	1910.1200(f)(5)(i)	✓HazCom/General Industry	Container Labeling/Identity	1,729
11	1910.1200 (g)(1)	✓HazCom/General Industry	MSDSs	1,627
12	1910.151(c)	Medical Services/First Aid	Drenching Facilities	1,584
13	1910.1200(f)(5)(ii)	✓HazCom/General Industry	Container Labeling/Hazard Warnings	1,571
14	1926.21(b)(2)	Safety Training	Worker Instruction	1,541
15	1926.100(a)	Head Protection	Protective Helmets	1,412
16	1910.219(d)(1)	Power Transmission Belts	Pulley Guarding	1,375
17	1926.59(g)(1)	✓HazCom/Construction	MSDSs/Provision	1,306
18	1926.500(d)(1)	Cranes and Derricks	Rated Load Marking	1,271
19	1926.59(g)(8)	✓HazCom/Construction	MSDSs	1,200
20	1910.147(c)(7)(i)	Lockout/Tagout	Worker Training	1,186
	1910.147(c)(4)(i)	Lockout/Tagout	Energy Control Procedure	1,184
	1910.212(a)(3)(ii)	Machine Guarding	Point of Operation	1,177
	1910.215(a)(4)	Abrasive Wheel Machinery	Work Rests	1,159
	1910.23(c)(1)	Floor/Wall Opening Guarding	Standard Railing	1,114
	1926.404(b)(1)(i)	Wire Design	Ground Fault Protection	1,029
	1910.305(b)(1)	Wiring Methods/Protection	Cabinets, Boxes, and Fittings	1,021
	1910.132(a)	Personal Protective Equipment	Provision, Use, Maintenance	1,008
	1910.1200(g)(8)	HazCom/General Industry	MSDSs/Maintenance	1,002
	1926.451(d)(10)	Tubular Welded Frame Scaffolds	Guardrails, Toeboards	985
	Section 5(a)(1)	General Duty Clause	Safe and Healthful Conditions	981

Total Number of Alleged Violations Cited in Fiscal 1994: 174,305

TOP 10 MOST FREQUENTLY VIOLATED STANDARDS - FY 95*

RANK	FY 95 STANDARD VIOLATED # VIOLATIONS
1	1910.1200 Hazard Communication 10,165
2	1910.147 Lockout/Tagout 4,700
3	1926.451 Scaffolding 4,048
4	1910.305 Wiring Methods, Components, Equipment for General Use 3,457
5	1910.219 Mechanical Power - Transmission Apparatus 3,355
6	1926.059 Hazard Communication (Construction) 3,315
7	1910.132 Personal Protective Equip. 3,070
8	1910.212 Machine Guarding 3,016
9	1910.303 Electrical 2,548
10	1910.215 Abrasive Wheel Machinery 2,507

* FY 95 (as of September 22, 1995)
Source: OMDS IMIS Reports.

Mr. MCINTOSH. Thank you very much, Mr. Good. I appreciate it. Mr. Gaulin.

Mr. GAULIN. Thanks for the opportunity. My name is Mark Gaulin. I am president of Magco, Inc. We're an industrial-commercial roofing contractor, working primarily in the Baltimore-Washington region.

The things that Bill had hit on already are items that we deal with on a daily basis, the EPA, DOT, OSHA, and MOSHA, who has decided to take a little step further than what OSHA does. It imposes a lot of burden on us. There was a particular item that I chose to talk about today, though, that I felt was unjust to smaller companies, young, growing companies like myself, a self-started business 8 years ago. We've grown to a point where we employ 50–60 people and do at least $7 million a year in sales.

We are forced in any State and Federal work to deal with what is called contract preference or set-aside programs, minority participation, where, by law, we're required to incorporate in our bids anywhere from 10 to 40 percent of our bid to a minority contractor. We perform 100 percent of the work with our own forces and we train our own people. They come up through the ranks, and they are taught by our methods and our technology.

For us to take a contract of $200,000 and attempt to go out and sub a piece of a system, which is assembled directly in place and built on the site, and sell it to a second party without necessarily the qualifications and/or the ability to do the work. We take the liability, the responsibility, and the financial responsibility. We sub these items out in order just to comply with the regulations.

There is a whole business industry that has grown out of that. Best intention: We understand the set-aside and the intent to give people opportunity and give minorities opportunity to grow into the business community, but, like anything, it has adapted into a business in itself that people have gone into business just to comply with this regulation and have set up makeshift businesses just to comply. And the overall intent is not occurring, and what it is doing is competing against us, as small businesses, and its forcing me to provide a piece of our work out to others and remove work from my own employees.

Thanks very much.

[The prepared statement of Mr. Gaulin follows:]

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STATEMENT BY

MARK GAULIN

OF THE

ASSOCIATED ROOFING CONTRACTORS OF MARYLAND (ARCOM)

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATURAL RESOURCES AND REGULATORY AFFAIRS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL REGULATION OF THE ROOFING INDUSTRY

JANUARY 26, 1996

Chairman and Members of the Subcommittee, my name is Mark Gaulin. I am President of Magco, Inc. Our firm performs both flat and steep work on educational, commercial and industrial buildings in the greater Baltimore/Washington area. I sit on the Board of Directors of the National Roofing Contractors Association (NRCA), and I am also this year's President of the Associated Roofing Contractors of Maryland (ARCOM).

In February of 1995, several of my fellow Maryland roofing contractors circulated petitions in favor of a moratorium on federal regulations. One of the main reasons for doing this -- but not the only reason -- is the growing web of regulations from the Occupational Safety and Health Administration (OSHA). Maryland is a state-run OSHA program, but there is not a lot of difference in how the regulations are applied and enforced.

Roofing contractors *and their employees* signed these petitions, as well as electricians, plumbers, property managers, carpenters and others. Those who signed that are Mr. Ehrlich's constituents include Brothers Roofing, The Roof Center Inc., individuals from Pasadena and others.

The people who signed these petitions are frustrated by the layers of regulations that they must follow once they get the job. But I would like to discuss federal regulations that make it very difficult to qualify for the job in the first place. I am speaking of the so-called contract preference or "set-aside" programs.

Magco was established eight years ago as we worked out of my basement with limited funds and a handful of employees. Magco now employs fifty to sixty individuals with annual sales in excess of seven million dollars. I believe that anybody with the right drive and business sense can succeed without government help. In fact, companies with government assistance have an unfair advantage against companies like mine, who must scratch their way up the ladder.

Magco could perform 100% of all labor with our in-house workforce, but to bid for Federal and State contracts requires us to "sub-out" anywhere from 15% to 40% of our contract amount. This burden, coupled with the added paperwork required by government agencies that administer these programs, can increase the cost of construction 10% to 15%.

In many cases contractors incur what is referred to as a "babysitting" cost when they are forced to hire firms that are not competent enough to complete the job without supervision. The "set-aside" programs seem to have spawned an industry in and of itself where businesses are in operation solely to fill minority requirements.

The added cost of these programs to already strained government budgets cannot be justified by what is apparently a failed attempt to compensate minority businesses for past discrimination. There is no place for discrimination in this country and it should never be taken lightly, but these kinds of government assistance programs are not necessary. Even though the construction industry is a tough arena, good companies should be allowed to succeed without being penalized by this kind of government overregulation.

Thank you for your attention. If you have any questions, I will be happy to answer them.

Mr. MCINTOSH. It seems, I imagine, often inherently unfair to people who feel they can compete, to see that somewhat arbitrary regulation saying they can't do the business.

Mr. GAULIN. Well, in order for us to get it out, that comes with a fee. Chances are their competitiveness is not going to be the same as ours, because it's a small portion. It adds an expense to us, at which point we end up having to mark up and administer their work, carry them through, supervise them through the project, financially assist them, joint check agreements, or whatever it may take to help enforce the percentage minimum. Thus, it affects the overall cost of all the Federal and State contracts. I mean, it's going to affect it by 10 to 15 percent across the board.

Mr. EHRLICH. May I ask you a quick question? In my law practice, I represented subs and general contractors. I know one of the major problems with respect to the MBE program is fronts, minority fronts.

Mr. GAULIN. Exactly.

Mr. EHRLICH. Are you still running into that problem out there?

Mr. GAULIN. They exist. There are a few contractors in my industry that are capable and competent. We receive a lot of work because of quality and reputation, and things like that. And, you know, you end up just carrying someone through the system just in order for you to meet the requirements, and it presses on our pressure, the pressure upon us just to maintain the quality and the performance, and everything else like that.

But the fronts, they are out there. As long as they fill the paperwork out, as long as the paperwork is approved, it's a legitimate business, and there they are. But they are surviving just to fill that need, and only that need.

Mr. EHRLICH. And you cannot do anything about it?

Mr. GAULIN. No, I must comply.

Mr. EHRLICH. Because, technically, the law is met.

Mr. GAULIN. Right. They met the law. They can sit there and say—I brought a minority firm in on a large contract here in Baltimore, who had not been approved, a true, legitimate minority company. Well, he hasn't filled his paperwork out; he's not approved. Well, the gentleman is sitting there in front of him, and they all concluded that, yeah, I guess he could be approved, and it's a legitimate business.

They told me to use another firm; this one is approved. And it was obvious, even at the meeting, that this firm was strictly in business to fill minority slots and actually performed very little of the work themselves, except for administrative and generate paperwork and charge a fee for this.

Mr. MCINTOSH. So you're telling me the firm that actually hired minorities and gave people work was at a disadvantage because the way the system works right now, because they hadn't filled out the paperwork?

Mr. GAULIN. They hadn't filled out the paperwork. They are not the ones that are necessarily taking full advantage of this because of the system, basically.

Mr. EHRLICH. That's a great irony. Thank you.

Mr. MCINTOSH. It's amazing, yes. Thank you very much.

Mr. Coblenz.

Mr. COBLENZ. Thank you very much, Chairman McIntosh and Representative Ehrlich. I appreciate the opportunity to appear before you. I'm sorry we're so short of time.

I would tell you my name is Cal Coblenz. I represent Wimpey Minerals, the present owner of an 83-year-old Baltimore company that I owned for 20 years, that I sold 7 years ago to a worldwide British firm, Wimpey Minerals, or actually to George Wimpey, PLC, from London, England. They have, each year, asked me to stay on to continue with the company, which I'm happy to do.

I would say that you should know that our company employs about 125 people. We do $10-million to $15-million worth of paving work around Baltimore each year, and we have enjoyed this quantity of work for a number of years. I am also the president of the Maryland Chapter of AGC, and we represent 275 employers.

I would say that I have six pages of things here that we have to abide by, the Federal regulations, and I just thought that the best way for me to discuss these concerns we have is to give you a list of some of the Federal laws and regulations we deal with daily. Believe me, as you hear here, being a contractor in the 1990's is not easy.

We would say, particularly, that OSHA is certainly one that gives us a lot of real problems, because we have to prove that we have adequately trained our employees. And we keep detailed records of each employee's mandatory OSHA training. In addition to the Federal laws and the agencies' regulations, the State of Maryland has enacted a State law that matches the Federal requirement or is more stringent many times.

In addition, all the general constructionsite requirements in our industry have been the target for numerous costly and burdensome regulations which we have had to fight to eliminate or, in other cases, have resulted in little, if any, improvement in safety or environment. The need for new regulations should always be based on risk management, cost-benefit analysis, and sound science.

As a small business operation here in Baltimore, we want to provide jobs for local people who want work. We want to provide them good pay, medical insurance, and retirement benefits. And we want to either attract skilled workers into our company or to train them in the skills we need. The millions of dollars that our industry spends to ward off burdensome and unnecessary regulations should be put toward employing people and rebuilding the Nation's crumbling infrastructure. About the only beneficiaries of all these regulations are the lawyers in Washington.

OSHA was needed when it was instituted, but, through the years, it has become a costly burden for the construction industry. Unsafe conditions at a plant or constructionsite must be corrected, but the exorbitant fines for minor infractions are certainly not warranted. I hope that there will be some reasonable restraint.

Historically, our individual companies in the paving business have designed their own road paving mixes to provide the longest life cycle at a reasonable cost. Then, in 1991, ISTEA, the Intermodal Surface Transportation Efficiency Act, dictated that each ton of mix we made for use in our respective States was to contain a percentage of rubber from old tires, to increase over a period of 4 years to 20 percent of the mix in 1997. And yet the contractor was

still responsible for the quality of the mix. The cost per ton of mix would have more than doubled.

After expenditures of thousands and thousands of dollars of research, study, and legal fees to prove that this was not a good idea, and with the help of many of you who are new Members in the Congress, this mandate was removed by amendment to the National Highway Systems bill.

Finally, I'm sure that all the Federal and State regulations that we must comply with have noble goals, to protect workers' rights, their safety, and to provide a good environment for us to live in, but, in many cases, compliance with these regulations destroys opportunities for the very people they are intended to help. If the Federal Government would simply let us pave roads instead of increasing our costs by so many meaningless regulation and administering social welfare schemes from Washington, everybody would be better off.

[The prepared statement of Mr. Coblenz follows:]

STATEMENT BY

CALVIN H. COBLENZ

OF

WIMPEY MINERALS, USA, INC.

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATURAL RESOURCES AND REGULATORY AFFAIRS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

JANUARY 26, 1996

TESTIMONY OF CALVIN H. COBLENTZ BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

I WOULD LIKE TO THANK REPRESENTATIVE EHRLICH, CHAIRMAN MCINTOSH AND THE REST OF THE SUBCOMMITTEE FOR ALLOWING ME THE OPPORTUNITY TO TESTIFY TODAY.

MY NAME IS CALVIN H. COBLENTZ, AND I AM PRESIDENT OF WIMPEY MINERALS, USA, INC., LOCATED IN BALTIMORE, MARYLAND. I AM ALSO PRESIDENT OF THE ASSOCIATED GENERAL CONTRACTORS OF MARYLAND. AGC OF MARYLAND IS A TRADE ASSOCIATION REPRESENTING 275 GENERAL CONTRACTORS THROUGHOUT THE STATE OF MARYLAND.

THE CHAIRMAN AND MEMBERS OF THE COMMITTEE HAVE ASKED ME TO DISCUSS THE ADVERSE IMPACT FEDERAL REGULATIONS HAVE ON MARYLAND BUSINESSES. PERHAPS THE BEST WAY FOR ME TO DESCRIBE THE CONCERNS I HAVE DEALING WITH FEDERAL REGULATIONS IS TO GIVE YOU A LIST OF SOME OF THE FEDERAL LAWS AND REGULATIONS I HAVE TO DEAL WITH ON A DAILY BASIS.

WHEN MY COMPANY RECEIVES FEDERAL MONEY ON A ROAD PROJECT, A WHOLE HOST OF FEDERAL AND STATE REGULATORY REQUIREMENTS COME WITH THE BUSINESS. A PARTIAL LIST OF THE VARIOUS FEDERAL LAWS I MUST COMPLY WITH INCLUDE --

- THE CLEAN AIR ACT

draft

- THE CLEAN WATER ACT
- THE PUBLIC WORKS EMPLOYMENT ACT
- THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
- THE NATIONAL LABOR RELATIONS ACT
- THE FAIR LABOR STANDARDS ACT
- THE COPELAND ACT
- THE DAVIS-BACON ACT
- THE OCCUPATIONAL SAFETY AND HEALTH ACT
- THE AMERICANS WITH DISABILITIES ACT
- THE FAMILY AND MEDICAL LEAVE ACT (PUT IN YOUR TESTIMONY ONLY IF YOUR COMPANY HAS 50 OR MORE EMPLOYEES)
- THE CIVIL RIGHTS ACT OF 1964
- THE CIVIL RIGHTS ACT OF 1991
- THE AGE DISCRIMINATION IN EMPLOYMENT ACT
- THE EQUAL PAY ACT
- THE EMPLOYEE POLYGRAPH PROTECTION ACT
- THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)
- THE IMMIGRATION REFORM AND CONTROL ACT
- THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT
- THE WHISTLEBLOWER PROTECTION ACT AND
- THE EQUAL EMPLOYMENT ACT

I PURPOSELY LEFT OUT THE FEDERAL TAX CODE AND THE VARIOUS REPORTING REQUIREMENTS OF THE IRS.

BECAUSE OF THESE LAWS, I MUST COMPLY WITH A HOST OF FEDERAL REGULATIONS. SOME OF THE FEDERAL AGENCIES THAT ISSUE

draft

REGULATIONS GOVERNING MY WORKSITES INCLUDE --

- THE DEPARTMENT OF LABOR
- THE ENVIRONMENTAL PROTECTION AGENCY
- THE FEDERAL HIGHWAY ADMINISTRATION
- THE DEPARTMENT OF TRANSPORTATION
- THE OFFICE OF FEDERAL CONTRACT COMPLIANCE
- THE FEDERAL WAGE AND HOUR DIVISION, AND
- THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

WITH EACH OF THESE AGENCIES COMES THOUSANDS OF PAGES OF REGULATIONS I MUST COMPLY WITH. JUST ONE AGENCY (OSHA) REQUIRES ME TO –

- PROVIDE PERSONAL PROTECTIVE EQUIPMENT FOR MY EMPLOYEES
- KEEP DETAILED ILLNESS AND INJURY RECORDS (THE OSHA 200 OR 101 LOGS)
- KEEP A MATERIAL DATA SAFETY SHEET FOR EVERY PRODUCT THAT COULD BE HAZARDOUS, AT EVERY WORKSITE
- PROVIDE FIRST AID EQUIPMENT FOR EACH WORKSITE
- PROVIDE WASH AND SANITARY FACILITIES AT EACH WORKSITE
- HAVE SAFE EQUIPMENT (DEFINED AS A METAL CONTAINER) FOR ALL GASOLINE
- AND, PROVIDE MANDATORY SAFETY AND HEALTH TRAINING TO ALL MY EMPLOYEES IN THE FOLLOWING AREAS –

  ** GENERAL SAFETY AND HEALTH
  ** MEDICAL SERVICES AND FIRST AID

draft

** GASES, VAPORS, FUMES, DUSTS AND MISTS
** HAZARDOUS COMMUNICATIONS
** HEARING PROTECTION
** RESPIRATORY PROTECTION
** FIRE PROTECTION
** SIGNALING
** POWDER-OPERATED HAND TOOLS
** WOODWORKING TOOLS
** GAS AND ARC WELDING
** GROUND FAULT PROTECTION
** CRANE AND DERRICKS
** MOTOR VEHICLES
** EXCAVATION, TRENCHING AND SHORING, AND
** BLASTING AND THE USE OF EXPLOSIVES

IN ORDER TO PROVE THAT I HAVE ADEQUATELY TRAINED MY EMPLOYEES IN THESE AREAS, I MUST KEEP DETAILED RECORDS ON EACH EMPLOYEE'S MANADTORY OSHA TRAINING.

INADDITION TO EACH OF THESE FEDERAL LAWS, FEDERAL AGENCIES AND FEDERAL REGULATIONS, THE STATE OF MARYLAND HAS ENACTED A STATE LAW THAT MIRRORS THE FEDERAL REQUIREMENTS, CREATED AN AGENCY TO ENFORCE THE LAW AND ISSUED REGULATIONS ON TOP OF THE FEDERAL REQUIREMENTS. IN SOME INSTANCES, MARYLAND'S REQUIREMENTS ARE MORE STRINGENT THAN THE FEDERAL REGULATIONS.

AS THE PRESIDENT OF A SMALL BUSINESS, I WANT TO BE ABLE TO PROVIDE JOBS FOR PEOPLE WHO WANT WORK. I WANT THEM TO BE ABLE TO RECEIVE MEDICAL INSURANCE AND GENEROUS RETIREMENT BENEFITS. I WANT TO PUT TOGETHER A PACKAGE OF EMPLOYEE BENEFITS THAT ALLOWS ME TO ATTRACT SKILLED WORKERS INTO MY COMPANY. I WOULD ALSO LIKE TO SPEND TIME ON FINDING NEW BUSINESS OPPORTUNITIES AND IMPROVING THE MANAGEMENT OF MY COMPANY.

UNFORTUNATELY, I SPEND THE MAJORITY OF MY TIME ATTEMPTING TO COMPLY WITH FEDERAL AND STATE REGULATIONS. FILING OUT THE FEDERAL AND STATE PAPERWORK IS THE ONLY WAY I CAN PROVE THAT I AM MEETING THE REQUIREMENTS OF THESE LAWS. YET THE AMOUNT OF TIME I SPENT ON THIS ACTIVITY LEAVES ME LITTLE TIME TO DO WHAT I REALLY NEED TO BE DOING – RUNNING MY BUSINESS.

HIRING SOMEONE TO HELP ME DEAL WITH REGULATIONS DOES NOT HELP THE ECONOMY GROW OR INCREASE BUSINESS OPPORTUNITIES FOR MY COMPANY. EVERY PERSON I HIRE TO HANDLE RED TAPE IS ONE FEWER PERSON I CAN HIRE TO EXPAND MY BUSINESS.

ALL OF THE FEDERAL AND STATE REGULATIONS I MUST COMPLY WITH HAVE NOBLE GOALS – THE PROTECTION OF WORKERS RIGHTS, SAFETY AND WELL BEING. HOWEVER, COMPLIANCE WITH THESE RULES DESTROYS JOB OPPORTUNITIES FOR THE VERY PEOPLE THEY ARE INTENDED TO PROTECT. IF THE FEDERAL GOVERNMENT WOULD SIMPLY LET ME PAVE ROADS, INSTEAD OF ADMINISTERING SOCIAL WELFARE SCHEMES FROM WASHINGTON, EVERYONE WOULD BE BETTER OFF.

Mr. MCINTOSH. Thank you. I agree with you totally on that one. I think that's right.

Let's keep going on this. Mr. Popomaronis.

Mr. POPOMARONIS. Gentlemen, thank you for the time. I know you are limited, and I will try to respect that. Hopefully, you will have an opportunity to look into what we feel is a very in-depth problem with community pharmacy.

Basically, community pharmacy has discriminatory pricing, and that pricing is brought about by the drug manufacturing industry. It has become so rampant that was once something that justifiably held to hospital or nursing homes has now spread throughout the entire United States, and has now become a vehicle to impair and affect business. Unfortunately, the Federal Government has become part of that equation now.

When I speak of unfair or discriminatory pricing, I speak of a drug manufacturer that sells the same drug, that could be an ulcer medication, to different purchasers at different prices. We're not only talking about hospitals and nursing homes, but we're talking about health maintenance organizations through the form of rebates. We're talking about other countries, like Mexico. We're talking about mail order. All of these purchasers buy at different prices.

The only constant in the whole equation is that community pharmacy pays the highest price for the purchase of that drug. And, very quickly, I will tell you a couple of them. I have numerous examples, but I will hold it to two. We have a potassium pill called K-Dur, made by Key Pharmaceuticals, a division of Schering-Plough, a major drug manufacturer, who has offered to a preferred purchaser that potassium pill, used by elderly, for $2.03 a bottle of 100.

Now, if you come into my community pharmacy, which is Edwards and Anthony EPIC Pharmacy, and purchase that drug, my acquisition cost is $27.31. That represents a 1,200-percent markup that's heaved upon the backs of community pharmacy and of the patients that come into those community pharmacies. And I want you to think a minute. A lot of those people are elderly, OK, those that don't have the insurance, that used five times the medications that you or I might use.

On the border, on both the Canadian border but, more prominently, down as we approach Mexico, our American citizens are crossing the border to buy their medicines at half the price of what I or the pharmacies down there can purchase that medication for. How is it in the best interest of these pharmacies on the U.S. border, when American citizens go over and buy legal drugs for half the price of what they can even acquire them to sell in the United States?

This is the discriminatory pricing that we referred to. This is something that benefits only the drug manufacturer. And it has three, what I would call, deleterious effects: One, it is in the process, as we speak, of eliminating community pharmacies as a competitor in the marketplace. Three pharmacies are closing a day in the United States. You have most recently read about the Rite-Aid-Revco acquisition, where a larger chain is gobbling up an even larg-

er one, because they feel the need, the pressure, and the inability to compete.

What has happened with the Federal Government, to get to the point, is that the Federal Government is now—and not just the Federal Government, all levels of government, to be fair, are succumbing to the temptation to take the short-term answer and take advantage of these unfair prices.

You've got—I want to say Don King, but it's actually James King of the Office of Personnel and Management, the Director, writing a letter to—and I'm sure Congressman Ehrlich has seen it, and Congressman Cardin, saying that, you know, I've taken a good look at this, and I see that it's in the best interest of the Medicare Federal retirees. My question is, but what's in the best interest of community pharmacy and, more to the point, what about the economic impact on community pharmacy?

We are in the process of providing a competitive counterbalance, either by competing with the Revcos, and the Rite-Aids, and the Giants out there, and with these now maintenance organizations, and with these mail order operations, as they go ahead and take advantage of these prices.

It sounds really good when a drug manufacturer comes up before you and says, "I don't know what they're talking about. The drug price index was only increased by 1.9 percent in 1994 and into 1995. Gee, I don't understand, inflation is 2.5 percent." But if you take a real good look at the number, as we've done, we find that the price increases to the community pharmacy are increasing at twice the rate of inflation; again, heaved upon the backs of the elderly, who can least afford to do this.

Now, you know, to me, that's a problem. To me, when we sit and we beg the Office of Personnel Management to take a good look at the economic impact, and you have Senator William Cohen in Maine, and good people in both the House and the Senate saying, "Stop, let's take a look at this." He has instituted and initiated a study that will assess the economic impact on community pharmacy and access for retirees.

Mr. MCINTOSH. Let me ask you this, Mr. Popomaronis, is there a regulation that prohibits the community pharmacies from forming a trade association or a buying group where you could take advantage of the pricing, form a larger pool to get a better price?

Mr. POPOMARONIS. What we are, Congressman, is—because of the time constraints, I have not had the opportunity to explain that EPIC Pharmacies is a group of over 450 community independent pharmacies that have realized early on, back a decade ago, that we were an island unto ourselves unless we work together and work like a chain. We are not Ma and Pa.

We are very computer-literate, and we are very sophisticated. And we are able and have asked the manufacturers to allow us the opportunity to work at the same terms that you give other purchasers out there. But that is not occurring.

This is now going to—it's being handled on a national level. If you read in the Wall Street Journal, there has been a $600-million settlement community pharmacy has litigated against the manufacturers, and they are now beginning—their cartel is beginning to crumble. The conspiracy to keep the prices at a higher level for

community pharmacy is starting to fall, but the Government, in the meantime, is taking advantage as the community pharmacies close.

To come to the point, we're saying that we're asking, in this case, that you look very clearly into telling Mr. King that the OPM should take a very good look at the General Accounting Office report that assesses impact on community pharmacy before it implements plan design changes that are going to devastate the industry. A letter that I will share with you, I'll get to your office, he has done none of that. And, evidently, the General Accounting Office and what they do does not have any impact in his division, and I'm very concerned about that. I'm asking you to take a good look at it.

Mr. MCINTOSH. Gladly. Please forward that letter to us, and we can take a look at that. That doesn't seem to me fair that the Government should intervene and put smaller businesses at a disadvantage that way. It sounded to me like the remedy for EPIC is to file an antitrust suit.

Mr. POPOMARONIS. It's certainly what's underway right now.

[The prepared statement of Mr. Popomaronis follows:]

Testimony of William T. Popomaronis

Before the

Sub-committee on National Economic Affairs
Natural Resources & Regulatory Affairs

of the

House Government Reform and Oversight Committee
on the
Economic Impact of Manage Care Organizations on
Small Business Community Pharmacy

January 25, 1996

Good day. My name is William Popomaronis. I reside in Baltimore Maryland where I own and have operated a small independent community pharmacy for the last 20 years. With me here today is Executive Director, Jim Miller, serving EPIC Pharmacies since its inception in 1985. Most recently I have accepted the position as President of EPIC Pharmacies, an independent purchasing alliance with over 450 independent pharmacies serving the Mid Atlantic region.

We both thank you, Mr. Chairman, and the members of the Sub Committee for calling this important hearing.

I am first a community pharmacist. Not a lobbyist, nor an attorney or a speech writer. Yet when Congressman Ehrlich presented me with the opportunity to speak before you today, I felt compelled to give you my perceptions of the State of community pharmacy as it exists in 1996.

My natural tendency is to stay behind the prescription counter where the warm embrace of the many elderly patients that I provide pharmaceutical care for is constant, genuine and sincere.

Many community pharmacists though continue to keep their heads in the sand, like ostriches, rather than face their worst fears about the future of pharmacies.

I see a not so rosy economic picture for community pharmacy in the year 2000. One where prescriptions are largely filled through mail order. One where health care business consolidation has left but a very few monopolistic HMO's, mail order dispensaries, and large retail pharmacy chains. I see a federal government forced to drive health care for cost containment, with such an obsession to manage care, that decisions lead to deleterious health care consequences.

Automated teller like machines dispense drug information and prescriptions because independent community pharmacy becomes extinct. "Pharmasauras", a new dinosaur created.

Worst of all, I see today's status quo remaining with my government not responding to the economic concerns of small business.

I beg the committee not to consider my words as arrogant or disrespectful. The temptation for government at all levels to give in and award pharmacy service contracts to monopolistic Managed Care Organizations, because of budgetary restraints, is making my worst case scenario very quickly turn into reality.

Of course, the real cause of my economic nightmare is not the government but the drug manufacturer. It is the drug manufacturers and their pricing schemes that allow the same drug to be sold to different purchasers at different prices.

Like a cancer that started with one malignant cell, it is now common place to find a drug manufacturer selling to a hospital, a nursing home, a mail order house, HMO or even another country at different prices for the same product!

Yet, one price remains constant...the price paid for the drug by community pharmacy. Whether it be a major chain corporation like Rite Aid, Giant, CVS or an independent like my own, Edwards & Anthony EPIC Pharmacy, the prices charged to community pharmacy are the highest in the industry.

How can a drug manufacturer justify selling a potassium pill K-Dur, manufactured by Key Pharmaceutical, and used frequently by our elderly, to a preferred purchaser for $2.03/ per 100 tablets and then turn around and sell that same drug to a community pharmacy for $27.31/100 tablets? This represents a 1245% markup to community pharmacy and our patients. How can the heart patch, Transderm Nitro, be sold for $8.40/ per box of 30 to the preferred purchaser by Ciba Geigy and the same product then be sold to community pharmacy for $39.89/a box of 30? This represents a 375% mark up heaved on the backs of community pharmacy and our patients by drug manufacturers.

How is it economically sound for United States pharmacies when our citizens cross the Mexican border to buy many of their drugs at half the price United States Community Pharmacies can buy them for.

Drug manufacturers pricing schemes have three deleterious effects.

1. It accelerates the elimination of independent community pharmacy as a competitor in the marketplace allowing a very few large chain competitors to remain.

2. It has and continues to cause a cost shift and increased financial burden on those elderly patients who have no insurance and purchase the bulk of the medicines at community pharmacy.

3. It limits access and choice for your pharmaceutical care.

This drug pricing scheme benefits only drug manufacturers. Drug manufacturers, many the darlings of Wall Street also own Pharmacy Benefit Management Companies with mail order subsidiaries.

The Federal government <u>today</u> is doing business with one of these monopolies. The savings that discriminatory pricing provides select purchasers caused the Federal government on January 1, 1996, through the Office of Personnel Management and National Capital Blue Cross to penalize its standard option Medicare Part B Federal Retirees by making them pay a 20% co-payment if they wish to purchase their drugs at the community pharmacy. There is no co-payment if retirees purchase through the mail.

In 1993 thru and including 1995, Federal retirees were advised by Blue Cross that they could purchase their drugs by mail or at a network of local community pharmacies without co-pay or penalty.

This network of community pharmacies accepted substantial cut in their dispensing fee to service Federal beneficiaries as a preferred pharmacy provider. Since January 1993, community pharmacy fee cuts have saved the Federal Employees Health Benefit program almost 200 million dollars.

While the cuts were deep, the opportunity to serve Federal retirees in my own pharmacy convinced me to accept the new reimbursement.

When given a choice, retirees overwhelmingly desire the human touch that only community pharmacy can provide. Without much fanfare Federal retiree purchases through the mail slowed dramatically in 1995. Consequently, in 1996 with the enticements of unfair pricing and limited competition, OPM made an about face business decision through Blue Cross to once again penalize Federal retirees and community pharmacy.

In the short term, this OPM decision to shift Federal Beneficiaries, through what I believe is economic coercion, to a drug manufacturer owned mail order company will reduce government drug expenditures. But what of the economic impact on the community pharmacy infrastructure and the competitive process necessary to provide fair prices to those that purchase in community pharmacies?

As I have stated the purchase and consolidation knowas vertical integration of the pharmacy delivery systems by drug manufacturers has been occurring at a rapid pace. The two largest Pharmacy Benefit Management companies are now owned by drug manufactures. Approximately 80% of the Pharmacy Benefit Management market is controlled by just five companies.

As they ratchet down reimbursement to cost and below independent community pharmacies are closing at a rate of three a day and many others are being purchased by chain competitors. Even large chains are being swallowed up by still larger ones as with the Rite Aid purchase of the Revco drug chain.

It is very likely that only a few chain competitors with regional market presence will remain to provide pharmacy services. Clearly the lack of competition will increase as this integration of services continues.

Today, 55% of Americans participate in Pharmacy Managed Care Programs through Pharmacy Benefit Management Companies, HMO's or mail order drug dispensaries. Yet a full 45% of Americans fall through the cracks.

I'm sure the drug manufacturer will come before you to proclaim that these pricing policies are good for America and the Government. They will quote the drug producer price index that shows a 1.9% inflation rate for 1994, when the CPI was only 2.5%. Yet as we unravel the number and examine the price increases for the top 500 drugs sold a community pharmacy both chain and independent we see price increases passed on the many Americans without insurance at nearly twice the rate of inflation.

Clearly the Government and consumers have reason to remain concerned about drug prices.

Mr. Chairman, members of the committee, it is in the interest of the Federal government and it's citizens to clearly examine and understand the economic impact these pricing schemes have on community pharmacy.

Right now the General Accounting Office has studies underway assessing the economic impact on community pharmacy and a Federal Employees ability to access drugs when contracts, with pharmacy benefit management companies owned by drug manufacturers are implemented.

Regrettably OPM decided not to wait till the June of 1996 GAO completion date and executed the contract with National Capital Blue Cross and its mail order pharmacy subcontractor.

I am asking this committee to say STOP, let's reexamine the impact of this change carefully before it produces undesirable health consequences.

It is my understanding that it would take a full act of congress to rescind this contract. Up to this hearing, between Bosnia, the Budget and the Blizzard of 96 the preservation of the community pharmacy economic infrastructure on a Federal level has gone unheard.

Finally, I cannot leave this hearing without giving the committee an understanding and the purpose for the creation of EPIC Pharmacies. EPIC Pharmacies allow independents to compete on a regional level with our chain competitors. We are <u>not</u> a weak sister. We are <u>not</u> Ma & Pa pharmacies. EPIC Pharmacies are independents who have realized that they are an island unto themselves without organization. The EPIC Pharmacies alliance employs over 4,500 Americans in the mid-Atlantic region. Besides the fact that the organization consists of 500 independent corporations, we are all identified as EPIC Pharmacies. We are a chain of independents.

The cost of our drug purchases because of this alliance is equal to a major chain such as Giant or Rite Aid or CVS. EPIC Pharmacies are not intimidated by these community pharmacy competitors, the competition is healthy and it is the consumer who benefits with lower costs for their drugs.

Unfortunately we are at an economic disadvantage by what we do not see...the Federal retiree mailing for his/her drugs to Florida, the rebate/discounts prescription services contract signed by the HMO, and Americans we do not see who cross the borders for cheaper legal drugs.

The answer is not to put the remaining 45% of Americans into managed care organizations. Managed care has for the most part yet to face the challenge of elderly patients who purchase five times the number of prescriptions that you or I do, and accumulate 70% or more of their health expenditures after retirement. When all Americans are in managed care, including Medicare and Medical Assistance recipients, and cost shifting can no longer occur, and drug cost will once again rise.

Community pharmacy and healthy competition can be preserved by eliminating these drug manufacturer pricing schemes.

Drug manufacturers should set the rules and apply their pricing standards to all purchasers of the drug not just a select few.

On January 18, 1996, the Wall Street Journal wrote of a pending 600 million dollar settlement for community pharmacy against many drug manufacturers in their conspiracy to over charge. It seems that the Drug Manufacturers Cartel has begun to crumble.

The legal expenses incurred on both sides of this case would never have occured if drug manufacturers voluntarily eliminated their pricing schemes that artificially prop up prices to community pharmacy.

Short-sighted decisions like that of OPM should be reversed and vigorously challenged by this committee.

While the Federal Government cannot affect the pricing policies of a manufacturer, I believe it can sensitize OPM to the complexity of the issue and potential harm to small business independent community pharmacy.

Thank You.

Mr. MCINTOSH. Yes. Well, thank you for sharing that with us today.

Mr. Hugh Brown.

Mr. BROWN. I am the owner and founder of a janitorial service company 25 years ago here in Baltimore County, providing that service to private industry and to the Federal Government. I am here to speak against the 8(a) and the other preferential procurement programs within the Federal Government as being discriminatory to me, a citizen.

To give you a couple of examples, but I'm not going to take up a lot of time. Two subject matters. I'm a targeted industry. My business is an easy business for the Government to say, we'll give a minority a contract; give it to a janitorial firm; we'll fill our quota.

In the Washington metropolitan area alone, there are 101 contracts, Federal, that I have identified that are minority contracts, open market can't compete on. I got the list right here, supplied them to the Congressman's office—you probably have them in your file—101, probably representing about $30 million annually. I can't compete with them.

No. 2, in addition to being a targeted industry—which is illegal, by the way—No. 2, the gentleman here from the roofing company addressed it, and as I was sitting here I thought about it, I bid at a sister university to this school right here, Bowie State College, this past year. Had a minority participation goal, that they strongly recommended, of 20 percent.

We went to the State of Maryland, asked for the certified list of minority contractors in the janitorial supply and equipment business, and they gave us a list. We contacted five of them; they all gave us prices. Then one of our suppliers said, "Why are you going to all these guys? They come and buy the stuff from me, mark it up, and sell it to you." Five of them out of five, fronts; just pure markup overhead fronts.

If you think I'm aggravated about this, I've lost 50 percent of my business opportunities in the last couple years because they've been going to preferential programs. Yes, I'm very upset. And I think that the courts are finally starting to recognize the discrimination heaped on the rest of us in business. If you take the recent decision, Adarand Constructors, out in Colorado, the new cases being filed in New Mexico, and such, I think the tide is starting to turn to recognize that everybody must compete in the open marketplace, subject to market forces.

I know you don't have a lot of time. That's all. I feel very strongly about this, very, very strongly.

[The prepared statement of Mr. Brown follows:]

STATEMENT BY

HUGH BROWN

OF THE

SAFEGUARD MAINTENANCE CORPORATION

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATURAL RESOURCES AND REGULATORY AFFAIRS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

JANUARY 26, 1996

Good morning. My name is Hugh Brown and I am President of Safeguard Maintenance Corporation, a Maryland Corporation which I founded and located in Baltimore County in 1976. I want to thank you, Mr. Chairman and Congressman Ehrlich for this opportunity.

I am here to strongly object to any preferential procurement programs based on race or sex. Any law-regulation-guideline-goal-quota or objective designed to stimulate the growth of business purely or dominantly on the basis of race or sex is not only wrong, it is discrimination at the hands of my government.

Some of the programs include:

1) The Small Business Administration's 8(a) Minority Contracting Program.

2) The Pentagon's "Rule of Two" Program.

3a) The Federal Acquisition Streamlining Act (FASA) which wants to put women-owned businesses on an equal footing with Small Disadvantaged Business

3b) Additionally, FASA wants to alter a current program from:

"Any procurement must be set-aside solely for small business if the Government expects competition among small businesses and can get a reasonable price."

To:

"Giving preference first to small disadvantaged firms and then to small businesses."

The market erosion created by these policies continues into the area of subcontracting opportunities as well. The General Services Administration and the Defense Department are now implementing plans that would award huge service contracts to a single company, a practice know as "Contract Bundling." These bundled contracts would contain goals to subcontract portions to women-owned and small disadvantaged firms only. While the SBA definition of women-owned company is very clear, the euphemism of small disadvantaged company seems to be a moving target.

I cannot presume to define this term, but I can tell you specifically who has been classified a "Small Disadvantaged Business."

1) Bethesda, Maryland Based I-Net

   By the end of its nine year stint in the 8(a) program, I-Net racked up 145 contracts worth more than 500 million dollars, with fewer than 20 of the contracts competed openly.

2) A group of well-known wealthy African American investors bought a television station in Buffalo, New York, benefiting from a Federal Minority preference program that gave them a tax break to buy the station. The station was then sold for a healthy profit.

3) The former Mayor of Charlotte, North Carolina, Harvey Gantt, who is African American, and his partners who bought a television license from the FCC under a minority preference bidding system. They then sold the license to other investors four months later, and Mr. Gantt pocketed a $3 million profit.

4) Wally Stevens and Stevens Engineering receiving 50 million dollars worth of engineering contracts from the 8(a) program only to find the non-competitive multi-million dollar contracts don't exist in the real world. He then asked for a 1.5 million dollar bailout from current Maryland Governor Paris Glendenning.

5) CPF Corporation is a small disadvantaged janitorial firm and a direct competitor of mine. The owner emigrated from Spain, went to work for a competitor and then started his own firm -- taking advantage of the 8(a) program for noncompetitive contracts including work at the Pentagon, valued at more than $2 million annually.

A recent audit of the 8(a) program conducted by the Inspector General's Office of the SBA found that of 50 randomly selected participants, 35 or 70 percent had net worth's of more than $1 million. Twelve out of the 50 participants (24%) had annual compensation of more than $750,000. Are these examples small disadvantaged? Socially or economically disadvantaged? These preferential programs currently provide special treatment to countless disadvantaged celebrities, millionaires, and businesses that should have to compete in the open market like everyone else. For your information, I have copies of the Small Business Minority Enterprise Development Division and listing for the National Institute for the Severely Handicapped (NISH). They show the Janitorial

Service contracts (62 and 39 respectfully) that have been removed from the competitive market in the Washington Metro Area alone. I estimate the minority contracts to have a value of 21.6 million annually and the handicapped contracts to have a value in excess of $10 million annually. This does not include state, county, city, and private industries who also insist on a heavy minority presence...most of it in the janitorial field. It's time to shut off the Federal, State, County and City pipeline to these socially and economically disadvantaged millionaires.

The current administration is determined to protect the status quo, and it may well take a lawsuit similar to the Supreme Court Decision of Adarand Constructors, Inc. v. Pena, Secretary of Transportation et al., 115 S.Ct. 2097 (1995), on every program to effect real change.

I don't have the time and resources to wage this long, expensive, and politically incorrect battle. I'm too busy trying to survive in a targeted industry. The Government should protect all its citizens from unlawful discrimination - but it should not give special treatment to anyone.

On a slightly more optimistic note I can tell you that I, and many people I talk with have a great deal of hope for this Congress. We have some faith that this Congress can change the "some people are more equal than others" attitudes.

Businesses need to believe that the playing field is level and subject only to free market forces.

We can only hope that these changes occur, and not at the typical federal glacier speed.

In closing, I want to thank you for the opportunity to testify here today. I would be glad to answer any questions that you may have.

Mr. MCINTOSH. I think people are now beginning to realize in this country that what was a noble goal, to eliminate discrimination and give people opportunities, the pendulum has swung too far, and it has become reverse discrimination, in some instances, and not really creating a true marketplace where people of all backgrounds can compete.

Mr. BROWN. Well, I think what we have to look at is economically disadvantaged, not the fact that Colin Powell, O.J. Simpson, Mr. T., Julius Erving, all very publicized individuals, have partaken in the minority preferential programs, including Mr. Stevens, right here in the State of Maryland, who got $50-million worth of 8(a) programs for engineering services, then found, when he had to get out of the program, he can't survive. And he just asked Mr. Glendenning, a couple months ago, for a $1.5-million bailout. Give me a break.

Mr. EHRLICH. Sir, I think the point you're making is, in addition to the chairman's point—and I like your point about economically disadvantaged opportunities. That should be the threshold here. That should be the focal point.

Mr. BROWN. Yes.

Mr. EHRLICH. Because, obviously, the way a lot of these programs are working, we're not hitting the targeted folks that, rightfully, I think we should.

Mr. BROWN. When I started my business, I should have qualified, because I went and I borrowed from my life insurance policy, friends and family, $5,000 to start my business. I should have qualified. I didn't get any help, didn't ask for any help. But I started my business 25 years ago, and now I'm really being beaten down by the Federal Government, because they have taken away, not only 50 percent just in the metropolitan area, more than 50 percent of their contracts and said, "They are reserved. You can't bid on them."

But Westinghouse doesn't want to come to me. USF&G doesn't want to come to me. Towson State University, in their present procurement for housekeeping services, has got a 20 percent minority participation. What happened to me at Bowie? I went to suppliers; all five of them were just fronts.

Mr. EHRLICH. Thank you.

Mr. MCINTOSH. I appreciate that. Although, let me put a word of caution on. I think Mr. Brown's example is the American way, where you reward people who take some of these risks themselves and invest their own savings and capital. If we start down the path of looking at economically disadvantaged people and provide an extra subsidy, that's good, but the next step is, then, the Government comes in and starts regulating them, and they become dependent on the Government.

So it can be a slippery slope, and we need to think long and hard, even on that criteria, because I think there is some value to saying, we're going to reward people who do take the chances, who want to make something for themselves, and oftentimes face failure. But they, a lot of times, will succeed if they work hard and persevere at it. And that type of American spirit is worth rewarding, I think.

Mr. EHRLICH. The point has been made that, if this Congress can't help you all, your long-term prospects are bleak.

Mr. BROWN. Bob, that was my closing comment here that I had. I said, on a slightly more optimistic note, I can tell you the people I talk to have a great deal of hope for this Congress, you know.

Mr. EHRLICH. Thanks.

Mr. MCINTOSH. Thank you.

Mr. BROWN. And I don't want you to—the article in the morning Sun paper, where they said you may have become a little discouraged because you haven't achieved what you hoped to achieve, I think you've made greater inroads than anybody expected you to make. It's kind of like a beachhead at war, or a baby crawling, stumbling, walking, and running. And don't be discouraged. You're heading in the right direction.

Mr. MCINTOSH. I like that analogy. We're at Normandy.

Mr. BROWN. I mean, yeah, you're at Normandy.

Mr. MCINTOSH. We're at Normandy, and we've got the rest of Europe to take back.

Mr. BROWN. Yeah, it's the rest of Europe in front of you.

Mr. MCINTOSH. Thank you. Thank you.

Mr. Stappler.

Mr. STAPPLER. First of all, I'd like to say thank you to the chairman and to Mr. Ehrlich for having me here today. I'm proud to be the anchor man of this meeting, at this point.

My name is Mike Stappler. I'm from Baltimore, been a resident here for 39 years, one of the principals in a closely held family owned business that's been around since 1958, called Overlea Caterers, Inc. We do a variety of different things, including social catering, and also we do a lot of government contract work through the Older Americans Act, called "Eating Together," in the area. We also do a lot of work through the Department of Education, through the Child and Adult Day Care Nutrition Programs. Both of these programs are federally funded, and primarily, one of the things I'm very concerned about recently, with the changes in some of the economic climate, we are now running into nonprofit agencies that are bidding on these government-financed contracts.

Primarily, my concern is that these agencies are going in where we are paying taxes on the revenues that we earn; we are fostering job growth and development and these agencies are bidding against us. They are soliciting funds in the private sector and getting money granted to them, and they are being granted through trusts.

Particularly, one agency, Meals on Wheels of Central Maryland, was actually gifted a facility, practically, from the Weinberg Foundation, which is a multibillion-dollar trust fund. They used this money to build a facility which they then used to bid against us in contracts that we held. And they are also out fund-raising through agencies, including United Way, Associated Catholic Charities, and Associated Jewish Charities. They are subsidized, in some ways, through the government agencies.

One of the contracts that they hold is a sole-source contract with the city of Baltimore, which is on the Title III C(2) program funded, and there is no competitive bidding on that. So here my tax dollars are going to pay for the Federal Government. They take that money to fund programs. They, then, don't ask the people that we're bidding against to get subsidized through their tax—I would love to be able to take the excess funds we make and plow them

back into my agency, and rehire new people, invest in plant property and equipment, use it to market, and solicit for further business in the future.

What's happened is, as we go down the line, we've seen a further deterioration. Last week I put in a proposal on a contract which was through a Child and Adult Day Care Nutrition Program. The price is $1.80 a meal for food. They cut the price 45 cents a meal, down to a $1.40-something. And the specs in that particular contract were 50 percent above the federally mandated specs. And I said, if you can get the same quality of services and products from another vendor for 40 cents less a meal than we're doing, I advise you strongly to take it.

And that's not something I really like to do with a client of mine. We're very proud of the work that we do. We are a quality operation. We just cannot compete against agencies that are subsidized, that can go out and solicit funds that are not taxed, and that then don't have to pay tax.

Now, I've been a certified public accountant for over 15 years. I happen to be in business. I did not choose to enter that profession full time. I'm also a certified management accountant. It is impossible to break even in a company, I can tell you. So nonprofit agencies are making money in these contracts or they are losing money, and it doesn't matter.

Unfortunately, what happens is, I have probably 100 jobs—this is one company we're talking about, in the State of Maryland and Baltimore—100 jobs in our company right now. All we're doing is, we're trading commercially developed jobs for Government-subsidized jobs. That's all we're doing; turning the jobs over. We're not really saving any money, because in the last, probably, week alone, we've terminated and reduced our work force by five, or six, or seven people.

You know, this deterioration that goes on over time, I mean, it's really choking me and our board, our group, our family board, to sit there and continually say, well, we have to cut our pricing so low so as to be competitive but not to be able to make a profit while we're doing it.

Mr. EHRLICH. You said you just cost yourself or cut five, six, seven jobs?

Mr. STAPPLER. Right.

Mr. EHRLICH. That is directly, in your mind, attributable to what?

Mr. STAPPLER. It's directly attributable to the reduction in the number of contracts we've been able to acquire and retain. I had a contract in Anne Arundel County; we've been the prime vendor in that county since 1973, OK, in publicly bid contracts against commercial firms. In 1992 or 1993, I believe it was, Meals on Wheels came and bid on a contract. They were not qualified to do it; and they were eliminated for not living up to the specs.

They kept dunning the government agency. "We want to come back. We want to come back." I had a contract where they—I had a CPI rider in this contract. The first year they said, "If you don't accept the CPI, we'll renew the contract," even though there's no provision for negotiation further. It's a sole option on the part of Anne Arundel County to do this, OK. They come in and say, "Well,

if you accept no CPI which you're entitled to, we'll renew it," which was illegal, in my opinion, OK, but we did it. And we said, "Fine. We'll accept that."

The next year they said, "Well, we're not going to renew your contract again," even though I felt like there was some type of obligation on their part, since we forego the CPI we were entitled to. And all departments said, "Well, you can just take us to court. We'll be more than happy to. We've got three or four people here on staff to do nothing but defend cases against a company like yours." I said, "I don't know that it's going to be a great thing for me to go in and sue one of my clients so they have to use me."

So, you know, after bidding it, and, again, they went in, they low-balled the contract, and they won. And that contract was probably $300,000 or $400,000 worth of business. I've had three or four other contracts—I had a contract recently. We were doing the meal for $1.58; they cut the price 15 cents a meal and gave them additional items. And I'm saying, I don't know where they are coming up with the capital, because I know what the cost of these products and services are.

In addition to those other things, we're also required, you know, to do State and local types of taxes that aren't involved with the Federal Government, which ultimately have an impact on what we do. I mean, these people can operate in an environment—if I had sole-source contracts I don't have to bid, then I can use that to subsidize my other work, and those are government-funded contracts, as well.

So, I mean, we don't have to worry about foreign competition coming in and killing us, because the nonprofits will drill us. Now, when you start attacking an organization like Meals on Wheels, you're hitting Mom, apple pie, and Chevrolet. I mean, nobody wants to hear, "Gee, it's a terrible thing." You know, your grandmother might be delivering meals to somebody's house that doesn't have food today. OK.

But when the snow is out there, 30 inches of snow that we're piling up over there, we got phone calls from Harford County and other counties saying, "Can you send us emergency food supplies," because our people were working. You know, there wasn't a day we didn't deliver food during the whole entire period.

So, you know, I mean, they will use us, and abuse us when it's, you know, fine for them. But when it's something where a commercial organization is coming in to bid—it's just not a level playing field with nonprofit agencies.

Now, I understand, you know, in research, for example, I know Johns Hopkins University, they do research, and they probably compete against private labs and other things. But I think when you have legitimate organizations that are commercially viable and areas where they can do government contracting and go out and—I mean, I thought the trend was, we're going to try to privatize things. And I don't think that subsidizing jobs through the Government, through the back door, is the same thing as saying, we want to privatize and try to make more commercially available jobs.

We've been very proud of the fact that places like AT&T are laying off 40,000 people and, in some of those years, we create five, six, seven jobs. We laugh and wave and say, "Hey, we created more

jobs than AT&T did this year." I know it sounds nuts, but, I mean, that's how proud we are of what we do.

So I really feel like it's an area where—I don't know that it's over-regulated, but I just think that, when the regulations that come down from the feds say that these people can bid with impunity, and they can just low-ball contracts and do them at a loss, what would be considered, commercially, at a loss, you know, we're not serving ourselves. Plus, they're not giving any consideration to the fact that we're kind of subsidizing those same programs they are paying them to bid against us on.

If you will indulge me for 1 second, since this gentleman over here was talking about MBE, we are in the MBE program, as well, through the city of Baltimore, on our contract through Eating Together, in Title III. And just to show you how some of these things happen that go on, recently I had a case where we were audited for unemployment by the State of Maryland. And they audited our subcontractors, as well, because they want to make sure that these are legitimate operations.

One of the contractors that we were using, that was approved by the city of Baltimore, was—I gave them this guy's information and said, "Well, we're paying $350,000 to this agency for trucks and delivery people, and so forth." They audited that guy. He closed his unemployment account in 1989, OK, which was 6 years ago. Now, when the guy hit me for the audit, I said, well, if a man has got a certified minority business enterprise company in the State of Maryland, approved by the city of Baltimore, and I'm required to use them by Ordinance 610, I don't see where I would be responsible for anything that he might be responsible for, if he's fraudulently putting himself out as a viable business. I have to follow those rules; why don't you go after him.

And what happened was, when that letter came to me, I sent a letter off to the EOC office, which is the compliance office for the city of Baltimore Law Department, and they said, "Fine. We'll go address this issue with the subcontractor directly," which they did. And they found out that, yes, he did.

In the body of Ordinance 610 in the city of Baltimore, it states, "You may not subcontract more than 10 percent of your subcontract." The guy was subcontracting 100 percent of his contract, 100, OK, the whole thing, to other subcontractors, both minority and nonminority individuals, OK.

Now, here's what they did. They sent him a letter and asked him to bring his records in. He had a hearing in front of the review board. They said, "This is a joke; it's a sham." And he said, "Well, I know the mayor, I know the Governor, I know the Congress; I know everybody." So he throws a lot of smoke up in the air, and they said, "Well, OK, we'll have another review by the Board of Estimates." The guy is still doing the job. I have not received a letter yet from the city saying this guy should be canceled.

Now, I have two other MBE-certified guys that want to take over this work. And I don't know why, to this day, a guy who they admittedly said has, you know, fraudulently represented himself and blew the body of this ordinance—I mean, that is—if that's not the crux of an MBE program, there is no such thing as the crux of a program; it doesn't exist.

So when you say, are there sham companies out there, are there people out there that are doing this? I mean, I don't have the time or the energy or the ability to go out and investigate whether a company that the city tells me is certified—I don't have the wherewithal to stop them from going out there and saying that they're not. I mean, when the State of Maryland goes out and audits them, and the guy has fraudulently closed his unemployment account for the last 6 years, you know, there's something wrong with the program. It's just that simple.

And I—look, I support it. I mean, we've been doing minority business enterprise subcontracting for almost 20 years. And I think it's an affront to the people who are legitimate MBE program companies to hear that that goes on, because that just gives guys like you that much more ammunition to say, just blow all the programs away; none of them should be there.

So I don't know why even the city would protect—I understand protecting their turf, that's one thing, but to go out there and protect guys that they know are playing the game, that's another story. So, yes, I think they're out there. And I don't want to water down my original point of that, but, I mean, that was a particular one, because I called the compliance office myself on that particular issue, and I said, "Can I get rid of this guy? First of all, he's not giving me good service, and second of all, it's a joke."

[The prepared statement of Mr. Stappler follows:]

STATEMENT BY

MICHAEL STAPPLER

OF

OVERLEA CATERERS, INC.

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,

NATURAL RESOURCES AND REGULATORY AFFAIRS

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

JANUARY 26, 1996

TESTIMONY OF MICHAEL STAPPLER

Good Morning. My name is Michael Stappler. I am from Baltimore Maryland, where I own and operate a food service company, along with five other members of my family. I am President of Overlea Caterers, Inc. Which has been in business for over 35 years. I have been with the company since 1980.

I want to thank you, Mr. Chairman, and the members of this committee, for calling this important meeting, and for allowing me some time to appear before you.

I am a small businessman; I am not a lobbyist, politician or attorney. My main concern deals with the ability of non profit entities to compete against for profit companies in government contracts. This is especially true where commercial business entities like ours exist and are able to offer products and services to the government agencies.

Specifically, Meals on Wheels has bid on and won, several contracts funded by the federal government, which are administered by the State of Maryland and local subdivisions of Maryland. This particularly bothers me because they are a 503c not for profit corporation. Meals on Wheels does not pay federal or state income taxes; Overlea Caterers does.

Meals on Wheels is allowed to raise tax free donations to subsidize their operations, including their food service operations. It is not possible for there to be a level playing field in contracting when the very dollars that Overlea Caterers pays in to fund the programs are given back to an agency that does not pay in.

Indeed, the main production facility that Meal on Wheels of Central Maryland operates was funded with a major contribution by a local not-for-profit trust. It is a devastating combination when your competition can raise tax free funding, without bank financing that has to be paid back, and they use that as the vehicle to bid against you without the need to make a profit.

We don't have to worry about foreign competition coming in and harassing us with product dumping and price fixing, we have the local not for profit agencies to deal with.

I believe that it is patently unfair for a non profit agency to be allowed to compete with for profit firms in areas where the non profit does not have the same burdens as the for profit companies. In some areas, agencies like the school system have bid on contracts for food services. In some of the regulations, they receive preferences if they want to bid on a federal contract or a contract funded by the federal government. Again, they do not pay taxes and are funded by federal and local tax

dollars. The funds we pay in are used to fuel the competition against us.

I have bid on several contracts in the past two years that were awarded to non profits, based on lower cost. This has resulted in our laying off and terminating workers and downsizing our operation. The ripple effect in terms of taxes and employment go beyond the profit and loss of the company. There is increased unemployment, less personal income taxes collected and less productivity for our organization.

I support non profit agencies, both personally and through my business. I think they provide valuable services to the community. When those agencies are granted an unfair advantage commercially, I think it is time to stop it.

I support legislation to limit profit making activities of non profit companies. I am a Certified Public Accountant, and in my experience in business, there is really no way to insure operating at a break even; no profit or loss. You make money or lose money. If non profits make money, they can invest it back into the agency or dispose of the funds in other ways. If they lose money, they can raise tax free dollars to subsidize themselves.

If my company makes profits, I am sure to pay taxes. I would love the opportunity to choose to invest those profit dollars in jobs, or invest in plant property or equipment to enhance my business for the future, instead of paying taxes. I know the government will not allow me to do so, for obvious reasons.

I believe in the current Congressional leadership. From my perspective, I am glad to see movement on various key issues and policies that have been intrenched for my lifetime. Change is difficult, but not impossible.

Thank you for the opportunity to testify today. I would be glad to answer any questions that you may have.

Mr. MCINTOSH. It's a huge, huge morass; huge morass. Well, thank you very much. I appreciate that.

Mr. STAPPLER. Thank you.

Mr. MCINTOSH. Our next witness is Thomas Meighen.

Mr. MEIGHEN. Thank you. I'm Tom Meighen. I'm with Stromberg Sheet Metal; I'm the safety and risk manager there. I've been with them for 6 years now. I've submitted a written statement, and I'm not going to read the whole thing. I hope you can take some time sometime to look that over, but I'll hit on some of the key points.

I wanted to speak on OSHA, maybe some of the positive things that I've seen in OSHA and things that have developed in the last year or so. Talk about a targeted industry, we do both construction and we're also a sheet metal shop. I've received notice that sheet metal is going to be one of the targeted industries now, as far as OSHA enforcement is concerned.

My first direct experience with OSHA was going on 3 years now, it was February 1993. Federal OSHA came into our shop, then in the District of Columbia, wrote a number of citations. Some of them were founded; some were questionable, I guess, in their direct effect on real employee safety and health. One of the big things that came out of that was a machine guarding issue that had to do with press brakes, which is a very versatile machine, but potentially a very dangerous machine, too.

We hadn't had an accident on press brakes, attributable to the machine guarding, for at least 12 years, records that I've gone back on. But in working with the local field office and pushing the issue, they couldn't come up with any real workable solutions. I kept working with them and I kept bothering them, but ended up with a meeting at the national office of OSHA, and we came up with a workable solution, one that the company could live with and one that we could apply.

As recently as this past December, I was at the national office of OSHA, meeting with some of their people and also a sheet metal contractors association that I'm a member of, where we're going to try to get this program put together and accepted on a nationwide basis. So we're seeing some efforts where they are kind of opening the doors and working with people.

A couple of the other things that we've seen in the last year or so come out of OSHA, one example is focused inspections. Before, an OSHA officer would come out to a constructionsite, they were pretty well required to cite anything that they saw that was a violation. It didn't have to have a direct influence on the safety and health of the job. I saw one citation that was on a State plan, but it was still under the Federal standard, where a temporary railing had overlapped at the end by three inches, and the compliance officer took a picture and wrote it up.

So they could still really hit some things that didn't have a direct influence. Now, with this focused inspection program, what they are looking at now is based on all the research and information. They are addressing the four areas that are really getting the people hurt in the construction business. They are looking at the falls and the fall exposures. The roofers certainly can relate to this. They are looking at electrical hazards and electrocutions, struck-

bys, caught-betweens, trenching accidents, things that are really getting the people injured.

Some of the other changes that I've seen, right now they are working on, in negotiated rulemaking, which is basically a committee format, where labor, management, and also Federal people are meeting to develop a standard for steel erection, which has some very specific hazards to deal with that are unique to that industry in itself.

So I'm seeing some progress; I'm seeing some changes there. They are willing to talk to people. They are opening up the door. I think they have received some kind of a wake-up call. Now, are they perfect yet? No. No, they certainly aren't. Are they trying to make some progress? Yes. Yes, they are.

And am I seeing some results? Yes, I am. I'm finally seeing some of those gears turn, some people waking up and really trying to deal with the issues that are getting the people injured, not just the paperwork issues such as the hazcoms, and areas you didn't have the right poster put up, so we're going to give you a citation.

It's encouraging to see that. So there is some good coming out of that, and I just wanted to offer comment on that.

[The prepared statement of Mr. Meighen follows:]

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CONTRACTING — ENGINEERING

January 25, 1996

Chairman David McIntosh and Members of the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs of the House Committee on Government Reform and Oversight

I appreciate you giving me the opportunity to speak with you today. You should be aware that my comments are from my own personal experiences and may not reflect the opinions of my employer or other persons in the safety profession.

The focus of my comments will be on OSHA and the positive changes I have seen. Changes which not only help make the workplace safer but encourage input from the people who have to apply the OSHA Standards in real life. I find myself in the unusual position of supporting the need for common sense Government regulation.

For nearly six years I have been the Safety and Risk Manager of Stromberg Sheet Metal Works, Inc. For seven years prior to this I worked primarily with insurance companies in the field of safety. I have a Bachelor of Science degree in Safety Management, am also a Chartered Property and Casualty Underwriter (CPCU) and have earned several other safety and insurance related designations. I am active in the safety profession and am the Treasurer of the Washington Metropolitan Area Construction Safety Association (WMACSA), Co-Chairman of the District of Columbia Subcontractors Association Safety Committee and a member of the Sheet Metal and Air Conditioning Contractors' National Association Safety Committee (SMACNA). Safety and Risk Management is my chosen profession.

Stromberg Sheet Metal is a regional sheet metal fabrication and construction business with approximately 340 employees working in Maryland, Virginia, West Virginia, North Carolina and the District of Columbia. Our main facility and offices are in Maryland. During these six years I have participated in numerous OSHA inspections. Either through state plans or Federal OSHA we have had three inspections at our fabrication shops and in the area of a dozen or so at our construction sites.

My first direct contact with Federal OSHA was at our then main fabrication plant in the District of Columbia on February 16, 1993. A number of citations were issued, some were founded and some were debatable in their value and effect on safety. One big issue which was addressed had to do with machine guarding, press brakes specifically. A citation was issued for a lack of guarding on these machines, however; no practical solutions were offered to protect them. While working with the local OSHA office, a meeting was arranged with an expert at the National office and a workable and safe solution was developed.

This solution is now being better defined and as recently as December 15, 1995 I sat in a meeting with members of the National OSHA office along with representatives from SMACNA to develop a plan to

allow this solution to be used throughout the United States. I found this open and workable approach quite encouraging.

Within the last year I have seen several other positive things implemented by OSHA these include:

Focused inspections for construction. Under most circumstances an OSHA Compliance Officer can now go on a construction site and address the four main issues that get workers injured and killed. These issues include falls, electrical hazards, struck by injuries and caught between hazards. Prior to implementing this procedure a Compliance Officer was required to cite all hazards observed no matter how minor. This is why violations relating to paperwork, such as the hazard communication standard, record keeping and posting requirements, and not actual job hazards used to be the most frequently cited. The Compliance Officer should now be freed up to do more inspections and better serve the employees he is trying to protect.

Informal complains. All complaints by an employee or his representative used to require a detailed, time consuming follow up by the Compliance Officer. Now a system known as phone and fax may be used for informal complaints. Again, human resources can be freed up for better uses.

Negotiated rule making. A standard to address the specific hazards of steel erection is currently being developed in committee process using representative of labor, business and government to develop a standard all can live with. The value of getting all parties together in the development of OSHA Standards can not be overstated.

Please, do not misunderstand me. I am not in favor of over regulation or Government intrusion. OSHA has a purpose and their resources should be directed at making workplaces safer. Their resources may have been misguided in the past but I have seen significant changes in their efforts and how they do business.

While some businesses, such as Stromberg, make a good effort at employee safety there are many bad operators out there. I see them practically every day. On a construction site they are a hazard to my employees too and I have little influence over their actions. Rules and regulations, fines and citations, may be the only way to convince some people.

Yes the OSHA Standards are complicated and difficult to understand. Yes, if a Compliance Officer shows up and really wants to cite you he or she probably can, somewhere, find a violation.

Is OSHA perfect? No. Are there areas in which they can improve? Yes. Are they making efforts to improve? Yes. Can I see results? Again, Yes.

Again, thank you for the opportunity to make these comments. I try to answer any question you may have on this topic. Should you wish to contact me on a later date to discuss this, please feel free.

Sincerely,

Thomas J. Meighen

Thomas J. Meighen, CPCU
Safety and Risk Manager

Mr. MCINTOSH. I appreciate that. Thanks. In fact, at one of our field hearings in Minnesota, a small businessman mentioned that the head of OSHA, Mr. Joe Dear, had spoken to the small business conference at the White House and said that they were going to figure out a way to stop having fines for paperwork and nondirect safety violations on the first visit. They would come and they would tell what the problem was, and work with the company to try to get them to get it corrected.

Unfortunately, we wrote them a letter to get that confirmed, then he said, "No, no, we haven't officially changed our policy yet." So one of the things that I hope will come up this year in Congress is a reform act on OSHA that will let some of the things the agency's are already trying to do and the directions they are moving in, codify those and give them the statutory authority and ability to go ahead and do those types of activities.

What I hear everywhere from businesses is that it's in our interest and we have a strong desire to have a safe workplace, you know, most legitimate businesses. Occasionally, you will run into examples where, obviously, somebody doesn't, and they need to have enforcement mechanisms to force those people to be safe. But most businessmen I talk to say they want safety; they value that, because their workers value it. And they get a lot better productivity when they can assure their workers of that.

If we can create a climate where OSHA works with business to develop a maximum safety ability—and, also, I'm a big fan of incentives, where, if you reward people for a good record, track record on safety, I think you'll get a lot more accomplished that way. So I want to figure out ways of promoting those types of ideas.

But you bring good news. I'm glad to hear of that success. You may want to, as you are moving forward, if there are other people who are encountering less success, we may call on you to share with us how you did it in working it up through, and your presentation.

Mr. MEIGHEN. Tenacity. You have my phone number on the letterhead.

Mr. MCINTOSH. Thank you. I appreciate that.

Do you have anything on that?

Mr. EHRLICH. Yes, I just want to make a couple points real quickly.

Tom, first of all, your points are well taken. Come over to Washington, listen to our subcommittee, listen to debate. Unlike the way the press likes to paint a lot of things, the new regulatory agenda with this majority in Congress is not to make an unsafe workplace; it's to keep a safe workplace and stop stupid regulations. And, unfortunately, that took me 7 seconds to say, and some attention stops after about 4 seconds.

Let me make a couple points to all of you. First of all, I appreciate very much your appearance here today.

Mr. MCINTOSH. We've got one more witness.

Mr. EHRLICH. Oh, yes.

Mr. MCINTOSH. We've got one more, the gentleman they told me. Jim Miller, is that right?

Mr. MILLER. Yes.

Mr. EHRLICH. Jim, I will hold off.

Mr. MCINTOSH. Then I'll let you close.

Mr. EHRLICH. OK, yes. I was going to close, but I'm sorry.

Mr. MILLER. I'll be brief. I am Jim Miller, executive director of EPIC pharmacies. I just want to add some clarity. Bill had a very, very nice presentation for you all. And I'm glad you two have been able to reconcile the Baltimore Colts issue. I noticed what State you were from.

Mr. MCINTOSH. He's told me he appreciates it.

Mr. EHRLICH. In Indianapolis, we just don't talk about that.

Mr. MILLER. I'm sorry.

Mr. EHRLICH. But I appreciate you bringing it up.

Mr. MILLER. Just for some clarity, what Bill was referring to, in his limited amount of time, was the fact that the Federal Government, in their wisdom and through OPM, has decided to institute a 20 percent co-payment for, in all cases, seniors under the Medicare program of the Federal employees program to buy their prescriptions. So there's a 20 percent disincentive for them to use community pharmacy. Zero co-pay at mail order. That's a true manipulation of the discriminatory pricing that exists by having the Federal Government drive people to assist them, that's anticompetitive toward community pharmacy.

Another point of clarity is that, when we speak of community pharmacy, we speak of the Walgreens, who do billions of dollars worth of business, not buying any better than the EPIC pharmacies, who do—in our group, we represent sales of $350 million. So these aren't volume issues; these are class of trade issues.

Basically, on the Federal employees program, what you have is analogous to community pharmacies being asked to stay open for the acute care and emergency care prescriptions for Federal employees. That means that we're not good enough or we're not designated to fill maintenance medications, but you sure do want my community pharmacy open to take care of the needs of your acute care children's ear infections, your heart attack people who need Nitrostat stat, that's why they call it "Nitrostat," for their heart.

It's analogous to asking a shoe store to be open, OK, but telling the shoe store that they can only sell socks, and the socks, you fix the price at a low reimbursement. That's what it's analogous to, because that's exactly what's happening in pharmacy community. And what's happening is, you're destroying—not you—but the system is destroying the infrastructure of community pharmacies in this country that I think have served the American public very, very well.

And there is some cure that the Federal Government, through the auspices of some of their agencies, like the FTC, could have done through a closer insight and study of the long-term anticompetitive effects of potential violations of certain acts, such as the antitrust acts, that may have occurred by the manufacturers who are now being cured, hopefully, by injunctive relief, through the Federal court system.

So I don't think the Federal Government is totally—through its regulatory—at least enforcement—is without some culpability, over the years, with not having their agencies look at whether these were really violations of the Robinson, Patman, Sherman, and these other acts.

And I think that they continue to not look at things that are affecting competition. Vertical and horizontal integration: You have big PBM companies buying drug manufacturers. You also have horizontal integration, like Revco and Rite-Aid, like American Drug Stores with a large drug manufacturer in the West.

I think what you're doing, the long-term effects are that sometimes the short-term effects of enforcement of antitrust laws may cause a competitive situation. But if they are not looked at on an overview of the long-term effects, what you will do is, you're going to have no community pharmacies, zero, and you're going to have several big players dominate the marketplace. And I think that spells higher prices, no competition, and that's an area where we're leading.

Last point: We have to spend an incredible amount of money on attorneys. I said recently that I don't go to the bathroom without my antitrust attorney. That goes to the issue that small caterers, or whoever it is, cannot get together—you mentioned, can we get together? Yes, we can get together for the purpose of purchasing, but there's a very, very succinct structure that we must have, which we do. It's a joint integrated venture that we have to get together, because we're all competitors in the marketplace and negotiate contracts, but we have to have nonexlusions and everything in there, so we truly can't compete.

It's a fallacy to think that small businesses can get together and form effective negotiating when you always have the threat, did you fix a price? Did you conspire to boycott? These are burdensome. I think they need to exist, but I think the FTC and others needs to have an open dialog to define how can we operate without me being scared every day whether I should even be in this job or not, to represent small businesses. And we would like to bring that dialog, at some point, to the forefront of your committee, if possible.

Thank you.

Mr. MCINTOSH. I appreciate that. This has been helpful insight. Bob mentioned there is a letter circulating about the OPM purchasing problem, and actually your description helped fill out the picture for me about how they are picking certain people to give preferences to over others. Let me look at that also, and we will do that.

Mr. MILLER. Thank you.

Mr. MCINTOSH. Thank you very much.

Mr. EHRLICH. You know I agree. He'll agree, too.

Mr. MCINTOSH. I always listen to Bob; he's got a lot of good advice.

Mr. MILLER. Thank you very much.

Mr. MCINTOSH. Do you want to sum up for us today?

Mr. EHRLICH. Yes, just quickly. David, thanks. I think my folks here in the 2d Districts and surrounding districts thank you for coming here.

Mr. MCINTOSH. It's great to be here.

Mr. EHRLICH. And we'll bring you back to maybe the Preakness and some other things here. But thank you very much, David. It's great to work with you in my first year in Congress. Two last points, and I know I speak for you with respect to this, as well.

One, whenever I speak to groups of small business owners like yourselves, either people in management positions or owners—some of you have heard me say this before—the fact that political education, with respect to your employees, has gone unnoticed, unattended to over the years, hurts what we're trying to do in helping you in Washington.

The dichotomy between legitimate regulations and stupid regulations gets lost in the politics of Washington. Pro-life, pro-choice, pro-labor, pro-business, well, everybody is pro-labor; everybody is pro-business. It's where do you draw the line. What makes sense; what does not make sense? Where does this regulatory mentality stop? That's what we're about the business of, trying to get the dialog and the debate going in Washington.

We need you, but, quite frankly, we not only need you, but we need your employees to understand what we're trying to do. When we debate OSHA reform, we're not trying to put the screws to workers. We're trying to create more jobs so that there are more workers, in the long run. You've all heard me say this before, but that's a very, very important point to the public dialog in Washington. The sound bite mentality and sound bite age we live in does not lend itself to legitimate debate on these very complex issues we've touched on today. We need your help in this regard, and you all know that.

Second, and I could not help—one of our favorite bills here, David, and you know what I'm going to say—Michael, you've mentioned nonprofits and the fact that they are competing against you. Nonprofits are good. I give money to nonprofits. We all give money to nonprofits.

David McIntosh and Ernie Istook and Bob Ehrlich have been talking in the first year of the 104th Congress about stopping the practice in Washington of spending taxpayer money so that some nonprofits and other for-profit entities—stopping their practice of taking taxpayer money and using that money to, one, further political agendas outside the scope of their business; and, two, asking Congress for more money, with our money.

It is not an attack on anyone. It is an attack when the relatively few for-profit and nonprofit groups in this country who have grown up in the last 30 to 40 years, and who have gotten used to this bloodline from the Federal taxpayer to their interest and political advocacy. To the extent that business and nonprofits alike can get back to the business at hand, which is you all making a buck and creating jobs, and nonprofits actually doing the work in the field, and not coming to Congress and falling in love with becoming a lobbyist, we'll all be better off.

I know I speak for you in this regard. I thank you for what you've done.

So the next time you hear about the McIntosh-Istook-Ehrlich bill or, as we refer to it, the Ehrlich-McIntosh-Istook bill.

Mr. MCINTOSH. Ending welfare for lobbyists.

Mr. EHRLICH. Anybody who is interested in actually reading the bill and what we're trying to do, please call our office. There is a great deal of misinformation. But there should be a relatively few groups out there who are very concerned about cutting their blood-

line off, because that's what we're trying to do, for your sake, and for every Federal taxpayer's sake.

Thank you all very much.

David, thank you.

Mr. MCINTOSH. Thank you, Bob. Thank you for hosting this, and thank you to the university. This has been a very, very informative session, and we will take all of this information and put it in the official record in Congress. There are several good ideas for Corrections Days and problems that we can continue to address this year on the legislative front.

One of the things that Bob and I are going to be working on in the committee is holding some hearings in Washington to put the fire under the feet of some of these agencies, to keep pushing for them to reduce the regulatory burden. So your testimony helps give us the factual information we need to be able to really move forward in that area.

So thank you. I appreciate it. The committee is adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

NAWGA
National-American Wholesale Grocers' Association

IFDA
International Foodservice Distributors Association

THE Food Distributors Association
Educational Services • Government Relations

Testimony of the
National-American Wholesale Grocers' Association
International Foodservice Distributors Association

before the

Committee on Government Reform and Oversight
Subcommittee on
National Economic Growth, Natural Resources and Regulatory Affairs

Regarding Federal Regulatory Reform

January 26, 1996

On behalf of the nation's food distributors, thank you for the opportunity to submit testimony on the regulatory burden placed on our members by the federal government.

NAWGA/IFDA is an international trade association, based in the Washington, D.C. area, comprised of food distribution companies which primarily supply and service independent grocers and foodservice operations throughout the U.S. and Canada. NAWGA/IFDA's 300 member companies operate over 1,200 distribution centers with a combined annual sales volume of $125 billion. NAWGA/IFDA members, in combination with their independently-owned customer firms, provide employment for several million people. 56% of the groceries sold in the U.S. are supplied by the independent wholesale distributors who compose NAWGA's membership. IFDA, meanwhile, represents member firms that sell food and related products to restaurants, hospitals, schools, and other institutional foodservice operations.

We would like to thank you Mr. Chairman for your efforts to shrink the size and scope of the government regulations affecting the business community. The work that you and your colleagues on the National Economic Growth, Natural Resources and Regulatory Affairs subcommittee have done in this Congress has been crucial to laying the groundwork for returning a sense of perspective to the way the government operates.

We strongly support the regulatory reform proposals contained in H.R. 9, passed by the House last year. It is crucial that federal agencies be required to perform cost benefit

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analysis and risk assessment to determine the costs that any proposed regulation would impose on the affected businesses. In addition, we support H.R.994, the Regulatory Review and Sunset Act, which would give Congress the opportunity to review all new regulations three years after their implementation, and then revisit them every seven years to ensure that they are still performing a needed function without creating too drastic a burden to the economy.

As food distributors, our members operate on an extremely thin margin, often less than one cent on the dollar. Every dollar spent complying with an unnecessary government regulation is money that our members could better put to use investing in their companies to provide more jobs and create more efficient means of delivering food to the consumer. Put simply, unnecessary government regulations raise our member companies' costs of doing business, costs that they have no choice but to pass on to their customers, which in turn result in higher prices for consumers.

NAWGA/IFDA and its members do understand that most government regulations were originally written to provide important safeguards against very real dangers. Our trade association, in fact, was founded ninety years ago out of the need to enact laws and regulations to protect the quality of food distributed across state lines. Our founders recognized the validity of these concerns, which had led Congress to enact the National Pure Food Law. As the years have passed, however, many of the regulations originally enacted to combat legitimate problems, have been duplicated by other agencies of the federal government or by state and local governments, resulting in a complicated and duplicative layering of regulations that costs billions of dollars to comply with each year.

Today's regulatory environment provides numerous examples of the need to reform the regulatory system. The number of regulatory agencies and statutes has exploded. One of our member companies, with only 174 employees, now faces regulations from up to 55 different federal, state and local agencies and statues. This is one agency for every three employees. A list of the agencies and statutes with which this company must comply is attached. Each of these organizations issues separate regulations or requires different procedures, leaving businesses little choice but to devote a significant amount of resources to comply. This robs them of the ability to expand and provide more jobs for the economy.

This week, one of the first elements of the "Contract with America" went into effect. The Congressional Compliance Act requires that Congress comply with the laws and statutes that are in effect for the private sector. As congressional offices struggle to determine which employees are subject to overtime requirements and ensure their facilities comply with the myriad requirements of the Occupational Safety and Health Act and the Americans with Disabilities Act, Congress will have the opportunity to observe first hand the problems faced each day by American businesses. The size of the booklet, 532 pages, that all Members of Congress received from the Office of Compliance provides an immediate view of just how large and confusing the regulatory environment is.

Many of the regulations arise from outdated laws which need to be revisited by Congress. The food distribution industry achieved a major victory when the Perishable Agricultural Commodities Act, which regulates trade in fresh and frozen fruits and vegetables was amended last year. PACA, as it is known, was written in the 1930's, yet had changed little over the years despite the vast technological advances that now make the delivery of perishable agricultural products quicker and safer than was possible 60 years ago.

This problem, however, is not limited to the agriculture industry. All businesses in the nation must comply with the Fair Labor Standards Act, another law written in the 1930's to protect the rights of workers. One of the features of this law is the distinction between those employees exempt from the overtime provisions and those who must receive time and one half for all hours worked over forty in a given week. For a retail or service firm, all salespeople regardless of whether they work from outside a facility or inside an office, are exempt from this provision. For wholesalers such as food distributors, however, inside salespeople are not. With the new technology such as faxes and computers available, such inside salespeople are now often the main point of contact for our member companies and their customers. Because of this provision, inside salespeople at wholesale and distribution companies are unable to increase their salaries through working on the commission system. By removing this incentive to sell, companies find their growth artificially restrained by an outdated government regulation and new jobs that could be created are lost.

Regulatory reform cannot be accomplished by merely updating outmoded laws. Many of the federal agencies continue to maintain the mindset that more government regulation is better. An example of the pervasiveness of this philosophy in the federal government is the insistence of the Occupational Safety and Health Administration (OSHA) to continue work on a standard to eliminate ergonomic injuries.

OSHA has determined that a standard is necessary to prevent cumulative trauma disorders despite the fact that such problems represented less than 4 percent of workplace illnesses and injuries that required missed workdays in 1992. In order to prevent this small number of injuries, OSHA has been working on a standard that would cost American industry billions of dollars to implement. It would require many employers, including food distributors, to radically reengineer the workplace and dramatically increase paperwork requirements, yet would not necessarily reduce these injuries and illnesses. Ironically, if OSHA continues on its present course and issues a proposed standard along the lines of the two drafts that have already been made public, employers would have little choice but to automate, eliminating jobs for millions of Americans. Yet OSHA continues its work on a draft standard, and maintains a proposed ergonomics standard on its calendar for 1996.

Contrast this with the cooperation achieved by Congress, the Department of Agriculture (USDA) and the food industry following the USDA's proposal known as the "Mega Reg." This massive regulatory effort involves two major initiatives, pathogen reduction to reduce contaminations and a mandatory Hazard Analysis and Critical Control Points program to determine possible contamination points in the food chain. Combined, the

two proposals added dramatically to the already complex standards involving food handling and processing. After objections were raised by Rep. Jim Walsh, and negotiations with Agriculture Secretary Dan Glickman, an agreement was reached that the USDA would review, revise or repeal its existing regulations before the publication of a final rule. This was a major step toward reducing the layering of regulations on top of one another, and an example of cooperation to achieve important goals that has often been lacking between the federal government and business.

Congress clearly can make a difference in working to reduce the regulatory burdens on American business. Just as importantly, it can be done without reducing the effectiveness of important regulations, thereby not placing the public at risk. Making government regulations less complex and more user-friendly will increase productivity and efficiency to allow American companies better opportunities to compete in the global marketplace. This means more jobs and more savings passed on to the consumer; a win-win situation for government and business.

ABC Distribution Company's Regulatory Burden

The following is a sampling of the federal, state, and city agencies and the statutes under which ABC must comply:

Federal Agencies
Department of Transportation
Department of Labor – Wage and Hour Division
Environmental Protection Agency
Equal Employment Opportunity Commission
Food and Drug Administration
Health Care Financing Administration
Internal Revenue Service
Interstate Commerce Commission
Occupational Safety and Health Administration
Social Security Administration
U.S. Customs Service
U.S. Department of Agriculture
USDA – P.A.C.A. Branch

Federal Statutes
Americans with Disabilities Act
Civil Rights Act
COBRA
ERISA
Family and Medical Leave Act
MSDS
Natural Resources Protection Act

State Agencies
Bureau of Unemployment
Bureau of Labor Statistics
Bureau of Corporations, Elections, Commissions
DEP
Department of Weights and Measures
Department of Human Services
Department of Marine Resources
Human Rights Commission
Jobs Board Coalition
State Department of Motor Vehicles
State Turnpike Authority
State Department of Labor
State Environmental Protection Agency
State Wage and Hour Division
State Department of Agriculture
State Public Drinking Water Fund
State Water Testing
State Historical Preservation
State Department of Transportation
State Workers' Compensation Commission

State Statutes
Corporate Income Tax*
Dairy Licensing
Excise Tax*
Family and Medical Leave
Fuel Permits*
Gasoline Tax*
Meat and Poultry Licensing
Sales Tax*
Seafood Licensing
Substance Abuse Reporting

City Agencies
City Engineers
Board of Health
Planning Board

City Statutes
Personal Property Tax
Real Estate Tax

*Must comply in every state in which they do business.

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