

Y 4
. J89/2
96-28/
PT. 3

GOVERNMENT

Storage

REGULATORY REFORM

DOCUMENTS

JUN 16 1980

HEARINGS

BEFORE THE

FARRELL LIBRARY
KANSAS STATE UNIVERSITY

SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 104, S. 262, S. 299, S. 755, and S. 1291

REGULATORY FLEXIBILITY ACT OF 1979

JUNE 21 AND AUGUST 8, 1979

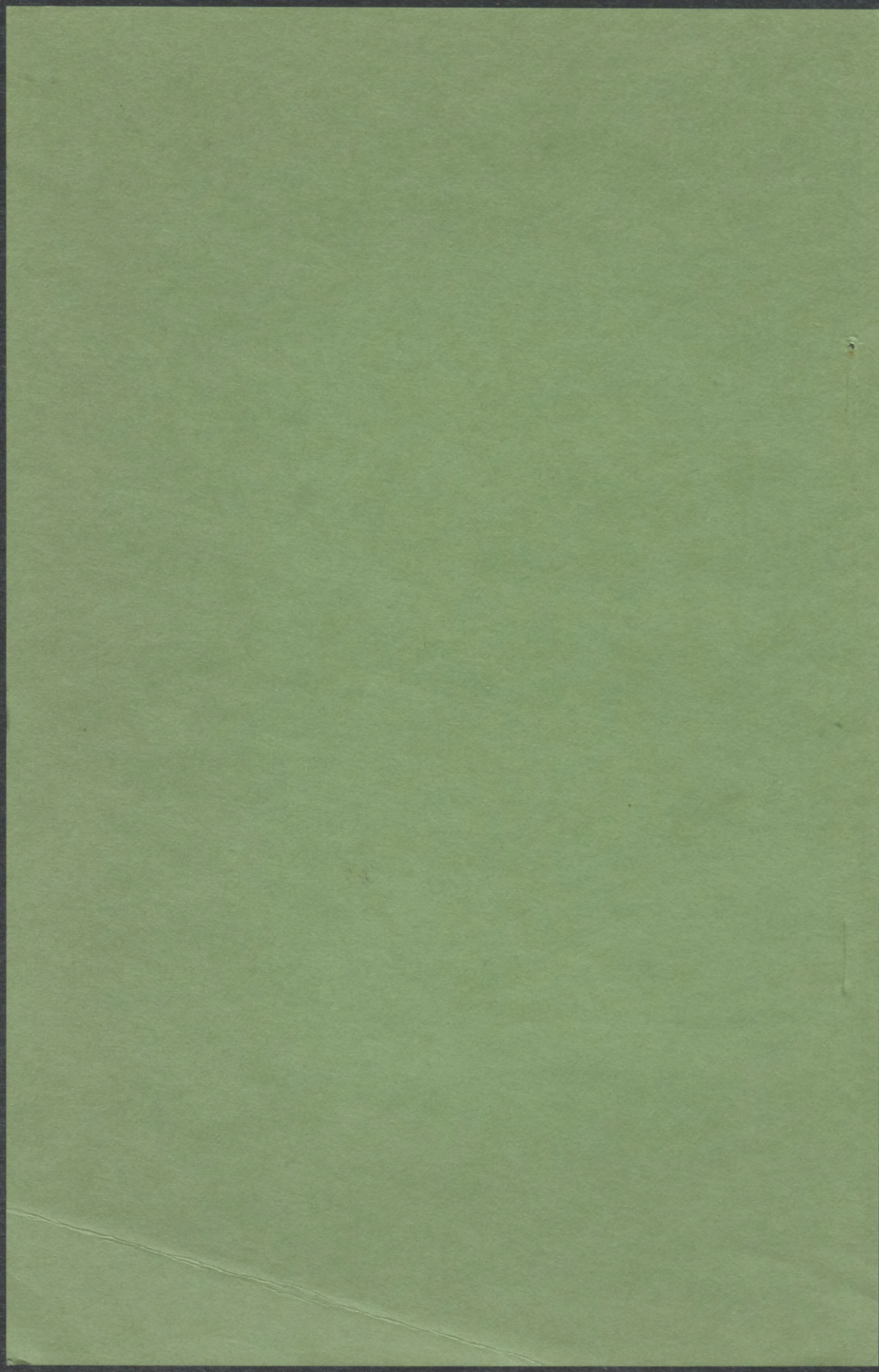
Serial No. 96-~~31~~ 28

PART 3

Printed for the use of the Committee on the Judiciary



1042



REGULATORY REFORM

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
S. 104, S. 262, S. 299, S. 755, and S. 1291
REGULATORY FLEXIBILITY ACT OF 1979

JUNE 21 AND AUGUST 8, 1979

Serial No. 96-~~11~~ 28

PART 3

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON :: 1980

48-824 O

COMMITTEE ON THE JUDICIARY

EDWARD M. KENNEDY, Massachusetts, *Chairman*

BIRCH BAYH, Indiana
ROBERT C. BYRD, West Virginia
JOSEPH R. BIDEN, Jr., Delaware
JOHN C. CULVER, Iowa
HOWARD M. METZENBAUM, Ohio
DENNIS DECONCINI, Arizona
PATRICK J. LEAHY, Vermont
MAX BAUCUS, Montana
HOWELL HEFLIN, Alabama

STROM THURMOND, South Carolina
CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ROBERT DOLE, Kansas
THAD COCHRAN, Mississippi
ALAN K. SIMPSON, Wyoming

STEPHEN BREYER, *Chief Counsel*
EMORY SNEEDEN, *Chief Minority Counsel*
PATTI B. SARIS, *Counsel*

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

JOHN C. CULVER, Iowa, *Chairman*

PATRICK J. LEAHY, Vermont
JOSEPH R. BIDEN, Jr., Delaware
HOWARD M. METZENBAUM, Ohio
BIRCH BAYH, Indiana

PAUL LAXALT, Nevada
ROBERT DOLE, Kansas
CHARLES McC. MATHIAS, Jr., Maryland
THAD COCHRAN, Mississippi

JAMES H. DAVIDSON, *Chief Counsel and Staff Director*
AL REGNERY, *Chief Minority Counsel*
CHRISTINE SARCONE, *Chief Clerk*
ROBERT W. NICHOLS, *Counsel*

CONTENTS

THURSDAY, JUNE 21, 1979

STATEMENT

	Page
Opening statement of Senator Culver.....	1

TESTIMONY

Petkas, Peter J., Director, The Regulatory Council.....	3
Panel of mayors:	
Robinson, Hon. Kenneth, Bayard, Iowa; Robert Hatala, Fort Madison, Iowa, and Merton E. Domonoske, Fallon, Nev.....	11
Panel of hospital officials:	
Fry, Willis, president, St. Francis Hospital, Waterloo, Iowa; Charles Linden, administrator, Boone County Hospital, Boone, Iowa, and Donald W. Dunn, president, Iowa Hospital Association, Des Moines, Iowa.....	39
Panel of businessmen:	
Wimer, Connie, chairperson, Small Business Committee, Des Moines Chamber of Commerce, and Frank Swain, National Federation of Independent Business.....	50

PREPARED STATEMENTS

Domonoske, Merton E.....	19
Fry, Willis, and Charles Linden.....	40
Hatala, Robert.....	33
Robinson, Hon. Kenneth.....	11
Swain, Frank.....	53

WEDNESDAY, AUGUST 8, 1979

STATEMENTS

Opening statement of Senator Culver.....	63
Opening statement of Senator Dole.....	65

TESTIMONY

Bishop, Jack, chairman, Polk County Board of Supervisors, accompanied by Quenten Emery, director, Department of Social Services, and Richard Gruber, acting director, Board of Supervisors.....	66
Miller, Thomas J., Attorney General, State of Iowa.....	72
Stewart, Milton D., Chief Counsel for Advocacy, U.S. Small Business Administration.....	80
Panel of Iowa business people:	
Colston, Monroe, acting general manager, Greater Des Moines Chamber of Commerce; Deborah Squire, car wash operator, Marshalltown, and Lloyd Clark, builder and realtor.....	134
Grefe, Rolland E., attorney, Des Moines, Iowa.....	147
Bergman, William A., attorney, Cedar Rapids, Iowa.....	155
Panel of local officials:	
Tully, Thomas A., councilman, Dubuque; Lloyd Sievers, mayor, Altoona, and Clarence C. Perry, engineer, Henry County.....	159

IV

PREPARED STATEMENTS

Bishop, Jack.....	70
Colston, Monroe.....	135
Grefe, Rolland E.....	152
Miller, Thomas J.....	78
Perry, Clarence C.....	170
Sievers, Lloyd.....	168
Stewart, Milton D.....	87
Tully, Thomas A.....	166

QUESTIONS AND ANSWERS

Questions of Senator Culver and responses of Thomas J. Miller.....	79
Questions of Senator Culver and responses of Monroe Colston.....	137
Questions of Senator Culver and responses of Thomas A. Tully.....	167
Questions of Senator Culver and responses of Lloyd Sievers.....	169
Questions of Senator Culver and responses of Clarence C. Perry.....	170

APPENDIX

S. 299.....	173
-------------	-----

ADDITIONAL PREPARED STATEMENTS

Statement of Eula Bingham.....	183
Statement of Ian D. Lanoff.....	197

COMMENTS ON S. 299

American Council on Education.....	212
Independent Bankers Association of America.....	214
Small Business Legislative Council.....	217
Questions and answers on S. 299.....	222

ARTICLES

"When Washington Regulates the Market, Should It Give Small Business a Break?" by James W. Singer, National Journal, Jan. 12, 1980.....	224
"ERISA Simplification from the Viewpoint of Small Business".....	227
"Helping Small Businesses with Their Pension Plans," U.S. Department of Labor.....	233

ADDITIONAL SUBMISSIONS FOR THE RECORD

Executive Order 12044.....	237
Regulatory flexibility memorandum issued by the President.....	247
Executive Order 12174, paperwork.....	249
Statement of Senator Culver re regulatory flexibility memorandum.....	251
Statement of Senator Culver re Executive Order 12174.....	252
Statement of President's Management Improvement Council.....	253
EPA memorandum on Bayard, Iowa, grant application.....	257
EPA memorandum on Fallon, Nev., grant award.....	260
Comments to subcommittee and memo to Polk County Board of Supervisors re indirect cost recovery plan, Mar. 5, 1980.....	264
Report on small city attitudes toward regulation, U.S. Regulatory Council, Feb. 29, 1980.....	268
Letter to Peter J. Petkas from Department of Agriculture, Jan. 31, 1980.....	329
Memorandum of agreement regarding flexibility in rulemaking between Occupational Safety and Health Administration and Small Business Administration.....	336
Press release, Department of Labor, Apr. 11, 1980.....	340
"Small Business: A Critical Element of the American Economy," paper, Alfred F. Dougherty, Jr., Bureau of Competition, FTC, Jan. 24, 1980.....	343
Agency regulatory flexibility personnel.....	368

REGULATORY FLEXIBILITY ACT OF 1979, S. 299

THURSDAY, JUNE 21, 1979

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:50 a.m., in room 424, Russell Senate Office Building, Senator John C. Culver presiding.

Present: Senators Culver, Laxalt, and Cochran.

Also present: James H. Davidson, chief counsel and staff director, Subcommittee on Administrative Practice and Procedure; John D. Podesta, counsel; Robert Nichols, counsel; Gail Bowman, counsel; Gary Knell, counsel; Christine Sarcone, chief clerk; and Al Regnery, chief minority counsel.

OPENING STATEMENT OF SENATOR CULVER

Senator CULVER. The subcommittee will come to order.

Today the Subcommittee on Administrative Practice and Procedure continues its examination of proposals to reform and improve the Federal regulatory process.

Our hearing today focuses on one of the most widely heard criticisms of Federal regulations—that they fall unfairly and unevenly on small businesses, local governments, and other small organizations of our Nation that are least able to cope with the mounting paperwork and redtape involved in compliance.

In January, Senator Nelson and I reintroduced the Regulatory Flexibility Act of 1979. That legislation, S. 299, establishes the principle that regulations should be designed to fit the scale and abilities of the institutions being regulated.

It would direct Federal agencies to consider the size and resources of the businesses or governmental organizations which would be subject to proposed regulations and encourage them to consider alternative proposals which would still accomplish the goals and purposes of the legislation or regulations involved.

In recent years, the volume of Federal paperwork has proliferated at an alarming pace. At almost every meeting I have had with small business people in Iowa, a major topic of discussion, of course, is Federal paperwork. The reams of reports and questions are a constant source of additional burden to small business operators.

The paperwork burden is only the tip of the iceberg. The inefficiencies in production, the billions of dollars in investments to comply with regulatory standards, and the frustration, anxiety, and anger that oftentimes is generated by many Federal regulations have thus far defied any comprehensive assessment.

I want to note that it is not the purpose of these hearings or of S. 299 to undermine worthwhile Federal regulatory efforts.

It is not the aim of this legislation to allow the continuation of practices which are dangerous to workers, consumers or the environment.

But the agencies which promulgate regulations in these areas must begin to consider the wide diversity of our economic and local governmental systems and try to tailor their regulatory requirements to the different circumstances which they face.

I particularly want to welcome today Mr. Peter Petkas, Executive Director of the President's Regulatory Council. We look forward to working very closely with the Council and with the President in the development of a workable regulatory reform package, and I expect that some form of regulatory flexibility proposal will constitute a major feature of that package.

It is a pleasure to welcome Senator Cochran to our hearing this morning. And, Senator Cochran, do you have a statement at this time?

Senator COCHRAN. Thank you very much, Mr. Chairman.

I would like to briefly comment that I think it has been abundantly clear that Federal agencies of the past have, in many instances, imposed unreasonable burdens on small businesses, nonprofit organizations, and small local governments. These burdens create inefficiency, raise operating costs, and thereby raise consumer prices. Or, in the case of small governments results in higher taxes.

But, moreover, I think that the public's perception is that all of this paperwork and burdening regulations come to very little in terms of public benefit. And I agree that we do need legislation and a strong statement by the Congress to indicate our disapproval of the inflexibility of the Government's approach to the regulatory process.

I am supporting the Regulatory Flexibility Act which you have introduced, Mr. Chairman. I congratulate you for the initiative that you are showing in this area. I think it is time to force the agencies to review the scope and flexibility of their actions and burdening of recordkeeping involved.

I saw figures indicating, Mr. Chairman, that this year it is going to cost throughout the United States about \$600 a person to pay for the cost of compliance with Government regulations. That also is a very significant factor in inflation. And for that reason, too, I think the Government ought to explore ways to look at the way it is doing its business, not just to suggest to the working people and business men and women in the country that it is their responsibility to shoulder the burden for fighting inflation. Government has a responsibility in this area.

And I think the focus on the regulatory process is certainly indicated. I look forward to hearing the witnesses, Mr. Chairman. I appreciate your giving me the opportunity to make this statement.

Senator CULVER. Thank you, Senator.

Mr. Petkas?

**STATEMENT OF PETER J. PETKAS, DIRECTOR, THE
REGULATORY COUNCIL**

Mr. PETKAS. Thank you.

Mr. Chairman, members of the subcommittee, I am Director of the Regulatory Council. As you recall, Doug Costle, Chairman of the Council, testified before you the other day on the Regulations Reform Act.

I appreciate the opportunity to appear before you today to discuss S. 299, the Regulatory Flexibility Act. Before I begin, Mr. Chairman, I would like to commend you for the work you have done to see that the regulatory process is sensitive to the special needs of America's small business men and women. I am hopeful and confident that we can work together on this legislation and achieve our common aims.

As you know, from Doug Costle's appearance before you last week, the Regulatory Council was formed to address a broad spectrum of important regulatory issues, including many of those that this bill is intended to meet. Since Doug's statement was on the administration's Regulation Reform Act, S. 755, generally, I would like to mention briefly some of the rest of the Council's relevant work.

The Council's first task was to produce the Calendar of Federal Regulations. The calendar provides a concise statement of important information on most major regulations under development throughout the Federal Government. It is the first step toward developing a comprehensive picture of all new Federal regulatory activity. With the calendar updated regularly, the President, Congress, the regulators, and the public especially small business men and women, will be in a much better position to deal with the regulatory system and resolve conflicts of policy or implementation earlier, and to predict the cumulative effects of proposed or planned actions.

The Council is also undertaking a series of projects to assess the cumulative impact of regulation on various sectors and to identify areas of overlap and conflict, both in Federal regulation and among Federal, State, and local regulations. I would like to submit a brief description of our activities, as announced last week, for the record.

Senator CULVER. Without objection, so ordered. It will appear in the appendix.

Mr. PETKAS. The President came to office with an understanding shaped by his own experience, of the importance of addressing the effect of regulation on small business. At the Regulatory Council, therefore, we are taking steps to insure that the concerns of small businessmen are addressed in all of our activities.

We have discussed the problems of small businesses in dealing with the regulatory process with both the members and staff of the White House Conference on Small Business and Milton Stewart, Chief Counsel for Advocacy at the Small Business Administration. The White House Conference is documenting what many of us have realized for some time small businessmen feel more burdened by regulations and less certain of their benefits than most Americans. These feelings

are especially understandable in view of the fact that the statutes underlying most of our regulatory activity typically treat all firms the same, regardless of size. Similarly, smaller firms often complain of greater difficulty in complying with the sheer number of requirements and the paperwork generated. Members of the staff and I are attending as many of the conference's small hearings as possible to learn personally and directly about small business concerns with regulation. I believe there are 50 or so such hearings that are now either completed or underway.

The bill you are considering today seeks to reduce the burden of regulation on small businesses and organization such as small community hospitals—I notice you have a panel of hospital administrators today; I am anxious to hear what they have to say—private schools and small governmental jurisdictions.

I support the thrust and concepts articulated in S. 299, although I must be frank and admit to some reservations over specific aspects of the bill, which I will discuss later in the testimony.

A number of Regulatory Council agencies, such as EPA and the FTC, are showing similar concern through their selective use of "tiering" as they promulgate regulations. Tiering is the use of differential regulatory requirements to accommodate the special concerns of small businesses. In these instances, tiering appears to be working well because the agencies have had the necessary flexibility to apply the technique where it will have a useful impact. We endorse the concept of tiering where possible, specifically where agencies are able to apply the technique in a manner consistent with statutory objectives and their ability to effectively manage its implementations. Balance and flexibility are necessary if tiering is to work.

I must stress, however, that businesses should not be exempt from important social legislation simply because they are small. A small company may create a significant adverse effect on its employees or the surrounding community, particularly with regard to worker health and safety or, the environment. You know as well as anyone in the Congress, because of your work in the Resource Protection Subcommittee, the devastation caused by Life Sciences, Inc., of Hopewell, Va., a small business manufacturing Kepone. The possibility of similar catastrophes will have to be avoided in every area where tiering is used.

Keeping in mind the twin objectives of minimizing the regulatory burden and maximizing achievement of statutory objectives, I will now turn to the specific provisions of S. 299.

The requirements of the bill are: First, to consider less burdensome alternatives to agency regulations; second, to solicit public comment on these alternatives; and, third, to consider a number of alternative techniques in the rulemaking process. We support the first two requirements; provisions with a similar effect are included in the administration's regulatory reform proposal, S. 755. In particular, the regulatory analyses provisions of the administration bill clearly complements these requirements.

We also could support the third requirement—an analysis of alternatives—as a useful guide to agencies if they are given the flexibility and discretion to adopt only those alternatives that will not interfere with their statutory mandate. I have no objection to any of the alternatives which include tiering of regulations, use of performance instead

of design standards, exemptions, clarification and simplification of requirements, and flexible and differing timetables. A strict requirement, however, that an agency engage in a particular analysis of each of the listed alternatives may be unwise because it could increase administrative costs, increase paperwork burdens on agencies—who, incidentally, often have a way of passing on their own paperwork burden to the affected businesses or communities—or be inappropriate in particular areas without significant benefit to anyone.

We would be particularly anxious to work with you on legislative language for each of our bills to define the purpose and meaning of the requirement that agencies consider “alternatives” which are less burdensome.

In addition, it is important that any statute not lead to increased litigation. The regulatory process is already too burdened with legal challenges that delay important rules for years.

In going to the White House conference meetings over the last few months, my staff and I have noticed a particular concern that small businessmen have with respect to the role of lawyers, legal requirements, and litigation in the regulatory process.

No provision should change the substantive statutory standards for rules or create new grounds for dilatory legal challenges. Any small business impact provision should not require a separate statement or be separately subject to judicial review.

Senator CULVER. Does that mean no provision should change the substantive statutory standards? Are you talking about the social goal or standards?

Mr. PETKAS. What we are concerned with is litigation that might grow out of small business impact provisions, which might lead to a substantive change, and I am sorry this is not very clear.

Recognize that the bill itself particularly says that special requirements for small business shall be consistent with the objectives and goals. We are concerned about the litigating impact of various of those provisions.

To the extent that tiering requirements relate to recordkeeping and reporting requirements, the objectives of S. 299 may best be achieved through changes in the Federal Reports Act, which already gives a preference to consideration of small business impacts. There are bills pending in both bodies to reduce small business paperwork burdens. The administration is working with the relevant committees on this legislation.

The only way in which significant improvements for small business can be made in the regulatory process is to have consideration of small business impact and special sensitivity to small business problems at all levels of the process. It must also be done with cognizance of all other Federal programs within a particular functional area. It is important, therefore, that the requirements for special small business consideration be consistent with existing requirements and with whatever comprehensive regulation reform is enacted.

This concludes my prepared statement. I would again like to thank you for this opportunity to appear before the committee, and I look forward to working with you and the members of the staff in producing a comprehensive reform program, sensitive to the special problems of small businesses. I would be glad to answer any questions you might have.

Senator CULVER. Thank you very much, Mr. Petkas.

I was interested in this reference on page 2 of your statement. One of the most common concerns and I think most understandable and meritorious is the frustration often voiced by small business people that they are continually subjected to audits, reports or obligations of various kinds to provide information made on an ad hoc basis by various Federal agencies and duplicated on the State level.

I have always been baffled by our inability to achieve harmonies both in the nature of the reporting materials themselves and the coordination at the Federal level among the various bureaucracies involved and the frequency of the reporting.

The same is true with the State government. I do not know why we cannot accept information submitted to State government for some purpose. There is an idea that such information is not adequate, but we have never tried to use it. Again, better coordination, vertically and horizontally, is necessary in these areas.

This is a most ironic waste of time, all being paid for by the poor devil working 7 days a week to keep his head above water.

What can you say about the possibility of having someone of importance get to work on coordinating Federal and State and inter-federal paperwork? We have intergovernmental councils and meet with Governors every time you turn around, and no improvement can be detected.

What can you tell us?

Mr. PETKAS. First of all, we have tried in our modest work agenda for the council to address specifically the question of the Federal, State, and local interaction. How Federal requirements often stimulate—

Senator CULVER. You tell me what you are going to do about it. Let us move along.

Mr. PETKAS. We have identified three areas—hospitals, financial institutions, and housing—where Federal, State, and local regulations are having a serious impact. That is where we are getting a lot of complaints, that is as to the duplicative regulatory schemes in this area and the way one stimulates the other.

Obviously, we need to collect information from a lot of affected interest groups, the people, and the affected agencies. But the first thing we did was to ask a member of the staff to spend a week in a town in middle America. We considered a number of towns in Iowa. We considered towns in the East and West. And for a variety of reasons, we picked Janesville, Wis., as a pilot study. It is a city of about 50,000, with manufacturing and a generally mixed economy.

We sent one staff member there to spend 1 week talking to businessmen, hospital administrators, to the mayor, county administrators, to State agencies and representatives of Federal agencies in the community, to get from them their primary concerns with respect to these three areas, and also with respect to the general problem of duplicative activity.

We don't have the results of that report ready for release yet. But in talking to our representative, he said the people of Janesville—and I expect this will be true in other towns we send people—were gratified that an organization like the regulatory council would, first of all, go out to talk to people about their specific concerns, and,

second, be willing to take their concerns to people who manage the regulatory agencies. That is the purpose of the council, to get the politically accountable officials involved in the problems of the regulated community and improving the process, and to get them to move beyond relying exclusively on their own agencies to carry out the statutory mandate.

That is the first thing we have done, in addition focusing on the three industry areas. We hired a——

Senator CULVER. Can you give me a single instance of change? You have Congressmen who do that every weekend. I do not have to go out there to find out what their problems are. We do not have to send another crowd.

Really, we have many people with their ear to the ground. All they are going to get is grasshoppers in their ears. Can you point to one single example where business used to have to report quarterly and now report biannually, or used to have to report monthly and now report annually. And can you point to one example where you sat down and talked to people and got tangible results?

Mr. PETKAS. No regulatory agencies have done precisely that.

Senator CULVER. I do not see any sense in continuing to fund these efforts to listen and learn. I am not trying to make it awkward for you, but it gets so frustrating and so tiresome. We have a problem. The patient could not survive another examination. And we do not need any more special lists. We need somebody to go out there with a "can-do" spirit and do something.

I think if the President called all those people into the Cabinet room and said, "Right now, as of today, everything we have to do monthly is going to be done quarterly, and everything done quarterly will be done twice a year, and twice a year will be once a year." That alone would make a substantial difference. Damn the consequences—let us do something.

Mr. PETKAS. That is precisely what we intend to do.

Senator CULVER. I do not think I will live long enough to see it happen, honest to God. I have been standing around here with a desire to change things for so long. People out there think they are frustrated. They ought to come in here and try to deal with the bureaucracy everyday like some of us. And I have been one to defend the bureaucracy, to my own political detriment, against some of the know-nothing criticisms, because I know how dedicated some of the people in those jobs are.

But it does not make it easier to say, "We have a crowd to go to Janesville to live with our fellow Americans." That is a neat idea, but, you know, it has a Peace Corps ring to it. You do not need this. "And I hope you sleep in local homes when you are out there and eat a real pancake in Iowa." But it is nonsense. You do not need to go through all that charade to learn anything.

Mr. PETKAS. With all due respect, Senator——

Senator CULVER. Do not give me due respect, give me answers. Nobody else gives me due respect.

Mr. PETKAS. A lot of our problem is getting our agencies to do precisely what the President wants them to do. It is the tendency of people here in Washington—that includes our loyal civil servants,

members of the council and their staffs, too often special interest groups—to focus attention just on what goes on in this city.

Senator CULVER. I know all that.

Mr. PETKAS. I think in order for us to be able to propose action, recommendations to the President, we have to have concrete examples of the problem.

Senator CULVER. I want you to submit to me for the record a list of your concrete recommendations. I am going to be seeing the President.

I am interested in this and I am getting more and more interested in it all the time. I cannot believe the President is not strong-willed enough to handle this problem. Judging from his record in Georgia, I think that he has a very devout and sincere commitment to handle this problem. Get the Cabinet secretaries together in that Cabinet room and promise a trip in Air Force One to Hawaii for the Cabinet Secretary who does the most in 60 days, tell all the Cabinet spouses what the game is, and you will get something done in 60 days. You will really inject some dedication into this enterprise.

I have a couple of other questions here. What time are you going to be fortunate enough to be able to leave us?

Mr. PETKAS. I am at your disposal.

Senator CULVER. Senator Cochran?

Senator COCHRAN. In going to see the President, Mr. Chairman, you might mention to him he did issue an Executive Order 12044 on March 23, 1978, which spells out regulations shall be simple and as clear as possible. They should not impose unnecessary burdens on the economy. It goes on to say to achieve these regulations shall be developed in a process to insure paperwork and other burdens on the public are minimized.

My question, Mr. Petkas, has anything happened in response to that Executive order?

Mr. PETKAS. There has been significant progress, and I believe the Director of OMB before Senator Culver the other day gave a commitment to give you a full report, I guess in August, of progress to date, preliminary results which have not been published or mentioned.

Some of our agencies have really changed the way they have begun to operate at the top to review regulations before they come out of the process. That is really the intent of the Executive order, to change the way the system develops regulations.

Senator CULVER. Will the Senator yield?

We have about three or four bureaucracies that have not done anything to speak of on that. They have not complied. I just wonder whether the word was not getting out effectively. If the President were to call in a Cabinet Secretary and fire him publicly for failure to comply or failure to exercise responsible leadership in implementing that order, he would get their attention and have the order taken seriously. There are three or four who are absolutely arrogant to their President's order to them as members of his Cabinet.

And I would not care how good a job they are doing on anything else. The symbolic value of the action would be to intensify the mind focus of these other bureaucracies on this problem.

Excuse me.

Senator COCHRAN. I think you make a very good point, Mr. Chairman.

And the question I was asking is does this not indicate that that is all the more reason for this legislation to be enacted? The Executive order apparently is not strong enough. Maybe we ought to impose these requirements as a matter of law and have oversight hearings from time to time to find out who is doing what in response to this kind of directive, which I think is important for the agency to consider. Eula Bingham in the Occupational Safety and Health Administration, I think has done a good job in eliminating crazy regulations that have come out of that agency. Well before the Regulatory Council was created, as early as 1969, the Federal banking agencies utilized, as the Chairman suggested, information from State bank comptrollers rather than having to ask the banks in every State the same questions over and over again that had been asked and answered by the State government.

So the coordination can occur, and the elimination of ridiculous regulations and unnecessary burdens can occur if some action is taken. But I am not sure if this is widespread in Government to make a whole lot of difference to the general public. We need more imaginative action in this regard.

One other question, I was going to ask you about the Federal Trade Commission. There is a provision in the law that permits allocation of funds to persons and organizations who come to present testimony and information in the rulemaking process about the substance of a proposed rule, how it will affect the agency, or how it will affect consumer interest. Very little effort is made to obtain information from small businesses on the burdens that a new rule might result in.

What is your reaction to requiring the FTC to allocate more of its funds for public information purposes to small businesses to find out about costs of compliance?

Mr. PETKAS. Well, I think, first of all, the Regulation Reform Act that we have introduced, which we are working on with Senator Culver's staff and other Senators, would largely incorporate the Executive order into law and it would extend the Executive order requirements as they are not now extended to independent regulatory agencies, including the Federal Trade Commission.

Our main concern with S. 299 is not with the principles involved but with integrating S. 299 into the larger regulation reform effort and building whatever comes our finally into the legislative bill, which means including the Executive order process as well as the concerns for small businesses.

Senator COCHRAN. What about my suggestion for public participation funds being allocated to small businesses so that the rulemaking agency will have more information about costs of compliance burdens and other hardships that are a Federal rule rather than just doling out money to so-called public interest groups to talk about how good the rule would be?

Mr. PETKAS. The section of the administration bill on funding of public participation specifically permits small business funding, and I believe—and I will be glad to get you some specific information on this—the several agencies that have that authority have to some extent funded those groups.

Senator COCHRAN. I have specific information. Less than one-fourth of the allocation of the funds for public participation by the FTC was allocated for small businesses who could not afford to come to Washington and present that information. This was last year.

But the information that we are speaking about was related to their opinion on the substance of the rule and not about costs of compliance burdens that would be placed as a result of paperwork, duplication of information-gathering activity, and that kind of thing.

The point that I am making is the agency needs to know that.

Mr. PETKAS. Until the Regulation Reform Act is passed, which includes a provision requiring analyses of just those points, agencies such as the Federal Trade Commission are not required by law to provide that information and, therefore, are not asking people about it.

And we support in our bill those kinds of requirements, and we support their extension to independent agencies. And we want to sit down with this committee and talk about ways to make sure that that kind of information is obtained from small businesses as well as large business.

Senator COCHRAN. If I offered an amendment to the FTC authorizations bill when it comes to the Senate to do what I just described, I guess that you would support that, too?

Mr. PETKAS. I would have to take a look at it. But it is consistent with what you said.

Senator CULVER. We rarely do that around here.

Mr. Petkas, you mentioned that the concept of flexible regulations is being used now by some agencies to reduce needless or overburdensome regulations. Surely this is some evidence in and of itself, is it not, that flexible regulations can be used as a tool of regulations without sacrificing commitment to poor health and safety goals and standards and regulations?

Mr. PETKAS. Absolutely. In fact, we have been talking informally with the Small Business Administration of an administrative initiative to encourage agencies to do this on their own as soon as possible, because we do have some good examples.

Senator CULVER. I think Senator Cochran brought up a good point in regard to OSHA. There is evidence that agencies that have used some of the concepts here contained in S. 299 have found that it actually increased their efficiency in protecting health and safety and other things in promoting a more sensible regulatory scheme, one that is more discriminating in its application, one that is less burdensome. I think you can make a case.

You get these Rube Goldberg contraptions with people tied in a knot on the floor. All you have done is get somebody to throw their back out of joint trying to fill out forms.

I think EPA has done remarkably well, as well as OSHA, in trying to get a grip on this. Of course, much remains to be done.

I know that you have another commitment this morning. I do want to express how pleased I am that the administration is now able to support the thrust of S. 299 and the concept of flexible regulations. Senator Nelson and I have labored for several years to achieve widespread recognition for this principle. I am also happy to respond to

your suggestion that we work closely together on the specifics of this bill so as to insure that it not only reduces unnecessary regulatory burdens on small business, Government, and organization, but that it adequately protect the Nation's health and safety at the same time.

Thank you very much. We wish you well. You have a tough job and I know you are working conscientiously.

Mr. PETKAS. I hope next time to have results of those efforts.

Senator CULVER. More than just post cards from Janesville?

Mr. PETKAS. I think you will see the results of that. Thank you.

Senator CULVER. Our next group of witnesses consists of a panel of mayors, Kenneth Robinson, Robert Hatala, and Mert Domonoske.

It is a pleasure to welcome you gentlemen here this morning. I know each of you brings some firsthand experience with regard to the problem that this legislation addresses. We look forward very much to hearing from you.

How would you like to begin? I think we are going to have some time constraint getting through all the witnesses this morning, and I would like to ask you to abbreviate your remarks and submit the entirety of material for the record.

Why do you not begin, Mayor Robinson, if you would, please? Nice to have you here today.

PANEL OF MAYORS:

STATEMENTS OF HON. KENNETH ROBINSON, BAYARD, IOWA; ROBERT HATALA, FORT MADISON, IOWA, AND MERTON E. DOMONOSKE, FALLON, NEV.

Mayor ROBINSON. Thank you, Senator Culver. I am proud to have you represent me in the U.S. Senate, and if I can be of any help to you in clarifying any problems small cities and/or small business may have, I am happy to cooperate. I am especially interested in your bill, S. 229 and I believe it would be a catalyst to help stem the tide of useless and worthless paper chasing.

[The prepared statement of Mayor Robinson follows:]

PREPARED STATEMENT OF KENNETH ROBINSON

I am honored to be asked by Senator Culver to make a statement in behalf of S. 299. If my help is beneficial, so much the better.

I have been dealing with bureaucrats for many years and as the rules and regulations become tougher, so do I. Not being very ambitious, I have devised one plan that works. As mayor and editor, I receive volumes of governmental and other requests. Some are questionnaires and others just seek information. Long ago I initiated a policy that saves me time. If the request says "under penalty of law," I fill it out. Otherwise, it goes into the wastebasket.

During the past several years I have had many personal experiences with Federal bureaucrats and I have heard many complaints from friends and neighbors. However, since I am sure of the facts concerning my own experiences and since I have had so many of them, I will confine most of my remarks to my own experiences.

About 8 years ago our city was told that we would have to install a new sewer system. The agency making that edict was the Guthrie County Board of Health. At the same time, they gave the word to four other towns in the country; namely, Bagley, Jamaica, Yale, and Menlo.

Our city officials asked for time and the board said that so long as we were making an effort to install a sewer we could go along as we had been, using septic tanks and dumping the effluent into the streams. The same order was given the other four towns. Bayard made the effort and we now have a fine new sewer system operating every day. The other four towns have done nothing and are still polluting the streams.

Bayard hired one of the finest engineering firms in the state of Iowa, Veenstra and Kimm of West Des Moines. They immediately went to work on our project and the Federal Government said we could get grants from the Farmers Home Administration, the EPA and that FmHA would loan us the rest. We followed this advice except we issued general obligation bonds to pay for part of the cost.

Redtape delayed the start of the project for more than 4 years and paper work piled up. In the meantime, costs spiraled and it is estimated that by the time we were able to call for bids the cost of the plant had more than doubled.

Farmers Home has been very cooperative and has done everything promised.

On the contrary, everything concerning EPA has been a fiasco. Unnecessary road blocks have been thrown in the way of progress causing slowdowns and work stoppages. All causing more expense.

Finally, the plant went into operation and we were charging rates established through cooperation with the Farmers Home Administration. Since this was the only agency we owe money we thought their figures would be acceptable. They were to us and to them. However, EPA tried to get into the act and change the rates.

A call from Senator Culver's office seemed to change their mind. Anyway, about 2 weeks after his call we were told that after reviewing our rates, they seemed to be all right. Another instance of harassment.

EPA has paid money as the project progressed but it was like pulling teeth to get the checks. Invariably the request was lost in Kansas City or they didn't like the way we crossed a "t" or an "i" was dotted.

We should have had our final payment no later than July of 1978.

The EPA is still holding up that payment of slightly more than \$42,000.

First they lost a copy of our ordinance and later other forms we had submitted came up missing. In desperation, I started sending reports and forms first class certified mail with return receipt requested. Even so, the EPA still lost two forms. One of them was the request for final payment.

I have a letter from Thomas M. Carter, grants officer, dated February 15, 1979, in which he stated that within 3 weeks from the time they received the request, our final check would be mailed. Even though the forms were sent the next day certified mail, the request was lost.

[See letter and newspaper article at the end of prepared statement.]

In the meantime, on March 19 a 2½-inch rain fell here on top of some very deep snow. The resulting flood caused some surface water to get into the sewer lines and one basement had a backup from the sewer.

Now the ivory tower experts in Kansas City are saying that something is wrong and they are not going to pay us the final \$42,000. I really know this is true because a fellow by the name of Zimmerman called me from Kansas City and spent 1½ hours on the phone telling me that he was going to write me a letter. When the letter came it bore the tidings that we would not get our grant money. They even have made veiled threats that we may have to pay back the grant money we have already received.

In the meantime, our engineers went to work and devised a plan to insure that such a backup would not occur again even though no one in town can remember of such a flooding situation ever happening before.

During the years of planning and construction, the city of Bayard has paid many bills from its general fund expecting to be reimbursed when the plant is finally accepted. Thus, the treasury is strapped and there are no funds available to pay the remaining bills. The engineering firm is holding the sack for close to \$25,000 and our city attorney has about \$2,000 coming. There are many smaller debts we cannot pay.

When the plant was being planned, the EPA told us we had to include an expensive chlorinating system. After we spent \$7,000 to install the system the EPA now says they have changed the rules and we are not to chlorinate.

Even though they say our system is faulty, they offer no plan to correct what they seem to think is wrong. Even if we had the money to make some adjustments we have no assurance that the grant money would be released and we would be further in debt.

Any suggestions on what we should do?

In 1965 my very dear friend Arden Newell, state director of the Farmers Home Administration, came to me and said, "Ken we have a fine new program to provide low-cost housing for the elderly. However, we haven't been able to get it off the ground. Will you help?"

At that time I was president of the local Lions Club and I took up the proposition with fellow club members. I had a plan and the Lions accepted it. Since then Bayard Senior Citizens Housing, Inc., sponsored by the Lions Club, has built four federally financed units with five apartments in each. Right now we are housing 23 elderly citizens in these apartments and they are all happy. The homes they left when they entered the apartments now house 33 younger persons.

Neighboring towns followed our lead and probably more than 25 Lions Clubs have sponsored senior housing. In Guthrie County, seven other Lions Clubs built homes and now every one of the nine towns in this county has at least one senior citizens home.

We are about to open an eight-plex to be occupied by low income subsidized families. This is owned by the senior citizens corporation.

As you may have guessed, there were no problems involved in building the first home which was occupied December 1, 1966. It was a little more difficult to build the second one and by the time the bureaucrats had become entrenched in the elderly housing program, the building of the fourth unit was a nightmare. No way would I get involved now in building another even though there is a need.

After we had built our second home, Mr. Newell brought all the county supervisors in Iowa to Bayard and had me explain how we had done it. They went out and under his direction Iowa became the leading state in the building of rural senior citizens housing.

The biggest tragedy for senior citizens in this country was when Mr. Newell died of cancer.

Now the attitude toward rural rental housing in Iowa is mean and vindictive. There is no more of the compassion of Mr. Newell.

As time has gone by, new rules have been promulgated and now it is almost impossible for volunteers to administer the program locally. To my knowledge, none of the housing projects has defaulted and on the whole all are relatively successful with no touch of scandal.

When asked why volunteers should have to do all the unnecessary paper work the answer was, "they don't have to, you can pay someone to do the work." The obvious question then was how do you pay this unneeded help? "Why, you raise the rent." I ask you, does this show compassion?

Some of the paper work they are demanding is not only useless and superfluous but is downright intrusion of privacy.

Naturally, there are some restrictions on the people who live in the homes and as anyone would expect there are eligibility rules. Now the FmHA is asking that incomes be verified.

We know that our people are honest and here in rural Iowa you are not faced with those who cheat as you might find in other areas. We know our people personally and they have all filed income certifications. The FmHA is asking us to verify these figures.

I have been advised by three lawyers not to do it. If a mistake should be uncovered I would be the one jailed.

The rural housing part of the Iowa FmHA is constantly harassing the Bayard Senior Citizens Housing group and has threatened to liquidate our loans and have the United States Government repossess them. Every month the payments on the loans are paid in full along with the interest and we owe no one a penny. When they come they come to set our residents out in the street, there very well could be a riot.

I hope you can see the change in attitude that has taken place in this agency. First you are a great guy, "please help," now when you object to their silly paper work you are a bad guy. Be assured very few if any housing corporations are knuckling under.

The bureaucrats don't know it but senior citizens thrive best when left alone. And, when they are harassed they begin worrying and become ill.

We have a saying around here that bureaucrats operate under Murphy's law— if there is a way to foul it up they'll find it.

Last year the Comprehensive Education and Training Act (CETA) was well and healthy and almost every city in this area was employing one or more persons under CETA.

Early in 1978, I talked to a friend at the Iowa Job Service and he told me to write a letter if we wanted some help under this program. He told me to write to the Office for Planning and Programming (OPP). I wrote one letter asking for a grant of \$27,000 to finance the employment of five persons to do work on streets and sidewalks following the installation of the new sewer system.

About 3 weeks later, I received notification that my request had been granted.

The Job Service sent us some men and we provided employment for them throughout the summer. The program didn't work out perfectly but it was better than one could expect. We were able to extend the employment of two of them for 1 year. At the end of the CETA period the town hired one of the men and he is working full time.

Now, there are several girls in the office at Carroll trying to handle the duties one man did on a parttime basis last year. We thought we might be able to employ one person this year to do work in the parks and on the streets. One of the girls came to my office and we filled out a 13-page application. Naturally, it wasn't right the first time and she came back twice before it was accepted. We did not get one applicant and to the best of my knowledge none of the neighboring towns has been able to hire any CETA help this year. But, there are plenty of workers in the office.

One thing, last year we were able to pay the workmen from \$4.25 to \$4.75 an hour. This year the pay is \$3.19—someone's new interpretation of inflation.

One of the most interesting encounters we have had involved the census bureau (they seem to be one of the worst). Several years ago we started getting huge questionnaires concerning flooding in our town. They had prepared an elaborate map showing an area where they thought we might have a flood plain. We were supposed to do something or we couldn't buy Federal flood insurance.

Since there was no flood area and since we weren't interested in Federal flood insurance we did nothing about it. Finally, they admitted that we did not have a problem and forgot about it. When I asked why we were harassed by all this junk, I was told that there are something like 15,000 municipalities in America but only about 3,000 have flood problems.

By sending the questionnaires to every city and town in the Nation they found out the 3,000 by a series of elimination.

During a period of 3 years, the city of Bayard had four clerks. The Federal and State requirements were so stringent that the average parttime clerk just got confused and lost trying to fill out the required forms. Several of them became alarmed and felt it would be easier to quit than to run the risk of getting themselves and/or the town in trouble.

At the time we hired the fourth clerk we also employed a certified public accountant to check her records and to fill out the myriad of State and Federal forms. He also helps me develop a budget for the approval of the council.

Since then we have had no problem but this added help is costing the city an extra \$3,000 a year that it can ill afford.

An experiment has been tried in some areas whereby a "circuit riding" city manager has been hired to help clerks in several towns handle the barrage of extra paper work. It seems to work pretty well but again it is an added expense.

The mayor of a neighboring town told me recently, that his municipality bought a new civil defense siren. The Government has a setup whereby the town would pay half the cost and the Government would pay the other half. This town bought and paid for a comparable siren and the total cost was less than the one-half they would have paid by going with the Government.

This is reminiscent of the Post Office Department. Here is a governmental agency which promotes the sale of stamped return envelopes. They do this printing below cost which adds to the postal deficit.

And, as a printer, I wonder where all the forms and other printing spewed out by the Government comes from. With the usual Government efficiency it is difficult to believe that much of this printing couldn't be furnished by private industry at a savings to taxpayers.

Most American citizens like to get involved but when the bureaucratic web keeps expanding and eventually strangles those well-intentioned people the result can be only one thing: fewer and fewer people willing to help and more and more bureaucrats harassing the populace.

One of the biggest problems facing citizens who try to deal with governmental agencies is interpretation of rules. One bureaucrat reads and interprets a rule one way while another puts an entirely different meaning on the same wordage. This has been one of our major difficulties in dealing with EPA. You seldom talk to the same person twice so you are constantly confused, just as they are.

If S. 299 holds the key to slowing the spread of this horrible disease called bureaucracy—and I think it does—then let's get this law passed and into operation without delay.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
374 EAST ELEVENTH STREET
KANSAS CITY, MISSOURI 64106

February 15, 1979

Bayard, Iowa
Project No. C190675 01

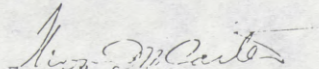
Honorable Kenneth Robinson
Mayor of Bayard
Bayard, Iowa 50029

Dear Mayor Robinson:

Enclosed is the revised Outlay Report and Request for Reimbursement for Construction Programs form which reflects the total costs determined eligible for grant participation. Also enclosed are copies of the revised Grant Amendment. Please sign all forms, retaining one copy of each for your files. Return the originals and all other copies and Assignment and Release form previously mailed to you to this office by certified mail within three weeks. Upon receipt, payment of remaining funds will be made.

A fiscal audit of your project records will be made after final payment. I am also enclosing a checklist of items which should be readily available for the auditor's review if an on-site audit is conducted. Total eligible cost is subject to adjustment based on final audit.

Sincerely yours,


Thomas M. Carter
Grants Administration Officer
Grants Administration Branch
Water Division

3 Enclosures

cc: Iowa Department of Environmental Quality
Veenstra and Kimm

Des Moines Register

THE NEWSPAPER IOWA DEPENDS UPON Des Moines, Iowa, Monday Morning, June 11, 1979
 11 Sections, price 25 cents

Bureaucracy alive, we're in Bayard

CHUCK OFFENBURO

BY VANCE, IA. — Pass the aspirin, we're winning.

"If we're going to do here is play a little game called 'how you say where you live.' It's sort of an unannounced spot check on the bureaucracy to make sure it's still numbering, dividing and multiplying itself into absolute chaos."

Bayard, folks here can say they live in Bayard, Highland Park, or Garfield County, Ia.

They can say they live at the 141st and 25th, or they can say they live at the 141st and 25th, or they can say they live at the 141st and 25th.

They can say they live in Merged County of Federal Region 7 — more precisely, Division of Criminal Investigation, Zone 2, Iowa Health Systems, Sub-Area 3, Department of Environmental Quality District 4.

They can say they live in the 141st and 25th, or they can say they live in the 141st and 25th, or they can say they live in the 141st and 25th.

bureaucratic jurisdictional boundaries, you'll end up with a black Iowa.

"It's just awful," he said. "It makes you wonder where it's all going to end up. Dealing with most of these agencies is so frustrating, maddening and time-consuming, it's hardly worth it. Besides, when you're done, you're never sure if you've done it right."

Oh, now maybe Robinson was especially agitated on the day of the meeting because he had to chair a session called the A-95 Review Committee, which operates under the aegis of the Region 12 Council of Governments.

"No," he said, "it's bad all the time. Not long ago, some guy called me from Kansas City about our sewer system. He talked to me an hour and a half to tell me he was going to be writing me a letter. No kidding. My arm hurt so bad from holding the phone I had to take aspirin for the pain."

What Robinson needs to do, Bayard Robinson needs to do, Bayard Robinson needs to do, Bayard Robinson needs to do.

Please turn to Page 2A



spot check — in any town, really. So why Bayard?

Because this is the home of Kenny Robinson, 6A, who is editor and publisher of the Bayard News and is also the town's mayor.

By virtue of his two positions, he must maintain a nodding familiarity with all the governmental tentacles that grasp at the 652 people living here — right here at zip code 50029 on the east edge of telephone area 712.

Say "bureaucracy" to Robinson and smoke starts drifting from his ears.

He's partial to a theory that if you took a blank map of Iowa and started drawing black lines on it to represent

Bureaucrats Say: No More

Continued from Page One

obviously, is get out to a ball game and forget it."

At the game, he could watch the Bayard Reds, who play in Class A competition except when they're playing in Class C. They represent the Bayard Community School District — which, by the way, has been designated school district number 522 by the Iowa Department of Revenue.

Thus, going to a game could build frustration rather than reduce it. So now about calling a politician and venting the anger?

But whom is he to call — the supervisor from District 1, the representative from District 30, the senator from District 22 or the congressman from the 3rd District?

The numbers could drive him crazy, in which case he'd be counseled by personnel from Social Services District 12 or committed by a judge from Judicial District 5A.

It just seems there's no escape from all the numbers and agencies here in this spot of Region 7 of the

Iowa Library Commission — which also District 6 of the Agriculture, Education and Conservation Services and Area 4 of the U.S. Soil Conservation Service.

The duplication and overlapping keep getting worse all the time, Robinson said. And, frankly, they have really gotten bad under Jimmy Carter, who you'll remember is the man who said heavens going to end a this crap.

The civil servants and bureaucrats have a stronghold on the county. And the last thing I can say about most of them is that they are simple ideas. No matter how you'll think, you can't get it through their heads. It's taxpayers' money they're frittering away."

OK, now, back to work, Mayor Robinson.

There's that new machine to master.

"We just got it," he said of the device. "We'll use it to keep better track of sewer and water bills."

Of course, first, we've had to give everybody a new number.

Mayor Robinson [continuing]. Sometimes I complain so about bureaucracy that I wonder if I am really a good citizen of this country. Then I review a long career and reaffirm my belief that unless something is done to stop governmental interference, the whole system will topple. I propose to fight for the principles this country stands for so long as I am a participant and able.

At other times I convince myself that I am a professional volunteer. I have been mayor of my town for 22 years. I was defeated once and I have refused to run several times. However, they write my name in and I accept the position with its \$75 a year salary. I am sure the city would pay more, but I maintain they cannot afford to pay what I am worth, so I take a token amount.

With this job I get to serve on the county conference board and the County Compensation Board Selection Committee. I am a member of the County Planning Commission and am a past president. I am a member of the Magistrate Selection Committee. I am chairman of the A-95 Review Committee and am a former member of the Council of Government's Executive Board and was its first treasurer. For several years I served on the board of the League of Iowa Municipalities and was president 1 year.

Many years ago, I served on two legislative ad hoc road study committees. I served a term as a member of the Iowa Development Commission. I was director and chairman of the regional library system for 4 years and for 5 years I served on the executive board of the Iowa Library Association. For 13 years I have been president of the Bayard Senior Citizens Housing Corp. Also, I am a member of the Iowa Small Business Advisory Committee.

All of this for no pay.

I have seen Federal and State regulations pyramid until today a person is scared to lead, follow or even get out of the way.

I have prepared a much longer statement which I would like to have appear in the record. However, if you Senators have some time this morning, I would like to explain to you how the attitude of the Farmers Home Administration has changed. Fourteen years ago, a new senior citizens housing law was going into effect. The State director asked me to help get the program off the ground. I was happy to cooperate and now my town has more elderly housing facilities per capita than any in our country. Guthrie County leads the State and Iowa leads the Nation.

However, later I would like a moment to explain how the present bureaucrats are threatening to force us into liquidation just because we refuse to fill out some of their Mickey Mouse forms. Our bills are all current and we have plenty of money in the bank, yet they say they are going to force us out of business. The harassment is almost unbearable.

I have made a full report on our experiences with the Environmental Protection Agency. Eight years ago, we were told that we must install a new sewer system. We complied and, after filing mountains of paper, we have a fine new system operating beautifully. But would you believe that after they lost file after file which we had to replace at untold cost, the EPA office in Kansas City is holding up the final grant payment of more than \$42,000. If you have time to listen, I would like to go into this more fully. If not, please read my complete report.

I must say paperwork has multiplied several times in the past year or two and the interpretation of laws and rules vary so much that a person believes that half the time he is being lied to.

I am loaded with frustrating examples of how Federal and State governments are strangling local government and local small business, but there may be a candle at the end of the tunnel—it is called S. 299. I pledge my efforts to help you Senators any way I can.

And just remember this, if the trend is not reversed, there will be no more volunteers.

Thank you.

Senator CULVER. Thank you very much, Mayor Robinson. I want to commend you for the really remarkable record of public service that you have just touched on here. I know it is even more comprehensive than you have acknowledged. And not only the people in your immediate community, but throughout the State owe you an enormous debt of gratitude for your conscientious efforts as a public citizen. I look forward to reading the detailed statement that we will make part of the record at this time, and continuing to work with you so we might get successful enactment of this legislation.

Senator CULVER. Our next witness—and I thought I would save questions until everyone has spoken on the panel—is Mayor Mert Domonoske of Fallon, Nev.

I would like to call on the distinguished Senator from Nevada at this time.

Senator LAXALT. Thank you, Mr. Chairman.

I congratulate you on your statement. I am a strong believer in local government. I am a product of local government. I served with county commissioners, State legislatures, and the whole bit. Out of that experience, I became convinced and am still convinced, perhaps more so here in Washington than ever, that wherever possible we should turn governmental functions over to the local people. It seems trite, but I think with the type of Government we have here in Washington, in terms of dealing with local problems, that the premise of that conclusion is all the more relevant.

It is often said around here if we transfer functions of the Federal level and take away the powers of bureaucracy, as anticipated by this piece of legislation, that all you are going to do is trade one set of bureaucrats for another, and perhaps trade the situation of bureaucrats not as competent as the bureaucrats we find abounding all over the banks of the Potomac.

First of all, that is arguable, in my estimation, based on my own experience. Second, I think perhaps the crucial point is, and the essence of the problems we have developing in this country, is the fact that we have a lot of people in this town formulating policy affecting our local government and citizens with no commensurate degree of responsiveness.

If you are a mayor, like Mayor Robinson, as a Senator with the myriad clients we have at the local level, it is almost impossible to fix responsibility in this town. Not so on the local level. Believe me, and I do not have to tell you, the three of you as mayors, if you have a problem with one of your constituents, and a progressive government, they are going to eyeball you. You are going to have responsiveness and have it quickly.

That is why I am delighted to join with Senator Culver on this piece of legislation. I am glad to see this committee and Senator Culver and the other cosponsors moving in the direction to equalize power and put it back to where it belongs, at the local level.

Mayor Domonoske is from Nevada. I have known him a long, long time and worked closely with him as Governor, and I have worked closely with him since I have been here. He epitomizes what I think is good in this country about government on a local level. I do not know if his salary is disproportionate to yours, Mayor Robinson. He has worked actively on a local self-help basis, and I think has done an astonishingly good job.

And so, Mr. Chairman, I am very pleased and proud as a member of this committee to welcome Mayor Domonoske and other witnesses, and look forward with great interest to his presentation.

Mayor DOMONOSKE. Thank you. I am Mayor Domonoske and a small businessman in the community of Fallon, Nev. And I must comment, as a country boy in the opulence of this room, I am happy to notice not all of our tax money has been sent overseas.

[The prepared statement and additional submissions by Mayor Domonoske follow:]

PREPARED STATEMENT OF MERTON E. DOMONOSKE

I am Merton E. Domonoske, Mayor of Fallon, Nevada and a small businessman operating an insurance and real estate office in our community.

It is a pleasure and an honor to be invited to testify before this committee on the impact that Federal legislation and rule making has on small local government and small business.

Almost every legislative act which imposes rules of compliance and reporting creates an additional burden and economic impact on small business and local government.

When the Federal Water Pollution Control Act was implemented in 1974, the City of Fallon was required to apply for a permit and to modify the plant to comply with the new discharge standards that were established. Congress authorized a grant program to assist in the plant modifications, but local government was required to pay 25 percent of the bill for the improvements. There was no assistance offered to offset the costs required for additional monitoring and reporting or for the additional operating costs created.

The City was able to fund its 25 percent of the construction, but had to advance payment of EPA's share of the cost while awaiting reimbursement. The project was completed and the final reimbursement request sent to EPA on June 30, 1977. After many phone calls checking on this reimbursement for monies advanced by the City, the EPA acknowledged our request on March 17, 1978 with an offer to pay to 95 percent of the grant pending an audit they estimated would be completed in an additional six to eight months. After other correspondence and phone calls, EPA agreed to pay to 98 percent of the grant.

When the audit report was received \$3,842.00 in engineering costs were disallowed by EPA even though a portion of these costs were specifically covered in the engineering contract submitted as required by EPA in 1974. It seems somewhat unreal that EPA would require almost four years to discover that they disagreed with the terms of the contract.

EPA has agreed after our appeal that they would allow an additional \$1,903.00 under another provision of the contract, but would still disallow the \$3,842.00. This in essence "split the difference approach" was not acceptable to the City and the City has appealed to EPA in Washington, D.C. for legitimate charges actually expended.

To avoid payment of some \$1,900.00 in legitimate charges the EPA will probably spend many times that on the appeal hearing procedure. This waste of the taxpayer's money and the loss to our City is a moral injustice further exaggerated by the loss of interest on money advanced and slow payment on reimbursement by EPA.

One of the major financial problems facing the City currently was created by passage of the Safe Drinking Water Act and regulations promulgated by EPA for

its implementation. Fallon has utilized the present water supply since 1948 or earlier with no reported adverse effects. In 1969, approximately three years after tests showed an arsenic content of 0.1 mg/l in the water, a hearing was held by the Nevada State Board of Health to determine if any problem existed. The Board found that there was no evidence of any problem and approved the City of Fallon water supply. With the advent of the EPA Interim Drinking Water Regulations the City was required to ask for an order to be in compliance with the law. A compliance schedule was required within nine months of the exemption date, which required that the City investigate the feasibility of meeting the arsenic standard. This study required the expenditure of in excess of \$8,000 not counting the City staff time and costs associated with information solicited from experts in the medical and biochemical field.

The minimum cost of treatment determined by an independent consulting firm was 5.166 million dollars. Other treatment methods studied, if implemented, would cost in excess of 11 million dollars.

If treatment was implemented at the \$5,166,000 cost the consumer would be faced with a 13 to 16 times increase in current water rates. The City Council asked the people what they desired by means of a ballot question on June 5, 1979. The voters overwhelmingly decided by a vote of 805 to 38 to leave their water alone.

EPA's "Handbook on Public Notification June 1977" states that Congress determined that the ultimate source of revenue to provide safe drinking water should be the consumer, however we do not believe it was the intent of Congress to force the consumer to pay for something he doesn't want or need just because EPA set an arbitrary standard without scientific justification.

The standard according to many experts is arbitrary, because there is no evidence of any conclusive nature that there is any detrimental effect at the arsenic level in Fallon water.

EPA is recommending expenditures of large sums of the taxpayers money, without at this time having decided on or publishing final standards. Prior to any large financial impact on local government or its taxpayers the EPA should be required to substantiate the standards scientifically and be required to publish final standards.

This is not the case under present regulations as you are guilty until you can prove your innocence and could be required to construct treatment facilities before the final standards are even known. Why should local government have to meet EPA deadlines when EPA has not met theirs.

The City had another problem with EPA over reporting requirements for the wastewater discharge permit conditions. The City attempted to comply with the reporting requirements on a program that was totally new to it and was threatened with a \$25,000 per day fine and possible imprisonment for certain officials, because they did not report on the right form. Attached are copies of correspondence to show the high handed manner that some government appointed officials use in dealing with local government.

When Congress authorized a flood insurance program we are sure that it was not their intent to have the program handled in the manner that it was. The City or Fallon was declared to be flood prone based on a contract study done with outdated information and no contact with the City of Fallon for information.

Many thousands of dollars later the City was able to prove that it was not flood prone and have the designation corrected. While the designation was on an interim basis many federal lending agencies jumped the gun and shut off all financing for new construction. Many more phone calls later and with help from our Senators, these agencies were convinced of their mistake and within a few weeks agreed to continue with financing commitments.

Another problem facing small cities and counties, which results in less final product for the dollar spent, is the artificially high wage scale required on Federally assisted projects. On the other hand a new maximum annual average contract wage for CETA participants has been established at \$6,718.00 (\$559.83/month and \$3.23/hour). This decision means paying a new employee less and in our case below the minimum wage in order to meet the average. As a result one contract for a project was cancelled and the Public Service Employment Contract (4 people) has been frozen so that a terminated employee cannot be replaced. This is just an example of the extremes we face from high level of government regulations.

Federal Revenue Sharing was a step in the right direction, but the costs of administering the program indicate that if the money could be collected locally the amount available to local governments would increase by a factor of two or more. A simpler program with less administration could be a flat percentage refund to local government of taxes collected by the Federal Government from

local taxpayers. Although the program was simplified by the 1976 amendments there are still many costs to local government associated with Revenue Sharing. These costs include additional advertising, hearings, bookkeeping, reports and audit expense.

The new mining safety and training regulations have already had an impact on our budget. Due to these requirements the cost of gravel for our streets and alleys has escalated.

Time to meet the schedule for this hearing was short and precludes more examples being presented, but we believe those cited represent the problems faced by local government as a result of Federal regulation.

We wholeheartedly support the concept of S. 299 if it will prevent new reporting and compliance requirements and alleviate some of the problems we already have.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
San Francisco, Calif., March 24, 1977.

Hon. MERTON E. DOMONOSKE,
Mayor, City of Fallon, Fallon, Nev.

DEAR MAYOR DOMONOSKE: Pursuant to Section 309(a)(3) and (a)(4) of the Federal Water Pollution Control Act Amendments of 1972 [33 USC §1319 (a)(3) and (a)(4)] (hereinafter the Act), enclosed are a Finding made by me and an Order based on that Finding, requiring compliance by the City of Fallon, Nevada with National Pollutant Discharge Elimination System (NPDES) Permit No. NV0020061. This permit was issued to the City of Fallon under Section 402(a) of the Act [33 USC §1342(a)] on November 11, 1974. The permit became effective December 11, 1974, with an expiration date of May 1, 1977.

The enclosed Finding and Order relate to the failure to implement the monitoring and reporting program.

Any violation of the terms of this Order could subject the City to a civil action for appropriate relief pursuant to Section 309(b) [33 USC §1319(b)] or civil penalties under Section 309(d) [33 USC §1319(d)]. In addition, Section 309(c)(1) [33 USC §1319(c)(1)] provides that willful or negligent violations shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation, or imprisonment for not more than one year, or by both.

If you have any questions concerning this matter, please contact this Office at (415) 556-7841.

Sincerely,

R. L. O'CONNELL,
Director, Enforcement Division.

Enclosure.

I hereby certify that a copy of the foregoing Finding of Violation and Order (Docket No. IX-FY77-60), addressed to the following, was mailed, postage prepaid, in a United States Postal Mail Box at San Francisco, California, on the 24th day of March 1977:

Honorable Merton E. Demonoske, Mayor,
City of Fallon,
Fallon NV 89406.

Ben Bartlett, City Engineer,
City of Fallon,
Fallon NV 89406.

Ernest Gregory, Acting Administrator,
Department of Human Resources,
201 S. Fall St.,
Capitol Complex,
Carson City NV 89701.

Dated at San Francisco, Calif., on March 24, 1977.

ANN MONTGOMERY.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

In the Matter of
City of Fallon, Nevada, Under Sections 309 (a)(3)
and (a)(4), Federal Water Pollution Control Act } Docket No. IX-FY-77-60
Amendments of 1972, 33 USC §§ 1319 (a)(3) and
(a)(4).

ORDER

The following Order is issued this date pursuant to Sections 309 (a)(3) and (a)(4) of the Federal Water Pollution Control Act Amendments of 1972 [33 USC §§ 1319 (a)(3) and (a)(4)] (hereinafter referred to as the Act). On the basis of the Finding of Violation attached hereto and made a part of this Order, the Director, Enforcement Division, Environmental Protection Agency (EPA), Region IX, pursuant to authority delegated to him by the Administrator and the Regional Administrator, has determined that the City of Fallon, Nevada is in violation of Condition I.C.2. of NPDES Permit No. NV0020061 as outlined in the Finding of Violation.

Taking these findings into consideration, and in consideration of the seriousness of the violation and any good faith efforts to comply, it has been determined that compliance in accordance with the schedule hereinafter set forth is reasonable.

It is hereby ordered:

That the City of Fallon, Nevada complete the following acts by the dates specified:

1. Within fifteen days of the date of receipt of this Order, *submit* to the Director, Enforcement Division, EPA, Region IX, with a copy to Nevada Environmental Protection Services, a progress report on purchasing and installing of the proper equipment to perform all analyses for the parameters outlined in Condition I.A. of NPDES Permit No. NV0020061. Said report shall include copies of bidding documents, purchase orders and any other documents which describe the status of monitoring and analysis equipment acquisition.

2. Within 30 days of the date of receipt of this Order, submit a schedule which describes how the permittee will, within 60 days of the date of receipt of this Order, begin the monitoring and analysis program required under Condition I.A. of NPDES Permit No. NV0020061.

Dated March 24, 1977.

R. L. O'CONNELL,
Director, Enforcement Division.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

In the Matter of
City of Fallon, Nevada, Under Section 309(a)(3)
and (a)(4), Federal Water Pollution Control Act
Amendments of 1972, 33 USC §§ 1319(a)(3) and
(a)(4). } Docket No. IX-FY-77-60

FINDING OF VIOLATION

I. This Finding is made on the basis of the following facts, to wit:

A. The Environmental Protection Agency, under the authority of Section 402(a) of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter the Act) [33 USC § 1342(a)], issued NPDES Permit No. NV0020061 to the City of Fallon (the "permittee") on November 11, 1974, to become effective on December 11, 1974 and to expire on May 1, 1977. The permit authorizes the discharge of pollutants from Discharge Serial No. 001 from the sewage treatment plant operated by the permittee to the New River Drain, a water of the United States.

B. Said permit contains certain general and specific conditions, including:

1. Condition I.A., Effluent Limitations and Monitoring Requirements, which states, in part, that during the period beginning May 1, 1975 and lasting through May 1, 1977 (Page 3), the permittee is authorized to discharge from outfall Serial No. 001. Such discharge shall be monitored by the permittee as specified below:

Effluent characteristic	Measurement frequency	Sample type
Flow.....	Once/month.....	Composite.
Settleable solids.....	do.....	Discrete.
Suspended solids.....	do.....	Composite.
Biochemical oxygen demand (5-day) ¹	do.....	Do.
Total residual chlorine ²	do.....	Do.
Total dissolved solids ³	do.....	Do.
pH.....	do.....	Do.
Fecal coliform bacteria.....	do.....	Do.

¹ Both the influent and effluent shall be sampled.

² Sampling shall begin upon initiation of chlorination of the effluent.

³ Both the water supply and the effluent shall be sampled.

2. Condition I.C.2., Reporting, which states, in part, that monitoring results obtained during the previous 3 months shall be summarized for each month and reported on a Discharge Monitoring Report form, postmarked no later than the 28th day of the month following the completed reporting period. The first report was due on November 28, 1975. Duplicate signed copies of these reports shall be submitted to the Regional Administrator and the State of Nevada.

C. The permittee has failed to comply with the aforementioned permit conditions, in that as of the date of this Finding, a discharge monitoring report, containing all parameters outlined in Part I.B.1. above, and properly signed and dated has not been received by the Regional Administrator.

II. On the basis of the facts listed above, the Director of the Enforcement Division of the Environmental Protection Agency, Region IX, finds that the City of Fallon, Nevada, is in violation of Condition I.C.2. of NPDES Permit No. NV0020061 in that as of the date of this Finding, a complete Discharge Monitoring Report, properly signed and dated, has not been received by the Regional Administrator.

Dated: March 24, 1977.

R. L. O'CONNELL,
Enforcement Division.

CITY OF FALLON,
Fallon, Nev., April 4, 1977.

Mr. R. L. O'CONNELL,
Director, Enforcement Division,
U.S. Environmental Protection Agency,
Region IX, San Francisco, Calif.

DEAR MR. O'CONNELL: We acknowledge receipt of your letter of March 24, 1977 alleging that the City of Fallon has failed to implement the monitoring and reporting program.

Plans and specifications for improvement of the Fallon Wastewater Treatment Plant to meet discharge standards were submitted to the Environmental Protection Agency for approval. These plans and specifications were approved by EPA and the contract was awarded for the improvements.

It was not until the final inspection of the almost completed contract that it was called to our attention that both EPA and the City had missed the fact that no provision had been made for measuring the discharge flow.

The City instituted a change order which was approved by EPA in August 1976 for the installation of the effluent flow measuring equipment. The equipment has been installed and is now operational.

The City has in good faith monitored those parameters it was able to monitor and has contracted with a private certified laboratory to perform those tests it was not able to perform. On February 2, 1977 a report was rendered to you in

letter form advising of progress made and giving a four month report through January 1977 of required parameters except discharge flow.

To bring our reporting totally up to date we are attaching copies of reports for February and March 1977. The only parameter not in accord with the discharge limitation is suspended solids on the March 1977 report. This was a result of algae.

The flowmeter on the effluent discharge showed a reading of .200 MGD on March 15, but due to agricultural use no flow has been experienced since March 16. It is anticipated that zero discharge will occur until next Fall due to agricultural use and evaporation.

Total dissolved solids for the month of March in the effluent as reported by the contract laboratory was 499 mg/l.

While we certainly take exception to your order (Docket No. 1X-FY-77-60) wherein you state "in consideration of the seriousness of the violation and any good faith efforts to comply", we are attaching copies of purchase orders and other documents as required in paragraph 1 of your order. We agree that we have not previously submitted the information on your form, but the information submitted to you in several letters shows that basis the parameters reported the plant has operated in excellent fashion and within the permit requirements. For many of the months involved there was no discharge from the plant and you were so informed.

In response to Paragraph 2 of your order we believe the two attached report. for February and March 1977 answer this portion of the order. Future reports on monitoring and analysis will contain actual flow measurements now that the installation of the discharge flow meter has been completed.

In response again to Paragraph 1 of your order, our laboratory now has the capability of measuring all but three required parameters. We have contracted with a private laboratory to make these other analyses. We intend, due to cost of contract services, to do all the monitoring and analysis in our own laboratory as soon as all ordered items are received.

We sincerely believe your organization shares with us the responsibility for the delay in the installation of the effluent flow measuring device and thus the incomplete reports submitted.

We have written this report and made the attachments referred to above in complete compliance with your order to the best of our knowledge and belief.

Sincerely,

BEN T. BARTLETT,
City Engineer.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
San Francisco, Calif., June 8, 1977.

BEN T. BARTLETT,
City Engineer, City of Fallon,
Fallon, Nev.

DEAR MR. BARTLETT: On March 24, 1977, a Finding of Violation and Order (Docket No. IX-FY77-60) was issued by this Office to the City of Fallon, requiring compliance with those provisions of NPDES Permit No. NV0020061 relating to effluent monitoring. The Order required, within thirty (30) days, the submittal of a schedule describing how, within sixty (60) days, the monitoring program would commence at the City's wastewater treatment plant.

We have reviewed your letter of April 4, 1977, which was in response to the above-referenced Order. Your letter stated that, at that time, the City had the capability of monitoring all but three of the parameters required by your permit. Your letter did not provide a schedule as required by Paragraph 2 of the Order.

Pursuant to Section 308(a) of the Federal Water Pollution Control (the Act) [33 U.S.C. § 1318(a)], you are hereby required to submit to this Office, within fifteen days of the date of receipt of this letter, and with a copy to Nevada Environmental Protection Services, the following information:

1. Identification of those parameters for which monitoring and analytical capability does not currently exist.

2. A detailed schedule outlining the remaining steps necessary to acquire and install all equipment required for making analyses of all parameters.

The schedule should estimate, as closely as possible, the final date by which all equipment will be operational for the necessary analyses.

The required information must be submitted under cover of a letter signed by the principal Executive Officer responsible for the subject facility, or his authorized agent.

Section 309 of the Act [33 U.S.C. § 1319] provides for civil and criminal penalties for failure to submit information required under Section 308, and for making a false statement in any submittal required under Section 308.

We also ask that you notify this Office in writing when all equipment has been acquired and is operational for the required monitoring and analysis.

Should you or your staff have any questions on the matters discussed above, please contact Peter King of this Office at (415) 556-7841.

Sincerely,

R. L. O'CONNELL,
Director, Enforcement Division.

JUNE 24, 1977.

Mr. R. L. O'CONNELL,
*Director, Enforcement Division, U.S. Environmental Protection Agency,
San Francisco, Calif.*

DEAR MR. O'CONNELL: We reviewed your letter of June 8, 1977 and were thoroughly confused as to what information you were requesting, since we felt that we had fully complied with the requirements of your order.

A call to Mr. Peter King as suggested in the last paragraph of your letter was most beneficial, as we learned that you did not mean to infer that the City was in non-compliance with your order, nor did you mean to infer that the monitoring program had not been started. We were advised that the intent of the letter was to learn when the City of Fallon Laboratory would be complete and have the capability of doing all testing on the premises even though this was not a requirement of the permit.

We have placed orders for all equipment, which we understand is required, for running the necessary tests. Most equipment has been received, however some items were shipped with parts missing. We are attempting to acquire the missing parts through a representative of the manufacturer. An optimistic schedule for receiving all missing parts is 30-45 days. After all parts are received we anticipate an operator training period of an additional 30-45 days. The lab on this basis should be capable of functioning for all required tests by October 1, 1977.

We felt that running all tests in our own laboratory would be more economical than utilizing a contract laboratory as we have been doing. We are reevaluating the situation, basis the work load of the plant operator. It appears that to do all testing in our lab would require another salaried position. In light of this additional manpower requirement we may decide to continue on the present basis of contract laboratory testing plus some tests in our own laboratory.

The permit parameters we are contracting are Suspended Solids, B.O.D., and Fecal Coliform. These are the three parameters we currently do not have the capability of running by prescribed methods in our lab.

We hope the information supplied above satisfies your request.

Sincerely,

BEN T. BARTLETT, P.E.
City Engineer.

RESOLUTION

Whereas, the City of Fallon has been notified by the State Health Department that its water supply contains Arsenic at a level in excess of standards, and

Whereas, the City wishes to comply with the requirements of law it has requested an exemption from the standards, and

Whereas, the residents of the City of Fallon voted 986 to 41 to leave the water as is, and

Whereas, all information available to this body shows without any reasonable doubt that Arsenic at the 0.1 mg/l level in City water poses no hazard to health, and

Whereas, since no hazard exists it appears unreasonable to restrict residential construction or subdivisions during the interim period of the exemption. Now therefore, be it

Resolved, That the attached report by City staff reflects the official position of the City of Fallon and it is respectfully requested that the State Board of Health grant the exemption with the changes in conditions requested.

Dated: July 18, 1978

MERTON E. DOMONOSKE, *Mayor.*

Attest: Leroy A. Getchell, *City Clerk.*

CITY OF FALLON,
Fallon, Nev., July 18, 1978.

REQUEST FOR EXEMPTION TO STATE BOARD OF HEALTH REGULATION BY CITY OF FALLON

The City of Fallon agrees with the background data presented on the Fallon Water System by Division of Health Staff.

The City has retained an engineering firm to study the feasibility and cost of lowering the arsenic level in the water supply. A preliminary estimate places the cost in the range of two million dollars which appears to be a prohibitive burden on the people of this community.

A ballot was included in all utility bills earlier this year asking the people to vote on whether they wished the arsenic level lowered with a resulting increase of five to ten times the current water rate or whether they wished to apply for a variance and leave the water as is.

The results with 1027 ballots returned of the 1679 mailed was 986 to leave the system as is and 41 for lowering the arsenic level. 96 percent of the water users in Fallon would prefer to retain the water supply with its low cost, good taste and softness as it exists now.

The City, based on reports used by EPA and other reports received from expert consultants in the trace minerals field, feel that there is no health hazard involved in the ingestion of water containing 0.1 mg/l of arsenic.

Tests were run on water extracted directly from the wells to determine valence of arsenic content. The valence tests show that the arsenic content is all in the pentavalent form.

Dr. S. A. Peoples, M.D. who supervised this testing states that pentavalent arsenic is several times less toxic than the trivalent form and has not been shown to be mutagenic or carcinogenic.

Dr. D. V. Frost after examining the Desert Research Institute findings for arsenic in hair (24 samples in 1969) states "The very low levels of Arsenic in the hair of Fallonites shows beyond any doubt that their small intake of Arsenic from the water has no adverse effects. Only when hair levels of 2-3 ppm Arsenic or higher are found is arsenical toxicity suspect".

The Desert Research Institute Study on arsenic in hair contained only names, addresses, sex and age of participants. The City was able to determine how long the participants had been utilizing water from the system by checking utility records and other records.

It is interesting to note from this study that persons using the water for four or more years showed a substantially lower level of arsenic in hair than those people on the system for a shorter time.

Dr. G. N. Schrauzer noted "Arsenic is controversial, as it has been for many years. As research continues, its value in cancer prevention will be properly recognized."

Dr. O. A. Levander of the USDA noted at a recent international meeting on arsenic that the EPA limit on Arsenic in drinking water appears to be below its nutrient need.

The nutrient need for Arsenic was first shown by Dr. Forrest Nielsen, et al. at the USDA-ARS Human Nutrition Laboratory at Fargo, N.D. This first work was in rats, but recent work has shown it to apply also for chickens. Dr. Nielson reported in 1977 on the consistent finding of unthriftiness, depressed growth, enlarged spleens and increased osmotic fragility of red blood cells in arsenic-deprived rats and chicks. The need for arsenic in pigs and goats has been reported from the University of Leipzig.

The controversy on Arsenic has gone on for many years as did the controversy concerning Selenium. Recent studies have shown the nutritional need for Selenium and changes in that standard have been recommended. Current studies show nutritional need for Arsenic and undoubtedly as soon as more evidence is available in this area, science will prevail and the current phobia will be erased.

Continuing studies by the U.S.D.A. on Arsenic levels in diets show a surprising decrease from the 1968 level of 130 ug/day (as As_2O_3) to about 20 ug/day in 1977. Canadian diets show a similar decrease.

Dr. Frost questions whether or not the U.S. Government may have been too successful in its constant efforts throughout this century to get as much Arsenic as possible out of our diets. He states "If we will let it happen, Arsenic will prove to be as beneficial as Selenium is proving to be. If we taboo Arsenic further, the consequences may be more tragic than race prejudice has been."

Many questions have arisen as a result of arsenic quantitative testing with many laboratories showing widely varying results on identical samples. A report received today on four samples taken by an EPA representative and tested in the Cincinnati Lab show that three of the four samples are at or under the .05 mg/l level. At this time we do not know what test procedure was used or why the results should vary so dramatically from other recent tests. It does show, however, that if these results were official we might not be requesting an exemption from the standard and this hearing might not be necessary.

The City of Fallon concurs with the recommendations of State Staff with the following exceptions:

Condition 3—The City has no objection to submitting a schedule for bringing the system into compliance by April 19, 1979 provided it is understood that one of the procedures for compliance is a request for variance, if cost and feasibility studies so indicate.

Condition 5—We believe that the scientific community has established beyond any reasonable doubt that no health hazard exists at the level of Arsenic contained in Fallon water. With a growing population in the entire state, and with few if any other reasonable alternative sources of water for the City, it would be an unfair and undue economic burden to disallow new housing or subdivisions in the interim period covered by this request. A prohibition of this type could force many people to provide their own wells and septic systems on appropriate size parcels in the county. This type of growth could pose a real health hazard at some future date if this prohibition is put into effect.

DESERT RESEARCH REPORT, ARSENIC STUDY 1969, CITY OF FALLON

Name	Address	Age	Years on water system	Sex	PPM arsenic in hair
Kay V. Geib	452 4th St., Fallon	30	(1)	F	0.35
Carol Farrington	5 East Pk., Fallon	57	3	F	.65
R. Craig Falconer	360 South Bailey, Fallon	20	6	M	.12
Albert Butterfield	80 South Broadway, Fallon	77	17+	M	.35
Doris Brown	255 South Broadway, Fallon	34	2	F	.50
Naomi Brown	do	16	2	F	.32
Mary Leona Brown	do	16	2	F	.30
Kathleen Bennett	88 West Park, Fallon	20	2	F	.32
Janet Beeghly	460 South Russell, Fallon	31	3	F	.27
Jacqueline C. Banovich	680 West A, Fallon	20	4	F	.30
Alice Baker	322 East Richards, Fallon	58	28	F	.32
Ida Armas	455 West Center, Fallon	55	(2)	F	.32
Doris Alcorn	45 West Fairview, Fallon	52	10	F	.79
Willette Whomes	495 South Bailey, Fallon	50	17+	F	.50
Madeline F. Trigueiro	445 W. Center, Fallon	50	17+	F	.25
Brice Tuttle	675 Cora Way	56	4	M	.50
Hazelmae Tipton	465 South Russell, Fallon	47	10	F	.42
Cora Thompson	580 West A, Fallon	83	19	F	.34
Kathleen J. Shank	510 Nadine, Fallon	49	2	F	.50
Earl L. Simmons	525 South Bailey, Fallon	38	3	M	.81
Vada Peterson	290 East Front, Fallon	69	1	F	1.93
Blanche E. McHugh	425 South Allen, Fallon	45	1	F	.20
Rosabelle Mattison	535 Cora Way, Fallon	61	1	F	.76
Linda Wood	112 North Nevada, Fallon	25	4+	F	.36

¹ No record.

² Over 4.

RESOLUTION No. 79-17

Whereas, the City of Fallon was granted an exemption to the arsenic standard of .05 mg/l by the Nevada State Board of Health on July 19, 1978, and

Whereas, the exemption granted required that a compliance schedule be submitted by April 19, 1979, and

Whereas, a study authorized by the Council has been completed by Water-source Consulting Engineers to determine the feasibility and cost of arsenic removal, and

Whereas, the least expensive method of arsenic removal investigation would have a capital cost in excess of \$5,000,000, and

Whereas, no source of funds is available for such a project other than revenue bonds, and

Whereas, the repayment of such bonds plus the increase in operation, maintenance and depreciation costs would result in a substantial rate increase of approximately thirteen times the current water rate, and

Whereas, the City has contracted various experts in the medical and biochemical field, who have advised that no health hazard exists from use of the current water supply, and

Whereas, a poll of all City water customers was conducted to determine the desires of the citizens, and

Whereas, this poll resulted in 96% of the public opposing water treatment and its associated costs; Now, therefore, be it

Resolved, That the City of Fallon accepts the attached reports from Watersource Consulting Engineers and the City Engineer as the position of the City and requests that the State Board of Health grant a variance to the arsenic standard as the method of compliance.

Dated: April 17, 1979.

MERTON E. DOMONOSKE, *Mayor*.

Attest:

Jerry J. McKnight, *City Clerk*.

CITY OF FALLON,
Fallon, Nev., April 17, 1979.

COMPLIANCE SCHEDULES AS REQUIRED BY EXEMPTION GRANTED TO CITY OF FALLON BY THE NEVADA STATE BOARD OF HEALTH ON JULY 19, 1978

It has been established by the Division of Health that the Fallon Water System exceeds the established arsenic level of .05 mg/l. City water has been supplied from the same source for over 30 years and based on tests done over the past 13 years the arsenic level has remained at an essentially constant level of .10 mg/l.

When the City appeared before the State Board of Health in July 1978 requesting an exemption to the arsenic standard, it was understood that the City had entered into an agreement with Watersource Consulting Engineers to study the feasibility of arsenic removal and associated costs. This study has been completed and is incorporated as a part of this compliance schedule.

The following facts are based on the Watersource Report and City Records:

1. The City has conducted a search for an adequate and safe water source for in excess of 50 years. Many sources were investigated, including both surface and underground supplies. The first test well was drilled into the currently used aquifer in 1931. Many additional test wells were drilled into other aquifers, but were eventually abandoned due to quality or quantity available. Due to current litigation on water rights and prohibitive costs of using water impounded behind Lahontan Dam this potential surface source is not a feasible possibility at least at this time.

Since it appears from our studies that the only known feasible supply of water for the City is the water supplied from the current aquifer, there are two alternatives to bring the system into compliance. These alternatives are to treat the water to lower the arsenic level or to request a variance to the standard.

2. Alternate No. 1 involving treatment to lower the arsenic level is technically feasible, but cost prohibitive. Three methods of treatment were thoroughly investigated and all three methods would appear to accomplish the required results. The least expensive system is the activated alumina process, which unfortunately has no service record for arsenic removal. Laboratory and pilot tests indicate this system to be effective in removal of arsenic. This system is estimated to cost \$5,166,000.

This system, while the lowest in cost of all systems investigated, would result in a water rate increase of thirteen times the current rate assuming that current monthly service charges remain unchanged.

The rate increase would be required to redeem revenue bonds, pay additional costs of operation and depreciation.

Revenue bonds appear to be the only source of capital available for this expensive project and would have to be approved by the voters of the City. Due to the current high cost of living and demands of property owners to reduce taxes and other costs, it appears there is little chance of such a bond issue receiving the approval of the public. A poll conducted by the City of all water users indicated that 96% opposed a bond issue with the resulting increase in rates. It is planned to have a similar question on the June ballot to give additional guidance to the governing body.

The passage of such a bond plus payment of additional operating costs would result in an increase of \$34.22 per month to the average residential water user. For renters furnished water as part of their rent, it would mean an average rent increase of \$34.22 or more per month.

Since most of the costs involved are fixed costs, a decrease in the water usage because of the higher rates would require additional increases in rates to prevent bond default.

This pyramid effect in water rates would have many side effects such as loss of lawns by homeowners, who would not or could not pay summer water bills of \$100.00 or more per month. An increase of this magnitude could effect changes in the lifestyle of a large portion of the local population.

A substantial decrease in water usage could also result in an increase in sewerage rates as these charges are currently based on metered water use and the fixed costs will remain unchanged.

3. There is no known evidence, at least available to us, which indicates any health hazard at the arsenic level in Fallon water. A recent study, which was conducted by Dr. Valentine on blood, urine and hair samples from five communities including Fallon, concludes that "arsenic levels in water at concentrations of 100 micrograms per liter or less seem not to produce an undue body burden". Preliminary results from another study, which includes Fallon, indicate normal findings.

Dr. S. A. Peoples, M.D. of the University of California, developed a procedure to determine the valence of arsenic in water. Samples from all Fallon wells have been tested by Dr. Peoples with the finding that the arsenic contained in the water is almost 100% pentavalent. Pentavalent arsenic is the least toxic form of arsenic and has never been shown to be carcinogenic or mutagenic according to Dr. Peoples.

Other studies have shown quite conclusively that arsenic is required for animal health. The nutritional level has not been established, but controlled tests have shown severe health damage to the offspring of arsenic deprived animals. Some scientists have expressed fear that various government agencies have been so successful in arsenic control that the amount available may fall below the nutritional requirement.

4. Based on the above facts summarized again below it appears that all requirements to justify a variance from the 0.05 mg/l arsenic standard are met.

(a) No other source of supply is feasible taking cost into consideration.

(b) Treatment and operating costs would make the cost of water prohibitive to the average user.

(c) No source of funds other than a bond issue is considered available and the public has expressed its opposition to such an issue with the resulting increase in rates.

(d) No known health hazard exists at the level of arsenic contained in Fallon water.

There are other factors, which should be considered also. One of these is that Fallon water contains fluoride at almost the optimum level for good dental health. All of the treatment options investigated would result in the removal of fluoride. No cost estimates were included in the attached study for re-fluoridation of the treated water, however it is estimated that this annualized cost alone would be in excess of 20 percent of the existing water rate.

Treatment would undoubtedly change the taste of the water. The local people take pride in the good tasting water and it is not unusual for visitors to state that it is a pleasure to get a good drink of water without the tastes associated with water treatment.

The current standard of 0.05 mg/l appears to be an arbitrary standard more politically oriented than scientific. Much more scientifically controlled research needs to be done to determine the role of arsenic in human health, prior to the expenditure of millions of dollars in possibly unnecessary treatment facilities.

The only logical argument for the 0.05 mg/l standard is that a one or two percent segment of the population may have extreme sensitivities and could be affected. This argument is almost impossible to defend as it has been recognized that a small percentage of the population may have extreme sensitivities to almost anything. It appears that there have been more allergic reactions to milk than there have been to the arsenic in Fallon water. If such an allergic reaction is discovered, the patient is advised not to drink milk. While no known reactions have been reported as a result of drinking Fallon water, it would appear that if one developed the patient should be given similar advice, such as drinking bottled or home treated water.

Less than one percent of the water pumped in Fallon is utilized for human ingestion, thus it is not cost effective to treat all water pumped. For the small segment of the population that may have extreme sensitivities and for anyone that feels they prefer a lower arsenic level in their drinking water, either bottled water

or home treatment systems are readily available at substantially lower cost than totally treated City water.

The citizens of Fallon are intelligent people, who feel they should not have to pay prohibitive rates for water, when there is no scientific evidence available to show that any health hazard exists at the arsenic level in Fallon water.

The Mayor and City Council of the City of Fallon have concluded after examination of facts available and a poll of all water users, that the only logical and feasible method of compliance is to pursue a variance from the arsenic standard. It is therefore requested that this method of compliance be approved by the State Board of Health and that the necessary variance be granted.

BEN T. BARTLETT, P.E.,
City Engineer.

Major DOMONOSKE [continuing]. It is a pleasure and an honor to be invited to testify before this committee on the impact that Federal legislation and rulemaking has on small local government and small business.

Almost every legislative act which imposes rules of compliance and reporting creates an additional burden and economic impact on small business and local government.

When the Federal Water Pollution Control Act was implemented in 1974, the city of Fallon was required to apply for a permit and to modify the plant to comply with the new discharge standards that were established. Congress authorized a grant program to assist in the plant modifications, but local government was required to pay 25 percent of the bill for the improvements. There was no assistance offered to offset the costs required for additional monitoring and reporting or for the additional operating costs created.

The city was able to fund its 25 percent of the construction, but had to advance payment of EPA's share of the cost while awaiting reimbursement. The project was completed and the final reimbursement request sent to EPA on June 30, 1977. After many phone calls checking on this reimbursement for moneys advanced by the city, the EPA acknowledged our request on March 17, 1978, with an offer to pay 95 percent of the grant pending an audit they estimated would be completed in an additional 6 to 8 months. After other correspondence and phone calls, EPA agreed to pay to 98 percent of the grant.

When the audit report was received, \$3,842 in engineering costs were disallowed by EPA even though a portion of these costs were specifically covered in the engineering contract submitted as required by EPA in 1974. It seems somewhat unreal that EPA would require almost 4 years to discover that they disagreed with the terms of the contract.

EPA has agreed, after our appeal, that they would allow an additional \$1,903 under another provision of the contract, but would still disallow the \$3,842. This, in essence "split the difference approach" was not acceptable to the city, and the city has appealed to EPA in Washington, D.C., for legitimate charges actually expended.

To avoid payment of some \$1,900 in legitimate charges, the EPA will probably spend many times that on the appeal hearing procedure. This waste of the taxpayers' money and the loss to our city is a moral injustice further exaggerated by the loss of interest on money advanced and slow payment on reimbursement by EPA.

One of the major financial problems facing the city currently was created by passage of the Safe Drinking Water Act and regulations promulgated by EPA for its implementation. Fallon has utilized the

present water supply since 1948 or earlier with no reported adverse effects. In 1969, approximately 3 years after tests showed an arsenic content of 0.1 mg/l in the water, a hearing was held by the Nevada State Board of Health to determine if any problem existed. The board found that there was no evidence of any problem and approved the city of Fallon water supply. With the advent of the EPA interim drinking water regulations, the city was required to ask for an order to be in compliance with the law. A compliance schedule was required within 9 months of the exemption date, which required that the city investigate the feasibility of meeting the arsenic standard. This study required the expenditure of in excess of \$8,000 not counting the city staff time and costs associated with information solicited from experts in the medical and biochemical field.

The minimum cost of treatment determined by an independent consulting firm was \$5.166 million. Other treatment methods studied, if implemented, would cost in excess of \$11 million.

If treatment was implemented at the \$5.166 million cost, the consumer would be faced with a 13- to 16-time increase in current water rates. The city council asked the people what they desired by means of a ballot question on June 5, 1979. The voters overwhelmingly decided by a vote of 805 to 38 to leave their water alone.

EPA's "Handbook on Public Notification June 1977" states that Congress determined that the ultimate source of revenue to provide safe drinking water should be the consumer. However, we do not believe it was the intent of Congress to force the consumer to pay for something he does not want or need just because EPA set an arbitrary standard without scientific justification.

The standard, according to many experts, is arbitrary, because there is no evidence of any conclusive nature that there is any detrimental effect at the arsenic level in Fallon water.

EPA is recommending expenditures of large sums of the taxpayers' money without, at this time, having decided on or publishing final standards. Prior to any large financial impact on local government or its taxpayers, the EPA should be required to substantiate the standards scientifically and be required to publish final standards.

This is not the case under present regulations as you are guilty until you can prove your innocence and could be required to construct treatment facilities before the final standards are even known. Why should local government have to meet the EPA deadlines when EPA has not met theirs?

The city had another problem with EPA over reporting requirements for the wastewater discharge, permit conditions. The city attempted to comply with the reporting requirements on a program that was totally new to it and was threatened with a \$25,000 per day fine and possible imprisonment for certain officials because they did not report on the right form. Attached are copies of correspondence to show the high-handed manner that some Government-appointed officials use in dealing with local government.

When Congress authorized a flood insurance program, we are sure that it was not their intent to have the program handled in the manner that it was. The city of Fallon was declared to be flood-prone based on a contract study done with outdated information and no contact with the city of Fallon for information.

Many thousands of dollars later, the city was able to prove that it was not flood-prone and have the designation corrected. While the designation was on an interim basis, many Federal lending agencies jumped the gun and shut off all financing for new construction. Many more phone calls later and with help from our Senators, these agencies were convinced of their mistake and, within a few weeks, agreed to continue with financing commitments.

Another problem facing small cities and countries, which results in less final product for the dollar spent, is the artificially high wage scale required on federally assisted projects. On the other hand, a new maximum annual average contract wage for CETA participants has been established at \$6,178—\$559.83/month and \$3.23/hour. This decision means paying a new employee less and, in our case, below the minimum wage in order to meet the average. As a result, one contract for a project was canceled and the public service employment contract, four people, has been frozen so that a terminated employee cannot be replaced. This is just an example of the extremes we face from high level of Government regulations.

Federal revenue sharing was a step in the right direction, but the costs of administering the program indicate that if the money could be collected locally, the amount available to local governments would increase by a factor of two or more. A simpler program with less administration could be a flat percentage refund to local government by taxes collected by the Federal Government from local taxpayers. Although the program was simplified by the 1976 amendments, there are still many costs to local government associated with revenue sharing. These costs include additional advertising, hearings, book-keeping, report, and audit expense.

The new mining safety and training regulations have already had an impact on our budget. Due to these requirements, the cost of gravel for our streets and alleys has escalated.

Time to meet the schedule for the hearing was short and precludes more examples being presented, but we believe those cited represent the problems faced by local government as a result of Federal regulation.

We wholeheartedly support the concept of S. 299 if it will prevent new reporting and compliance requirements and alleviate some of the problems we already have.

Senator CULVER. Thank you very much, Mr. Mayor.

And, Mr. Hatala, would you like to present testimony?

Mayor HATALA. I do have a prepared statement I would like to submit for the record.

Senator CULVER. So ordered. It will be inserted in the record.

Mayor HATALA. I am not here to condemn Federal regulations by any means, because I think they are needed. What I am here to do is point out areas where small cities are disproportionately affected by regulations and where regulations can be flexible. So I think the Regulatory Flexibility Act should be supported.

Several results of the uniform application of regulations to larger cities and to small cities results in the hiring of consultants, the limiting of the size and scope of projects and some communities even choose not to enter programs because they just do not have the resources and capability to get involved.

[The prepared statement of Mayor Hatala follows:]

PREPARED STATEMENT OF ROBERT S. HATALA

Senator Culver and members of the committee, the following testimony is in support of the Regulatory Flexibility Act.

Although Federal regulations affect all cities, uniform regulations have a disproportionate impact on small cities because they lack the financial resources and capacity to comply with those regulations. The relative impact of any one regulation is directly related to the size of the city.

Because of this disproportionate impact, small cities must hire costly consultants where large cities can rely on their own staff, limit the size and scope of projects, or, if they can, choose not to take part in a particular program.

EXAMPLES

Federal aid to urban systems

Fort Madison is currently involved in a Federal Aid to Urban Systems project. Because of the planning and reporting requirements for FAUS projects, the city is less well equipped to efficiently and effectively handle the location and design reports and the required inspections. Therefore, in order to complete the project, the city has had to hire an engineering consultant to perform these functions entirely at city expense.

The inspection requirements are of particular interest. Fort Madison is nearing completion on a relatively large paving project which will eventually connect to the city's FAUS project. This paving project was designed using the same criteria as far as load-bearing capacity as that for the FAUS project. The inspections for the locally financed projects are being done totally by city staff. Although the types of inspections required for both projects are essentially identical, the number of inspections required and the tremendous documentation required for those inspections make it impossible for our staff to inspect the project. As I have previously indicated, these inspections will be done by an engineering consultant, the cost of which is borne by the city.

Community development

When planning and reporting for Community Development Block Grant funds, small cities face essentially the same informational requirements as large cities, even though the same census data is not available to both large and small cities. This is evident when a small city attempts to report on income data. The census data for large cities is more complete and detailed and, therefore, easier for them to determine. In small cities, this same type of income data is required, but the same information is not available. It would seem that the requirements here could be flexible in order to reflect the available census information. Small cities are much less able to acquire this information using their own staffs.

Community development fund drawdown

The Department of Housing and Urban Development very recently reduced the minimum fund drawdown from \$10,000 to \$5,000. This will be of benefit to small communities, but even greater flexibility could be provided for. Very small cities, such as Montrose, Iowa, with a population of less than 1,000, have an acute problem with the higher minimum limits. Because any funds received from HUD must be disbursed within 3 days, a city the size of Montrose must wait until they have expended the minimum drawdown amount before making a drawdown request. Between the time they have made these first expenditures and the time that enough expenditures have been accumulated to reach the minimum drawdown limit, a city such as Montrose must either require that those to whom they owe money wait until expenditures have accumulated to the minimum, which has obvious drawbacks, or the city must use its own cash flow to cover these expenses. Although \$10,000 or \$5,000 may not sound like much to some cities, it is a very substantial amount to others.

Flexibility could be provided to small cities by further reducing or eliminating minimum drawdowns or the 3-day disbursement requirement could be changed so that small cities could draw down funds before they have been expended and then use those funds as their program progresses rather than their own limited cash flow.

Community development program administration

When making application for a Community Development Discretionary Grant, cities must show how their particular program will benefit low and moderate income people. Many of those programs which have the greatest impact on those people with low and moderate incomes, such as housing rehabilitation, have greater administrative requirements than the eligible public works-type projects.

Small cities many times lack the necessary resources to comply with the administrative requirements. Therefore, I am sure that many cities choose to avoid those types of projects in favor of those with less administrative requirements, even though those programs may not be as beneficial to those with low and moderate incomes.

Although Fort Madison succeeded in receiving funding for 2 years, we were not successful with program implementation, primarily because the city just did not have the capacity for the program. If we had a chance to repeat the process, I am sure that we would choose to apply for a more moderate grant which would probably mean leaving out the real people projects with the most direct benefit.

Wastewater treatment

Changes in regulatory requirements by the EPA have had a tremendous negative impact on several small cities in Iowa. West Point and Jefferson, two cities in Iowa, have been attempting to upgrade their treatment facilities. However, it seems that once they progress to the point where they have actually completed planning the process with the aid of consultants, the standards change and the progress made becomes obsolete. These constant changes in regulation adversely affect all cities, but again there is a disproportionate effect on the small cities.

Geographic flexibility should also be a concern where effluent standards are made because of the varying problems faced by different regions of the country.

CONCLUSION

Administrative rules and regulations are in order to maintain and improve the quality of life. However, many times these same rules and regulations have a disproportionate impact on small cities primarily because they do not have the necessary resources and capacity to comply.

Although the Federal Government should not quit making and changing regulations, it would be very desirable for it to look at the relative impact of a particular rule and, if it can be administered in such a way as to still provide the results of the intent of the legislation but still reduce the impact on small cities, then it should be done.

I believe that Fort Madison and all small cities would support the "Regulatory Flexibility Act".

Mayor HATALA [continuing]. Fort Madison is currently involved in a Federal aid to urban systems project which required a considerable amount of paperwork in the planning decision. Fort Madison does have a city engineer. However, because of the requirements, we have had to go to consultants. The inspections are of particular interest because we currently have a local paving project underway and it was designed on the same low capacity as the Federal aid project, and this will connect with the Federal aid project.

We have been able to handle the inspections for that project on our own, but because of the number of inspections and documentation, we have to go to a consultant.

I do not state this argument for anything against those regulations. Maybe they are needed, but it does show that the same regulation has a disproportionate impact on a city the size of Fort Madison, or smaller; and in Iowa, larger cities.

A community development has also been really a problem. It has been very beneficial in Iowa and other cities. One area I would like to point out is the census data in large cities versus small. When plan-

ning and reporting for community development projects, there are certain income data required. In large cities, the Census Bureau gets very detailed in their census tract data and, in fact, supplies detailed income data. And in small cities, this same information is not applied, yet those cities must fill out or they are asked the same questions and requested to supply the same information.

Yet we have the least amount of resources and capability to comply with those requests.

Another example in my community development concerns draw-down. What happens is, when you have community development programs, you have to have a minimum amount to draw down. And in our region, we write to Kansas City and they, in turn, send us the funds for that program. That has recently been reduced from \$10,000 to \$5,000. Fort Madison did not have a problem with \$10,000 limit. But a small city, say Monroe, Iowa, even \$5,000 is a pretty large amount. Some of the towns in Iowa have budgets of less than \$50,000. Now, this causes a problem because there is 3-day limit at which you have to have these funds expended. So, cities, say Monroe again, if there is a \$5,000 limit, they have to have \$5,000 obligated before they can make a drawdown. During that time, they must either make that contract or wait for its payment or use their own cash flow to compensate for this. And sometimes a small budget of \$5,000 may be a lot of money.

Again, community development is aimed at low- and moderate-income people. Some projects, such as housing, and rehabilitation, affect the low- and moderate-income people more directly. Sometimes they are the ones that require the greatest administrative capacity.

So, naturally, your communities choose possibly not to go into the high administrative-type programs in favor of the public works, streets, sewer-type projects which definitely do affect low- and moderate-income people.

In Iowa there are two cities I have been made aware of—West Point, Iowa, and Jefferson, Iowa—they have tried to start their waste treatment plant, and I think both of them have been attempting to do this since 1971. They get so far in the planning process and the regulations change. This has an adverse effect on all-sized cities, there is no question about that. I cannot really argue with what the EPA is trying to do. However, this has a disproportionate impact on smaller communities.

In conclusion, I would like to say I support and feel all small cities should support the Regulatory Flexibility Act, precisely because there is a disproportionate impact on smaller communities. And where this can be done, I think it should be done. And again I am definitely not against all Federal regulations because they have a very positive effect on the way we in the United States live today.

Senator CULVER. Thank you very much, Mayor Hatala. I think you have given us some extremely valuable examples which call for the necessity of us acting promptly on this legislation.

I wonder, specifically, you mentioned changes. It triggered in my own mind the appropriateness of trying to consider in applying the principles of S. 299 to changes proposed in rules as well as through their initial creation.

Do you favor that? You know, where the agency involved, if they are going to make a change, also go through?

Mayor HATALA. Impact of that change; yes.

Senator CULVER. I know in some Federal grant programs there are requirements that cities expend the money within a certain time limit, or they will lose it. I think some HUD programs established a limit like that.

With the lack of a large administrative staff—does a small town suffer special burdens from such a rule?

Mayor HATALA. I am not familiar with the 3-day time limit or whether they lost the money. But a small city, they have to have a minimum, and it would be consistent with the Regulatory Flexibility Act to look at the impact when these changes are made.

Senator CULVER. As a Congressman and now as a Senator I have always felt an amount of sympathy for mayors. It is so difficult to get the appropriate Federal agency to mail you information or send you material. You need a Philadelphia lawyer to begin to cope with the forms as well as a strong mailman to even get the materials to you quite apart from dealing with it.

And I really feel it is almost a charade, the whole exercise, because it is so unrealistic to expect anyone, and particularly those with limited resources, mayors and city councils working on a voluntary basis for the most part, to comply.

Is that roughly your experience, that this material, even when it does come, it is just too difficult to use?

Mayor DOMONOSKE. When you have a staff of one engineer in the department, it would take approximately 50 percent of his time on governmental paperwork.

Senator CULVER. Are there programs where you have actually had, like low-income housing, where you do not participate because of the complications?

Mayor ROBINSON. I think in my report, which concerns CETA—

Senator CULVER. You talk about the increase in the number of forms.

Mayor ROBINSON. Yes. Last year I wrote a letter. Someone in the Job Service Corps told me who to write to. I wrote a letter and asked for a \$27,000 grant. Three weeks later, I had a letter back saying it had been approved. We were authorized to hire five men. And we needed some extra help on the sidewalks and streets.

The fact is, it came through faster than I was prepared for it. Having dealt with bureaucrats, I could not believe it.

We did a fair job, I think, at least a better job than the bureaucrats would do spending the money. This year, we thought we might apply for one worker this summer. The one man working part time through Job Service, they put him on another job.

And there are about a half a dozen girls in the office. And Julie came down with a 13-page application. From last year's, we went from one letter written on city letterhead to a 13-page application. And, naturally, it was not right the first time, and she came back twice.

We had no applicants. Last year, we were able to pay \$4.25 an hour up to \$4.75. This year, the wage is set at \$3.19.

Senator CULVER. I wonder if some of you would provide for the record those illustrations, to the best of your knowledge, where you have had overlapping or duplicative demands for information, and in reporting for State and Federal agencies and where you think greater agency coordination in sharing information could be achieved.

In your prepared statement, Mayor Robinson, you described how you led a community in building four federally financed elderly homes.

Then you describe how increasing paperwork requirements by FHA in recent years have nearly overwhelmed the capacity of volunteers to deal with it.

Could you describe what kind of paperwork is being required, and why you think it is not only superfluous but may be an invasion of privacy?

Mayor ROBINSON. This bill 299—this is on page 3—Government information collection has not adequately weighed the privacy rights of individuals and enterprises against the needs of the Government for information, because of the design of the regulatory process—I don't know how much they have increased. We started out and there was no problem. We borrowed the money and made the payments like you would in a bank. I mean, I consider this as another loan. No different than going to the bank, give a financial statement once a year, you pay your payments according to the rules, and that is it.

But over a period of time, the Government and the Farmers' Home Administration has had rule upon rule, and now have come out with the tenant certification. You know, you don't want people living in elderly housing who are wealthy.

But on the other hand, in small rural areas, we know those people, and we pretty well know what their income is.

Now, they have a tenant certification. The person tells you what his income is, and that is it. This year, they have typed on there, and it says, "I verify." This is like making a sworn statement that I verify that these people are telling the truth.

Well, you gentlemen know as well as I do or anybody else, if somebody is going to cheat, they are going to cheat. And I am not going to catch them. I have been advised by counsel not to sign those things.

But this year they are using the old forms. They haven't got the the new forms printed yet; they are using the old forms, and have typed this verification thing down on the bottom.

I have refused to sign it, and do it, and I will continue to refuse to do it.

What they will do about it is more than I know. But I have copies of letters in which they state that if we don't conform, they will come out and liquidate those loans. And we had three bureaucrats in my office one day, one from Des Moines, and two from Atlanta, and we had neighboring people in, and they explained what they are going to do.

I said, what is the Government going to do? You are going to foreclose. How will the Government run these homes?

"Oh, we will put them up at auctions."

I want to be notified, because when I see a 96-year-old lady out in the street, a lot of people are going to be interested in that.

Senator LAXALT. I am just wondering, I recognize there is a spirit of authority here on the panel, I think, to some extent in the area of Federal intervention in local government. In these areas involving the treatment plants, and involving housing for the elderly, is there any real need for any Federal intervention or any Federal judgment being imposed other than your simply having the money available to you?

Do you need this kind of help or instruction on the Federal level?

Mayor ROBINSON. No. No.

Mayor DOMONOSKE. Absolutely not.

Senator LAXALT. Mr. Mayor, do you think you do?

Mayor HATALA. You know, again, I do not feel all regulations are bad.

Senator LAXALT. Nor do I.

Mayor HATALA. Fort Madison is a town of about 14,000, and we do have a little more staff, possibly, than the cities of Fallon and Bayard. But I do feel there are some very significant, positive things that have come from, you know, them having those regulations there.

Senator LAXALT. Involving Fort Madison?

Mayor HATALA. Yes.

Senator LAXALT. What areas?

Mayor HATALA. You know, just the whole aspect. The setup of the agency, because we do have a housing agency appointed by the mayor, and a director who runs the agency in a section 8 program. And just the standards by which they have to follow.

Senator LAXALT. Couldn't you just as well do that on the local level without the standards?

Mayor HATALA. We could, possibly. But I think, you know, the local government is again closest to the people. And sometimes beneficial, at least in Fort Madison, for Government to say, you must do this, because otherwise it might not get done because of the political atmosphere.

Senator LAXALT. You are apparently willing to make that trade-off and have that kind of intrusion in matters of local government?

Mayor HATALA. Sometime it is necessary.

Mayor DOMONOSKE. Let me give you an example. We have a volunteer fire department, but we cannot accept any Federal funding on that department, because we do not comply with the Federal regulations. It is an all-male department. You have to have females.

I have to have Chicanos and a mix in there. Therefore, when we could use the funds for a fire engine, since it is a volunteer department giving their time freely, we don't dare use Federal funding.

Senator LAXALT. The thing that concerns me, Senator Culver, and we have discussed this, is the need for any Federal intrusion at all in isolated areas. It seems to me if you have an area of activity reaching in any one of your small towns which does not have interstate impact, and does not have a great national interest involved, it would seem the imposition of Federal regulations and standards is improper in terms of the trade-off being made, increased paperwork burden and hassle to your own people, and all the rest of it.

And the flexibility contemplated in this act, I think, is a great step forward.

But in my own head, I am beginning to wonder whether or not we shouldn't think in terms of maybe getting down the road to plan exemptions.

In the community that has no interstate involvement, which is totally intrastate in terms of its activities, that maybe somewhere along the line we should shed that all off, and let these people do their own thing, and help them financially as much as we can.

I am afraid what is happening here is, we are having on this level an intrusion on local matters of standards, often totally at variance with what the locals want or need.

We are seeing that all over the West, particularly. They talk about a rebellion out there; we are in near-revolution. It is because of this type of thing.

What is being said to these people often is, you really don't give a damn about your local community, so we are going to have to come in and take care of you.

Most of the people do not accept that. I do not accept that. I am beginning to wonder in my own head, and as I say, getting back to the local premise, whether or not local entities that have no interstate impact, whether or not they should not be totally exempt in a lot of these areas.

Mayor HATALA. The area of housing was the way my comments were directed, as far as Fort Madison is concerned, I think the Federal aid project is an example of what you are saying here.

I do not think Fort Madison should have to meet inspection requirements which are this stringent, because we are interested in having the concrete last a long time, because I don't want calls that there are pot-holes and whatever.

I agree with you, there are areas where there should be exceptions.

Senator CULVER. I want to thank all the members of the panel for their appearance here today. We will make your comments and statements part of the record, and appreciate your suggestions and the contributions you have made.

We certainly hope we can continue to work together and see the realization of this legislation, and, hopefully, alleviate at least in the real sense some of the problems that you have.

Senator CULVER. Our next panel is a group of hospital administrators.

Welcome to the panel. We have Mr. Willis Fry, the president of St. Francis Hospital, Waterloo, Iowa; Mr. Charles Linden, who is the administrator for Boone County Hospital, Boone, Iowa; Mr. Donald W. Dunn, president of the Iowa Hospital Association, Des Moines, Iowa.

It is a pleasure to welcome you here today. Who would like to lead off here?

PANEL OF HOSPITAL OFFICIALS:

STATEMENTS OF WILLIS FRY, PRESIDENT, ST. FRANCIS HOSPITAL, WATERLOO, IOWA; CHARLES LINDEN, ADMINISTRATOR, BOONE COUNTY HOSPITAL, BOONE, IOWA, AND DONALD W. DUNN, PRESIDENT, IOWA HOSPITAL ASSOCIATION, DES MOINES, IOWA

Mr. DUNN. I would like to provide background for these two gentlemen who give illustrations of regulatory overkill on the typical Iowa hospital.

I am pleased to accompany them and speak to you in support of S. 299. To do that, I would like to set the stage to tell you we are proud of the performance of Iowa hospitals. I have a folder for the members of the subcommittee which provides Mr. Fry's and Mr. Linden's testimony, and some description of the effective cost containment that Iowa hospitals are performing, and a brief history

showing the evolution of hospitals over some 50 years in the lifetime of the Iowa Hospital Association.

But in particular, we have been proud of Iowa hospitals; 87 of the 131 general acute hospitals in Iowa have less than 100 beds. So typically, the Iowa hospital is a small organization——

Senator CULVER. What was the figure again?

Mr. DUNN. Eighty-seven out of 131 have less than 100 acute care beds. That means that all of those have approximately 4,000 admissions per year, or less; we are proud of the quality of hospital care rendered in smaller hospitals of Iowa.

All of Iowa hospitals are either publicly owned or voluntary, nonprofit organizations. Seventy, more than half, are units of government: city, county, or State government. Sixty-one are voluntary, nonprofit corporations. They are doing a laudable job in cost containment.

Historically, hospital costs in Iowa are 20 percent less than the average cost nationally, but contributing to our problems of meeting a voluntary effort goal in 1979 of 11.6-percent increase in total expenditures is the cost of regulation, and increasing costs of regulation.

We are, therefore, proud of expressing support for S. 299. In every case, Iowa hospitals are seeking to hold costs down. Mr. Fry and Mr. Linden will give you examples of how the burdensome regulatory overkill does apply.

One last comment: We would like to underline and endorse Senator Cochran's comment about the failure of agencies, and we would cite the Department of Health, Education, and Welfare, to live up to Executive Order 12044. Within these prepared comments, there is reference to that failure.

Senator CULVER. Thank you very much, Mr. Dunn.

Mr. Fry or Mr. Linden?

Mr. FRY. Thank you, Senator, very much.

It is a privilege and honor for me to be here today.

We have a prepared statement we would like to submit for the record.

[The prepared statement of Messrs. Fry and Linden follows:]

STATEMENT OF WILLIS FRY AND CHARLES LINDEN

Mr. Chairman, I am Willis Fry, administrator of St. Francis Hospital in Waterloo, Iowa. With me is Mr. Charles Linden, administrator of Boone County Hospital, Boone, Iowa. We are pleased to submit for the record the following testimony prepared with assistance from the Iowa Hospital Association. We appreciate this opportunity to participate in these hearings on Regulatory Reform, and we commend the committee for its study and efforts in this area of governmental regulations and their ever-increasing effect on hospitals in Iowa and those across the Nation.

We support the spirit of S. 299 and are confident that it will elicit a more concerted effort to reduce the impact of Federal regulations on small organizations, including hospitals. We strongly endorse the provisions of S. 299. While this legislation does not attempt to stop the issuance of rules and regulations, it could reduce the flow significantly and simplify rules for many individuals, businesses, organizations, and units of government with limited resources who have been increasingly overburdened by regulatory requirements.

We applaud the two main objectives of S. 299; namely, that the bill will increase the sensitivity of those agencies writing regulations to the needs and capabilities of those who will have to comply with them, and that it will establish the premise that regulatory requirements should fit the scale and abilities of those being regulated.

Of particular importance is the authority that S. 299 gives to Federal agencies to issue specific regulations and reporting and recordkeeping requirements for different-sized businesses, organizations, and government units. All too often small businesses, towns, and organizations are saddled with regulations and reporting requirements designed to address the problems of big business and large cities and organizations. The result is that these smaller units are forced to expend enormous amounts of time, money, and energy on superfluous paperwork and requirements that simply increase costs and do absolutely nothing to advance the general health, safety, or welfare of the population.

To accomplish these objectives, this bill will require agencies to invite public comment on ways to reduce the burden on individual, small businesses, organizations, and government units. Agencies will also have to justify the final form of new regulations in light of the comments and alternative proposals submitted by the public. Finally, they must periodically review the appropriateness and effectiveness of all existing rules and regulations with a particular eye toward eliminating unnecessary burdens they may be creating for individuals and small entities.

In light of the proposed review of all future regulations, we would urge that S. 299 not only require agencies to invite public comment when new rules and regulations are introduced, but also to allow concerned parties to retrospectively examine rules and regulations that currently affect their operation, requesting that the same review be applied.

The purpose of our testimony today is to give illustration to the fact that hospitals are among the most regulated industries in America. We would hope that S. 229 would alleviate some of the problems of government regulation in hospital operation.

Virtually every aspect of hospital operation is now subject to some form of regulation: Federal, State, local or voluntary. Professional performance is regulated through such legally mandated mechanisms as utilization review, medical audits, claims review, and PSRO. Capital expenditures are regulated by certificate of need and health systems agency organizations. Reimbursement is regulated by medicare, medicaid, Blue Cross, and others. Wage and hour laws dictate the minimum wage hospital employees are to be paid. Occupational Health and Safety Act (OSHA) states what must be done to be safe environmentally. The Equal Employment Opportunity Act affects the types of individuals that are to be employed. Hospitals are also controlled, in part, by the Internal Revenue Service laws, the Controlled Substances Act, the Bureau of Narcotics and Dangerous Drugs, the Atomic Energy Commission, the Environmental Protection Agency, the Federal Communications Commission, and other legally mandated and voluntary agencies.

Department of Health, Education, and Welfare (DHEW) is the source of most of the Federal regulations relating to hospitals. It has recently been reported by the General Accounting Office that HEW publishes between 750-800 proposed or final regulations each year; and that almost 600, or about 75 percent, of these are related to its health programs.

Early hospital regulatory programs were direct exercises of Federal and State power intended to protect the public. They included, among many others, minimum requirements for care and treatment and services that could and could not be provided. After World War II, the Federal Government's regulations became directly involved in increasing the availability of health facilities, personnel, and resources, and in disseminating information regarding technological advances. By the mid-1960's the relative abundance of health care resources gave rise to another shift in the nature of health care and hospital regulations. The regulations stimulating rapid growth in health care resources were replaced by regulations to prevent duplication of services, to distribute services appropriately and to enhance efficiency through planning. By the early 1970's the rapidly increasing proportion of the Federal budget devoted to the purchase of health care services, under such programs as medicare and medicaid, resulted in additional controls in the form of utilization and payment regulations.

The hospital industry's experience with regulation illustrates many of the frustrations that have been expressed by those who must comply with regulations; and demonstrates why hospitals are urging the development of a more rational and less burdensome regulatory approach.

We are encouraged by some recent efforts to relieve the regulative burden on hospitals. Perhaps the most recent example is the proposed rulemaking to expand and clarify the regulatory provisions concerning the role of the Joint Commission on Accreditation of Hospitals (JCAH) and American Osteopathic Association

(AOA) reviews in meeting the medicare program's conditions of participation for hospitals. The acceptance of JCAH and AOA accreditation by the Secretary of DHEW would reduce the need for annual State agency surveys of the hospital.

However, there are fears that we are taking one step forward and two steps back because of recent rulemaking. One case in point is the regulations published May 18 concerning the Uncompensated Services standards of compliance for health care facilities assisted by the Department of Health, Education, and Welfare under titles VI and XVI of the Public Health Service Act (Hill-Burton).

The May 18 publication states that the regulation will " * * * promote better delivery of services under the assurances and more effective monitoring of compliance with the assurances." In the case of Iowa hospitals which have always granted such care under the "open door policy," there was no need for the mandated minimum levels of uncompensated services to be rendered. The new rules will now eliminate a choice of compliance and impose a dollar volume of services that must be rendered and documented. In the State of Iowa, there is little demand or need for the uncompensated services under qualifying conditions.

According to the new rules, health facilities are required to publish plans for allocating the uncompensated services to be granted, are to describe the types of and time such services will be available and whether reduced cost care is also available. The availability of uncompensated services must be published in a local newspaper, posted in the hospital, and individual notice given to each patient. A determination must be made by the hospital as to the patient's ability to qualify for the uncompensated care by using national income-based criteria. Incidentally, the income criteria is developed and published by a different agency.

We believe that compliance with this regulation will be burdensome for hospitals in the State of Iowa because of the patient screening, recordkeeping requirements, and low demand. Perhaps the most troublesome issue is that this regulation eliminates the compliance option that reflected traditional and appropriate hospital practice in the provision of charity care.

This regulation and others, such as the June 1, 1979, malpractice cost reimbursement regulation, have been mandated over the protests of those concerned, and in disregard of President Carter's own Executive Order 12044.

In March 1978, Executive Order 12044—Improving Regulatory Management—was signed by the President. The order:

- Makes agency heads accountable for the regulations their offices issue;
- Required regulatory analyses of all major new regulations;
- Requires semiannual agendas of new and upcoming regulations;
- Expands public participation; and
- Requires that agency heads select the "least burdensome acceptable alternative" when issuing new rules.

While each executive agency was directed to adopt procedures to incorporate these reforms into its operations, our assessment is that actual compliance with the Executive order has been unsatisfactory.

Even with these directives, DHEW, without a regulatory analysis, adopted the uncompensated care regulations which will have an estimated cost of \$97 million in the first year alone,

A current example of proposed rulemaking is the DHEW System for Hospital Uniform Reporting (SHUR) appearing in the Federal Register of January 23, 1979. This system will be very costly to implement; much more than the \$65.6 million that DHEW recently estimated. In this instance again, there have been no cost benefit studies performed to justify its implementation. We are very concerned with this particular DHEW proposal because it could disrupt presently efficient, responsible accounting systems and reduce the effectiveness of hospital managers in all hospitals regardless of their size. In fact it will be overly burdensome in the small hospital because they do not have the personnel and resources available to study and meet the requirements of the proposed new accounting system. While DHEW, in proposing the new regulation gave token recognition to the problem of compliance in a small hospital, the small hospital requirements are, for all practical purposes, identical to the very large hospital. DHEW is reviewing hospital comments on the proposed regulation at this time; but, based on past performance, we are pessimistic about that Department's future actions.

We believe our pessimism is well founded, as can be illustrated by DHEW's most recent example of rulemaking; one which will have severe ramifications on our small hospitals. On June 1, 1979, DHEW published changes in the reimbursement methodology of hospital costs related to malpractice insurance coverage. The Department did this within 75 days of the proposed rulemaking, and in spite of many objections of those concerned.

The effect of the rulemaking will be to reduce medicare reimbursement for malpractice costs in many of our small hospitals to as little as 5.1 percent of the total hospital's cost of malpractice insurance coverage. The 5.1 percent is a national average of both large and small hospitals and is not related to the number of medicare days of inpatient care the hospital has actually rendered to its patients. Therefore, based on a national average of all hospitals, our small hospitals may only receive one-tenth of the amount of reimbursement they previously received.

DHEW again failed to perform a regulatory analysis on the malpractice premium cost regulation despite the Department's own estimate that this regulatory change would cost hospitals and private insurers \$310 million in fiscal year 1980 alone.

Furthermore, section (3)(a) of the Executive order states that "agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall (1) ensure that regulatory analyses are performed for all regulations, which will result in (a) an annual effect in the economy of \$100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic region. * * *" To date, we know of no procedure instituted by DHEW for making any such determinations in the development of program regulations. Because of DHEW's failure to comply with the intent of Executive Order 12044 and its regulation reform efforts, we believe that legislative reform is the only appropriate response to the regulation problem.

We urge legislative reform of the regulatory process such as S. 299 proposes, and we also would support legislative action to require preliminary and final analysis of regulations to estimate their costs and projected benefits; to consider the need for and the objectives of proposed regulations; and to consider any alternatives before final regulations are promulgated. Because of the increasing attention placed upon rising health care costs, we believe that analysis of regulations is crucial in light of the fact that regulatory actions are major contributors to rising costs.

It is not the intent of this testimony to minimize the effectiveness of laws and practices designed to insure patient safety and quality of care. The agencies promoting regulations must be required to recognize the wide diversity in our economic and governmental system, and the broad range of needs and abilities that exist within this diversity. If we can accomplish this, the regulatory process can be made more meaningful and more effective, focusing on real and productive improvements on our quality of life.

Mr. FRY [continuing]. I would like to make a verbal statement to you. This is my first opportunity to testify before a committee of the Senate, and I am particularly pleased to be here today to testify on behalf of Senate bill 299, a bill which I have studied carefully and one that we in the hospital and health care industry support.

Indeed, as a member of a hospital profession, I personally go on record as saying that the Regulatory Flexibility Act is long overdue. It is the type of bill for which we in the health care field have been begging for years.

While many of the regulations which you have already heard testimony about, such as OSHA and ERISA, are applicable to hospitals I have chosen not to mention them in my comments this morning.

I would hasten to state in my comments that our profession acknowledges that most Government regulation is born of an honorable intention. A problem arises, our Government representatives legislate a solution, and the bureaucrats set out to see that that solution is carried out.

To this concept, while there is concern on the part of those in our profession, there is also realization that our system of democracy is the best form of government available in the world.

Our concern, then, lies not with the rights and duty of our elected representatives to legislate a solution, but rather with the members of the bureaucracy who set about to write the rules and regulations as to how it will be carried out.

Regulations have become so duplicative and quagmired as to make those in our profession come to wit's end in our effort to try to fulfill them. It is incomprehensible to us members of the hospital profession as to why our industry has been singled out as the one major area of the economy of this United States that should bear the brunt of efforts to reduce inflation and Government spending.

Recent studies done at Iowa Methodist Hospital determined precisely the direct cost of the hospital's compliance in five areas covered by Federal regulations, those being utilization review and professional standards review organizations, certificate of need, reimbursement mechanics, plant codes, and personnel management.

The study period covered was the calendar year 1978. The direct cost for the five areas of regulations were: Utilization, \$115,310.90; certificate of need, \$57,850.24; reimbursement mechanics, \$61,402; plant codes, \$36,209; and personnel management, \$1,247,517.

Total cost of compliance for 1 year was \$1,518,289.14.

This broke down to the cost per admission of \$62.92. Cost per patient-day, \$7.30.

I also hold in my hand a copy of the new SHUR manual: 630 pages. This is HEW's newest program.

In my other hand, I hold a copy of the forms necessary to be completed to implement this manual: 66 pages. It has been estimated by several of my peers that implementing such reporting requirements will cost the average hospital \$100,000 in the first year.

How are the hospitals of Iowa under 100 beds going to come up with \$100,000?

In my hospital, we have estimated that this program will cost \$40,000 to \$50,000 in the first year alone. Similarly, such reporting is dictated by SHUR and would force the smaller hospitals to acquire computers or tie in with the larger computer operations, or to add considerably to their staff.

This is but one example of regulation. Another example would be certificate of need. While there is no argument that there is need for planning in the hospital industry, there is strong disagreement that the certificate-of-need concept, and all the paperwork entailed and cost of same is a method of choice.

Indeed, to cite my own hospital as an example, a certificate-of-need application was recently prepared for a project which we estimate will cost some \$5 million. Cost of preparing the certificate of need was in excess of \$15,000.

Expressed in a different manner, this application costs every patient admitted to St. Francis Hospital during the fiscal year 1978-79, \$1.50.

While this may seem small, you can see it definitely adds to the charge of our patients.

To cite another example, I would refer to an appeal St. Francis Hospital made. This appeal was based on a difference of opinion between the hospital and the medicare auditors. Medicare auditors, under the direct instruction of the Kansas City Office of Health, Education, and Welfare, questioned the medicare cost reports from St. Francis Hospital for the years 1974, 1975, and 1976.

They stated St. Francis Hospital has been overpaid by \$290,000 for 1 year in question, that being 1976. As a result, St. Francis Hospital was forced to repay \$290,000. We were not initially allowed to prove our innocence or our guilt. We were simply dictated to be guilty by the Department of Health, Education, and Welfare.

And as a result, we were required immediately to refund \$290,000 to the medicare program. We, of course, disagreed. We fought the matter. The fight itself required extensive time on the part of my staff, and, in addition, required us to obtain the services of a nationally known medicare attorney, Mr. J. D. Epstein of Houston, Tex.

Mr. Epstein makes his living and, indeed, established his reputation by providing a defense for hospitals who are appealing controversial interpretations made by the bureaucrats.

Some 18-20 months after the initial appeal process began, it was determined that St. Francis Hospital was correct, and the bureaucrats were wrong. We were then repaid \$290,000, which we had been forced to repay.

It should be noted that no interest was paid to the hospital on any of these funds. In addition, the hospital paid attorneys fees, plus staff man-hours and so forth, to the extent of some \$30,000 to \$35,000 in addition.

We were not reimbursed. It was particularly interesting to me in reviewing the materials and the brief that had been prepared by Mr. Epstein to read direct quotes that had been made on the Senate floor by such esteemed Senators as Douglas and Dirksen of Illinois.

The Senators' remarks clearly stated the intent of medicare law. However, when the law was put forth and underwent the interpretation by the bureaucrats, that which came out was far different from that which these esteemed Senators and other colleagues of theirs had in mind.

With that, I thank the committee for allowing me to make these comments. I stand willing to answer your questions to the best of my ability.

I also wish you well on behalf of the hospitals of this Nation, the patients we seek to serve, and indeed, the present administration, which is trying to hold down inflation and the cost of health care.

It is my opinion that this will be accomplished if your committee efforts are accepted by your colleagues in the Senate and the House of Representatives, who alone can successfully bring to completion the Regulatory Flexibility Act which you have before you and are now considering.

Thank you.

Senator CULVER. Thank you very much, Mr. Fry.

Health care is one of the most highly regulated industries in the country. As you mentioned in the prepared statement, I noticed an estimated 75 percent of all HEW proposed regulations each year. I think that comes out to some 600 regulations pertaining to health programs.

I believe very strongly that the Government has an obligation to maintain a representative regulatory process which permits consultation between the regulated and the regulators to reduce needless paperwork.

Do you gentlemen really think that we have such a system today? Do you think you were giving a meaningful opportunity to comment on any of these regulations prior to their adoption?

Mr. DUNN. We think Executive Order 12044 has not been adequately followed. In the prepared testimony, we do speak to an example or two of that.

We also would agree with some previous folks that regulation in the health field is needed in certain respect for the health and well-being and safety of the people.

So we do not choose to fight regulation per se.

Senator CULVER. For example, to your knowledge, did HEW consider alternative less burdensome regulations for smaller hospitals?

Mr. DUNN. In the proposed SHUR program, there were some very, very slight recognition given to the smaller hospitals. It was a difference of about 1 or 2 pages of the 66 that Bill Fry demonstrated for you.

I guess our great concern there was that although SHUR is not yet implemented, there was no examination in the field of the proposed SHUR manual and program prior to its initial publication in the Federal Register. It was only through the comment period that the tremendous concerns of the smaller hospitals and, indeed, also of the large hospitals that would be forced to change their accounting systems, were brought to light.

Now, we are informed that some modifications are being made, that the Department has gotten the message in some respects. But we have not yet seen evidence that recognition of the smaller organization is being more adequately recognized than some very slight change in the 66-page report.

Senator CULVER. Well, I noticed that in the SHUR instruction manual there is one section—really, two sections. “Where they make a pass at acknowledging the need to have some flexibility and discrimination in terms of the burdens they impose on smaller facilities.

One part they talk about a uniform reporting plan which has a provision which requires that the reporting system “provide for appropriate variation in the application of the system in different classes and facilities.”

I gather you think that wasn’t done at the outset and there are indications people are more sensitive now.

The other point buried here in the SHUR instruction manual describes “an optional reduced level for reporting for small hospitals.” But when I turn to that section, I am not sure whether it helps small hospitals or not, because after defining small hospitals as those with less than 4,000 admissions per year, the next sentence in the manual reads, “such hospitals at their option may report at a higher level of detail than that required for hospitals with an average annual admission of 4,000 or more.”

I wonder if that is the way HEW takes care of small hospitals? Perhaps you gentlemen should try to get large quickly.

Mr. FRY. These are the very problems that I mention in terms of the medicare appeal that we had. It is the interpretation put forth by the bureaucrats. The intent was there, but they come back with variation.

We say this, and they say no, this is variation. I was interested in hearing this morning the comments from some of the bureaucrats that we want to make sure we don’t have increased litigation. That very comment is going to cause all kinds of litigation, because smaller hospitals are going to say this is variation here, but it does not explain it, and even when it makes an attempt to explain it, it doesn’t.

It will be interpreted by the people who do not have expertise in the small hospitals, and the people from HEW will say, this is what that meant.

Senator CULVER. Mr. Linden?

Mr. LINDEN. Thank you Senator.

My comments will be brief. And I would like to take a couple of examples that may be minute, but happen daily.

I think the legislation proposed in S. 299 could have a profound and positive effect on all hospitals. And certainly small hospitals in the rural areas of our country.

Such legislation would take into account the size and type as it attempts to conform to regulations which often are not applicable to the particular hospitals' size, or even the scope of services.

Most, if not all, small hospitals are not in a financial position to hire the expertise to fill out reports and comply with regulation. However, we must comply.

Regulations do not allow for alternative methods. The cost to the taxpayers for instruction and enforcement, not to mention collection, listing, storage, and in many cases this can be greater than the benefits derived.

Yet all hospitals must report the same information to different sources. It is literally true, I think, that a great deal of time and effort is put forth in trying to find ways to either circumvent regulations or to minimally conform.

This type of activity can only be detrimental to all concerned in the long run.

One hundred of the small hospitals in Iowa are equal to that of five or six of the largest hospitals in Iowa. Yet the same reports, same regulations, the same basic requirements are imposed on all hospitals regardless of size. There must be an inconsistency in the cost-benefit ratio in such cases.

Medicare has created extra paperwork in time-consuming tasks because of certain requirements. For our particular hospital those charges for ECG, EKG, stress holster monitoring and ultrasound tests have to be split billed, which means two separate forms, part A and part B, must be filled out for each of these charges. And when payment is received from medicare, each charge is paid by a separate check.

When a patient is brought in by ambulance and admitted to the hospital, this ambulance charge cannot be billed with the inpatient bill on part A, but must be billed on part B, which means another form must be filled out.

Another time-consuming task is keeping the medicare logs. Each time a medicare patient is billed, information must be entered onto a log which contains 30-plus columns of necessary data. Each time a payment is received, it must be listed on the log also.

Medicare cost reports and title 19 settlement calculations are time consuming, also. Each year the hospital has many auditors in for 2 or 3 weeks. Medicare also demands certain things which do not seem reasonable. Before we can bill for an ambulance charge, we must have a certificate signed by the doctor.

If we know something is not covered, we still have to submit it to medicare. When a patient inquires to the intermediary about a non-covered charge, we still submit it to the intermediary even though he knows it is not covered.

When a patient is in a nursing home and requires Foley catheter, we send an EMTA to the home to do this and the charge is \$15. Medicare will not pay for this. But if the patient comes to the hospital by ambulance for the Foley catheter and returns to the home by ambulance, the charge would be \$70 plus the emergency room charge. This medicare would pay for. We send the EMTA's to the homes and save medicare money, but the patient gets billed for it.

One time-consuming task is a medicare log. Each time a medicare patient is billed, information must be entered into a log which contains 30 columns. As each payment is received, it must be listed on the log.

Sometimes they take back payments on accounts that are years old. There is no way for us to recover on these, and cost must be passed on, because many times the patient has expired or the estate has been closed.

In our hospital, we have a small medical nuclear laboratory which uses insignificant amounts of nuclear material for some types of diagnostic work. And we fill out an application. In 1975 we filled out the application, and the instructions were on two sheets of paper. Since that time, there was an inspection of our institution by the National Regulatory Nuclear, an onsite visit.

We again put in our application 2 years later for renewal, and dozens of pages of instructions were involved. The end result is our old license is significant, and it tells us what we can and cannot do. The new one is no different.

Yet in the interim, literally hundreds of hours of paperwork were spent in getting this accomplished, not counting the dollars.

I could go on and mention all the screw-ups that went on in between correspondence. I would like to conclude by saying we need your help and need it badly if we are going to control costs of health care.

Mr. DUNN. Senator, back to your earlier question.

Recently, in medicare, there used to be recognition about the smaller hospital in the way they would do their accounting to show their cost.

They could send in a more simplified form. Since January 1, all hospitals, including the small ones, have to go to a departmental cost reporting system. That has nothing to do with the SHUR program, that is still on the drawing boards.

But although there is a pledge to allegiance at times, their actions are not consistent.

Senator CULVER. As you know, the Health Care Financing Administration and the Small Business Administration asked an accounting firm, Morris Davis, to do a study of the cost to hospitals of complying with the SHUR requirements.

On pages 12 and 13 of that report, they stated that one of the possible expenses which would be incurred by hospitals in complying with the SHUR requirements would be the redesigning of their time cards, and supply and drug requisition forms.

Could you give us a little insight about the form that your time cards and drug and supply requisition forms take, and talk a little bit about how difficult it would be to redesign and reprint those forms?

And do you know whether the SHUR program would, in any way, exempt small hospitals from that obligation? You know, have you ever had discussions of redesigning those cards before?

Mr. LINDEN. I am not sure if we are exempt or not. My institution switches between admissions, so we may swing in and out of the program, depending on what happens in the community.

In my institution, which is a rural hospital, our time cards, the people record the time they come in on a sheet of paper, and when they leave. We don't have timecards. We have a small computer system we are putting in, our requisition for supplies we print ourselves, and the department head, once a week, makes out a requisition for supplies from the storeroom, and they issue them out.

We would be becoming overly sophisticated for an unsophisticated community hospital delivering general health care.

We are going to become so sophisticated in what we are doing to forget what we are there for.

Senator CULVER. Would the SHUR program allow small hospitals to obtain exemptions from any of the new accounting procedures that it mandates?

Mr. DUNN. No. In this respect, you are talking about the SHUR program proposal which as presently designed would not exempt the small hospital.

Senator CULVER. That Morris Davis study, as I recall, makes some of its estimates in terms of computer time. Do all hospitals have access to computers? How big does a hospital need to be to make it cost efficient to buy access to computer time?

Mr. DUNN. I would venture to guess that in a hospital of less than 250 beds, it clearly would not be cost effective for them to own their own computer.

There are some shared computer programs, purchased services that can be obtained. But it would be an added cost, in a time when top priority is to minimize health care costs.

Mr. FRY. Our hospital is 240 beds. We are in a sharing system. But in order to meet the requirements of SHUR, it will cost us an additional \$8,000 a year to buy into additional programs in that shared system.

In addition to that, there is also a vast difference between functional accounting and managerial accounting in terms of the data we are reporting. We have established a data base. We have a sophisticated budgeting system for a hospital of our size, and it is based on historical data going back 10 years.

In order to maintain that budgeting system, I would have to keep two systems: No. 1, to run in-house; and No. 2, to satisfy these fellows.

Or if we didn't our whole budgeting system, all the money we had invested in it, and all the time spent with department heads and other people, would be completely gone; which would be a tremendous waste of money.

Mr. DUNN. That is a particularly sore point with us. The authority that Congress gave was for a uniform reporting system. This design literally requires a whole new uniform accounting system, and we think that is a clear example of going beyond the legislative authority.

Senator CULVER. So that 3½-inch manual you brought along, the SHUR requirements, instructions, applies to big hospitals, and little hospitals, alike?

Mr. DUNN. That is correct. And everyone of Iowa's hospitals under 100 beds would definitely be forced to go outside their own expertise to bring in a CPA firm.

Senator CULVER. It is 87 out of 131.

Mr. DUNN. That is correct.

Mr. FRY. There is talk in our industry. There is a lot of conversation about eliminating beds. It is common knowledge in our area, here is a way to eliminate beds because a lot of these small hospitals will go broke.

Senator CULVER. I want to thank you gentlemen very much for your presentation and testimony this morning. It was extremely valuable to the committee. I look forward to working with you as we try to get this legislation shaped up and successfully enacted by the Congress.

Mr. DUNN. Thank you, Senator. Good luck to you.

Senator CULVER. Our next witnesses are Connie Wimer and Frank Swain.

Good morning. It is a pleasure to welcome you here this morning.

PANEL OF BUSINESSMEN:

STATEMENTS OF CONNIE WIMER, CHAIRPERSON, SMALL BUSINESS COMMITTEE, DES MOINES CHAMBER OF COMMERCE, AND FRANK SWAIN, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Ms. WIMER. Thank you. It is very pleasant to be here. Thank you for the invitation.

Because of time constraints, caused by owning a small business and certain county regulations, I do not have a formal prepared text. I think I can cover my points in about 5 minutes.

If you would like anything submitted in more detail, I would be happy to do so.

I am here not only as a small business owner, but as chairperson of the Small Business Committee for the Greater Des Moines Chamber of Commerce, and also as a delegate to the White House Conference on Small Business in 1980.

When I was asked to chair the small business committee, I did a little research, and some of the figures were very surprising to me. Perhaps you are familiar with them. There are a couple of outstanding ones I would like to mention this morning.

Small business represents 96 percent of American business in the United States, and it provides 55 percent of the jobs in the private work force. Thirty percent of these businesses that are new fail within the first year, and 50 percent of them within 2 years.

The burden of paperwork and regulations contributes greatly to this tremendous failure percentage. The Commission on Federal Paperwork estimates that \$120 billion in paperwork costs will be imposed by the Government in 1979 and that small business will bear 60 percent of those costs.

It is also estimated that regulations will average \$12,000 in costs to each small business owner. And a lot of them cannot afford that.

Legislation such as you are proposing to establish principles of relating requirements to size is long overdue. I was dismayed that it took me 2 years to learn that you had introduced this, and I hope that in some way I can be helpful.

As chairperson of the small business committee, I see great concern by business owners. In setting out our committee goals for the year,

this was brought out again and again—the paperwork problems and the regulations.

At the open forum for the White House Conference on Small Business held in Des Moines, a number of programs were mentioned that need attention. I am not going to read them to you, but there are 13 of them. If you are interested, I will send them to you.

It seems so ironic to me because that I have seen the positive side of Government trying to help small business. The SBA in Des Moines does a marvelous job with seminars and education and support for small business.

But, on the other hand, I see Government imposing problems that in some cases insure the failure of a business. It is somewhat like the right hand not knowing what the left hand is doing.

For example, a requirement that might constitute 1 or 2 percent of the total cost for a large business could very well be 20, 30, 40 percent of the total costs for a small business. And those percentages could tell a sad story, I find.

In addition, the sophistication, the expertise, and the time necessary are simply not available to a lot of small businesses. Mr. Nichols suggested that I come up with a few concrete examples of problems. I am sure you have heard more horror stories than I have. I read some of the testimony before this committee from last year and the year before.

So I decided rather than to document more of the outstanding ones, I would tell you about what I know best—my own company and the frustrations that I have had in a very brief period of time as a small business owner.

I asked my bookkeeper yesterday for any suggestions she might have for input. She gathered together the papers that she has to work with, just to do a payroll, and I could not believe my eyes. I did not realize how many forms there are.

You might be interested, Senator. She came up with some suggestions, and one of them was exactly what you suggested to the first witness—that many of these papers she has to file monthly or quarterly be cut back, and that they be filed annually or at least less often than they now are.

So you certainly have her support on that suggestion.

My second example regards a profit-sharing pension plan that I wanted to set up for my employees. I looked into the idea and discussed it with my accountant.

The accountant stated, it was great business for their profession, but could not advise us to do it because of the administrative costs. Annually they would eat up almost 50 percent of our contribution and simply not benefit the employees enough.

I was very fortunate, to find an approved plan through an insurance company that did fit our company's needs. Even though our contributions are relatively small, or have been so far, the projections for some of our employees is a retirement of some \$1,500 a month.

Now, those employees almost missed that opportunity for that kind of a retirement plan because of the ERISA costs.

My third frustrating problem with regulations involved the Wage and Hour Department. We were audited several months ago. A

young woman came into our office unannounced as they do, and said she would like to look at our records.

She indicated she would be there about half a day. The third day, I started to get nervous and thought, What in the world have we been doing wrong? I spoke with her about a pamphlet that would give us a list of all of our obligations.

The next day, she came back—which, by the way, was the fourth day—and she brought a stack like that. It was unbelievable, fine print, dozens of pamphlets. She said, "Some might apply and some might not, and it is your responsibility to figure it out."

She spent 5 days there requiring almost that amount of time from my bookkeeper before she completed her audits. My bookkeeper took all the pamphlets home and spent one whole weekend reading them to see if we were complying with all the requirements.

It turned out we had allowed seven employees to make up time. They had a legitimate reason and needed to be gone yet needed their full salary and asked to make up the time. It was not made up in the same 40-hour workweek.

My penalty was to pay time and a half to the seven people, and, it amounted to \$241. However, the true cost with the pain, the agony, and my bookkeeper's time, let alone the taxes we pay to cover the salary of that Government employee, was very costly and frustrating.

We are a good example because we are in a very competitive business. We have three competitors in Des Moines. It takes a bright person to do the kind of work—we are a title company, and there are no formal schools for this type of work, and you do on-the-job training, which is costly.

So when you get good employees, you work hard to keep them. We have tremendous benefits for the size of our company. And it is just one of those ridiculous wastes that the Wage and Hour are coming in to protect—they are trying to protect the employees and they actually harmed them.

And when I said to this young woman, "You know, what you have done is eliminate this flexibility that I have given them to make up time. I cannot do that anymore, because I cannot afford to pay time and a half for it."

She said, "I realize that is the result, but we have to go by the books, and the books say it must be done this way."

Those are my three most recent frustrations. I do have three suggestions, but I do not want to be presumptuous. Perhaps they are not applicable to this particular bill, but I would like to run them by you quickly.

The first one was something I heard about at our open forum. Are you familiar with the Canadian bin system numbers? When they have forms that companies are required to fill out, they are given what they call a bin number. If a form is sent that does not have a bin number, they are not required to return it.

Apparently, they eliminate a lot of forms that are actually not required, but a voluntary sort of thing.

I would like somehow in some legislation to encourage Federal employees to use commonsense, a rule of reason. I do not know how you could do it, but I think it would be wonderful if you could.

The third and the last suggestion is a suggestion for some sort of tax relief for any large one-time expenditure for making costly changes that are necessary to comply with some new regulation.

I do have two questions. I did not have access to a Federal code at the time I read the bill. How many tiers are possible the way this is written? More than two?

Senator CULVER. I do not know just what the administrative experience has been in that regard. The implication was at least two. I do not know how refined they get in terms of their categories.

Ms. WIMER. My other concern was in trying to read how the public will actually have an opportunity to scrutinize and comment on new regulations, and perhaps you have intended to work further on that.

Senator CULVER. We are going to try to substantially broaden that in terms of representative participation from the public sector, and there are a number of ways we hope to improve that.

Thank you very much, Ms. Wimer. We are very grateful to you for your presentation.

I wonder how many of the payroll forms you mentioned there were required by IRS?

Ms. WIMER. I do not know.

Senator CULVER. Could you find out and let us know?

Ms. WIMER. Yes. There are no State forms in here; these are all Federal.

Senator CULVER. Mr. Swain?

Mr. SWAIN. Thank you, Senator.

First of all, I bring greetings from Mike McKevitt, who was unable to be here this morning. He is out of town.

As you well know, NFIB has been a strong supporter of this bill since introduced by you 3 years ago. I would like to emphasize this morning three points.

First of all, I do have a prepared statement and would like to submit it for the record.

Senator CULVER. Without objection, so ordered. It will be inserted in the record.

Mr. SWAIN. Three points we make in that statement.

First concerns the example we have all heard this morning from the city administrators and from the hospital administrators, and from the business people. From NFIB's perspective, these are hardly isolated examples. We hear every day in the mail and phone calls from our members that regulation is a continuing problem, and the problem is increasing in intensity.

[The prepared statement of Mr. Swain follows:]

PREPARED STATEMENT OF FRANK S. SWAIN

Mr. Chairman, National Federation of Independent Business, on behalf of its 580,000 small and independent businesses, is pleased to appear this morning in support of S. 299, the Regulatory Flexibility Act. As we have stated on numerous occasions in this and other fora, we consider the approach to the regulatory problems of small entities embodied in S. 299 to be innovative, responsible, and helpful. The legislation is high on NFIB's list of priorities for the 96th Congress.

Previous witnesses this morning have cited numerous specific examples where tiered regulation would be helpful to small entities. On previous occasions, NFIB has done as well.¹ Rather than repeat those or add more we would like to emphasize that these are not isolated examples; they are symptomatic.

¹ See the testimony of James D. "Mike" McKevitt before this subcommittee, October 7, 1977.

BREADTH OF THE PROBLEM

NFIB is a broad-based association. We have as dues-paying members small entrepreneurs in businesses ranging from forest nurseries to water well drillers—from foundries to eating and drinking places—from real estate to day care centers.

Approximately 95% have 40 or fewer employees. Our survey work, our discussions with individual entrepreneurs, and our mail bag bring us in contact with a wide spectrum of small businesses. Thus, we are aware that the examples just presented are uncommon only in their details. The theme remains constant.

Let us offer some numerical evidence. In 1978, 25,000 of our members responded to a short series of questions on regulation and regulatory agencies. The first question posed was "Are government regulations a problem in your business?" Possible answers were "Yes", "No", and "Undecided". Those responding in the affirmative were then asked "Is government regulation a major or minor business problem?" Possible answers were "Major" or "Minor". The clear results can be seen on table 1.

Despite the subjectivity of the response categories provided, these data are indications that small business finds Government regulation a significant business problem. This point is corroborated by other survey evidence. The NFIB Quarterly Economic Report for Small Business, as an example, consistently has found over the last 4 years approximately 1 in 10 small firms believing "government regulation and red tape" to be their single most important problem.² Dandridge and Sewall examining the internal problems of a small sample of small businesses in New York learned that "understanding legislation and regulation" followed only "financing, getting money, cash management" in order of importance.³ And Hartmann and Holbrook found "amount of regulation" and "government regulation" to rank 3rd and 4th respectively out of a list of 39 internal and external problems presented to sample of small businesses in the Nashville, Tennessee area.⁴

Note in table 1 that a direct relationship exists between firm size and the regulatory problem. The larger the small firm, the greater the problem. (This illustrates the small business portion of the curve presented by Professor Milton Kafagolis in prior testimony on similar legislation last Congress.⁵ As you will recall, Kafagolis posited that the relationship between regulatory impact and firm size took the shape of a modified bell-shaped curve. The highest point on the curve was reached by a larger small firm.) This is not surprising for a number of reasons. What is surprising is the large percentage of those firms grossing less than \$100,000 which find Government regulation to be a major business problem.

These same data also demonstrated some variation by industry sector. For example, manufacturing found regulation a greater problem than retailing, transportation found it a greater problem than the nonprofessional services. Yet no industry sector appears to be escaping the problem.

[See table 1 at end of prepared statement.]

To follow up our survey we asked those respondents indicating Government regulation to be a business problem whether the regulations of any agency or agencies were particularly difficult. If the response was affirmative, a list of 15 agencies was provided for the respondent to identify the agency involved. At first blush, there were few surprises in the data gathered. IRS and OSHA ran neck and neck; EPA finished third, followed by Wage and Hour, HEW, and DOT. Others ranked lower.

With this result, one might reason: clean up the problems with IRS and OSHA (the data was collected prior to abolition of "nit-picking" regulations) and the problem will be greatly alleviated. There is truth in this reasoning, but it misses a significant point revealed by closer examination of the data.

IRS, OSHA, and Wage/Hour impact all small employers to a greater or lesser degree. But other agencies regulate far more narrowly defined populations, e.g. the ICC regulating trucking. Therefore, to determine the relative regulatory impact of a particular agency on a particular industry, the size of the regulated population must be controlled. In other words, to fairly determine the relative

² NFIB Quarterly Economic Report for Small Business, (eds.) Bailey, Richard M. and Dunkelberg, William C., (National Federation of Independent Business: San Mateo, Calif.), quarterly series.

³ Dandridge, Thomas C. and Sewall, Murphy A., "A Priority Analysis of Problems of Small Business Managers," American Journal of Small Business, October, 1978.

⁴ Hartmann, G. Bruce and Holbrook, S. Thomas, "Opinions of Small Business Managers," (Nashville Area Chamber of Commerce: Nashville, Tenn.), June, 1978.

⁵ See the testimony of Professor Milton Kafagolis before this subcommittee, October 7, 1977.

impact of agency regulations, on a particular industry those small businesses doing the evaluation must be regulated by the agency or agencies in question.

To overcome this problem we isolated NFIB's two most homogeneous industry sectors—transportation and agriculture. We then arbitrarily, but we think reasonably, assumed that each respondent in these two sectors would be affected by five of the regulatory agencies on the respondent's checklist. In the transportation sector, we assumed all respondents were regulated by IRS, OSHA, Wage/Hour, ICC and DOT. In the agricultural sector, we assumed all respondents were regulated by IRS, OSHA Wage/Hour, EPA and the USDA. The results of this comparative analysis can be found in table 2.

Note in table 2, we get a considerably different view of the relative difficulty of an agency's regulations than we did initially. For example, agriculture found EPA's regulations the most difficult of all. Only then came OSHA and IRS. Transportation found the industry specific, ICC and DOT providing the most difficulty, though IRS and OSHA were cited quite frequently. Wage/Hour ranked lowest of the five in both sectors. We believe that if we could break down our industry sector classifications in more detail and run similar analyses, the same phenomenon would occur.

[See table 2 at end of prepared statement.]

The foregoing data make two points quite clearly. First, small business has a serious regulatory problem. While impacting different sizes of small firms and different industry sectors with some variation, no size or sector is without problems. Secondly, while the total regulatory impact of an agency is at least partially a function of the population it regulates the impact of an agency on individual small business and/or small business industry sectors can vary significantly. Thus, an agency which may appear to have very little impact on the population as a whole, may cause enormous problems for an individual small business and/or small business sector.

THE SMALL BUSINESS OMBUDSMAN

A small business ombudsman has been suggested as a means or method of assisting small business with its regulatory problems. In theory, NFIB believes the concept quite helpful; in practice, we are not as certain. But, NFIB would encourage that the committee recommend some systematic experimenting, i.e. trial of the concept in selected agencies to see how well theory translates into practice.

The theory is good for a number of reasons. A small business ombudsman would serve as the focal point for individual small businesses and small business trade associations within an agency. With the size of bureaucracy today and frequent inexperience of small entrepreneurs in "working the bureaucracy," a focal point for entry is a significant positive step.

However, to perform this directory function properly, the individual(s) must know the agency and its personnel well. This assumes previous experience in the agency. But unless the ombudsman position is sufficiently prestigious and influential, it may be considered a "dead end" in an individual's career pattern. If that becomes the case and capable people cannot be attracted, then practice may defy theory.

Assuming enactment of S. 299 or similar legislation, regulators will be seeking greater and greater input from small businesses. In theory, therefore, regulators would first consult with the ombudsman in the agency to determine prior problems in the subject area, data sources, and so forth. This serves the positive dual purpose of keeping the ombudsman versed in agency activities—which we assume will help keep small business versed—and keep the regulator versed in small business interest.

However, if the ombudsman cannot produce or produces badly, regulators may come to regard the tiering activity to be a pro forma political exercise. Should this occur, small business could be in worse shape than if an ombudsman had not existed at all.

To enhance the credibility of any ombudsman, we suggest that the individual(s) be employees of the agency rather than an employee of the Small Business Administration (SBA) stationed within. We believe it will help the function's acceptance within the agency as well as acceptance of the individual(s) performing the function. We assume, however, the ombudsman of an agency would work closely with the Office for Advocacy at SBA. Without such cooperation, the credibility of both could be seriously undermined.

Success of an ombudsman will boil down to how much support the agency head is willing to give a small business ombudsman. Is he or she willing to assign

capable individuals to the task whose upward mobility will not be jeopardized by such an assignment? Is he or she willing to insist that the ombudsman have access to agency decision makers? Is he or she willing to consider reasonable requests of the ombudsman for change? These are the kinds of things that cannot be legislated, but are critical to the success of such a program.

In the past, NFIB has had differing experiences with similar activities. The Small Business Treasury Advisory Committee, established by former Secretary Simon and continued by Secretary Blumenthal, rates high marks. While not an ombudsman in the true sense of a day-to-day functioning activity that handles "casework" as well as policy, it is taken seriously by Advisory Committee members and Treasury officials alike. Secretary Blumenthal has assigned his top people to attend, and they have participated actively. While the discussions at times have been rather vigorous, members of the Advisory Committee are convinced that Treasury is making a bona fide effort to solicit and consider small business points of view.

In another instance, the concept did not work as well. The old Federal Energy Administration (FEA) set up a small business office in 1975 to handle energy problems of small business. While the personnel in that office were always receptive, to our knowledge they never became involved in serious regulatory questions or, if they were, they were not effective in doing so. It evolved to the point where the office virtually became an appendage of the conservation program and was confined to energy conservation seminars around the country and other projects of that nature.

There are other similar ombudsman type experiments beginning or in progress. OSHA has established one, and has just filled the position. The SEC has established a small business office. Representatives of the Food and Drug Administration and the Pension Benefit Guaranty Board have set up small business liaisons. This is a welcome trend by agencies. It is too early to judge its success.

A critical factor to an ombudsman program we believe will be constant oversight by appropriate committees of the Congress. If ombudsman are brought before the Congress in a regular fashion to report on their activities (or lack of), the prestige of the position is enhanced, the agency head may become more interested, better evaluations can be made of their success and failures, and comparisons can be readily made among the activities of the various agencies. But if such oversight is not conducted, we fear the opposite series of events could occur.

The ombudsman concept provides opportunities and pitfalls. But we feel the former outweighs the latter and we would encourage the committee to proceed at least on an experimental basis. We do feel that legislating this concept is preferable to proceeding by executive order or relying on the good will of the agency head.

LEGISLATIVE OUTLOOK

The National Federation of Independent Business has been an enthusiastic supporter of the Regulatory Flexibility Act since its introduction in 1977. We previously have testified for this legislation at hearings before this committee, the Senate Small Business Committee and the House Small Business Committee. A number of other witnesses representing the Federal Government, local governments, private businesses and institutions, large and small, have spoken to the Congress in support of this legislation. Last year the committee reported out the Regulatory Flexibility Act and it was passed on the floor of the Senate.

This year hearings have been held in both Houses of Congress on Regulatory Flexibility. Although the House has not finally passed the legislation there is broad support on that side for the bill. Representative Kastenmeier of the Judiciary Committee has introduced H.R. 1971 identical legislation to S. 299 with 35 cosponsors. Representative Ireland of the Small Business Committee has introduced H.R. 1745 which now has 145 cosponsors, and which we hope to see reported out of the House Small Business Committee in the next few weeks.

We recount this background to remind this committee that there is an extensive and thorough legislative record already established which proves the need for this legislation. As we indicated previously in this testimony, regulation is a very serious problem for small business. NFIB is very aware of the many proposals for regulatory reform pending before this committee. These proposals are all deserving of careful study. But we also believe that the regulatory flexibility approach is fully deserving of immediate attention by Congress.

NFIB is firmly convinced that the Regulatory Flexibility Act is a simple commonsense approach to the problem of disproportionate regulatory impact on small business. The concept of tailoring regulations must be legislatively mandated.

S. 299 would do this by amending the Administrative Procedure Act. On the House side, H.R. 1745 would accomplish the same thing by amending the Small business Act. We believe this approach to be an effective one and an approach for which there is legislative and statutory precedent.⁶

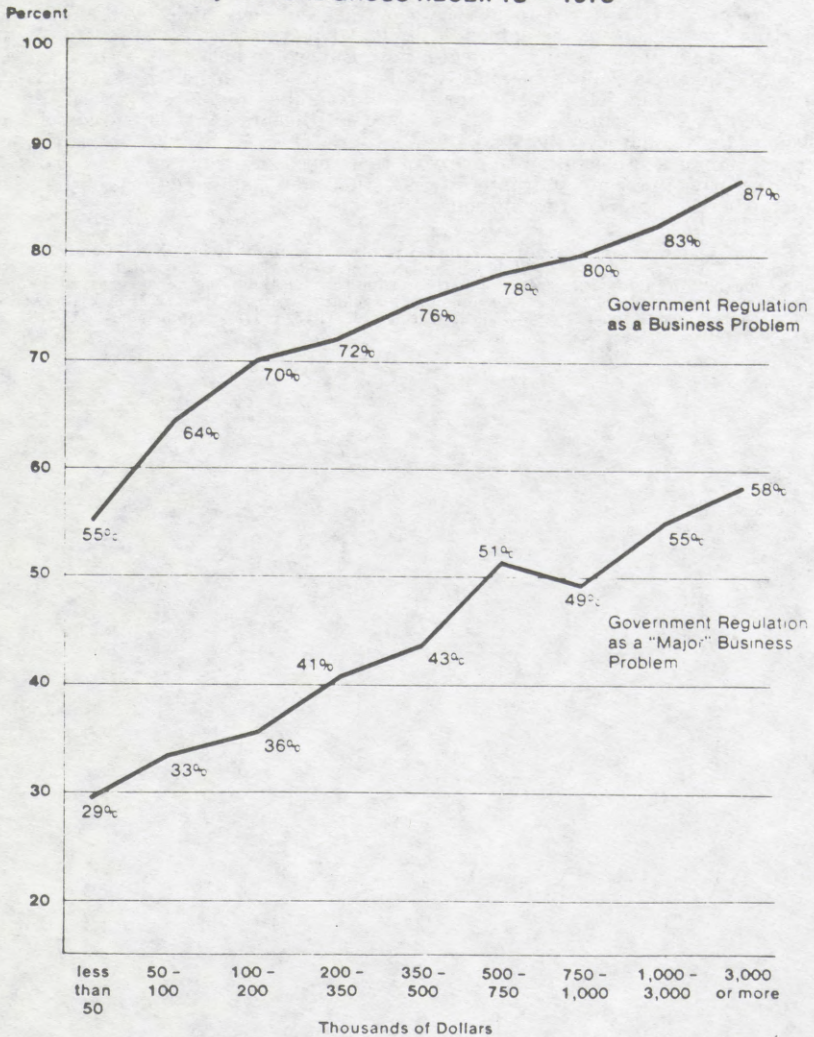
It is not NFIB's desire to advocate one legislative vehicle over another for enacting the concept of regulatory flexibility. This committee has several factors it must consider in reporting our legislation. But we do believe it is essential that action be taken as soon as possible, whether that action means passage of S. 299 on its own, passage of S. 299 as part of an omnibus regulatory reform bill, or passage of S. 299 as an amendment to the Small Business Act. The needs of small business for regulatory relief and the appropriateness of S. 299 for providing a simple commonsense solution to many of these needs is clear on the record.

We greatly appreciate your interest, Mr. Chairman, and hope that the Judiciary Committee and the Senate will soon act on this bill.

⁶ See for instance, "The Small Business Investment Act of 1958," Public Law 95-507, 92 Stat. 1770 section 221 of that law requires each Federal agency to establish goals and policy means for achieving greater participation for small business concerns in Federal procurement contracts. That section amends the Small Business Act (15 U.S.C. § 644). See House Conference Report No. 95-1714, October 4, 1978 (to accompany H.R. 11318) for further details.

TABLE 1

**GOVERNMENT REGULATION AS A SMALL BUSINESS PROBLEM
by ANNUAL GROSS RECEIPTS — 1978**



SOURCE: unpublished tabulations, National Federation of Independent Business

TABLE 2

IMPACT of SELECTED AGENCY REGULATIONS on SMALL BUSINESSES
in the TRANSPORTATION and AGRICULTURE INDUSTRIES - 1978

	<u>Transportation *</u>			<u>Agriculture *</u>	
	<u>ICC</u>	<u>DOT</u>		<u>EPA</u>	<u>USDA</u>
IRS	22% 32%	22% 36%	IRS	22% 38%	22% 18%
OSHA	24% 32%	24% 36%	OSHA	32% 38%	32% 18%
WAGE/HOUR	9% 32%	9% 36%	WAGE/HOUR	14% 36%	14% 18%

*percent of entire industry population specifically identifying the agency's regulations as difficult.

Mr. SWAIN [continuing]. And we have conducted various surveys of our membership, and we cite these in our testimony along with the surveys of others.

I do not think there is any doubt, the record is clear, that regulation is a much more serious problem for small business people now than it ever was. And it is certainly not getting any better.

I think you have to look to see what sort of problem it is, though, and various examples have been cited this morning.

The Government requires too much paperwork. The regulation is too expensive because it forces businesses, municipalities, hospitals, or whatever to hire consultants and buy expensive technology and computers. The time to comply with the regulatory requirement is too brief. These are all variations on the same theme. The regulators are not forced to use commonsense under the present scheme.

What we are really saying is, the regulators do not know and do not have to pay any attention at all to the capability of whatever they are regulating to comply with the regulations. They do not have to pay any attention. It is irrelevant to the regulators how much time the city, hospital, or small educational institution has to fill out the paper. And they forget that the smaller business or smaller city or smaller institution does not have the profit margin, does not have the budget flexibility to absorb the cost as well as large institutions and larger cities and larger businesses.

Government pressure basically becomes financial pressure for the small business, and pressure on the tax base of the small municipality, and taxing to the budget of the small institution. We are very strongly for your legislation, Senator, because we think it would legislate, if possible, some commonsense into the regulators.

The second point we make in our testimony this morning is that in thinking through how this bill would actually operate when it is enacted, we are troubled by what will happen after the bill is passed.

In other words, how closely will the agencies and the regulators themselves adhere to the bill. We wonder what mechanism will be utilized to assure the mandate of the legislation will be followed.

One idea we explain in our written statement is that one person be appointed within each agency. This might be done through language in the legislation or a suggestion in your committee report or through Executive order.

But at any rate, this person would be responsible for carrying out the mandate of this legislation within a particular agency.

We think it is very important that some sort of mechanism like this be recommended so that there will be some focal point, and it just will not be lost in the shuffle.

We are aware of the many pending issues of national importance, and we appreciate your time spent on this issue. I am sure you do not have time to call up the heads of the 50- or 100-odd Government agencies, after this bill is enacted, and ask each and every one of them if they have complied with S. 299. It would be simpler if there were an office in each agency, to call and see if the agency complied.

We are all aware that President Carter has attempted to achieve a measure of regulatory reform by Executive order, and the response to that has been spotty at best. There have been some agencies that have done very well, and have appointed small business liaisons and so on. And others have not.

I cite that only to say this legislation is undoubtedly necessary, and an Executive order is not sufficient and does not reach the independent regulatory agencies. Probably somewhere in the legislation or in the history you ought to make clear there needs to be a focal point within each agency where there should be a responsibility for making sure the agency complies.

The third point we want to make is just to recount the fact that this committee has been considering this legislation for 2 years now, and of course, reported it out last year, and it was passed by the Senate.

Identical legislation has been introduced into the House this year by Congressman Kastenmeier. And it is clear that there is very broad support for this type of bill. It is a simple, commonsense approach.

We are very aware that your committee, and other committees here in the Senate and the House are considering a whole range of important regulatory bills. But we would like to emphasize we think an adequate record has been made for the passage of this bill, and we hope this bill is not unduly held up by the careful consideration you have to give to regulatory proposals.

I would be glad to respond to questions.

Senator CULVER. One of the problems when you make reforms is that when we try to eliminate paperwork we can end up creating more paperwork as people try to comply with the new rules.

You know yourself, people instinctively rebel at that because it is added bureaucracy.

And if we do it in-agency I do not see how you can expect anybody to get a good fitness report for doing the job. If they are going to be designated whistle-blower on the company payroll, I mean, good luck if they even expect to get a key to the bathroom later.

You know, you must be a good soldier and salute with both hands to get anywhere in an agency.

Mr. SWAIN. We merely raise the issue to suggest that we are sure a lot of agencies will comply and do their best, but others may not.

Senator CULVER. I realize your concern. I am trying to think if there are other mechanisms, some more systematic way to do it.

What do you think about the year-end report idea, or something, in conjunction with monitoring from associations like yours? It seems to me you should be able to keep external, private sector pressure on them in a more systematic way.

If you see they are not complying, you can stimulate a congressional oversight hearing. That might result in more responsive agencies.

Mr. SWAIN. I think the yearend report is certainly essential.

Speaking for myself and my association, there is no way we could begin to cover the Government agencies the way we ought to and the way we should cover all of these agencies that issue regulations.

As you may know, the Small Business Administration recently established the Office of Advocacy.

Senator CULVER. Could that office handle this problem?

Mr. SWAIN. I think that office is off to a good start, and I think that would be one other alternative that might be looked to.

Senator CULVER. One thing, as you know, S. 299 directs each agency to develop its own definition of small business. I must say, I would be concerned that this approach might result in dozens of different definitions, definitions of small business, so that a firm might be considered small by one agency but not by several others.

Mr. SWAIN. I think that is a problem that we are always going to run into, Senator. Basically, we found there are two general ways of defining small business.

One is in terms of numbers of employees, and one is in terms of some financial test. Say, for instance, you are worried about OSHA requirements, are these for all small businesses? As you know, a few years ago, they eliminated reporting form 101 for all businesses of 10 or fewer employees. That is a very small business. I think the argument could be made that some other OSHA requirements might be eliminated for businesses with 20 to 30 employees.

Senator CULVER. So I think agency by agency, there is a basis for distinction on a mission-orientation basis.

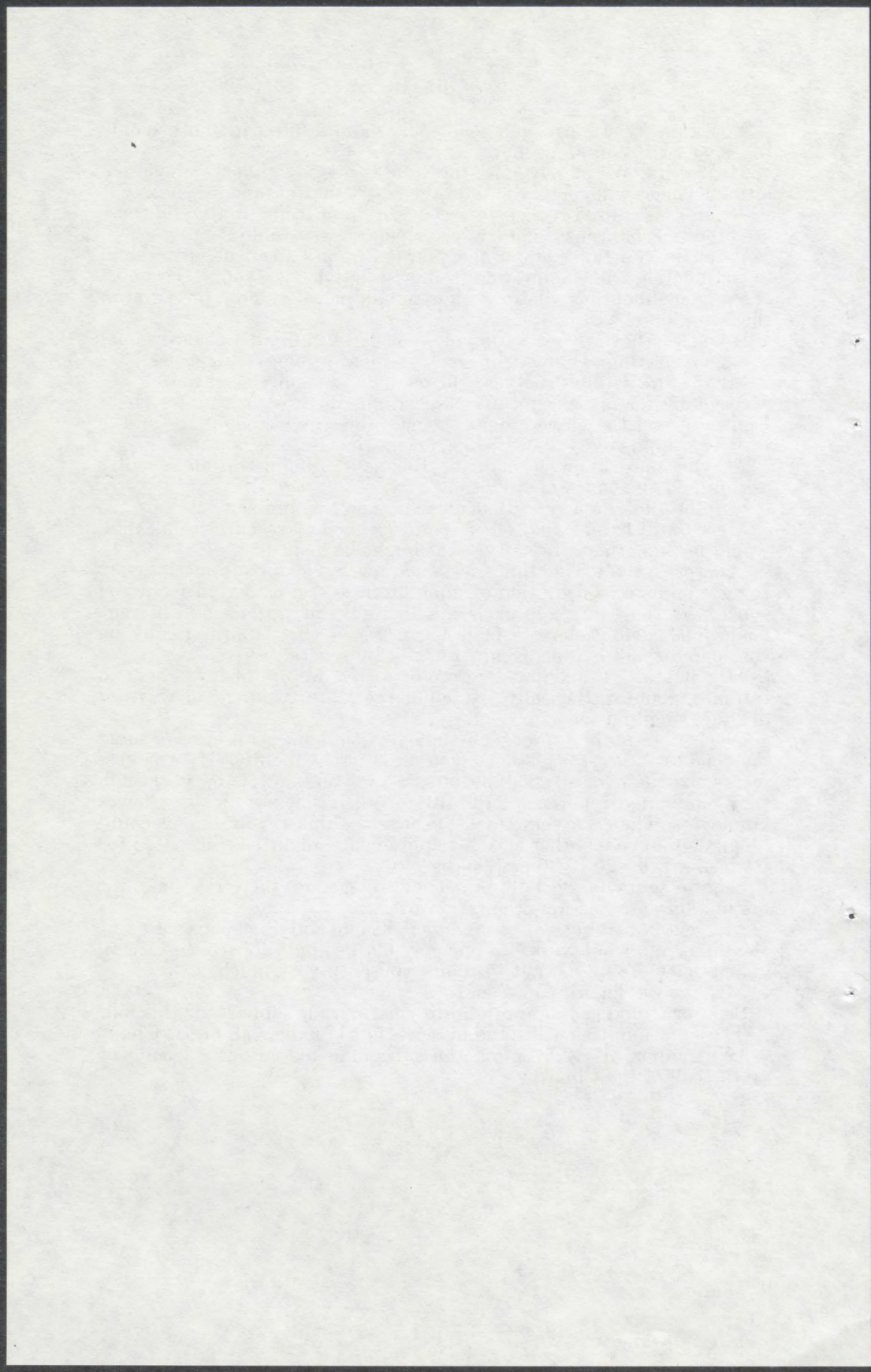
Mr. SWAIN. All businesses are not the same and all agencies are not the same, and what works for one may not be applicable to the others.

Senator CULVER. I want to thank you both very much.

Mr. SWAIN. Thank you, Senator.

Senator CULVER. I am grateful to you for your support for this bill.

The subcommittee will stand in recess until further call of the Chair.
[Whereupon, at 12:07 p.m., the subcommittee adjourned, subject to the call of the Chair.]



REGULATORY FLEXIBILITY ACT OF 1979, S. 299

WEDNESDAY, AUGUST 8, 1979

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
AND PROCEDURE,
COMMITTEE ON THE JUDICIARY,
Des Moines, Iowa.

The subcommittee met, pursuant to notice, at 9:30 a.m., at 120 Polk County Administrative Office Building, Senator John C. Culver (chairman of the subcommittee) presiding.

Present: Senators Culver and Dole.

Also present: Jim Davidson, chief counsel; John Podesta, counsel; Gail Bowman, counsel; Christine Sarcone, chief clerk, and Bob Cynkar, minority counsel to Senator Dole.

OPENING STATEMENT OF SENATOR CULVER

Senator CULVER. The hearing will come to order. Today's hearing represents an important part in the continuing series of hearings by the Subcommittee on Administrative Practice and Procedure on proposals to reform the Federal regulatory process. We have brought this hearing to Des Moines to focus on one of the most widely heard criticisms of Federal regulations, that they fall unfairly and unevenly on small businesses and local governments and other small organizations, organizations which are least able to cope with the mounting paperwork and redtape involved in compliance with Federal regulatory requirements.

An Iowa publisher told me recently that one of the census forms which he has to fill out every year is "totally irrelevant" to the management of his newspaper and appears to have been prepared by someone unacquainted with the publishing business. He also told me about a friend of his, a cooperative elevator manager, who could not honestly or accurately fill out a particular census form. His friend sent it back to Washington with his annual audited return with a note attached. All it said was, "Sort it out yourself."

Traditionally, our citizens have been able to take pride in their Government. They have seen effective antitrust enforcement prevent what could have been a gobbling up of every small enterprise in this country. They have seen our finest scientific minds work together to prevent dangerous drugs from being placed on the market, saving literally millions of people from injury or even death. They have seen our Government set important safety standards for automobiles when many citizens were becoming victims of faulty designs or maintenance. Those are examples of our Government at its best.

On the other hand, the same elevator manager I mentioned before not only must fill out a myraid of census forms, but also sales, income, excise, social security withholding, and unemployment tax forms, along with returns for grain sales, soybeans and corn checkoffs, feed tonnage and fertilizer tonnage, grain storage, a U.S. Department of Agriculture financial statement, and grain and field corn tax reports. At least 109 times a year, he, or someone in his organization, must sit down to prepare a form for some branch of government.

These examples are by no means rare. At almost every meeting I have had with small businessmen in Iowa, the major topic of discussion is Federal paperwork. The reams of reports and question are a constant source of additional burden to small business operators. Examples like this have led to a public perception that the Government is isolated from the people, that it is operating without any sense of what the impact of its actions is upon the average American, and that it is weighted down and delayed by well-paid lobbyists for special interests.

As I see it, there are two ways to go in addressing the public's frustration. The first is to arbitrarily cut away at programs. The alternative is to take a close and vigorous look at those programs and their regulations and to identify the real sources of the indifference and delay. In the process we need to get the message across that the regulations that are appropriate for IBM are not the same as those which should be applied to the realty company in Davenport. I have set as my No. 1 priority in the reform of government the removal of needless regulations and their accompanying paperwork requirements. This is why we are holding hearings like this one today; to seek out from you alternatives to the existing practices. In addition, I have introduced and held hearings on S. 299, the Regulatory Flexibility Act, which would establish the principle that regulations should be designed to fit the scale and abilities of the institutions being regulated.

This bill would direct Federal agencies to consider the size and resources of the business or governmental entities which would be subject to regulations and encourage the agency to consider more appropriate alternatives. The support for this approach has been encouraging. Twenty-three other Senators have joined as cosponsors. The National Small Business Association has labeled the passage of S. 299 as "one of the most important issues facing this Congress." The National Federation of Independent Businesses, the Small Business Administration, and the Chamber of Commerce of the United States are all organizing together to see this bill through the 96th Congress. I want to note that it is not the purpose of these hearings or of S. 299 to undermine worthwhile Federal regulatory efforts. It is not the aim of this legislation to allow the continuation of practices which are dangerous to workers, consumers, or the environment; but the agencies which promulgate regulations in these areas must begin to consider the wide diversity of our economic and local government systems and tailor their regulatory requirements to the different circumstances which they face.

I am confident that we will enact a proposal which will have a valuable long-term effect and which will not sacrifice the benefits we can and do derive from laws and regulations which are designed to protect the public health and safety.

We are pleased today to hear from such a distinguished group of individuals representing both business and government. I am personally delighted to have joining me here one of the senior Republican members of the Senate and one of the most important members of the Senate Judiciary Committee, Senator Dole from Kansas.

Senator Dole, would you like to make a statement at this time?

OPENING STATEMENT OF SENATOR DOLE

Senator DOLE. Thank you, Mr. Chairman. I am pleased to play a part in today's hearing. The broad area of regulatory reform is a subject of concern to us all. Regulations attempting to prescribe our behavior in an incredible range of areas pour out of Washington at a rapidly increasing rate. Many of these regulations have very beneficial goals, at least on paper. We are increasingly discovering that the huge body of Federal regulations has unintended effects which often undermine these beneficial goals and further aggravate other national problems.

I have been very concerned by the more unapparent, but nevertheless often oppressive, compliance costs of Federal regulation. The cost of complying with the massive amount of Federal regulation is a major contribution to inflation. The billions of dollars of spending required to conform to literally thousands of detailed regulations raises prices without any corresponding rise in productivity.

Whether you look at the problem from the perspective of an efficient government or a reasonably profitable business, we can no longer ignore the unintended burdens of regulation. As a matter of Government operation, Federal regulations have generated significant compliance costs which are never reflected in agency bookkeeping. From the perspective of the private sector, compliance with Government regulations imposes a sizable tax on business, and one which does not benefit the Treasury of the United States.

We have some idea of the magnitude of these costs to large corporations and conglomerates. Businesses like GM, Exxon, and Westinghouse have been able to fund fairly reliable studies. In 1977, for example, a study was made of the costs of 48 companies, the size of those I just mentioned, to comply with the regulations of only six Federal regulatory agencies. For those companies the cost of the actions taken to comply with the regulations of those six agencies that would not have been taken without those regulations amounted to \$2.6 billion.

I find such costs shocking, and I must wonder whether we are getting our money's worth. In that regard, I plan to introduce legislation in September which would require agencies to perform a cost-benefit analysis of their proposed rules, insuring that the people subject to these rules have an input in the analysis and have a judicial remedy if the agency unreasonably ignores their advice.

I am equally concerned about the lack of hard facts and figures about the problems small businesses and small governments have had with Federal regulations. Large corporations make up only one segment of our economy and they have the resources to make themselves heard, but what of the little guy?

As of the most recent figures from the National Federation of Independent Business, here in Iowa there are about 64,000 businesses

which have fewer than 100 employees. In my own State of Kansas, there are about 51,000. In Kansas, about 98 percent of the employers are running a small business, according to the definition of the Small Business Administration.

Senator Culver, this is why I am delighted to be able to be here with you. We need more information about the regulatory experiences of small businesses and governments. You have already demonstrated your concern by introducing the "Regulatory Flexibility Act," which is the subject of this hearing. The witnesses we will hear today, I am sure, will cover the gamut of the problem, and I look forward to their testimony.

Senator CULVER. Thank you very much, Senator Dole. Our first witness is Jack Bishop who is, of course, the chairman of the Polk County Board of Supervisors. It is a pleasure to welcome you and have you as our leadoff witness, Mr. Bishop.

STATEMENT OF JACK BISHOP, CHAIRMAN, POLK COUNTY BOARD OF SUPERVISORS, ACCOMPANIED BY QUENTEN EMERY, DIRECTOR, DEPARTMENT OF SOCIAL SERVICES, AND RICHARD GRUBER, ACTING DIRECTOR, BOARD OF SUPERVISORS

Mr. BISHOP. Thank you, Senator Culver. I am very pleased to be here. It wasn't very long ago that we were both in Polk County in a similar type of hearing. I would also like to welcome Senator Dole from Kansas. The folks of Polk County and central Iowa certainly want to welcome you and commend you for attempting this task you have taken. Some people, I am sure, feel it is impossible, but I think it can be done, and we certainly have confidence you will succeed in that.

Senator DOLE. Thank you very much.

Mr. BISHOP. I would like to present what I consider to be a brief statement. We have a more detailed written statement that we will present to your committee. Then we will try to answer any questions that you might have in those areas that are of concern to us.

Senator CULVER. Would you please introduce your two staff people.

Mr. BISHOP. On my left is Quenten Emery, the director of the department of social services, and on my right is Richard Gruber, the acting director of the staff of board of supervisors.

I would like to begin by commenting on federally mandated regional planning authorities. The Central Iowa Regional Association of Local Governments, better known as CIRALG, is the product of regulations promulgated by the forerunner to the Office of Management and Budget. Its initial purpose was to serve as a planning agency and liaison on behalf of local governments to the Federal Government.

It is responsible for the administration of over \$11 million in Federal, State, and local funds in program areas ranging from roads and bridges to basic human services to the elderly. Through the process of administrative rules, this agency has been able to expand its realm of responsibility from that of a regional planning authority to an operating agency for various Federal programs provided within the central Iowa region. This case is not unique to central Iowa, but exists in each instance where a federally mandated regional planning authority has been

allowed through the administrative rules process to exceed the initial intent of the Congress.

The Congress created it as a planning agency not accountable to any electorate. It is now serving to extend the intent of the Congress through the administration of Federal grants and aid for various projects that rightfully should be administered by those units of local government who are accountable to a constituency. Clearly this exceeds the intent of the legislation you passed creating regional planning authorities.

Regarding the Department of Housing and Urban Development, confusion and paperwork highlight its rulemaking procedures. The process of cross-referencing of rules promulgated by HUD often contain cross-references to other rules and regulations. The result is that local governments catalog or otherwise retain at their disposal all volumes of rules and regulations which may or may not be germane at their local jurisdiction.

The product is a tome of information of which little may actually be meaningful to the local jurisdiction in their particular problems. Periodically HUD will consolidate its regulations. This consolidation supersedes the individual Federal Registers. However, when it is considered that HUD has over 20 separate sections under four titles which relate to planning and housing, the process of consolidation of program amendments and rules and regulations serve to compound the confusion that exists with regard to all HUD programs.

Consolidation of these rules and regulations, as they occur into a single updatable document, would be extremely beneficial. The sheer magnitude of Federal regulations and paperwork that flow from HUD is possibly the single greatest deterrent to small government and counties to be able to participate in the program provided by Housing and Urban Development.

The process simplification is not impossible. The degree of simplification demonstrated in the preapplication process of the standardization of application forms and standardization of grant performance reports is an example. Efforts to these ends should continue. In the area of health, education, and welfare and social services programing, specific programing from Health, Education, and Welfare does present occasional problems. However, in general the process of participation in rulemaking through Health, Education, and Welfare is commendable. HEW agencies collaborate with officials at the local level in formulating their policies.

As a result, proposed rules are headed in the right direction before they are printed in the Federal Register. The point of dissatisfaction comes after rules are adopted and implemented. It seems that after the rule is interpreted at the Federal regional level, further interpretation at the State level occurs.

The original intent of the law has disappeared into a maze of red-tape, and the general unwillingness to accept responsibility or make a decision at any level can be exceedingly exasperating. This results in frustrated clients at our Polk County doors. An appeal procedure that would make it possible for Polk County to receive clarification and/or rulings directly from those involved in the rulemaking process at the Federal level is therefore recommended.

Gentlemen, I would like to say that I am sure you have heard a lot of examples of different problems that local government runs into. But I think one of the classics occurred some time ago. I do not recall the specific program, but we ran up against a roadblock. We were asked to fill out form X. Our staff called the agency and said that we would be happy to do that if you would just send us form X.

We were told that they just couldn't possibly do that because form X hadn't been developed yet. Our staff said, "Well, how do we handle a situation like that?" The person at the other end of the line said, "If you write a letter to yourself and send us a copy, I will try to run it through for you. Then when the form X is developed, we will send you one and you fill that out and send it back to us." This just didn't make a whole lot of sense.

We have the same problem in local government on a much smaller scale. We run into those from time to time, but it is just a waste of everybody's time. When form X is developed, that is when they ought to implement form X. We would be happy to attempt to answer questions in regard to some of my remarks or any questions in the area of county government that you would like to ask.

Senator CULVER. Jack, I just have one quick question. I want to thank you for your statement, and some of the helpful illustrations you have given us will be useful in trying to get support for this needed legislation. As you know, a lot of local governments have had a real difficult time finding out information about programs as to which they might qualify for or how to get help. I wondered if you are having the same kind of problem with regard to getting a better handle on what Federal regulation implies to county government, if that is as big a problem as the substantive problem of getting information on all program opportunities that you could have?

Mr. BISHOP. I will have Mr. Gruber answer that.

Mr. GRUBER. One of the responsibilities of our office is to attempt to monitor the various rules and regulations that would apply to county government. We have a staff person who spends approximately 60 percent of his time attempting to determine what regulations from the Federal Register mean to whom, and try to get that information in a meaningful form delivered to the appropriate person. It would take a very large wheelbarrow to move the volumes of information that we get each week related to Federal rules and regulations. The process is made more difficult as we must interpret them and come up with something meaningful and accurate so that the operations or agencies have a product that will allow them to know what is right in a particular instance. It is definitely a problem that could be solved in the Register itself.

Senator CULVER. Do you have any suggestions for us as to what we can do at the Washington end? There have been things we have tried to do that we have already alluded to, but are there things we can do by way of boiling that down so that we give notice to you in some sort of a package form? Based on your understanding of what your dealing is with these things, what can we do at the Washington end that would simplify things and make them so they can be more conveniently done?

Mr. GRUBER. Periodically individual agencies will attempt to consolidate the rules and regulations that they have proposed within the Register. The most helpful process would be if on a monthly basis or a quarterly basis it would be required of the Federal agencies

to provide a consolidated concise document that supersedes all previous rules and regulations and provides us to that date with a type of picture of what is required. That type of information would be most beneficial.

Senator CULVER. Senator Dole?

Senator DOLE. I am curious to know, Mr. Bishop, just how much time you and your staff spend dealing with regulations, and, in addition, the inconvenience and the paperwork involved? How do you compute the costs? Do you determine in a year's time how much money you spend complying with Federal regulations?

Mr. BISHOP. I don't have the exact dollar information. I certainly would be happy to attempt to get that information together. Because Polk County is a large enough county that they have different departments dealing with many different regulation-related problems, I can assure you it is a sizable amount of time and money spent in that area.

[Information pertaining to Senator Dole's query can be found in the appendix.]

Senator DOLE. I think you indicated in your statement that as far as HUD is concerned you're suggesting some appeal procedure to avoid friction between local, State, and Federal jurisdictions. As you said, one decries the other and you end up in a stalemate, lost months of time and maybe the loss of the entire initiative.

Mr. BISHOP. We do certainly run into that quite often, but we just can't get an answer.

Senator DOLE. Have you ever had any contact with a Federal agency that was surprised because an application was published so quickly? Have you ever had that experience?

Mr. BISHOP. To be honest with you, I think for the most part when we deal with the Federal Government, we realize the problems that we are discussing here today, but certainly we wouldn't want to condemn the whole process. We have gotten a lot of help, but often they don't have the answer. As well, it is a bureaucratic problem. Often our contact person just can't find out from whomever he is supposed to find out what.

Senator DOLE. That is the point I want to stress, and I am certain you already did in your statement. The Government is often responsive, but we tend to, as we should, look at problem areas and try to figure out some way, through either Senator Culver's legislation or some other approach, to at least ease the pain as far as small business and small governmental units are concerned. Maybe it would help to simplify Federal regulations insofar as smaller governments or smaller businesses are concerned. That might be an approach. I think that is what John has in mind.

Mr. GRUBER. One possibility that we have discussed with various Federal agencies in the process of attempting to find an answer, is the development of some sort of clearinghouse for Federal regulations. At present we subscribe to a number of private agencies that provide us with some ways of what is happening in a particular agency. This idea applied in a central office of somewhere in the Federal Government that could do that process of giving us a clearinghouse being the single focal point where we would go initially to find the right answers to our questions, would save us the time and effort involved in trying to chase down the right person in the right office of some particular agency. That sort of effort would be very beneficial.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF JACK BISHOP

In the oral remarks presented in conjunction with this written testimony, reference was made to the freshness of the new surroundings in which your subcommittee held its public hearing on S. 299, entitled The Regulatory Flexibility Act. The reference was not by chance. The physical surroundings represents an effort by the Polk County Board of Supervisors to build upon the strengths of an old building and create a new environment and setting that is conducive to the effective government. The renovation of this structure designed and built nearly 80 years ago to accommodate the changing needs of our citizens today is very similar to your proposed S. 299. Preserving the greatest strengths of the system you are proposing to reconstruct the Federal rulemaking process. What you appear to have accomplished within that S. 299 is to build upon a past in such a manner that you are able to insure an even greater degree of access and impact by all persons without overburdening them with requirements and redtape that simply increases the cost and produce no real benefits. The legislation you have introduced has served to provide a means in which small business, small cities, and others are insured access and removed a great degree of mystery that abounds in the process of rules promulgation by various Federal agencies charged by Congress.

It is your process we commend and your results which we shall continue to support. Indeed, if the end of your legislation can be accomplished, the Federal regulatory process can be made more meaningful and more effective. The time and money spent by small business and interested individuals on meeting the complex and often inappropriate requirements established through administrative rulemaking procedures at the Federal level can be focused on improving the quality of life that we expect.

Is it not the purpose of good government to provide for its people? Is it not reasonable that we as servants of the citizenry that puts us in our positions as policymakers not require that those agencies empowered to act in our behalf recognize the wide diversity of our economic and governmental system, and the broad range of needs and abilities of those individuals we serve that exist within that diversity. Should we as elected officials fail in the representation of the interests that put us in office, then we should resign the commission granted us by those persons we represent.

It is only too often that the little people of this country find themselves locked in the corner, unable to respond with the necessary sophistication and resources, to the rules that your agencies of the Federal Government have promulgated. Rather than attempt to provide a full and complete listing, let me focus on but a few glaring examples.

The Central Iowa Regional Association of Local Governments, better known as CIRALG, is the result of rules promulgated in the late 1960's by the forerunner to the present Office of Management and Budget. Its purpose was to provide a local planning agency representing local governments at the Federal level. CIRALG has since expanded its purpose from planning local governments to now acting as an operating agency for certain of those Federal programs which were rightfully intended by the Congress of the United States, to be administered by instruments of local government. It is those local governments and not a federally mandated planning agency which is representative of those persons who would receive benefit from those programs. Contrary to that intent, that Federal regional planning agency has circumvented the basic premise of democratic accountability. This very basic precept of our democracy has been circumvented by those persons within an agency created by Federal rules and regulations promulgated by numerous Federal agencies whose ability to identify with a constituency is much deluded simply because they are not held accountable to that constituency. This circumvention is inexcusable. The net result is an unelected body, not representative of any citizenry nor accountable to the electorate, who may be unresponsive to the desires of the citizens within the area that it has been deemed to serve. The net result for the citizenry must contend with an unelected quasi-professional group of individuals who are either unable or unwilling to respond to that temper. Just one more example of the unyielding nature of an irresponsible bureaucracy. For all concerned, there is but frustration.

Within Polk County, in recent years the Housing and Urban Development Administration has provided numerous grants in aid through the Community Development Act. The efforts on the part of the Housing and Urban Development are commendable. Through Federal moneys provided through HUD community development programs, numerous private residences within Polk County have been brought to a new standard of decency. Without the patient indulgence and

commitment of regional HUD officials to the Polk County's community development projects, the success we have achieved would not be possible.

Though Federal moneys provide a remarkably exciting incentive to local residents to improve their quality of life, the constant changes in program regulations through the administrative rules process has resulted in needed renovation projects being needlessly delayed. As a result, no single neighborhood project has been completed. The spot approach has not succeeded in Polk County.

As you requested, we have encountered other difficulties with the Department of Housing and Urban Development's promulgation of rules and regulations. Rules promulgated by the Department of Housing and Urban Development often contain cross references to other rules and regulations. These cross references pertain not only to precedent planning requirements, but also cross reference such programs as the Small Cities and Entitlement Cities. This process requires local governments to catalog or otherwise retain at their disposal all volumes of rules and regulations which may or may not be germane to their local jurisdiction.

Periodically the Department of Housing and Urban Development will transmit consolidated regulations governing specific programs to the local governments. These consolidated regulations supersede the individual Federal Registers. However, the frequency of this consolidation is often too few and far between. This becomes clearly evident when you consider that the Department of Housing and Urban Development has over 20 separate sections under four titles which relate to planning or housing programs. As an example, on March 1, 1978 the Department of Housing and Urban Development issued a Federal Register containing amendments to part 570 Community Development Block Grant, subparts C, D and F. This single publication relating only to the community development block grant program reflected some 53 amendments. This volume of amendments to the rules and regulations, combined with the frequency of amendments, serves to compound the confusion that exists with regard to all of the HUD programs. Future consolidation of these rules and regulations as they occur into a single, updateable document would be extremely beneficial.

At the present time the Department of Housing and Urban Development provides for a 30-day review and comment period for interested parties. This period is intended to provide sufficient time to receive written comments with respect to the proposed rules governing activities of a specific program. However, due to the sheer volume of HUD sections and amendments as illustrated by the example of March 1, 1978, combined with the continued cross referencing of various rules and regulations, the 30-day time period is often inadequate to make an appropriate evaluation of the impact of a proposed rule or regulation on the local governments. Therefore, we would recommend that the 30-day comment period be extended to allow for a more thorough examination of the potential effect.

Under the present procedure of rule promulgation a grant recipient often is confronted with changes which drastically affect the program for which the grant was originally received. As an example, Polk County made application to the Department of Housing and Urban Development for a comprehensive community development block grant for the purpose of providing emergency repairs to elderly and handicapped individuals of low or moderate income. Subsequent to the county receiving the three-year community development block grant, the county was advised that in order to meet other rules and regulations relating to housing assistance planning, "substantial rehabilitation" of structures would be necessary to remain qualified for future community development block grants.

As a result of the current procedure of promulgating rules and regulations, there often results inconsistencies between HUD program objectives which makes it extremely difficult for local governments to comply with Federal requirements. As an example, the current rules and regulations require a high degree of citizen participation and involvement by a local government in the development of its community development block grant program. Subsequent changes by the promulgation of new rules and regulations often times negate the citizen participation process, as demonstrated by the shift from an emergency repair to a substantial rehabilitation requirement.

The sheer magnitude of Federal regulations and paperwork that flow from the Department of Housing and Urban Development is possibly the single greatest deterrent to small governments and counties being able to participate in the program and even metropolitan counties and large cities find it necessary to procure grant specialists in order to try and track and obtain available Federal moneys, a cost which small counties and communities can ill afford.

We would encourage the continued simplification of the entire process as positively demonstrated by the Department of Housing and Urban Development in

the simplification of: (1) The preapplication process, (2) the standardization of application forms, and, (3) the standardization of grantee performance reports.

Finally, I address the area of very basic human services to those people who are in need. Title XX of the Social Security Act has provided what we have become accustomed to believing is the supermarket of Federal social services. That Title XX Act allows for Federal reimbursement and Federal direct payment to State governments for the provision of certain basic human services which have, in Polk County, become an essential part of our Department of Social Services program. As a result of Federal funding previously unfounded in the State of Iowa. Certain services that previously could not be provided are now available. It is my contention and belief that this was, in fact, the intent when the original legislation providing for title XX programs was written, accepted, approved by the Congress of the United States and signed into law by its President. Unfortunately, administrative regulations have in fact handicapped the ability of not only State government, but local governments to provide title XX mandated services. Instead, we now face the dilemma where limited resources require that basic human services be cut back to the extent that those most in need are most deprived. Administrative rules do not grant us the latitude to manage effectively at the local level the process of revenue reduction.

In the more general sense, we are satisfied with Federal rulemaking in the area of human services. In dealing with HEW, we feel that we have two opportunities to participate in this process.

Most HEW agencies collaborate with officials at the local level in formulating their policies. Thus they are often headed in the right direction before the proposed rules come out in the Federal Register. And, for our second opportunity, we have found them to be responsive to further suggestions during the review periods.

We appreciate the fact that the Federal reviewers have listed the numbers and kinds of responses they have received when the final rules are printed. We also appreciate the fact that a rationale is given for acceptance or rejection of responses of major significance.

Our only dissatisfactions come after the rules are adopted and implemented. It often seems that by the time a rule is interpreted at the Federal regional level, further interpreted at the State level, and often interpreted again at the State's regional level; the original intent of the law has disappeared into a maze of red tape, tons of paper, fuzzy policies, and a general unwillingness to accept responsibility or make a decision. The Feds decry the State, the State decries the county, and we are left unresolved problems and frustrated clients at our doors.

We would therefore recommend an appeal procedure that could make it possible for us to receive clarifications and/or rulings directly from those involved in the rulemaking process at the Federal level.

In summation, the greatest challenge we face in the coming years is to insure that the little people have ready access to that Federal machinery which dictates how we survive, to how we live. Your legislation, Senator Culver, will insure that we shall have a more meaningful and a more effective access to the Federal regulatory process.

Senator DOLE. Thank you.

Senator CULVER. Thank you very much, gentlemen. We appreciate it. Our next witness is Mr. Tom Miller. Mr. Miller is, of course, the attorney general of Iowa. Attorney General Miller, I am looking forward to hearing your statement.

STATEMENT OF THOMAS J. MILLER, ATTORNEY GENERAL, STATE OF IOWA

Mr. MILLER. Thank you, Senator. Let me begin by thanking the subcommittee for this opportunity to appear before you. I would like to share with you some observations about this bill and about administrative law and regulation of business in general.

Senator Culver, I agree with your opening statement that burdensome regulation—"redtape"—is one of the principal contributors to citizens' cynicism about Government. I think the healthiest part of the Regulatory Flexibility Act is that it will finally exert a few constraints on the regulators, and will likely weed out the excessively burdensome regulations that give people such a bad feeling about Government.

Let me emphasize that I do not doubt the need for Government regulation of business and local government, particularly when conventional market restraints do not operate and where public health and safety is at stake. The environmental area is a good example. While the long-term costs to the public from pollution are clear, a polluter does not pay a price in the marketplace for the privilege of polluting. There are no effective market restraints, and often the victims of the pollution are miles away in a different jurisdiction. As a result, Government regulation is essential.

But what we too often fail to recognize is that each Government regulation has a cost, the cost of compliance, that is often unmeasured. In many cases new employees and experts must be hired to complete forms. But it makes no sense to impose a comprehensive regulatory program that costs small businesses and local governments thousands and millions of dollars when there is little or no payoff. We need to more carefully balance the potential regulatory payoff against the burdens of meeting the requirements.

In many areas of the law, the constitution, statutory law, and certainly in administrative law, we undertake a balancing process. Government officials and lawyers and people, I think, are familiar with that balancing process. I think it is high time that we put the burden and the cost of the regulation into that balancing process. I see that as a main feature of the Regulatory Flexibility Act. The basic philosophy behind that act is similar to that underlying the National Environmental Protection Act, popularly known as NEPA. The genius of NEPA is that it does not mandate that Government agencies make particular decisions, but it requires that environmental concerns be taken into account before major projects affecting the environment are undertaken. It requires that environmental information be gathered and available to the decisionmakers for their consideration.

The Regulatory Flexibility Act operates under the same principles and is aimed at pollution of a different kind, pollution of the regulatory environment by unnecessary and burdensome regulations. It does not restrict the discretion of agencies. But it does require that before an agency promulgates new rules and regulations, it must specifically solicit proposals for less burdensome alternatives and invite arguments on why small business and Government units should be exempted. If the proposed alternatives are not accepted, the agency must explicitly state in writing why the alternatives were not preferable. Where recordkeeping or reporting requirements are involved, the agency must, among other things, indicate the type of professional skills needed to comply, the number of persons who would be required to keep the records, and the average amount of time necessary to comply.

Really, in a sense, what the bill does is turn the tables on the regulators. It requires the regulators to go through some of the loops, go through some of the considerations that small businesses and small governments and, indeed, that all governmental units and all businesses must go through. Psychologically I think that is important in and of itself.

As attorney general of Iowa I can assure you that these provisions will make a difference. For instance, requiring the agency to specify in writing the "cost of compliance" will force bureaucrats to clarify their analysis of the burdens of proposed regulations. Many judges can tell you about tentatively deciding important cases one way then

reversing their position 180 degrees after discovering their original inclinations could not be put in persuasive prose.

The same is true in our office. Many legal questions are resolved only after an attorney sits down and puts something in writing. Writing has a concreteness that can be evaluated and criticized. Errors in logic, instead of being masked in congenial conversation among colleagues, are revealed in black and white. Hidden assumptions are exposed, and justifications that appeared convincing on the surface become transparent when transferred to the written page.

Another feature of the Regulatory Flexibility Act worthy of additional emphasis is section 3, subparagraph 6, which expressly invites alternative proposals from individuals, small businesses, small organizations, and small government jurisdictions. This active solicitation of views will help better inform agencies of available options. It also gives the smaller organizations a more meaningful chance to participate actively in decisionmaking. As a result, government is brought that much closer to the people.

I also want to comment upon section 5 of the act which requires that all agencies publish a plan for the review of rules and regulations of the agency. I know that in State government we have ancient rules that seem forgotten. The problem must be many times more serious at the Federal level. Section 5 of the Regulatory Flexibility Act would require agencies to reexamine their regulations to see if there are any "blue regs," regulations that experience has proved to be unnecessary or unsuccessful.

The merits of the act which I have commented on so far—requiring "cost of compliance studies" in advance and expressly inviting alternatives from the people to be regulated—can be considered procedural improvements. At least as important is a key policy in the act; establishing the principle that regulations should be designed to fit the scale and abilities of the institution being regulated. This is indeed, as far as I know, a novel approach to the problem. It deserves a great deal of consideration because, in regulating small companies, the benefits are often small and the burdens very large.

In summary, we in Iowa know that action like the Regulatory Flexibility Act is needed. It may be easy for a 1,000-bed hospital in New York to complete HEW's SURE cost containment form that is 160 pages in length and accompanied by a 50-page manual, but can Iowa's small hospitals fairly be expected to do the same?

Similarly, I note that HUD recently asked the Iowa city of Fort Madison to supply statistics on average income of its citizens in order to receive housing funds.

This would be an easy task for the city of Des Moines since Federal census data is available for that purpose. But Fort Madison is too small a town to appear in the income data in the U.S. census. It would thus cost Fort Madison thousands of dollars to assemble the data for the grant, while Des Moines could obtain the data by sending a college student on a 2-hour jaunt to the library.

I think the Regulatory Flexibility Act makes sense. It will not solve the problem of excessive regulation overnight, but it will swing the pendulum away from it. In effect, the Regulatory Flexibility Act blows the whistle on ill thought-out regulatory expansion. Small towns and small businesses in Iowa will benefit from it.

Thank you very much for the privilege of testifying before this subcommittee.

Senator CULVER. Thank you very much, Attorney General Miller. I want you to know that the testimony you have given us has been very useful. One of the things that concerns me, and I wonder if you could perhaps give us some help on it, is the problem of duplication—Federal and State requirements for forms and reporting essentially calling for the same information. The result is that, for example, in terms of the Department of Agriculture that the Iowa department will call for certain information from the farmers' grain elevators, USDA would be doing the same thing. What thoughts do you have and how we could get better coordination and cooperation to reduce the paperwork inefficiency of that, and, above all, the frustration and costs and time loss to the poor people that are trying to cope with it all?

Mr. MILLER. One thing I know is that the State's consideration in that regard is that if there is a Federal report with a requirement that they think is adequate, and it is usually more than adequate, the State will require only the Federal report to be filed with the State to fulfill the State's interest in having that kind of knowledge.

I guess I would make two suggestions: First, perhaps the roles should be turned around. Maybe the Federal Government should allow business to file a State report under certain criteria where the State form is adequate. Second, certainly the best solution would be some sort of coordinated effort between the States and the Federal Government. Perhaps, even a joint report that would provide for the information that both agencies need, but also cut down by 100 percent the number of reports required.

Senator CULVER. Is this something that the National Attorneys General Association, any of their working task force or groups, might look at or could be making some requisitions to us on?

Mr. MILLER. I think that might be a worthwhile effort. There is nothing of that type going on now, that I know of. We sort of put all our eggs in one basket, at least for a few months, to work on the *Illinois Brick* situation. Reversing *Illinois Brick* is crucial to effective operation of our 50 attorney generals' offices. Some other things have suffered as a result of this priority, but certainly after the Congress has solved that problem for us, one of the things I think we should be looking at would be this whole question of paperwork and regulations and, as you suggested, joint reports, Federal and State.

Senator CULVER. Thank you.

Senator DOLE. I want to comment on HEW's SURE cost containment form. I think we may have delayed that for another year through efforts of the House. Your referral to the 50-bed hospital as opposed to some 1,000 beds in New York City does make a great deal of sense, and it is a very good example. I think it presents the clearest focus on the problem. The same regulations, the same forms, the same amount of paperwork, the same amount of work go into the process whether you are a 10-man operation or a 1,000-man operation. I think this is a good example that really puts the focus on the problem. Of course, I assume that people in Iowa also are frustrated sometimes by State regulations, not only Federal regulations.

Mr. MILLER. That is certainly the case, Senator.

Senator DOLE. Because they write us about State regulations and they write you about Federal regulations.

Mr. MILLER. The Federal Government has no monopoly on over-regulation.

Senator DOLE. I send my State regulations back to the attorney general and you send yours to Culver, I guess, knowing that we will lose half of the mail and the problem is eliminated. Has the State of Iowa ever participated in a rulemaking procedure? I am more familiar with the Federal Trade Commission. My wife was a Federal Trade Commissioner. I don't understand why they work, but I understand how they work and I know the rulemaking process. Have you ever participated in any rulemaking procedure in any agency?

Mr. MILLER. Our office has participated in regard to social services and also in regard to transportation.

Senator DOLE. I wonder sometimes if those making the rules on a Federal level, and I don't say this critically, really have the input from someone like yourself who understands the problem in this State or some attorney general or some other citizen or some businessman or woman from Kansas or California. I think, as Senator Culver pointed out, there are always the special interests, and I don't use that phrase critically, but there are always those in Washington who appear. I wonder if we could do more to protect the rights of the citizens if we had more State and local participation.

Mr. MILLER. I think that would be the case. In our office it is, like everything else, a question of priorities. We have a limited staff to do all the legal work for the State government, and when there is a million-dollar tort claim action facing us, we must respond to that on a priority basis. As a result, I don't think that over the years we have devoted enough resources to making the State's case and mailing objections known to proposals and regulations at the Federal level. We are going to be trying to do more and more of that.

Senator DOLE. In fact, this S. 299 would essentially require an agency to invite alternative proposals. I guess the question would be: Is it realistic to expect the State of Iowa or my State to assume that burden? I assume it would be if it affected the people in this State or my State or any other State.

Mr. MILLER. I think it would, and the act invites in particular small businesses, small governmental units and individuals, to make proposals that would treat their groups in a different fashion. I would think that making those kinds of proposals would involve considerably less effort than complying with the regulations in the same way that New York City had to comply in regard to governmental units and IBM in regard to businesses.

Say a small business group sees a regulation coming down that is going to be harmful to them and doesn't see a very strong need to have that kind of regulation. By making a proposal to the Federal agency of how they want to be treated differently and why they want to be treated differently, the whole burden is put on the agency to study the proposal and justify its own position, if it doesn't agree to the proposal. The greatest features of this act are that it turns some of those burdens around onto the regulators and makes it possible to have alternate treatment. I think that is good.

Senator DOLE. I think another feature of the act is that there are enough votes for it to pass. I think that is always an outstanding

quality of any piece of legislation. I would just suggest that it is because of the concern of Congress for the various things that you have stressed, and the other witnesses may stress, that Congress is now looking at whether we should repeal the rulemaking authority in some agencies. In other words, whether we should have legislative veto to create sort of a super agency called the "Congress." It is a tough question, but I think much of the frustration that we are hearing comes from the small businessman.

The large businesses are concerned about the cost, but they can cope with that cost and pass it on, I assume. There is no doubt in my mind that unless there are efforts made—and I believe that Senator Culver's bill is certainly a step in the right direction—we are going to find exemptions, and I am not certain about exemptions from health and safety regulations. Whether you have 10 employees or 1,000, you ought to provide safe working conditions. So I think it does pose a challenge to the Congress, and certainly to those in positions of responsibility, like yourself, to do something before we compound the problem.

Mr. MILLER. That is right. I think also the act is healthy in terms of administrative law. It is built right into the Administrative Procedures Act. It has concepts that are familiar to the regulators, and there is no reason they can't understand this. There is no reason they can't react to it, if they want to, if the Congress and public is demanding enough to make them react.

Senator CULVER. You may be aware, Attorney General Miller, that one of the proposals pending in this whole regulatory legislative area is the proposal to publicly fund the agencies to permit them to make sure that they get the widest possible participation. For example, small business people, individuals and groups that otherwise might not have the financial resources to come and to share their views at the appropriate time in the rulemaking procedure could participate. They would have to satisfy certain tests in order that abuse be avoided.

I think this is one of the other proposals that we have now before us that we will be looking at seriously to try to get the remission of judgments and, above all, the commonsense built into the process early enough that it will have some impact and force and ultimately shape the nature of the rule or the regulation and draw upon the expertise of small business people. This is something, too, that we might send to you and maybe get some more specific and refined thoughts from you for our record.

Mr. MILLER. I think that is an excellent idea. I thought of this when I was talking a minute ago about small businesses and small governmental units reacting. The real problem in that area is then getting the information, having somebody to watch what is going on in terms of rulemaking. The funding that you are talking about now could play that role as well as the advocacy role. One of the real missing things, I think, is the means for small business, small governmental units to know what is proposed and what is going to happen before "the shooting match" is all over so they can submit alternate proposals and so they can object. I think that is crucial.

Senator DOLE. It goes to the very heart of the problem. I think you have said that it is a question of being responsive in government. Sometimes it is not easy. There are all kinds of letters floating around

to Members of the Congress. I recall one written by a widow. It was sort of, "Dear Congressman: Will you help me get my widow's pension from the Veterans' Administration? I have written so many letters and had so many problems, sometimes I am really sorry my husband died." That is sort of the frustration that you have. You write and you look at the regulations and nothing happens except more regulations.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT BY THOMAS J. MILLER

Let me begin by thanking the subcommittee for this opportunity to appear before you. I regard the occasion as particularly auspicious in light of the introduction of the Regulatory Flexibility Act by Senator Culver. I would like to share with you some observations about this bill and about administrative law and regulation of business in general.

It is my observation that burdensome regulation "red tape" is one of the principal contributors to citizens' cynicism about Government. I think the healthiest part of the Regulatory Flexibility Act is that it will finally exert a few constraints on the regulators, and will likely weed out the excessively burdensome regulations that give people such a bad feeling about Government.

Let me emphasize that I do not doubt the need for Government regulation of business and local government, particularly when conventional market restraints do not operate and where public health and safety is at stake. The environmental area is a good example. While the long-term costs to the public from pollution are clear, a polluter does not pay a price in the marketplace for the privilege of polluting. There are no effective market restraints. And, often the victims of the pollution are miles away in a different jurisdiction. As a result, Government regulation is essential.

But what we too often fail to recognize is that each government regulation has a cost—the cost of compliance—that is often unmeasured. In many cases, new employees and experts must be hired to complete forms. But it makes no sense to impose a comprehensive regulatory program that costs small businesses and local governments thousands and millions of dollars when there is little or no payoff. We need to more carefully balance the potential regulatory payoff against the burdens of meeting the requirements.

The basic philosophy behind the Regulatory Flexibility Act is similar to that underlying the National Environmental Protection Act popularly known as NEPA. The genius of NEPA is that it does not mandate that Government agencies make particular decisions, but it requires that environmental concerns be taken into account before major projects affecting the environment are undertaken. It requires that environmental information be gathered and available to decision-makers for their consideration.

NEPA has been very successful. Numerous projects have been altered, and, in some cases, abandoned, by Federal agencies when the environmental impact statement demonstrated unexpected adverse consequences that might not have been discovered had the agencies not been required to take a hard look at the environmental impact.

And, the existence of written environmental impact statements improves the legislative control of agency action. Sen. Culver has made good use of environmental impact statements—the Tellico Dam project is an example. Without NEPA, the job would have been far more difficult.

The Regulatory Act operates under the same principles and is aimed at pollution of a different kind, pollution of the regulatory environment by unnecessary and burdensome regulations. It does not restrict the discretion of agencies. But it does require that before an agency promulgates new rules and regulations, it must specifically solicit proposals for less burdensome alternatives and invite argument on why small business and government units should be exempted. If the proposed alternatives are not accepted, the agency must explicitly state, in writing, why the alternatives were not preferable. Where recordkeeping or reporting requirements are involved, the agency must, among other things, indicate the type of professional skills needed to comply, the number of persons who would be required to keep the records, and the average amount of time necessary to comply.

As attorney general, I can assure you that these provisions will make a difference. For instance, requiring the agency to specify in writing the "cost of compli-

ance" will force bureaucrats to clarify their analysis of the burdens of proposed regulations. Many judges can tell you about the important case that they had tentatively decided one way, and then reversed their position 180 degrees after they discovered that their original inclinations could not be put in persuasive prose. The same is true in our office. Many legal questions are resolved only after an attorney has sat down and put something in writing. Writing has a concreteness that can be evaluated and criticized. Errors in logic, instead of being masked in congenial conversation among colleagues, are revealed in black and white. Hidden assumptions are exposed, and justifications that appeared convincing on the surface become transparent when transferred to the written page.

Another feature of the Regulatory Flexibility Act that bears additional emphasis is section 3, subparagraph 6, which expressly invites alternative proposals from individuals, small businesses, small organizations, and small government jurisdictions. This active solicitation of views will help better inform agencies of available options. And, it gives the smaller organizations a more meaningful chance to participate actively in decisionmaking. As a result, Government is brought that much closer to the people.

I also want to comment upon section 5 of the act which requires that all agencies publish a plan for the review of rules and regulations of the agency. I know that in State government, we have ancient rules that seem forgotten. The problem must be many times more serious at the Federal level. Section 5 of the Regulatory Flexibility Act will require agencies to reexamine their regulations to see if there are any "blue regs" or regulations that experience has proved to be unnecessary or unsuccessful.

The merits of the act which I have commented on so far—requiring "cost of compliance studies" in advance and expressly inviting alternatives from the people to be regulated—can be considered as procedural improvements. At least as important is a key policy in the act: Establishing the principle that regulations should be designed to fit the scale and abilities of the institutions being regulated.

We in Iowa know that action like the Regulatory Flexibility Act is needed. It may be easy for a 1,000 bed hospital in New York to complete HEW's SURE cost containment form that is 160 pages in length and accompanied by a 50-page manual, but can Iowa's small hospitals fairly be expected to do the same? And, I note that HUD recently asked Fort Madison to supply statistics on average income of its citizens in order to receive housing funds. This would be an easy task for the city of Des Moines, since Federal census data is available for that purpose. But Fort Madison is too small a town to appear in the income data in the U.S. census. It would thus cost Fort Madison thousands of dollars to assemble the data for the grant, while Des Moines could obtain the data by sending a college student on a two-hour jaunt to the library.

In sum, I think the Regulatory Flexibility Act makes sense. It will not solve the problems of excessive regulation overnight, but it will swing the pendulum away from it. In effect, the Regulatory Flexibility Act blows the whistle on ill-thought-out regulatory expansion. Small towns and small businesses in Iowa will benefit from it.

Thank you very much for the privilege of testifying before this subcommittee.

QUESTIONS OF SENATOR CULVER AND RESPONSES OF MR. MILLER

Question. Is there a need for participation funding in the regulatory context?

Answer. Yes, I believe it is both appropriate and advantageous to pay the expenses for participation in rulemaking by representatives of some small communities, businesses and organizations. This could include reimbursement for travel to Washington, contracts for studies conducted by associations representing these people, and repayment for other costs of participation.

It is an unfortunate fact that a lack of financial resources often presents an insurmountable barrier to full participation in our governmental processes. This is likely to be the case for the small businesses and others who might otherwise benefit from the Regulatory Flexibility Act. To my knowledge, these people have not received participation funding in the past (except for some public interest groups), and this is one reason they have suffered burdensome, inappropriate and even ridiculous regulations. It seems entirely likely to me that these people, with financial support for participation, might often develop data or positions that reveal a perspective the regulatory agency has overlooked.

Question. Is there a danger that Government grants and contracts will be misused if we lessen the reporting requirements for them?

Answer. I believe there is only minimal danger that some grants and contracts will be used improperly, and I think that the merits of the Flexibility Act in fact will lead to better voluntary compliance with regulations and easier monitoring by Federal officials.

The genius of the Regulatory Flexibility Act is that it encourages regulators to devise more appropriate and simpler rules. I believe it is axiomatic that people will adhere more readily to more sensible rules; conversely, disrespect breeds contempt. The mayor of one small Iowa town called some regulations "useless, superfluous and a downright intrusion of privacy." How long can we expect him to strive to comply with regulations he doesn't respect?

The same mayor also said of current complicated regulations, "You're never sure if you've done them right when you're finished." I think superior regulations resulting from the act will make things easier for both those being regulated and Federal officials charged with monitoring compliance. I assume there are numerous agencies that will welcome the opportunity to draw up and enforce regulations better tailored to situations that vary widely.

Question. Problems and solutions to regulatory excesses in Iowa.

Answer. Other than our Administrative Procedures Act, which went into effect in 1975, I do not know of specific efforts here to minimize regulatory excesses.

Under our A.P.A. (Chapter 17A, Code of Iowa), the Governor, Attorney General or Administrative Rules Review Committee may file objections to a proposed rule on grounds that it is unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency. (The Administrative Rules Review Committee is made up of six members of the general assembly). Filing such an objection puts the burden of proof on the agency in any subsequent judicial review or enforcement proceeding. In addition, the Governor may rescind adopted rules and the Rules Review Committee may delay the effective dates of rules or refer rules to the general assembly.

Mr. MILLER. That is right.

Senator CULVER. Thank you very much, Attorney General Miller. Our next speaker will be Mr. Milton D. Stewart, the Chief Counsel for Advocacy of the Small Business Administration in Washington. Good morning, Mr. Stewart. It is a pleasure to welcome you here to Iowa, and I look forward very much to hearing your testimony.

STATEMENT OF MILTON D. STEWART, CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. STEWART. Thank you. Mr. Chairman and Senator Dole, it is a pleasure to be here. I would like to begin by reading for the record the following message:

To the Chairman: I want to express my support for your leadership in holding hearings in Des Moines this week on regulatory reform. I feel hearings are an important way to uncover and assess specific regulatory problems and a valuable source of suggestions for solution. You have worked hard in the Congress to make the Federal regulatory systems sensitive to the concerns of our Nation to the millions of small businessmen and women.

Please be assured that my administration will work with you not only to resolve specific problems, but also to search for legislative solutions to mere general problems. I also want to commend you for the recently concluded hearings on regulatory reform conducted by your Subcommittee on Administrative Practice and Procedure. I look forward to working together to improve the management of our regulatory process.

Sincerely,

JIMMY CARTER.

Mr. Chairman, I have been in my present post for roughly 1 year, and I tell everybody who will listen that I am still learning my job. This is a subject which we are deeply engaged in on a day-to-day basis. I would like, if I may, ask that my statement and its attachments be

entered into the record, and I will just summarize it very quickly and tell you what is in our appendixes, which are offered for your record. First of all, based on my own experience as a business person and as a lawyer, someone who has lived in regulated industries, and as a Government official, I have said that this legislation is long overdue. Over the last 10 years we have seen an unprecedented expansion of the regulatory responsibilities of the Federal Government.

The result has been a cumulative burden on small business that has seriously hampered its ability to compete. The President has led the way to regulatory reform, both with his Executive order and his proposal for broad cost-benefit analysis. The principles and direction, as embodied in S. 755, have my support.

As I have said many times and in many different ways, when the same regulation is applied to both large and small businesses, the relative burden is much greater on the small concerns. During a period when we witnessed a growth of big business and big government, we also encountered "big regulations." Those are sweeping edicts that are broad enough to encompass every conceivable situation, without regard to the relative costs, and include all businesses within the parameters of the regulation. The result has been that small business has been caught up in the same net as big business, despite the fact that their inclusion often contributes little to the objectives of the regulation. These "big regulations" are really big regressive taxes. Small business simply does not have the resources available to large business. Every regulation costs time or money. Small business' ability to compete and even to survive is sooner or later affected adversely by this cumulative burden or unregulated regulations.

This legislation does not, therefore, represent a frighteningly novel or unique concept. It simply brings order and commonsense to the law. Many of its suggested procedures have been used before. This legislation simply pulls together a number of desirable practices and requires that the entire Federal Government will at least think about its regulatory impact on small business.

Several agencies are quite familiar with this approach. The EPA has promulgated a number of regulations which make accommodations to size in setting water and air quality standards. I have a list of such EPA regulations, which I would like to submit to the committee in attachment A of the appendixes. They typically divide compliance requirements on the basis of discharge volume. For some time the Federal Communications Commission, the Interstate Commerce Commission, and the banking agencies have divided their respective regulated industries into size classes for reporting and accounting purposes. For example, the ICC divides carriers into report classes based on operating revenue. I have a list of these which I would like to submit in attachment B of the appendixes.

The Securities and Exchange Commission has recently developed a new form, S. 18, specifically for use by small business. The new form will be used by smaller companies making a public stock offering. Small companies were previously required to file S-1, a lengthy form which often discouraged small companies from making public offerings. The Federal Trade Commission has proposed an exemption for smaller companies as part of its proposed regulation for the mobile home industry. Agencies use "tiering" in regulatory flexibility now, but they use it unpredictably and sporadically.

The President's Executive Order 12044 appears to require executive departments to conduct economic analyses. The central problem is there has been no specific study of the impact on small business. There are a number of questions any analysis should answer about the impact on small business. There is a list of such questions drafted by our chief economist, which I would like to submit with my testimony in attachment C. It would also be helpful if the legislation required the agency to do this analysis, including small business impact at the earliest possible stage of regulatory development.

Finally, I would like the record to reflect how small business people view this problem, and this is one of the critical missions of the Office of Advocacy, in our judgment. I have given you some lengthy excerpts from a recently issued report on small business and innovation by some of the most brilliant small business people in the country. This was a task force, one we set up consisting of 20 presidents of small innovative firms, the kinds that produce breakthrough products and breakthrough processes. They cited the burden of regulation as one of the problems that had to be overcome. There are attached excerpts from two other task force reports, which were made to the Assistant Secretary of Commerce for Science and Technology by similar groups, and they, too, cite regulation and the need for this kind of legislation in the same way that ours did. It also may be worth noting that one of these was written by a culturalist in California, and his business is regulated by 42 agencies, Federal, State, and local. His name is George Lockwood, and you will find some of his language in this appendix.

By way of conclusion, Mr. Chairman, I would like to give just a personal perspective. I lived with the problem as a venture capital manager, and I can remember 12 years ago, the specific day on which I determined that the Investment Company Act of 1940, which was written for big mutual funds, was just erroneous, being applied to small business investment companies, the field that I was then in. I can't say strongly enough how anxious we are to see this legislation become law. Thank you very much.

Senator CULVER. Thank you very much. It was a pleasure for me as a member of the Senate Small Business Committee to support your nomination at the time you were appointed 1 year ago. I want you to know that the vigor with which you have fulfilled your responsibilities since you have been in that office is very commendable.

Mr. STEWART. Thank you, sir.

Senator CULVER. There is something that I am giving some thoughts to, and I would like your judgment on this because of your particular experience. As we look at this regulatory package we are trying to put together over and beyond the Regulatory Flexibility Act, I am considering proposing that each Federal regulatory agency be appointed a small business advocate to try to reach out to small businesses on regulatory matters. Obviously you are given this herculean task, and it is mind boggling in terms of how to get that successfully and pervasively across this complex Government of ours. How does an idea like that strike you? Does it invite other problems if they say, "Why do it for small businesses if you aren't doing it for this or that?" What are your views on that idea?

Mr. STEWART. I think what you just said raises one of the kinds of problems there are. I think it might invite efforts by other groups to have good people in these agencies, and perhaps they should.

Senator CULVER. Other than small businesses?

Mr. STEWART. Other than small businesses. My instinct reaction is that I would be inclined to go slow with it at this juncture because we are still feeling our way. I think we will be able to help you with a better answer in a year or two. Obviously the choice we have got is: Does it make more sense to have a small business ombudsman in every Federal agency or to try to centralize the responsibility or do we need some combination of both? We have the matter very much under continuing study under us and the Office of Management.

Senator CULVER. If you could be good enough to think about this, we will probably be looking at a markup of this general legislation anytime from mid-September on in the full Senate Judiciary Committee and our subcommittee.

Mr. STEWART. That may be a good approach.

Senator CULVER. As you are probably aware, the SBA, itself, has been a significant contributor in the area of paperwork——

Mr. STEWART. Guilty as charged, Senator.

Senator CULVER [continuing]. And redtape burdens on small business people who have come to me with the problems they have had wrestling with the various agencies. You are supposed to help them wrestle. What steps is SBA taking currently, Mr. Stewart, to try to improve its track record with the various businesses it serves?

Mr. STEWART. The most notable two, I think, Senator, relate to the basic financial assistance mission of the agency. Our administrator, Vernon Weaver, who himself comes out of the insurance industry, which lives with paperwork problems, has reduced the size of the application form for the basic SBA guaranteed loan. It is now simpler and cleaner and better. Second, he has proposed, and we are experimenting with, a functional change that will simplify the process enormously.

What we have done is designated some 26 commercial banks in the country for an experiment under which STA has delegated to them more of its initial review responsibility in the hopes that we can reduce from two to at least one and a half the processes that an applicant has to go through. I can't say from what we know now, but it looks like the experiment is going to be successful. As we prove it out and learn from it, the Administrator plans to expand it and extend it to other matters.

Senator CULVER. Is this related in any way to what I understand is the SBA's nearly complete automated inventory of all Government business forms? Is that a separate project?

Mr. STEWART. Yes.

Senator CULVER. Could you tell us about that project and list the changes that small businesses and municipalities may expect as a result of that? In addition, I would like to know whether or not you have made any attempt to standardize the Government forms of various agencies so that a small business could fill out the form once and then keep it, for example, for various submissions and merely add any specific data that is required over and above the basic data.

Mr. STEWART. We are taking what are the necessary "baby steps" in the direction that you have described. For almost a year now we have had several hundred small business people around the country, heroic fellows and ladies, keeping diaries of every Federal, State and local form they fill out and keeping records of every time they are visited by some Federal, State, or local official on a formal mission. We are

establishing, in effect, profiles by the standard industrial code of what the regulatory burden is like if you are a pharmacist as against a saw-mill operator as against a limestone miner. This, we hope, will in time enable us to have a comparative estimate of the burden and to begin to set some priorities within the executive branch.

A second side of this leads in another direction which you have suggested, and we have been told by OMB that it is the first. It will be a comprehensive log of federally imposed paperwork in which we will have an actual computer listing of every agency form in the Government. I can't swear to that it will be complete because every day we find new ones, but we have several hundred trade associations vigorously canvassing their member to fill out logs of all the forms they execute in a year and their estimates of the amount of time required and their cost. This, we think, will get to the last point you have mentioned when we are able, as we will be, to identify the specific questions which are asked by a lot of people. We can then begin to talk seriously about, "Must everybody ask the same question? Isn't there some way that Government machinery can talk to Government machinery and exchange Government collected forms instead of having repetitively to go back to the small business person?" It is a long, hard road, Senator, but we are on it at last.

Senator CULVER. One of the points that has been raised most consistently with me is the problem of excessive and complicated paperwork requirements small businesses are experiencing with regard to the IRS and the Bureau of the Census—those two agencies. Has your office attempted to work with these agencies in any particular way to represent the views of small business to them and try to see if something can't be done there?

Mr. STEWART. In a very preliminary way, only. We are really holding our fire until we have got our data in hand. Just to confirm what you are saying, my horseback estimate is 70 to 80 percent of the paperwork that small business is hit with comes from the tax structure and the IRS and the equivalent in State local agencies. The census has certainly run second as the source of paperwork.

That being confirmed by our numbers, we have had some formal discussions about specific problems having to do with the risk of paperwork and the like, but I cannot tell you that we have yet explored fundamental change. One of the things, I think, the Congress wants to take a look at is the fact that the IRS is exempted from the statute, which authorizes OMB to require clearance for form. We will have some things to say about that when our data is in hand.

Senator CULVER. Senator Dole.

Senator DOLE. I am a member of the Finance Committee. Every year we talk about simplifying the tax return, and I must say, I think every year it is a little more complicated. So I will hope you will have some authority there. We have been talking about small businessmen and small businesswomen. Is there a nice little simple definition for that that you could give me?

Mr. STEWART. Senator, nice and little and small, no, but I will try.

Senator DOLE. I think we are getting to the crux of the problem. Somebody hears from the Small Business Administration and they either find out that their company is not a small business or that it is a small business. Maybe a little definition would be helpful.

Mr. STEWART. Senator, I have had this same dialog with easily 500 small businessmen and women in this country in the last year, and what I always say is, "Why are you asking," because that is how we have to begin. My own answer is that if you are not one of the 2,500 biggest businesses, you are probably small in terms of what you have to live with by way of problems on a day-to-day basis. Are you asking for a Government, legal or regulatory, purpose? If you are a manufacturing company, we have to refer you to a table of standard industrial classification codes which tells you what number of employees you may have and still be deemed to be small. That is for procurement purposes.

For lending purposes we have to also take a look at your gross sales and your total assets. We have to look at all three of those. If you are not in on one, you may be in on another one. I wish that I could tell you that I was imaginative enough to come up with a different substitute. I have to confess defeat, after a year of looking. I am not through with any of this. I just think our economy is so complicated that when you start to take a relevant term like small, you run smack up against the fact that we have got to have different divisions for different industries and different purposes. I am afraid there is no way around it.

Senator DOLE. Let's take Iowa, for example. If there are 64,000 businesses with 100 or fewer employees, are all of those people qualified for small business?

Mr. STEWART. By my definition absolutely.

Senator DOLE. But according to the act would they be qualified?

Mr. STEWART. According to the act for procurement and surely almost all of them for loans. The only exceptions would be that in fields like the oil business or the cattle business or the agriculture business. That is a special case altogether. You see, you cannot even say anything unequivocal. The answer is probably, yes.

Senator DOLE. I think that is a very legitimate and proper response. I don't quarrel with it. It does again focus on the problem because we use the general term. I spoke to a young man before the hearing who is not a witness, but who pointed out to me the problems of advertising the government benefits that are available to Veterans. By the time you learn about the program, you find out that you are not eligible. I am certain it is not intended, but what happens so often is that somebody out in, say, Russell, Kans., which is one of the greatest metropolitan areas left in my State, thinks that they have a small business. Then they check it out, and for some reason they find out that they are not eligible. I am not suggesting there shouldn't be some guidelines and some restraints, but as the chief lawyer advocate for small business, have you ever testified before a rulemaking committee in Washington or the Federal Trade Commission or others where you have tried to represent the view of small business?

Mr. STEWART. I have, sir.

Senator DOLE. Do you find that successful?

Mr. STEWART. Senator, I am a cowardly lion about this sort of thing. I have appeared before the Federal Trade Commission once. Informally in a proceeding they conducted to consider regulations for the funeral home industry, and I appeared, really, very informally to urge that before they promulgated their rule, they should hear some

data we had about the paperwork burden that such companies have now, and that before they added to it they ought to have before them specific information on how heavy the burden was now for companies of different size. I urged, frankly, a form of this regulatory flexibility Senator Culver's bill provides. They haven't come out with a final regulation, so I don't know how we came out, but the odds were pretty good.

Senator DOLE. I know a little about that rule. I'm not certain if it was your testimony, but there was testimony in which an effort was made to apply a broad rule to the whole industry. It may have been needed in some areas, but it wasn't needed in others. On the other hand, there were certain alleged abuses, such as in cremation cases where someone was charged for the casket, and other things that people don't like to discuss. But I am wondering, while we are talking about small businesses and small governments, if there would be a chance that the SBA could find some way to cover the expenses, if necessary, of small businessmen and women participating in these hearings? Maybe you do it now, I don't know.

Mr. STEWART. We try to, Senator. We have gone slowly, but we have got limited resources, like everybody. But on at least one occasion I brought a dozen small business people to Washington to talk to the staff and the Director of the Council on Wage and Price Stability. They were considering this regulation in talking about them. I said, "Look, I think you ought to hear from a range of small business people to get some ideas about how these regulations are really going to be read out in the field." We do a fair amount of this. We think we should do much more, and we think it is one of our central missions to bring small business into the process.

Senator DOLE. That may not be the most cost-effective way to do it. Maybe it would be better if you just solicited views of small business and made them available to different industries because, going back to the initial statement made by Senator Culver, the people who are there in Washington or wherever it may originate, are generally represented, and they should be. I don't suggest that something is improper, but there are many here, and I don't understand whose views are whose. They are never reflected.

You indicated last August in hearings on an earlier version of S. 299 that the biggest regulatory burden should be imposed on the "broadest back" similar to our system of progressive taxation. Is it possible to scale the burden of regulatory compliance, as you suggested? I mean, can we ease the burden on small companies and increase the burden on large corporations on the theory of economy of scale?

Mr. STEWART. Senator, I don't want to be misunderstood. I am not for increasing the regulatory burden on anybody, but what I was driving at—

Senator DOLE. Are you talking about the cost?

Mr. STEWART. That is right. What I was talking about really was to scale the terms of the regulation to reflect response to the difference in ability to comply so that, for example, such easy things as recognizing that a big company can afford to replace capital equipment and can get it in place faster and more cleanly, probably, in more relevant terms than a small firm.

For example, one of the toughest regulations to come out of Washington is going to be the regulation on electroplaters. We have been

discussing this with EPA, and I would say that they are being very responsive. They are going to give them 3 years to comply. We are trying to work out loan packages and simplify the information programs. As you know, one of our big illusions in Washington is that if you stick it in the Federal Register, everybody affected is going to know about it. We need an affirmative information program. That is a form of regulatory flexibility. Those big companies know about regulations early on.

In my own experience it takes roughly 2 years for small business in this country to find out the full impact of a change in law and regulation. Their lawyers and accountants have a hard time keeping up with it, if they have got them. So that in response to your question, yes, I do think that it is possible to scale regulatory burdens to the size of the regulators.

Senator DOLE. The problem is that if there is a regulation and you are required to do something, it is very often the case that it is going to cost the man with 50 employees just as much as the man with 5,000 or 10,000 employees, and the same for a multimillion-dollar business as a million dollar business. How can he possibly deal with that added cost? In many cases they cannot, and must either modify or leave their business. Sometimes, of course, the public interest has to be the final arbitrator. It is always a tough call to make. Again, I think it gets back to the thrust of the legislation. I am not suggesting anybody has anything but pure motives in mind, but when you sit back in some big office in Washington and decide what is good for someone in Fort Madison or Des Moines or Russell, Kans., or Medicine Lodge, it is a little different out there.

Mr. STEWART. Yes, sir. I think you put your finger on a couple parts of the answer. One of them is certainly to bring those people into the process early on, people in Russell, Kans., and Medicine Lodge, Council Bluffs, and the rest of the places, so their views are heard. Another is to develop the attitude in the Government, a commonsense priority attitude, on this regulation business. If 90 percent of the pollution comes from 15 companies, let's get them to comply before we bother about the other 10 percent. We are just as anxious to get at it, but we can set a rule of reason about these things.

[The prepared statement of Mr. Stewart follows:]

PREPARED STATEMENT OF MILTON D. STEWART

Mr. Chairman and members of this subcommittee: It is a pleasure to be here to discuss this important bill. It represents a positive step towards improving the relationship between the Federal Government and small business. The subject is one in which I have had a long-abiding interest and a strong personal conviction.

My comments, and my support of it, reflect my views as the Chief Counsel for Advocacy and not necessarily those of the SBA or the administration.

Legislation of this nature is long overdue. Over the last 10 years we have seen an unprecedented expansion of the regulatory responsibilities of the Federal Government. The result has been a cumulative burden on small business that has seriously hampered its ability to compete. The President has led the way to regulatory reform, both with his Executive order and his proposal for broad cost-benefit analysis. The principles and direction as embodied in S. 755 have my support.

As I have said many times and in many different ways, when the same regulation is applied to both large and small businesses, the relative burden is much greater on the small concerns. During a period when we witnessed a growth of big business and big government, we also encountered "big regulations." "Big regulations" are those sweeping edicts that are broad enough to encompass every conceivable

situation without regard to the relative costs and include all businesses within the parameters of the regulation. The result has been that small business has been caught up in the same net as big business despite the fact that their inclusion often contributes little to the objectives of the regulation. These "big regulations" are really big regressive taxes. Small business simply does not have the resources available to large business. Every regulation costs time or money. Small business' ability to complete, and even to survive, is sooner or later affected adversely by this cumulative burden or "unregulated" regulations.

Some agencies have already recognized the inequalities of the "big" regulation approach and have used regulatory flexibility principles to ease the burdens on small business.

This legislation does not therefore represent a frighteningly novel or unique concept: It simply brings order and common sense to the law. Many of its suggested procedures have been used before. This legislation simply pulls together a number of desirable practices and requires that the entire Federal Government will at least think about its regulatory impact on small business.

Several agencies are quite familiar with this approach. The EPA has promulgated a number of regulations which make accommodations to size in setting water and air quality standards. I have a list of such EPA regulations which I would like to submit to the committee. (Attachment A) They typically divide compliance requirements on the basis of discharge volume. For some time, the Federal Communications Commission, the Interstate Commerce Commission, and the banking agencies have divided their respective regulated industries into size classes for reporting and accounting purposes.

The ICC, for example, in 49 CFR 1240-1259 divides carriers into report classes based on operating revenue. I have a list of these which I would like to submit. (Attachment B)

The Securities and Exchange Commission has recently developed a new form, S-18, specifically for use by small business. The new form will be used by smaller companies making a public stock offering. Small companies were previously required to file S-1, a lengthy form which often discouraged small companies from making public offerings.

The Federal Trade Commission has proposed an exemption for smaller companies as part of its proposed regulation for the mobile home industry.

Agencies use "tiering" and regulatory flexibility now. But they use it unpredictably and sporadically.

Section 3 of S. 299 would require an agency to issue a statement that it "seeks and will consider alternative proposals * * *." Small business rarely will have the resources and capability to undertake the economic analysis necessary to develop alternative proposals. But, any Federal agency which follows rational regulatory development procedures already has the capability to perform an economic analysis.

The President's Executive Order 12044 appears to require executive departments to conduct economic analyses. The central problem is there has been no specific study of the impact on small business. There are a number of questions any analysis should answer about the impact on small business; there is a list of such questions drafted by our Chief Economist which I would like to submit with my testimony. (Attachment C)

It would also be helpful if the legislation required the agency to do this analysis, including small business impact at the earliest possible stage of regulatory development.

This will eliminate the need for the agency to go through the entire process a second time, if and when alternatives are submitted later. Second, we all know that it is only human nature that agency personnel develop prejudices toward their proposal once they have adopted it. It is then difficult to convince them of the merits of alternative proposals.

I am often asked to give examples of regulations that would be changed if this legislation is enacted. My first reaction is to say all of them, that at a minimum, every small business person who writes or calls our office could nominate a regulation for revision from this standpoint. There are clearly some regulations, which for health and safety reasons, must encompass all business. Others are ideal for "tiering." Without an economic analysis which expressly includes small business impact we have no way of knowing. Our office will try to help implement such legislation by setting a general standard for impact analysis and continuing to monitor the way agencies implement it. This legislation will help to make it a coherent governmentwide effort.

We are already encouraging agencies to utilize regulatory flexibility alternatives informally. Examples are: EPA's proposed electroplating regulations, the FTC's funeral home and used car regulations, OSHA's regulations where small businesses have been shown to be low risk, and the Treasury's governmentwide cash disbursement policy.

We cannot give you the number of regulations this legislation will affect but there will surely be savings to the Nation, the taxpayer and the small business community. Our economic environment will be more favorable to job creation, innovation and productivity. The small business sector will be healthier.

In summary let me reiterate that this bill does not represent a disturbing departure from precedent. It signals an important, useful and orderly effort by Government to control itself.

[Attachments A-D follow:]

ATTACHMENT A

ACCOMMODATIONS TO SIZE IN EPA REGULATIONS

The following list includes all promulgated industry-specific regulations which explicitly take size of polluter into account. It does not include those regulations for industries composed largely of small enterprises unless there is explicit discussion of size in the regulation. In some cases, an industry will not be segmented by size because all firms are similar, yet the dominance of small business means that economic burdens on small business have been considered.

*Not Available in any day
Not Available in any day*

Sector	Standard	Threshold	Accommodation or Exemption	
WATER QUALITY STANDARDS				
Dairy Receiving Stations	BAT,BPT	150,000 lb/day input milk equivalent	X	
Dairy Fluid Products	BPT,BAT	250,000 lb/day input milk equivalent	X	
Cultured Products	BPT, BAT	60,000 lb/day input milk equivalent	X	
Butter	BPT	175,000 lb/day input milk equivalent	X	
Cottage Cheese and Cultured Cream Cheese	BPT, BAT	25,000 lb/day input milk equivalent	X	
Natural and Processed Cheese	BPT, BAT	100,000 lb/day input milk equivalent	X	
Fluid Mix for Ice Cream and Other Frozen Desserts	BPT, BAT	85,000 lb/day input milk equivalent	X	
Ice Cream, Frozen Desserts Novelties, and Other Dairy Products	BPT, BAT	85,000 lb/day input milk equivalent	X	
Condensed Milk	BPT, BAT	100,000 lb/day input milk equivalent	X	
Dry Milk	BPT, BAT	145,000 lb/day input milk equivalent	X	
Condensed Whey	BPT, BAT	300,000 lb/day input milk equivalent	X	
Dry Whey	BPT, BAT	57,000 lb/day input 40% solids whey	X	
Canned and Preserved Fruits	BPT BAT	2,000 tons/yr raw 2,000 tons/yr raw 10,000 tons/yr raw	X	X
Canned and Preserved Vegetables	BPT	2,000 tons/yr raw	X	X

Sector	Standard	Threshold	Accommodation or Exemption	
Canned and Preserved Vegetables	BAT	2,000 tons/yr raw 10,000 tons/yr raw	X	X (<2000
	limitations do not apply to single-commodity 100 percent canned corn processing plants of all sizes, and multi-commodity 100 percent frozen vegetable processing plants with total annual raw material production less than 8,000 tons per year.			
Canned and Miscellaneous Specialties	BPT	2,000 tons/yr		X
	BAT	2,000 tons/yr		
	new source	10,000 tons/yr	X	X
		"	X	X
Conventional Blue Crab Processing	BPT, BAT	3,000 lb/day raw		X
Southern Non-Breaded Shrimp in the Contiguous States	BPT, BAT	2,000 lb/day raw		X
Breaded Shrimp Processing in the Contiguous States	BPT, BAT	2,000 lb/day raw		X
Hand-Shucked Clams	BPT, BAT	4,000 lb/day on any single day		X
Pacific Coast Hand-Shucked Oysters	BPT, BAT	1,000 lb/day on any single day		X
Atlantic and Gulf-Coast Hand-Shucked Oysters	BPT, BAT	"		X
Beet Sugar Processing	BAT	2,300 tons/day	X	
Feedlots	BPT, BAT new source	1,000 slaughter steers and heifers; X 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine weighing over 55 pounds; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.		
Ducks	BPT, BAT, new source	5,000 ducks		X

Sector	Standard	Threshold	Accommodation or Exemption
Electroplating: coatings	BPT	employment ≤ 11 wastewater $\leq 2,061$ gallons/hr production $\leq 2.7 \text{ ft}^2$ per hr. per em- ployee	X
Electroplating: chemical etching and milling	BPT	"	X
Petroleum refining: topping	BPT, BAT, new sources	all sizes have weights	X
Petroleum refining: cracking	BPT, BAT, new sources	all sizes have weights	X
Petroleum refining: petrochemicals	BPT, BAT, new sources	all sizes have weights	X
Petroleum refining: lube	BPT, BAT, pretreatment new sources	all sizes have weights	X
Petroleum refining: integrated	BPT, BAT, pretreatment	all sizes have weights	X
Hair Pulp Unhairing with Chrome Tanning and Finishing	BAT, new source	17,000 kg/hides per day	X
Hair Save Unhairing with Chrome Tanning and Finishing	BAT, new source	"	X
Unhairing with Veg- etable or Alum. Tanning and Finishing	BAT, new source	"	X
Finishing of Tanned Hides	BAT, new source	"	X
Vegetable or Chrome Tanning of Unhaired Hides	BAT, new source	"	X
Unhairing with Chrome Tanning and No Finishing	BAT, new source	"	X

Sector	Standard	Threshold	Accommodation or Exemption
Hand Pressed and Blown Glass Manufacturing AIR QUALITY STANDARDS	EAT, new source	50 gallons process wastewater/day	X
Fossil Fuel Fired Steam Generators	new source-air	>250 million Btu heat input/hr	X
Lignite Fired Steam Generators	new source-air	"	X
Incinerators	new source-air	50 tons/day input	X
Storage Vessels for Petroleum Liquids	new source-air	40,000 gallons capacity	X
Secondary Lead Smelters (pot furnaces)	new source-air	550 lb. capacity	X
Petroleum Refining Claus		2-5 Million Bushels	X
Sulfur Recovery Plants	new source-air	permanent capacity	X
All Industries	major new source review process	100 tons pollutant uncontrolled	X
TOXIC SUBSTANCES	reporting re- quirements	\$5 million/sales	X

[ATTACHMENT B]

TITLE 49—TRANSPORTATION

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBPART A—RAILROADS

§ 1240.1 *Classification of rail carriers.*

(a) For the purpose of annual, other periodical and special reports, commencing with reports for the year, quarter or month beginning January 1, 1978, and thereafter until further ordered, operating carriers by railroad subject to the provisions of Part I of the Interstate Commerce Act shall be, and they are hereby, grouped into the following classes:

Class I. Carriers having annual carrier operating revenues of \$50 million or more.

Class II. Carriers having annual operating revenues of less than \$50 million but in excess of \$10 million.

Class III. Carriers having annual operating revenue of \$10 million or more.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year such annual carrier operating revenue is greater than the maximum for the class in which the carrier is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls. Class II carriers shall adopt Class I classification effective as of January 1 of the following year.

(2) If at the end of any calendar year a carrier's annual operating revenues is less than the minimum revenue level for that class, and has been for 3 consecutive years, the carrier shall adopt the accounting and reporting requirements for the next lowest class. Such adoption shall be effective as of January 1 of the following year.

(3) Carriers shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Newly organized carriers shall be classified on the basis of their annual carrier operating revenues for the latest period of operation. If actual data are not available, new carriers shall be classified in the basis of their carrier operating revenue known and estimated for a year.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(d) In applying the classification grouping to any switching or terminal company which is operated as a joint facility of owning or tenant railways the sum of the annual carrier operating revenues, the joint facility rent income, and the totals of the joint facility credit accounts in operating expenses, shall be used in determining its class.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12, Interprets or Applies Sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 12 and 20)

[40 FR 51642, Nov. 6, 1975, as amended at 42 FR 35087, July 7, 1977; 43 FR 28205, June 29, 1978]

SUBPART B—CARRIERS BY WATER

§ 1240.2 *Classification of carrier by water.*

(a) For the purpose of annual, other periodical and special reports, commencing with reports for the year, quarter or month beginning January 1, 1975, carriers by water subject to the provisions of the Interstate Commerce Act shall be, and they are hereby, grouped into the following classes:

Class A. Carriers having annual carrier operating revenues of \$500,000 or more.

Class B. Carriers having annual carrier operating revenues of \$100,000 but less than \$500,000.

Class C. Carriers having annual carrier operating revenues of less than \$100,000.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year such annual carrier operating revenue is greater than the maximum for the class in which the carrier

is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls. For Class B carriers adoption of Class A classification shall be effective as of January 1 of the following year. For Class C carriers adoption of a higher classification shall be effective as of January 1 of the second succeeding year.

(2) If at the end of any calendar year a carrier's annual carrier operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the accounting requirements of the lower class in which the current year revenue falls. Such adoptions shall be effective as of January 1 of the following year.

(3) Carrier shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual gross carrier operating revenues.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. Such request shall be in writing specifying the conditions justifying an exception.

(Sec. 12, 24 Stat. 383, as amended, 54 Stat. 933; 49 U.S.C. 12, 904. Interprets or Applies Sec. 20, 23 Stat. 386, as amended, 54 Stat. 944; 49 U.S.C. 20, 913)

SUBPART C—CARRIERS BY ELECTRIC RAILWAY

§ 1240.3 *Classification of carriers by electric railway.*

(a) For the purpose of annual, other periodical and special reports commencing with the year, quarter or month beginning January 1, 1975, carriers by electric railway subject to the provisions of the Interstate Commerce Act shall be, and they are, grouped into the following classes:

Class I. Carriers having annual carrier operating revenues of \$1 million or more.

Class II. Carriers having annual carrier operating revenues of \$250,000 but less than \$1 million.

Class III. Carriers having annual carrier operating revenues of \$250,000 but less than \$250,000.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year such annual carrier operating revenue is greater than the maximum for the class in which the carrier is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls. Adoption of the higher classification shall be effective as of January 1 of the following year.

(2) If at the end of any calendar year a carrier's annual carrier operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the accounting and reporting requirements of the lower class in which it falls. Such adoption shall be effective as of January 1 of the following year.

(3) Carriers shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Newly organized carriers shall be classified on the basis of their annual carrier operating revenues for the latest period of such operation. If actual data are not available, new carriers shall be classified on the basis of their carrier operating revenue known and estimated for a year.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12. Interprets or Applies Sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20.)

SUBPART D—MOTOR CARRIERS

§ 1240.4 *Classification of motor carriers of passengers.*

(a) For purposes of the accounting and reporting regulations, common and contract carriers of passengers subject to the Interstate Commerce Act are grouped into the following three classes:

Class I. Carriers having average annual gross operating revenues (including interstate and intrastate) of \$3 million or more from passenger motor carrier operations.

Class II. Carriers having average annual gross operating revenues (including interstate and intrastate) of \$500,000, but less than \$3 million, from passenger motor carrier operations.

Class III. Carriers having average annual gross operating revenues (including interstate and intrastate) of less than \$500,000 from passenger motor carrier operations.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year or of 13 4-week periods, such annual carrier operating revenue is greater than the maximum for the class in which the carrier is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls. For Class III carriers adoption of Class II classification shall be effective as of January 1 of the following year. For Class II carriers adoption of a higher classification shall be effective as of January 1 of the second succeeding year after the carrier meets the minimum revenue limit for Class I.

(2) If at the end of any calendar year, or accounting year of 13 4-week periods, a carrier's annual operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the accounting and reporting requirements of the lower class in which the current year revenue falls. Adoption of the lower class shall be effective as of January 1 of the following year.

(3) Carriers shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual gross carrier operating revenues.

Any carrier which begins new operations is required to furnish the above estimate, including intrastate, anticipated interstate and local cartage revenues, to the Bureau of Accounts, Section of Reports, prior to the issuance of a certificate or permit.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying conditions justifying an exception.

(Secs. 204, 220, 49 Stat. 546, as amended, 563, as amended 49 U.S.C. 304, 320) [40 FR 51643, Nov. 6, 1975, as amended at 41 FR 30012, July 21, 1976]

§ 1240.5 *Classification of motor carriers of property.*

(a) For purposes of accounting and reporting regulations, commencing with the year beginning January 1, 1975, common and contract carriers of property subject to the Interstate Commerce Act are grouped into the following three classes:

Class I. Carriers having annual carrier operating revenues of \$3 million or more.

Class II. Carriers having annual carrier operating revenues of \$500,000 but less than \$3 million.

Class III. Carriers having annual carrier operating revenues of less than \$500,000.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenue. If at the end of any calendar year, or accounting year of 13 4-week periods, such annual carrier operating revenue is greater than the maximum for the class in which the carrier is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls.

For Class II carriers adoption of Class I classification shall be effective as of January 1 of the following year. For Class III carriers adoption of a higher classification shall be effective as of January 1 of second succeeding year.

(2) If at the end of any calendar year, or accounting year of 13 4-week periods a carrier's annual carrier operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the accounting and reporting requirements of the lower class in which the current year revenue falls. Adoption of the lower class shall be effective as of January 1 of the following year.

(3) Carriers shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual gross carrier operating revenues.

Any carrier which begins new operations is required to furnish the above estimate, including intrastate, anticipated interstate and local cartage revenues, to the Bureau of Accounts, Section of Reports, prior to the issuance of a certificate or permit.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(d) Special Provisions for Carriers with Household Goods Operations.

(1) For purposes of accounting and reporting revenues and expenses, the revenues of common and contract motor carriers of property, that have household goods operations, are categorized as follows:

Instruction 28B (household goods).

Instruction 27 and 28A (general commodity and other).

Each category of revenue is then classified in accordance with the dollar revenue limits prescribed in paragraph (a) of this section and shall be classified in accordance with paragraph (b) of this section. When a carrier has both household goods and general commodity and other revenue, each category shall be classified (I, II, or III) to determine the accounting and reporting regulations which pertain to that category.

(2) If a carrier grouped as Class I or Class II carrier in accordance with paragraph (a) of this section has operations in both categories in paragraph (c)(1) of this section, and one of the categories is classified as Class III, such revenues and expenses shall be accounted and reported in accordance with the regulations pertaining to the Class I or Class II category.

(3) If a carrier grouped as Class II in accordance with paragraph (a) of this section has operations in both categories and both categories are grouped as Class III in accordance with paragraph (c)(1) of this section, such revenues and expenses shall be accounted and reported in accordance with the regulations pertaining to the category with the larger annual gross carrier operating revenues.

(Secs. 204, 220, 49 Stat. 546, as amended 563, as amended: 49 U.S.C. 304, 320).

SUBPART E—FREIGHT FORWARDERS

§ 1240.6 *Classification for freight forwarders.*

(a) For the purpose of annual, other periodical and special reports, commencing with the year, quarter or month beginning January 1, 1975, freight forwarders subject to the provision of Part IV of the Interstate Commerce Act, shall be, and they hereby are, ground into the following classes:

Class A. Freight forwarders having annual operating revenues on \$100,000 or more.

Class B. Freight forwarders having annual operating revenues of less than \$100,000.

(b)(1) The class to which any freight forwarder belongs shall be determined by annual operating revenue. If at the end of any calendar year such annual operating revenue is greater than the maximum for the class in which the freight

forwarder is classified, the freight forwarder shall adopt the accounting and reporting requirements of the higher class in which it falls. For Class B freight forwarders adoption of Class A classification shall be effective as of January 1 of the second succeeding year.

(2) If at the end of any calendar year a Class A freight forwarder's gross operating revenue is less than \$100,000, and has been for three consecutive years, the freight forwarder shall adopt the accounting and reporting requirements applicable to a Class B. Such adoption shall be effective as of January 1 of the following year.

(3) Freight forwarders shall notify the Commission of any change in classification by completing and returning the Carrier Classification Form with the Quarterly Financial Report for the third calendar quarter, if appropriate, or by October 31.

(4) Any freight forwarder which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual gross operating revenues.

(5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving freight forwarder shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.

(c) In unusual circumstances, such as partial liquidation, and curtailment or elimination of contracted services, where the classification regulations will unduly burden the freight forwarder, the freight forwarder may request the Commission for an exception to the regulations. Such request shall be in writing specifying the conditions justifying an exception.

(d) Any freight forwarder, at its operation, may adopt the accounting requirements of a higher class than the one in which it falls. Notice of such action shall be promptly filed with the Commission. However, for reporting purposes the freight forwarder shall comply with the reporting requirements of the class applicable to its annual gross operating revenue.

(e) Under part IV of the Interstate Commerce Act the observance of the rules and regulations stated in this system of accounts becomes obligatory upon persons having direct charge of the accounts of the freight forwarders concerned, and such persons will be held responsible for their proper application.

(Secs. 403, 412, 56 Stat. 285, 294, 49 U.S.C. 1003, 1012)

[ATTACHMENT C]

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Where possible the impacts of the proposed rule or regulation should be broken down as follows:

1. Demographic impacts:
 - Number of firms affected per industry, defined by four digit SIC Code.
 - Number of industries affected.
 - Number of anticipated plant closings.
 - Geographic distribution of impacted firms and closings.
2. Direct costs (total and per dollar of output) by size of impacted firm:
 - Operating costs.
 - Capital costs including cost and availability of financing.
 - Administrative costs.
 - Enforcement costs by the Federal Government.
3. Indirect Costs:
 - On the regulated firms, by firm size.
 - On other firms, by firm size.
 - On other levels of government.
4. Nonquantifiable impacts (psychological costs, and so forth) by firm size.
5. Competitive effects—analysis of relative impacts by firm size:
 - Effects on concentration. Are the costs distributed regressively or proportionately per unit of output? Would a two-tier system of regulation minimize cost without significantly reducing benefit levels?
 - Effects on merger activity.
 - Effects on entry.
 - Other discriminatory effects.
 - Exports-Imports.

6. Aggregate Impacts—employment, output, growth rates:

Industry.

Nation.

7. Cumulative costs of all Government regulations (Federal, State, and local) by firm size:

While the direct costs of any given regulation may seem reasonable, the total burden of all regulations may be oppressive. Consequently, an attempt to measure the total direct cost of all Government regulations is important.

8. Three categories of business size (small, medium and large) should be defined with the small business category subdivided into three categories where applicable:

Small business 0-499 employees:

small, small business 0-19 employees.

medium, small business 20-249 employees.

large, small business 250-499 employees.

Medium business 500-1,000 employees.

Large business 1,000+ employees.

Benefits should also be estimated for each rule or regulation so benefit/cost ratios can be analyzed to see which rule or regulation reaches the stated goal more efficiently.

Since estimating benefits and costs is far from an exact science, high and low estimates should be presented. Estimates of high costs and low benefits are likely to be provided by those who will be regulated and low costs and high benefits by those groups benefiting from the regulation. These should be available in a comparative format to assist in evaluating the regulations.

MILTON D. STEWART,
Chief Counsel for Advocacy,
Small Business Administration.

(Attachment D)

From "SMALL BUSINESS AND INNOVATION" - A REPORT OF
AN SBA OFFICE OF ADVOCACY TASK FORCE

(Recommendations of three small business task forces
to lessen the negative effect of Federal government
regulatory policy on small business innovation.)

- A Report of Small Business Members who Served on
the Industrial Innovation Advisory Committee that
was established as part of the Domestic Policy Review

- A Report to the Assistant Secretary of Commerce for
Science and Technology by the Commerce Work Group on
Job Creation

- A Report of an SBA Office of Advocacy Task Force

COMPARISON TABLE

SBA ADVOCACY
TASK FORCE BILL

COMMERCE JOB CREATION
WORK GROUP (JC-WG)

COMMERCE INNOVATION
SMALL BUSINESS TASK FORCE (INN-SBTF)

REGULATORY PROCEDURES

ADVOCACY TASK FORCE BILL SECTION	JC-WG AND/OR INN-SBTF RECOMMENDATIONS
No parallel section in Advocacy Task Force Bill	A thorough revision of the regulations and operating procedures of OSHA as they relate to small innovative business to include: -- A general exemption from OSHA, except where the accident history of a particular industry or firm is substantially greater than average, and in such cases, the burden should be upon OSHA to justify action; and -- The prohibition of first instance citations except in extreme cases. (INN-SBTF)
Section 6(b)1	In all regulatory activities, the burden should be placed upon each regulatory agency to establish a cause of concern before requiring regulatory compliance by a small business. Minimum levels of impact should be statutorily defined thereby exempting small businesses in all but extreme and justifiable cases. (INN-SBTF)
No parallel section in Advocacy Task Force Bill	Substantial strengthening of the Regulatory Council to include: -- participation by the Small Business Administration; -- requiring all regulatory agencies to balance the risks of a hazard against the economic costs, with thorough consideration of specific impacts of proposed regulations upon small business creative processes; -- the use of "performance standards" and not "method standards" in those cases where regulatory standards are clearly justified; (JC-WG)

REGULATORY PROCEDURES

ADVOCACY TASK FORCE BILL SECTION	JC-WG AND/OR INN-SBTF RECOMMENDATIONS
No parallel section in Advocacy Task Force Bill (cont'd)	-- wherever possible, return to reliance upon standards associations with federally mandated standards being the last resort, and -- improved congressional oversight of the regulatory process as it relates to small innovative businesses. (INN-SBTF)
No parallel section in Advocacy Task Force Bill	Provide product liability and recall insurance at reasonable costs for small businesses, with exemptions from recalls except in the most extreme cases; and the establishment of statutory limits of liability for product failures similar to Workman's Compensation Insurance. (INN-SBTF)
No parallel section in Advocacy Task Force Bill	We recommend that small businesses be allowed to deduct twice their payments for regulatory advisory services related to compliance with federal, state, and local regulation. (INN-SBTF)
COLUMN NOTE: These two sections of Task Force Bill have no direct parallels in JC-WG or INN-SBTF Reports.	All federal agencies which issue regulations affecting small business shall, insofar as practicable, issue them so as to relate regulatory burdens to the relative size of the firms regulated. (ADVOCACY TASK FORCE BILL - Section 6(b)) In cases where government regulations provide for an agency to make a decision involving a matter initiated by a small business within a certain time period and that decision is not forthcoming by said deadline, it shall be assumed with legal force that the decision is affirmative i.e., that permission, if not denied within a specified period, is granted and an extension, if not denied within a specified period, is approved. (ADVOCACY TASK FORCE BILL - Section 6(b)(2))

THE EFFECTS OF DOMESTIC POLICIES OF THE FEDERAL GOVERNMENT
UPON INNOVATION BY SMALL BUSINESSES

A Report of Small Business Members
Who Served on the Industrial Innovation Advisory Committee
That Was Established as Part of the Domestic Policy Review.

May 1, 1979

NOTICE: This report represents the views of the several members from small business who served on the Advisory Committee on Industrial Innovation, an advisory committee that was convened by and reported to the Secretary of Commerce. This report of the committee members from small businesses does not necessarily represent the views of the Department of Commerce, the Small Business Administration, or any other agency of the Federal Government.

* * *

REGULATION.

During the past decade, a new regulatory environment has emerged to fulfill a wide variety of social "mandates". This environment includes new agencies such as OSHA, EPA, CPSC, NTSB and EEOC, in addition to expanded jurisdictions of existing agencies such as FDA, SEC, FTC, DOE, DOT, Justice, Corps of Engineers and others involved in the regulation of business in one way or another. We believe that the mission of each of these agencies is well intended and, if only one (or a few) of them were impacting upon small innovative businesses, their impact could be absorbed within the creative process. Unfortunately, for many small businesses there is mandatory involvement with a wide range of agencies and, in some cases, the laws and regulations being enforced were intended for large sources of hazards, or for some other purpose than to control the new field being pioneered by the innovator.*

In some new fields, the regulatory environment is so intense and so diverse that the whole of this impact is greater than the sum of the parts. The small guy is overwhelmed by the law-making, rule-making, and enforcement processes of regulation. This intense diverse regulatory environment is contributing to inflation in two ways--by impeding innovation (particularly innovation in small enterprises)--and by adding significantly to business costs.

REGULATION IS A MAJOR DETERRENT ON THE CREATIVE PROCESS.

The overwhelming nature of widespread regulation results in an adverse interference with the innovative process, pushing the balance away from success. The innovator's most precious assets of time and energy are drained. Expensive delays are experienced, and the creative entrepreneur and his scientists and engineers are kept on the defensive--not on the offensive that is necessary for their success.

In addition to regulations contributing to inflation, a serious consequence of this new regulatory environment is that economic progress is distorted in favor of those fields where government involvement is minimal and where innovation can occur relatively untrammled. In those fields where regulation is diverse and intense, greatly reduced entrepreneurial activities are experienced, and only those innovators who can map and navigate the governmental process can succeed.

The costs of regulation to the innovative process in small business are large and real.

GOVERNMENT FAILS TO RECOGNIZE THE DISPROPORTIONATELY HEAVY IMPACT OF THE REGULATORY PROCESS UPON SMALL BUSINESS INNOVATION.

When approaching government, the small businessman often encounters a presumption of harm and dishonesty, or at best, indifference, and not a sympathetic understanding of the peculiar needs and problems of the small guy attempting to be creative. The legislative and rule-making processes are impossible forums for his participation and his bureaucratic adversaries have substantially greater influence and credibility in these processes. Laws, rules, policies and procedures often are made for "administrative convenience", and such administrative conveniences usually become an inconvenience for the innovator. As a society we must address the question of whose convenience is more important--the bureaucrat's or the innovator's?

During the 1970's, "due process of law" in American democracy has become an unfamiliar phenomenon to the small innovator--the process is closed to him--and grossly discriminates against him. This adversary regulatory process in America today has caused the remaining few small innovators to consider government as an alien power committed to their destruction.

The small innovative business cannot deal with this intense and diverse regulatory environment as readily as can the large corporation. If a re-birth of innovation is to occur, government must recognize this adverse discrimination and a major departure from current regulatory processes that affect small innovative businesses is necessary.

In view of this deleterious impact of federal regulation upon small business enterprises, and the serious consequences of inflation and stymied innovation, we wish to make the following recommendations:

RECOMMENDATION # 4--CHANGES IN REGULATORY POLICIES.

. A thorough revision of the regulations and operating procedures of OSHA as they relate to small innovative business to include:

--A general exemption from OSHA, except where the accident history of a particular industry or firm is substantially greater than average, and in such cases, the burden should be upon OSHA to justify action; and

--The prohibition of first instance citations except in extreme cases.

. In all regulatory activities, the burden should be placed upon each regulatory agency to establish a cause of concern before requiring regulatory compliance by a small business. Minimum levels of impact should be statutorily defined thereby exempting small businesses in all but extreme and justifiable cases.

. Substantial strengthening of the Regulatory Council to include:

--participation by the Small Business Administration;

--requiring all regulatory agencies to balance the risks of a hazard against the economic costs, with thorough consideration of specific impacts of proposed regulations upon small business creative processes;

--the use of "performance standards" and not "method standards" in those cases where regulatory standards are clearly justified;

--wherever possible, return to reliance upon standards associations with federally mandated standards being the last resort;

--improved congressional oversight of the regulatory process as it relates to small innovative businesses.

. Provide product liability and recall insurance at reasonable costs for small businesses, with exemptions from recalls except in the most extreme cases; and the establishment of statutory limits of liability for product failures similar to Workman's Compensation Insurance.

The OSHA problem is particularly serious for small innovative enterprises that have to deal with this agency, and a revision in OSHA policies and practices is necessary. Some members of our Committee believe that it would be in the best interest of workplace safety as well as of industrial innovation to eliminate OSHA entirely. Others agree, but believe that this may be politically impractical. Still others are of the opinion that government can improve workplace safety with the significant amendments to present policies and procedures that we are proposing.

The recently published report Making Prevention Pay by the Inner-Agency Taskforce on Workplace Safety and Health concludes that OSHA has failed to make an improvement in workplace safety during the past decade. And, it is clear to us that the burden of this program on small innovative businesses is discriminatory and highly adverse. In addition, OSHA is an agency that has generated an enormous amount of litigation, and in cases of appealed OSHA citations, over fifty percent have been vacated. Yet, litigation is not a form of relief for small innovative businesses--the OSHA rule-making and appeals process, and judiciary relief, is a costly and time consuming game that small enterprises cannot play. Therefore, the burdens of citations should not be placed upon small businesses, at least in the first instance, and we urge that the burden be placed upon government to demonstrate on a case by case basis that unusually great hazards exist before OSHA can exercise jurisdiction in the case of small businesses.

In most other areas of regulation, it is our opinion that the burden of compliance for small business enterprises should be substantially reduced, and in many cases can be eliminated without materially compromising the overall objectives of the subject regulation. It is virtually impossible for the struggling innovator to comply with the never ending forms, mandated reports, applications, investigations, inspections, permits, licenses, standards, variances, checklists, guidelines, plans, study-sessions, public meetings, rule-makings, non-rule makings, hearings, non-hearings, burdens of proof, appeals, etc., and to accomodate the rapidly growing enforcement budgets at all levels of government to "make businesses comply." The language of government is a strange tongue written by lawyers for judges that is as incomprehensible to the small innovator as is the regulatory process itself. This government problem is more than simply a paperwork blitz--it is a major consumer of time, energy, and capital, and is sometimes absolutely prohibitive.

We believe that it is essential that a clearly specified level of impact or hazard exposure be established before a business is regulated, to allow the entrepreneur to innovate without the burden of regulation consuming his precious time, drive and capital, and in causing inordinate delays for him to learn the appropriate rules, accomplish their compliance, and obtain appropriate permits. The burden is particularly onerous upon the innovating entrepreneur attempting to do something new since most existing laws are intended to eliminate some other form of evil.

The new regulatory environment is another example of how government polices unfairly discriminate against small innovative firms by treating them the same as big corporations. Some big corporations can survive in this regulatory game--they can enter law making and rule making procedures, retain experts to ply the most subtle interpretations of the rules, and can afford the time and costs of appeals and litigations, etc.--the small guys simply cannot because "the due process" is too time consuming, costly, and technically overbearing. If the small guy tries, the balance in his struggle for survival weighs heavily towards failure. Therefore, we strongly believe that reasonable exemptions are necessary for small firms if our sector of the economy is to be revitalized as a major source of non-inflationary innovation.

* * *

RECOMMENDATIONS FOR CREATING JOBS
THROUGH THE SUCCESS OF SMALL,
INNOVATIVE BUSINESSES

A Report to the Assistant Secretary of Commerce
for Science and Technology

This report, prepared under the direction of William C. Norris, Chairman of the Board and Chief Executive Officer of Control Data Corporation and a member of the Commerce Technical Advisory Board, represents the views of a Work Group of private citizens, each of whom has had unique and valuable experience in technology and entrepreneurship.

December, 1978

B. Reducing the Burden of Regulation

Small businesses, along with large businesses and non-profit institutions, have been burdened by the recent expansion of both federal and state regulations. Some of the recent regulations -- those for occupational safety and health and for environmental protection -- have impacted most businesses. Others -- those for food and drugs and auto safety -- have applied to specific industries. We understand the social concerns that led to such regulations, and we are aware that both federal and state governments are reviewing whether current regulations are the most cost-effective way of dealing with these societal problems. For example, the Interstate Commerce Commission is relaxing its rules against shippers with their own trucking operations to seek for-hire traffic to eliminate otherwise empty back-hauls. We also recognize that the balancing of social gains and economic losses in assessing regulation is a complex task, ill-suited to a work group focussing primarily on the job-creating potentials of innovations by small, technically oriented businesses.

We note, however, that innovations -- because they involve new products, services, and processes -- are likely to encounter considerable regulatory uncertainty.¹³ Such uncertainty is particularly burdensome to small businesses because they lack the specialized staff of large businesses to cope with the regulatory maze. As a result the task of regulatory compliance is likely to fall upon the already over-committed line management of small businesses. Ultimately it reduces their competitiveness both in domestic and foreign markets. A partial solution lies in the creation of regulatory advisory services, themselves largely small profit-making businesses, which can develop computer data bases and an expertise for coping more effectively and efficiently with the complexity of government regulations than individual small businesses. Such a service can save the time of small business management and reduce the cost of compliance.

To encourage the formation of such firms as well as to recognize that even the services of advisory firms will only reduce, but not eliminate, the burden of regulatory compliance on small businesses, we consider it desirable that more than the deduction of the actual business expense be permitted for payment to regulatory advisory firms. Furthermore, as a matter of good government, we think the cost of regulatory compliance for small businesses should be highlighted in government decision making by a tax deduction that exceeds the actual expense.

Recommendation 6.

We recommend that small businesses be allowed to deduct twice their payments for regulatory advisory services related to compliance with federal, state, and local regulation.

¹³George S. Lockwood, Founder and General Partner, Monterey Abalone Farms, "An Address to the Third Annual Colloquium on Research and Development Policy," American Association for the Advancement of Science, Washington, D.C., June 21, 1978.

A Report of the SBA Advocacy Task Force:

"Small Business Innovation Act of 1979"

A Legislative Proposal

SECTION 6: REGULATIONS, POLICIES AND PROCEDURES. (a) Procurement: The Office of Federal Procurement Policy in cooperation with the Small Business Administration shall develop and issue a simplified set of regulations for research and development awards to small business designed from the users' point of view.

1. Cost-sharing requirements for research and development awards to small business shall be eliminated and negotiated fees shall be allowed on all such contracts;

2. No Federal agency or organizational unit within an agency shall exclude small business from a fair and equitable opportunity to compete on a merit basis on the same terms as other participants;

3. Every Federal agency shall seek unsolicited proposals from small business and shall give such proposals a fair and prompt review based upon their

merit, and small business should have equal opportunity to receive sole source awards;

4. Independent research and development (IR&D) and bid and proposal (B&P) costs of small business firms shall be considered as expenses for the fiscal year in which they occur instead of being averaged-back over the past two years;

5. The Departments of Defense and Energy and the National Aeronautics and Space Administration shall take additional steps to conduct regular break-out reviews of all proposed large scale systems contracts for research and development, and to seek means of making more of this effort available to small business.

6. All Federal agencies involved with research and development funding will develop, with the Small Business Administration, specific programs, to inform their staffs and consultants of the need to provide a fair and equal opportunity to small women-owned and minority business firms to be considered for Federally funded research and development; and of the requirement to guide, counsel and assist small firms to strengthen their capability to compete and insure that they receive a fair share of all Federal research and development contracts as described in the Small Business Act. Evaluations of procurement personnel performance shall include appraisals of achievement and attitude in expanding small and minority business participation;

7. All Federal agencies have a responsibility to identify and study those problems of their procurement system that, in effect, discriminate against small business and a responsibility to make changes or eliminate these practices to the extent possible through administrative action.

(b) Regulatory Flexibility:

1. All Federal agencies which issue regulations affecting small business shall, insofar as practicable, issue them so as to relate regulatory burdens to the relative size of the firms regulated.

2. In cases where government regulations provide for an agency to make a decision involving a matter initiated by a small business within a certain time period and that decision is not forthcoming by said deadline, it shall be assumed with legal force that the decision is affirmative, i.e., that permission, if not denied within a specified period, is granted an extension, if not denied within a specified period, is approved.

BIOGRAPHIES

MEMBERS OF
SBA ADVOCACY TASK FORCEMilton Bevington:

B.S. in Chemical Engineering, M.I.T., MBA - Harvard Business School. President and CEO of Servidyne, Inc.; former Executive Vice President of The Trane Co.

SERVIDYNE:

Founded in Atlanta in 1966. Supplies total energy management services to industrial, commercial, and institutional services. Clients are nationwide and in over 20 foreign countries. Headquartered in Atlanta, the company has 13 offices located throughout the country.

N. Paul Bosted:

M.S. in Physics, Sr. Fellow - Mellon Institute, Pittsburgh, Pa. Nine years - International Rectifier Corp., as President. Five years as an International Technical Consultant. Joined Sun Systems in 1976. Serves as President Expert in the field of electronics.

SUN SYSTEMS:

Founded in 1971, specializes in sophisticated digital electronic instruments for government installations, NASA and several Nuclear Energy plants. Clients include GE, International Harvester, Westinghouse. Presently have 12 employees. Size of business - \$500,000 gross.

William Chandler:

Oregon State University, American Graduate School of International Management. Founder and President of Bay Venture Management, San Francisco, Calif. Formerly associated with Federal Reserve Bank, Raytheon, Veriflo Corp., and Western Growth Fund.

BAY VENTURE MANAGEMENT:

Organized in late 1975 as a venture development firm dealing with start-up companies in the bay area.

Dan Cronin:

B.A. Harvard, Economics, Cum Laude, 1950, Advanced Management Course, Harvard. Vice President, Small Business Association of New England. Formerly salesman, manager and then President of small hospital supply co., which merged in 1968 with a large company with 150 employees and 5 million in business. In 1974 served as Assistant to the then Secretary of Commerce, Elliot Richardson, 1977 joined Ampersand Associates, a venture capital firm. Also served on SBA Regional Advisory Council.

AMPERSAND ASSOCIATES:

Venture Capital firm with investments ranging from 1-1/2 million to 100 million. One client is #2 in the electronic cash register business.

Alfred C. W. Daniels:

E.E. Graduate of Arizona State University, Harvard Law School, also served as an Assistant Dean at Harvard. Vice President, New England, HH Aerospace Design Co., Inc. An officer and rated airline transport pilot, he has served in both command and staff R&D positions in the U.S. Air Force where he also earned four Air Medals with 200 missions in Viet Nam. Received the 1,000 Hour Sabreliner Flight Award. President, Black Corporation. Presidents of New England, Inc., and a member of the Board of Directors, Smaller Business Association of New England, Inc.

HH AEROSPACE DESIGN CO., INC.:

A consulting firm established in 1974, incorporated in the State of New York. A 100% minority-owned corporation, serving the Eastern Seaboard. HHA's capabilities include R&D studies, economic analysis, design and engineering services in aerospace, electronics and transportation planning, including surface systems, tests and evaluation.

Dr. Orrie Friedman:

Ph.D. Chemistry - McGill University, 1944. Former Professor of Chemistry - Brandeis University. Left to organize Collaborative Research, Inc., in 1962. Has served as President & Science Director since its inception. His contributions to bio-medical research are included in over 90 science publications. Well known for basic discoveries in cancer chemotherapy. Served on a number of Advisory Ctes at NIH. Member, Office and Director of several corporate, philanthropist and professional organizations.

COLLABORATIVE RESEARCH, INC.:

A high technology company with interests primarily in bio-medics and research and development. Organized in 1962 to undertake sponsored research, the company consists of two closely integrated operating divisions: Research and Pharmaceutical Products, and a central Research Division. Company has expertise in a number of areas as the cutting edge of new cell and molecular biological technology.

Edward Gaffney:

Michigan Technology University, Mechanical Engineering. Developed and patented the cushion lift chair. Awarded U.S. Small Business Person of the Year in 1978, and Small Business Man of Wisconsin in 1977. President and Founder of Ortho-Kinetics. Currently Vice President of Independent Business Association of Wisconsin. Member of Wisconsin Legislative Council, Subcommittee on Small Business.

ORTHO-KINETICS:

Founded in 1963, small high technology based firm, specializing in research and development and manufacture of the cushion lift seat and childrens care seats. Currently employs 50 people.

Clyde R. Goodheart:

B.S. in Biology, Northwestern University, MD - Northwestern Medical School, MS - Northwestern Graduate School. Three years at California Institute of Technology in Post-Doctoral Fellowship. Assistant Professor and Associate Professor, Department of Pediatrics, University of Southern California Medical School, Children's Hospital of Los Angeles. Well known for his work in cancer research, Dr. Goodheart has been involved in bio-medical studies and has written many scientific articles.

BIO LABS, INC.:

Founded in July, 1970 by Dr. Clyde R. Goodheart, it serves government and industry through contract research, product development programs, quality control testing, industrial microbiology. Current research areas include tissue culture work, immunology, biochemical and biophysical work with viruses.

Sidney Green:

B.S. University of Missouri in Mechanical Engineering, M.S. University of Pittsburgh, attended University of Pennsylvania Graduate School & received the degree of Engineer in Engineering Mechanics from Stanford University. Formerly with Westinghouse Electric Company Research Labs, General Motors Defense Research Labs, & GM Technical Center. President & Chief Executive Officer of Terra Tek, he is active on many government committees & professional societies. Published over 40 open literature papers and reports, holds several patents.

TERRA TEK:

Founded in 1970 as a for-profit company, a springoff venture pursuing application of ideas primarily initiated at the University of Utah. Recognized as a leader in problem-solving applications involving rock mechanics, the geosciences and associated technology, and for its practical application of material sciences. Main lines of business include R&D, manufacture of sophisticated servocontrolled computer interfaced test systems, full-scale testing of drilling, mining and exploitation of new ventures.

Harold Guller:

Washington University School of Engineering. President and Chairman of the Board of Essex Cryogenics Industries, Inc., and President of its wholly owned subsidiaries: Essex Cryogenics of Missouri, Inc., Higgs Screw Products, Propellux Corp., and Essex Precision Controls, Inc. Serves as Chairman of the St. Louis District Advisory Council of the Small Business Administration. Member of various local and regional advisory and technical committees and several civic organizations.

ESSEX CRYOGENICS INDUSTRIES, INC.

Designs and produces hydraulic, pneumatic fuel, electronic and electromechanical components and subsystems for aircraft applications. Selected as the Small Business Prime Contractor of 1971 for Region VII, Small Business Subcontractor of 1972 for Region VII; Small Business Subcontractor of 1973 for Region VII and National Small Business Subcontractor of the Year 1973.

Dr. Eugene Haddad:

B.S. Engineering Physics, Alabama Polytechnic Institute of Technology, M.S. in Physics, University of California, Ph.D., University of Utah. Formerly staff member of Los Alamos Scientific Laboratory and AEC Research Division. 1966-1967 Visiting Professor of Physics, Catholic University. 1968-1969 Assistant to Deputy Director of Science and Technology, U.S. Defense Atomic Support Agency. 1969-1975 Executive Vice President, Columbia Scientific Industries Corp., Austin, Texas. Since 1976, President, Chief Executive Officer and Director of Columbia Scientific Industries Corp. Member of several professional and honorary societies. Has published numerous papers in scientific journals.

COLUMBIA SCIENTIFIC CORPORATION:

The main thrust of the company is in the design and manufacture of high quality environmental and safety equipment. The company also conducts research for federal, state and local governments, as well as the private sector. Located in Austin, Texas, the company employs 85 people and has an annual sales volume of approximately \$4.5 million.

Roger Hill:

B.S. Physics, Brown University, M.S. Elec. Engr., Northwestern University, Doctorate studies at Northwestern University. Small Business person of the Year in State of Wisconsin, 1978. Member of Independent Business Association of Wisconsin, Special Committee on Small Business of Wisconsin Legislative Council, First National Bank Board of Directors, International Trade Subcommittee of the Chamber of Commerce of the U.S., Institute of Elec. & Electronic Engrs.

GETTYS MANUFACTURING CO.:

Founded in 1959 by Roger Gettys Hill, as a three-person engineering and consulting firm and later dynamically expanded into an international, multi-million dollar enterprise with subsidiaries in England, Germany and Italy. Today, Gettys and its licensee supply over 50% of the world DC servo drive market. In 1965 introduced world's first all-electronic three-dimensional tracer.

Robert Hillas:

B.A. Dartmouth, MBA - Stanford University. Seven years as a Venture Capital Investment Specialist with E.M. Warburg, Pincus and Company. Serves on two Boards of Directors and one Advisory Committee of Investee Companies.

E. M. WARBURG, PINCUS, & CO.:

Specialists in financial services. One of the larger private venture capital pools in the country. Deal with start-up money particularly in large publicly held companies.

Patrick Iannotta

Majored in Economics, Queens College, Member, Treasury Advisory Council; New York State Governors High Technology Task Force; President of Ecolotrol for past ten years.

ECOLOtrol, INC.:

Founded in 1969, developed a standardized treatment system for industrial waste water and municipal sewage. Number of plants in design & construction throughout the world. Currently commercializing sophisticated instruments and control devices in the energy area. Ecolotrol holds several patents.

Charles G. James:

B.S. in Business Administration - Bowling Green State University. Treasurer and member of Board of Directors, The Sea Pines Company, Hilton Head, South Carolina. Staff person, Laurance S. Rockefeller, New York. Group Vice President of Heizer Corporation, Chicago, Illinois, a venture capital firm, currently with Battelle Memorial Institute, Columbus, Ohio, as President of Scientific Advances, Inc., a wholly-owned subsidiary of Battelle.

SCIENTIFIC ADVANCES INC.:

Provides financial, management, and technical support for companies or projects originating within or without Battelle; a whollyowned subsidiary of Battelle Memorial Institute, Columbus, Ohio. SAI was conceived as a source for short run production, marketing and eventual disposition of unique Battelle developed products, SAI has shifted to the formation and growth of new ventures to introduce innovative technology.

Paul Kelley:

Harvard, MBA, Northeastern University. Is a doctoral candidate at Boston University. Is responsible for implementing the Massachusetts Technology Development Corporation Revolving Loan Fund program. Has been personally involved in several turn-around situations and technology-based start-ups. He was instrumental in putting together the financial packages for over 40 successful start-up, technology-based companies. President of SUN Community Development Corp. and is the Senior Lecturer in the Venture Development Program at Boston State College.

MASSACHUSETTS TECHNOLOGY DEVELOPMENT CORPORATION:

A public-purpose development finance mechanism established by an act of the Massachusetts State Legislature in July 1978. Has the dual capability to provide management and direct financial assistance to early-stage, technology-based small businesses in Massachusetts. The MTDC can provide seed capital to commercialize new technologies which will foster primary job creation and increase tax revenues and exports.

Gilbert V. Levin:

B.E., The Johns Hopkins University, 1947, M.S., 1948, Ph.D., 1963, Environmental Engineering. President and Founder, Chairman of the Board of Directors, Biospherics Inc., Rockville, Md. Formerly Director, Life Systems Division. Member, Board of Directors, Hazelton Labs, Inc., Falls Church, Va. Holds more than 33 patents in biological treatment of wastewater and in microbiology. Member of several honorary science associations & author of approximately 100 technical publications.

BIOSPHERICS INCORPORATED:

Organized into three major operating divisions: The Environmental Instrumentation Division which develops, manufactures, and markets sophisticated innovative instruments in the fields of pollution control and health; the Laboratory Division which performs contract research and development on environmental and health problems, develops Biospherics proprietary products in these areas and offers commercial analytical services in chemistry, biochemistry, microbiology, pesticides, and toxic substances; the Science Writing Division which writes, edits, produces and disseminates information in these areas of interest.

Harold K. Lonsdale:

B.S. Chemistry, Rutgers University, 1953. Ph.D in Physical Chemistry, Pennsylvania State University, 1957. Formerly, Nuclear Research Officer, U.S. Air Force, staff member, Research and Development Laboratory, General Atomic Co., Principal Scientist, ALZA Corp., and Visiting scientist, Max Planck Institute of Biophysics, Frankfurt, West Germany, and the Weizmann Institute of Science, Rehovot, Israel. Since 1974, President of Bend Research Inc., Bend, Oregon. Member of the American Chemical Society, Editorial Board of Desalination Journal and Editor of the Journal of Membrane Science. Adjunct Professor, Oregon State University. Author of many publications.

BEND RESEARCH, INC:

Is a young firm engaged in contract research and development for industry and government. Their field of expertise is membrane science and technology.

David T. Morgenthaler:

Massachusetts Institute of Technology, B.S., M.S. (mechanical engineering), Licensed Professional Engineer. Presently, Senior Partner, Morgenthaler Associates since 1969. Formerly with Fosco, Inc., as President and Vice President of Delavan Manufacturing Co. Chairman, National Venture Capital Association. Holds directorships with numerous companies throughout the country and member of several civic and regional organizations.

MORGENTHALER ASSOCIATES:

A private venture capital firm founded in 1968 by David Morgenthaler. The company's objective is to obtain substantial long term gains by investing in companies which offer some kind of proprietary product or service. It invests throughout North America and is interested in all types of business. The firm's normal investment size ranges from \$100,000 to \$300,000 in a given investment.

George W. Murphy:

B.S., Fordham, 1960. From 1958 to 1970 employed by IBM in various marketing and management positions. Since 1970 President and Chief Executive Officer of Educational Computer Corporation.

EDUCATIONAL COMPUTER CORPORATION:

Is the industry leader in research, development, and production of low cost computer controlled simulation devices that are used in advanced training programs. ECC blends computer technology with modern task oriented instructional methods to produce fully integrated technical training programs.

Dr. Arthur S. Obeymayer:

B.A. with High Honors, Swarthmore College, 1952. Ph.D. in Chemistry, M.I.T., 1956. Recipient of NST fellowships. President and founder of Moleculon Research Corporation. Founder and first Chairman of the Research Management Association. Currently, Vice President of the American Association of Small Research Companies. Has served in various capacities in the Association of Technical Professionals, Boston Industrial Mission, Federation of American Scientists and the Small Business Association of New England. Is frequently called upon by the Federal and Massachusetts state governments to serve in an advisory capacity.

MOLECULON RESEARCH CORPORATION:

Specializes in research, development and consulting in chemistry and allied fields. These services range from feasibility studies and product development to problem solving, chemical engineering investigations, and process development. Moleculon makes Poroplastic R film and powder. Product applications include controlled release materials, dermatological preparations, membrane separations for hydro-metallurgy and impurity removal from waste water, and color change monitoring of toxic vapors.

Dr. Judith H. Obeymeyer:

B.S., mathematics, Carnegie - Mellon University, 1956. Ph.D. in Mathematics, Harvard University, 1963. Assistant Professor, 1960-1966 Wellesley College. In 1978 taught mathematics at the University of Massachusetts. Recipient of four NSF Fellowships. Since 1968 Trustee and Manager of Technology Really Trust. Has served in a number of capacities with Moleculon Research Corporation for the last fifteen years. Has served as officer and on the board of numerous civic and charitable organizations and is a member of several honorary and professional societies.

MOLECULON RESERACH CORPORATION:

Specializes in research, development and consulting in chemistry and allied fields. These services range from feasibility studies and product development to problem solving, chemical engineering investigations, and process development. Moleculon makes Poroplastic R film and powder. Product applications include controlled release materials, dermatological preparations, membrane separations for hydro-metallurgy and impurity removal from waste water, and color change monitoring of toxic vapors.

Tom Perkins:

Degree in Electrical Engineering, Massachusetts Institute of Technology. M.B.A., Harvard Graduate School of Business Administration. Venture Capitalist with Kleiner, Perkins, Caufield, & Byers, San Francisco. Director, National Venture Capital Association, past President, Western Association of Venture Capitalists. Co-founder of Optics Technology and founded University Laboratories which became the leading producer of inexpensive gas lasers.

KLEINER, PERKINS, CAUFIELD & BYERS:

An active venture capital partnership with a capitalization of \$15 million. Investments typically range from a minimum of \$200,000 to a maximum of \$1 million. They seek opportunities with the potential to achieve significant shares of high growth markets. Examples: computers & computer peripherals, office equipment, medical products and instruments, microbiology, genetic engineering, telecommunications, semiconductors, laser & optics, and pollution control.

Harry D. Richardson:

SCMP - Harvard University, 1976; MS - Engineering, University of Alabama, 1950; BS - Mechanical-Electrical Engineering, Louisiana Polytechnic Institute, 1941. Chairman and President of Nuclear Systems, Inc. since 1971. Currently consulting Professor to Louisiana State University. Member of the Board of Directors of several companies and member of numerous professional societies.

NUCLEAR SYSTEMS, INC.:

Is a small technology company. Primarily it is engaged in (1) developing, manufacturing, and marketing equipment using radioisotopes, (2) environmental and quality control testing electronic components, and (3) developing, manufacturing, and marketing products for management and conservation of energy in homes and small commercial buildings. In 1979, the sales volume is estimated to exceed \$6 million. There are 250 employees located in six U.S. locations and one manufacturing plant in Mexico. NSI is a public company with nearly 500 stockholders.

Walter D. Syniuta:

Sc.D - M.I.T., Mechanical Engineering, M.Sc, Queens University, B.Sc, Queens University. President, Advanced Mechanical Technology, Inc. Formerly with Scientific Energy Systems Corp., Assistant & Associate Professor of Mechanical Engineering, M.I.T., Engineering Consultant, Development Engineer & Vibration Engineer. Member of various professional societies & author of several publications relating to his expertise in the field of electron microscopy.

ADVANCED MECHANICAL TECHNOLOGY, INC.:

A Massachusetts corporation engaged in R & D, and manufacturing of instrumentation. Engaged in R&D in the field of energy conversion systems, with current development programs in gas-fired hot water heaters, gas-fired residential space heating, waste-heat recovery systems, a novel heat-actuated heat-pump based on the Stirling cycle, use of ceramics in heat engines, and heat engine combustion research. AMTI is currently engaged in several commercial engineering projects.

Bruno O. Weinschel:

Dr. Engineering degree from the Technische Hochschule, Munich, Germany. Since 1952, President of the Weinschel Engineering Co., Inc. He is known for his work in the state of the art of insertion-loss microwave measurement. Serves as Director of the Precision Measurements Association. A Fellow in the Institution of Electrical Engineers. Editorial review boards of The Microwave Journal and Microwave Systems News. Author or co-author of forty journal articles and inventor or co-inventor of twenty patents.

WEINSCHTEL ENGINEERING COMPANY, INC.:

A leader in the design and manufacture of high quality instruments and components for use throughout the microwave industry. Known worldwide for their precision and quality. Contributor to the advancement of microwave technology. Complete in-house, totally integrated engineering, machining and assembly, with inspection and test procedures in Gaithersburg, Md.

Robert F. Zicarelli:

B.S. and MBA - Northwestern University. Has been with Northwest Growth Fund, Inc. for 18 years, having joined NWGF as Vice President and Director in 1961. His investments in venture capital experiences span 30 years. A member of the Board of Governors of National Association of Small Business Investment Co.'s. (NASBIC) and Board of Directors, National Venture Capital Association. Past President of Regional SBIC Association and member of SBA National Advisory Council.

NORTHWEST GROWTH FUND:

Founded in 1961, it is an SBIC headquartered in Minneapolis with offices in Denver and Portland. It is a wholly-owned subsidiary of Northwest Ban Corporation. It has assets in excess of \$40 million and investments in more than 50 small businesses, employing over 15,000 people. NWGF has invested in a broad range of apparel and personal products, electronics, basic manufacturing, communications, industrial and consumer services. One of the largest SBIC's in the country actively dedicated to venture capital funding.

BIOGRAPHIES

MEMBERS OF COMMERCE INNOVATION
SMALL BUSINESS "TASK FORCE"Mr. Wayne Coloney:

Texas A&M, Summa Cum Laude Graduate - Georgia Institute of Technology, 1950. Serves as Chairman of the Board & Chief Executive Officer of the Wayne H. Coloney Co., Tallahassee, Florida. Formerly associated with Barrett, Daffin & Coloney, and J.E. Greiner & Co., Tampa. A professional engineer certified in Florida, Georgia, Alabama, and North Carolina. Member of American Society of Civil Engineers, National Society of Professional Engineers and numerous other organizations, both professional & philanthropic. Listed in Who's Who in the World and in the South and Southwest. Mr. Coloney holds several patents and has published articles related to his extensive interest in knowledge of land planning, transportation facilities, drainage and air pollution and historical renovation.

WAYNE H. COLONEY COMPANY:

Founded in 1970 as a broad-based engineering firm dealing with structural, mechanical and legal engineering in the areas of land planning, pollution control and design. Grew from three employees in 1970 to presently 200. Awarded in 1972 - Pollution Control Citation, 1975, SBA Regional Prime Contractor of the Year, placed in top 500 design firms chosen by McGraw-Hill magazine.

Eugene M. Lang:

B.A. from Swarthmore College, M.S. from Columbia University, mechanical engineering studies at Brooklyn Polytechnic Institute. Currently, President of REFAC Technology Development Corporation of New York City. Chairman of Scriptomatic, Inc., Philadelphia, Pa., Chairman of J.D.S., Inc., a West Palm Beach, Florida real estate company, Chairman, Electronic Research Associates Inc., Moonachie, New Jersey, a manufacturer of power supplies and loudspeakers. Chairman of REFAC

Electronics Corp., Barkhamsted, Conn., manufacturer of microminiature display devices and switches. Serves on Department of Commerce, Advisory Committee on Science and Innovation.

REFAC TECHNOLOGY DEVELOPMENT CORPORATION:

Since 1952, this company's principal business has been international technology transfer -- the creation of manufacturing licenses and joint ventures as a means for client manufacturers to enter export markets. Most REFAC clients are smaller companies that have specialized industrial products or manufacturing processes.

George Lockwood:

B.S. in Civil Engineering, Northwestern University
M.B.A.- Harvard University, Currently President & Founder of Monterey Abalone Farm, Founder of Monterey Kelp Corporation which was acquired by Merck & Co., Inc. Formerly with Global Marine, a pioneer firm in off-shore oil well drilling. Mr. Lockwood holds several patents in his varied background including electronics & electronics manufacturing, oceanography & oceanography engineering, civil engineering, heavy construction & chemical processes.

MONTEREY ABALONE FARM:

Founded in 1972, specializes in domesticating the abalone species of the marine snail in California. In the first part of its history the company did extensive research in biological, environmental & nutritional factors relative to commercialization. Currently undergoing a major expansion of its operations.

Duane D. Pearsall:

B.S. from University of Denver, Commercial Engineering. General Motors Institute. Founder and President of the Small Business Development Corporation. Previously founded and was President of the Pearsall Company (1955-1966) and of Statitrol Corporation (1964-1977). Member of several professional societies. Member of Executive Committee and Board of Directors of Denver Chamber of Commerce and Council of Small Business of the Chamber of Commerce of the U.S., Regional Vice Chairman for Small Business, N.W. Region. Serves on S.B.A. Colorado District Advisory Council and M.F.I.B. Action Council Committee. Has published several technical papers. Colorado Small Business Person of the Year - 1976. National Small Business Person of the Year - 1976. Outstanding Citizen Award Mile High Sertoma Club - 1978. Serves on the Board of Directors of several companies and organizations.

SMALL BUSINESS DEVELOPMENT CORPORATION:

This was formed to support three activities - as consultant to small businesses, as an investor in small business and to organize a stronger voice for small business in Federal legislation.

Eric P. Schellin:

A.B. Columbia University, J.D., George Washington University. Lecturer, Patent, Trademark & Copyright Law, Georgetown University, 1974-present. Executive Vice President of the National Patent Council, Inc., Chairman of the Board of Trustees of the National Small Business Assoc., 1979. President, Erdo Co., Member of various legal & scientific associations and the bar of V.A., D.C., Supreme Court and Court of Customs and Patent Appeals.

Robert C. Springborn:

B.S. University of Illinois, 1954, Ph.d. Organic chemistry Cornell University, 1954. Since 1972 Chairman and President of Springborn Laboratories, Inc. Formerly, Chairman and President of General Economic Corporation; Vice President, Chemical Group and General Manager of New Ventures Division, W.R. Grace; General Manager, Food and Chemicals Division, Ionics, Inc.; and Vice President, Technical Director, Ohio Rubber Division of Eagle-Picher Industries, Inc. Hold several patents in the field of high polymers. Several papers on entrepreneurship. Member of numerous professional, civic honorary societies. Chairman of the Coalition of Small Technical Businesses.

SPRINGBORN LABORATORIES, INC.:

Is an internationally oriented, employee-owned company. Serving the chemical and allied products industry with special expertise in high polymers offices in the U.S., Europe and Asia.

Biographic Summaries of Work Group Members

WILLIAM C. NORRIS, Chairman

B.S.E.E., University of Nebraska; Founder, Chairman of the Board, and Chief Executive Officer, Control Data Corporation; Founder, Engineering Research Associates; former Vice President, Sperry Univac.

SHERMAN R. ABRAHAMSON, Executive Secretary

Ph.D. (Geography), Clark University; Special Assistant to the Chief Executive Officer, Control Data Corporation; former Office Director, U.S. Department of Commerce; former Visiting Scholar and Special Auditor in Economics, Harvard University; former Professional Lecturer in Geography, Economics, and Business Administration, George Washington University.

JOHN H. CARTER

Ph.D. (Physical Chemistry), University of Oregon; Director, Semiconductor Materials Products, IBM; Member, Commerce Technical Advisory Board; Member, Board of Directors, Communications Village, Inc., Kingston, New York; Consultant, Harvard University Institute for Minority Business Enterprises, and Urban Business Education and Economic Development Association of Washington, D.C.

DONALD W. COLLIER

Ph.D. (Physical Chemistry), Princeton University; Senior Vice President, Borg-Warner Corporation; Member, National Research Council and Commerce Technical Advisory Board; Fellow, American Institute of Chemical Engineers; former President, Thomas A. Edison Research Laboratory; and former President, Industrial Research Institute, Inc.

WILLIS K. DRAKE

B.S.A.E., Purdue University; Founder and Chief Executive Officer, Data Card Corporation; Director, Riede Systems, Inc., Teleproducts Corporation, and APCO Capital Corporation; Chairman, Executive Committee, Industry Advisory Council, Institute of Technology, University of Minnesota; former Group Vice President, Data Products Corporation.

JOHN FREIVALDS

M.A. (Development Economics), George Washington University; Manager, Agricultural Projects, Experience, Inc.; former U.S. Peace Corps manager of farm cooperatives in Panama and Colombia; former Economist, Development and Resources Corporation, State of California; former Assistant to the President, I.S. Joseph Company, Minneapolis.

DANIEL S. GREGORY

M.B.A., Harvard University Business School; Chairman of the Board and Chief Executive Officer, Greylock Management Corporation; Director, Teradyne Corporation, National Venture Capital Association, and others; Trustee, Institute of Contemporary Art and the New England Medical Center.

VERNON H. HEATH

B.B.A., University of Minnesota; Co-founder and President, Rosemount, Inc.; Director, Tonka Corporation, First Trust Company of St. Paul, Abbott-Northwestern Hospital, and others; former Chairman, Board of Directors, American Rehabilitation Foundation (Sister Kenny Institute).

HERBERT C. JOHNSON

B.S.M.E., University of Colorado; Chief Executive Officer, Electro-General Corporation; Founder and former Chairman of the Board and Chief Executive Officer, MTS Systems Corporation; Director, Tonka Corporation; former Industry Advisory Council, Institute of Technology, University of Minnesota.

RICHARD S. MORSE

S.B. (Engineering), Massachusetts Institute of Technology; Industry Consultant and Director, Dresser Industries, Inc., Compugraphic Corporation, Scientific Energy Systems Corporation, and others; Founder and former President, National Research Corporation; former Assistant Secretary of the Army (R&D); former Senior Lecturer at the Sloan School of Management, M.I.T.

MARILYN NELSON

M.A. (Economics), Smith College; Chairman, Citizens State Bank of Waterville, Minnesota; Director, Northwestern Bell Telephone Company, Carlson Companies, Tyrone Guthrie Theater, Minnesota Orchestral Association, and others; Trustee, Macalester College and Member, Development Council, Smith College.

MERTON J. PECK

Ph.D. (Economics), Harvard University; Chairman, Department of Economics, Yale University; former Member, President's Council of Economic Advisers; former Director, Systems Analysis, U.S. Department of Defense.

NEIL SHERBURNE

Studied at Kansas State College and University of Minnesota;
Member, U.S. Department of Labor Executive Reserve and Regional
Manpower Advisory Board; Member and former Chairman, Board of
Regents, University of Minnesota; former Secretary-Treasurer,
Minnesota AFL-CIO.

ROBERT TAPP

Ph.D. (Religion), University of Southern California; Chairman,
Humanities Program and Professor of Religious Studies, University
of Minnesota; former Professor of Philosophy of Religion, Meadville/
Lombard Theological School; former Managing Editor, Zygon: Journal
of Religion and Science.

Senator DOLE. Thank you.

Senator CULVER. Thank you very much, Mr. Stewart. Our next group of witnesses are in a panel; Mr. Monroe Colston, Mr. Lloyd Clark, and Mrs. Deborah Squire. It is a pleasure to welcome all of you here today. How would you like to begin? Mr. Colston, would you like to start out for us, please? Mr. Monore Colston is the acting general manager and chief operations officer of the Greater Des Moines Chamber of Commerce.

PANEL OF IOWA BUSINESS PEOPLE:

STATEMENTS OF MONROE COLSTON, ACTING GENERAL MANAGER, GREATER DES MOINES CHAMBER OF COMMERCE; DEBORAH SQUIRE, CAR WASH OPERATOR, MARSHALLTOWN, AND LLOYD CLARK, BUILDER AND REALTOR

Mr. COLSTON. Thank you very much for the opportunity to be here this morning to express the views of not only the Greater Des Moines Chamber of Commerce, but also those views for the National Alliance of Business. One of the things that this legislation points out, and we are certainly delighted with, is that it speaks to regulation reform. The United States Chamber, along with local chambers, have been concerned about overregulation for a period of years. I would like for my statement to be a part of the record, and I will summarize real quickly in terms of part of the contests.

Senator CULVER. No objection.

Mr. COLSTON. The chamber of commerce is composed of those persons who are members of the business community, and namely will come together to join collectively and do some things that they might not be able to do singly. One of the overriding things that we have been concerned about over a period of years has been the portion of the amount of paperwork that is borne by small business as opposed to large business.

Some of the rationale has been with equal justification that large business as well as large cities have staff specialists to meet with and comply with those regulations set forth, understanding the rationale for all regulation which adheres to accountability and physical responsibility.

It seems to me as though the thrust of S. 299 makes for regulatory agency adjustment to comply with the paperwork requirements to assist small business and small cities.

The energy crunch, double digit inflation, high employment, are all some of the things that we, as all Americans, are faced with: Equal opportunity to perform on jobs, and where jobs exist or those persons that really want to work, provide for those persons that opportunity. Another issue that we are faced with, the chamber, as well as from the National Alliance of Business, is how to provide these essential services on a day-to-day basis where we are faced with monetary constraints.

Paperwork that is levied on small business, and particularly minority business, has reached a point where it is almost an inordinate amount of ability to even understand what is transpiring. Examples of various agencies, such as HEW, DOL, DOT and EPA, and also SBA, who have those particular parts of this program that is designed

to assist minority entrepreneurs become much more competitive and make it harder to gain access to the marketplace. Complicated application gets to be humiliating to persons who have to go through the process.

It seems to me as though we could reduce those applications and reduce the amount of paperwork. We should begin to develop a system based upon a pyramid, a pyramid going from the base up to the pinnacle, whereby the information would emerge very quickly to the top without being interceded in the middle, only to be disseminated to some other agency. It really points to the lack of communication.

One of the things that is currently under close scrutiny is title VII of CETA, and that piece of legislation speaks to a very unrated program whereby the private sectors for the every first time will be asked by the Department of Labor and by the prime sponsor to ask the private sector persons who, in fact, employ 7 out of 10 persons in gainful and meaningful employment, what their needs are, and the private sector will be able to say, "We want to train people to do certain kinds of things." We see this as being very positive, and we believe this will lead to a healthy relationship between the private sector and governmental units.

In summary, I think that, in terms of the Regulatory Flexibility Act, we will be very happy and delighted with this piece of legislation. If I may answer any additional questions related to my prepared statement or my comments, I would be glad to do so now or later. Thank you, very much.

[The prepared statement of Mr. Colston follows:]

PREPARED STATEMENT OF MONROE COLSTON

I am honored to be asked by Senator Culver to make some statements with regard to S. 299, regarding the inordinate amount of paperwork that is levied by governmental agencies on small businesses and particularly minority entrepreneurs. This act, the Regulatory Flexibility Act, speaks to the proposed legislation that will bring into compliance an accurate study that would relate to the impact on businesses and cities that would be a part of complying with the regulation that was set forth by the U.S. Congress.

There has been a overriding concern over a period of years that there is a disproportionate share of paperwork that is borne by small businesses as opposed to large businesses and some of the rationale has been with equal justification that large businesses as well as cities have staff specialists to meet and comply with conforming to the regulations that are set forth. Understanding the rationale for all regulations, which is to adhere to accountability and fiscal responsibility, from that vantage point, cities as well as businesses should be able to be very competitive and work in the direction of adhering to the regulations. It is only when there is grave misuse of Federal monies or grave danger to the population based upon concerns about health and environmental protection and abuse of consumer rights that regulatory bodies should be larger and more effective.

It seems to me as though the thrust of S. 299 is to make regulatory agencies adjust their compliance and paperwork requirements to assist small businesses and medium-size cities. We also find out during the current times that we are facing double-digit inflation, an energy crunch and high unemployment. It seems to me that the national optimum would be for all Americans to get an equal opportunity to perform and, where a job exists, for those who really want to work, to provide one for them. The other concern should be in the area of health care and personal safety to be assured for all American citizens, where each of us has an equal opportunity to be afforded a decent, sanitary and safe place to live. One of the overriding issues that we are facing today that we currently see from the Chamber of Commerce and from the National Alliance of Business is environmental impact on some of the essential services that are necessary to do the day-to-day work, as an example, some of the cut backs with some services that were provided by virtue of governmental monies.

The paperwork that is being levied quite heavily on small businesses and minority businesses is that of reaching an understanding when submitting an application for approval for various proposals that would be sent to various agencies, such as HEW, DOL, DOT, EDA. The turnaround time for payment when a vendor gets one of these proposals submitted requires much too much time. Consequently, if there is an entrepreneur who has an 8A set-aside, which speaks to acknowledgement of a minority entrepreneur who is gainfully given a competitive lead in certain avenues of approach based upon supply and demand, then that entrepreneur has to wait an inordinate amount of time to get his or her money back from the agency, which creates a cash flow problem. The 8A program that was established by congressional legislation to enable minority entrepreneurs to be competitive with majority entrepreneurs, requires, from my experience, a lot of paperwork in terms of filling out the application. Those persons who were responsible in part for the administration of it, which is the Small Business Administration, seem to create some problems in that whole loan application process for review for expenditure of Federal moneys for that person who is seeking the loan. It seems, in my opinion, based upon the experiences that I have had, to be a humiliating kind of experience for that entrepreneur who goes in to lay out his or her total financial outlay as well as historical background only to be subjected to personal interrogation. It seems to work in a counter-productive manner and creates a stigma about the Government that is not a very positive one based upon that kind of experience.

Additional kinds of things that are very noticeable and would be very helpful in S. 299 would be in terms of providing some kind of management and technical know-how beyond the initial loan that is received by a small entrepreneur. The biggest problem that small entrepreneurs face is that of undercapitalization and lack of management and technical know-how. When agencies meet compliance and dole out Federal moneys, then it is from that point on that one's ability to succeed or fail is put to test. It would be a good notion to attempt to build in a system or support process by having staff persons be able to continue to work with a business to make sure that they gain the knowledge of taxation, the same as an accountant would be able to give that kind of knowledge, and to give some degree of legal know-how. The biggest problem that small businesses are constantly faced with is not having the know-how in terms of accounting procedures and legal requirements for survival. The whole accountability process is one of a pyramid reflecting at the very base that the flow of information and requirements would go up to the pinnacle of the pyramid. During that whole process as it flows up, there exists in the maze many, many stops, many, many detours and those are interrupted by absorbing part of the information that should be going directly to the top. If there were some way to establish, as some States have done, and set up a one-stop clearinghouse, we could get some degree of support for entrepreneurs, large and small, but particularly minority entrepreneurs that would be going into business.

At the Chamber we have established an organization known as BARB, which is an acronym for Business Advisory Resource Bank. This is a cadre of volunteers who agree to lend their expertise in furthering the survival of small business. If there could come about the same process through some particular unit in Government to insure that with the funding would also come the support service, that might reduce a lot of the failure rate.

There is a great reluctance on the part of small businesses to get involved in any kind of Government program. We have seen that from the National Alliance of Business perspective, which is the unique partnership of business, labor and government whose mission is to identify jobs in the private sector for a certain category of people, namely the economically disadvantaged, Vietnam veterans, needy youth and ex-offenders. This national program is one that started in 1968 on a voluntary basis and it has continued to work. It has a new wrinkle to it now, whereby some of the OJT (on-the-job training) would have been done in the past by the Department of Labor reimbursing an employer 50 percent of the wage or with other tax incentives; there has not been an overwhelming amount of employers who have inundated the National Alliance of Business seeking that reimbursement so that they could bring on more persons into their work force.

This says that there is a reluctance to do any particular kind of agreement with any governmental units by virtue of the paperwork and the monitoring that is necessary to do that. While we understand the check and balance system is necessary, we are also very, very aware that the expose that was done with the utilization of CETA funds on "60 Minutes" was not a true indicator of some of the medium-sized cities; that there is merit in terms of how the expenditure of

those dollars be handled. The new title that comes under CETA, title VII, speaks to the private sector initiative program, in which the chamber of commerce nationally as well as the National Alliance of Business sees this as an opportunity to attempt to do something for training needs. Small employers are asked in this effort to hire from the various categories in order to be able to receive tax incentive credits, in order to make persons who are tax eaters into tax payers. Acceptance of the program will require education on the part of those private sector persons, chief executive officers and personnel persons, to understand that in terms of working with governmental units and toward solving a very devastating need, a drain on human potential in this country, that their assistance will be needed.

It seems to me as though S. 299, the Regulatory Flexibility Act, would be able to reduce the amount of paperwork that an employer would have to use in a contract and the reporting that is necessary to insure that gross neglect is not done to the program and that moneys would be expended for services rendered.

In conclusion, it would be admirable if communication would transpire between all regulatory bodies, governmental agencies. As an example, I am sure that OSHA and its adherence to health procedure and safety features should be in contact with EPA and vice versa; that all affirmative action programs and time-tables should be a part of EEOC. All regulatory bodies who require that information should be in communication so that business would not be inundated with the same kinds of report. From the EPA side of it, the State's level department of environmental quality seems to use a much stricter standard in terms of adherence as opposed to the Federal, which really is tantamount to creating some very impactful things in a local community toward attracting economic clients to a given community based upon what is acceptable in attainment and non-attainment areas. So with communication put into motion, I would find tremendous amount of merit in the "Regulatory Flexibility Act," S. 299, and would be very much in support of that legislation as now presented and as I now understand it. Thank you very much for allowing me the opportunity to appear before you, Senator Culver. If I might be able to answer any questions today or at some subsequent time, please do not hesitate to contact me.

QUESTIONS OF SENATOR CULVER AND RESPONSES OF MR. COLSTON

Question. I know that small business associations play an important role in assisting their members in keeping track of new Federal regulations which might affect them. These associations, like the National Small Business Association, the Chamber of Commerce and the National Federation of Independent Business also contribute valuable comments to agencies concerning proposed rules. Do you think S. 299 makes adequate provision for the greatly increased need for small business comments on new regulations? Can the Chamber of Commerce handle such a task along with the other small business groups?

Answer. How would the Chamber of Commerce be able to provide adequate support in terms of handling the task of other small business groups? This Chamber of Commerce currently has a Small Business Committee and an arm of that group known as BARB (Business Advisory Resource Bank) which addresses managerial and technical challenges that are presented by minority entrepreneurs. The additional work of the Small Business Committee is to look into areas that directly concern small business and their search to remain solvent and become an employer of the unemployed. I believe that S. 299 does provide, as it is currently drafted, provisions to deal with the greatly increased needs of small business in the new regulation that is proposed.

Question. In your work with the Chamber of Commerce of Des Moines, you have had the opportunity to deal with and learn about both small and large businesses. In your opinion, do small businesses really have unique problems with Federal regulations which simply do not apply at all or to the same degree to larger enterprises?

Answer. In my work with the Chamber of Commerce in Des Moines dealing with large and small businesses, my experience relates that the unique problems that small businesses face when dealing with Federal regulations are different from those that are faced by large enterprises. The difference is in terms of setting aside proper staff persons who can specifically respond to the various forms and regulations that are requested on a quarterly or semiannual basis. Staffing to comply with governmental regulations is the biggest concern that I hear voiced by small business.

Question. I have been considering legislation which would require every Federal regulatory agency to appoint a small business ombudsman whose function would be to monitor the activities of that agency, act as an advocate for small business within the agency, and to reach out to small business people for their ideas and advice. Does this sound like a workable approach to making each agency consider the impact of its rules and regulations on small businesses? Do you have any suggestions that you might add?

Answer. With regard to setting up an ombudsman with the various Federal agencies, I believe that this has a great deal of merit. The advocacy role of small business has been by and large left to the Small Business Administration and there has been an absence of a voice to represent the small entrepreneurs with other governmental agencies. There is a need for one who could be very objective and would not be tied to the bureaucratic fiber that other Federal employees would have to adhere to. The only suggestion that I would have regarding that person's function would be that he would certainly have to be free of constraint by the agency in which he works and would need, in my opinion, to come from business as opposed to being a product of the civil service program.

Senator CULVER. Mr. Colston, I think we might let all the panel speak first, then we will have a chance for questions. Mr. Clark, would you like to go next?

Mr. CLARK. I would like to refer to traditional values and let the day go first.

Mrs. SQUIRE. I am a small business person. My husband and I own a carwash in Marshalltown, Iowa, and we have two part-time employees. Six months ago we had one full-time employee and three part-time employees, but the costs have risen so quickly that we had to let some go. I was born and raised believing in small business and that small business was the American dream. Everybody seems to want to own a small business someday.

One of the reasons I really came here today is to let you know that the small business person is really getting discouraged. They are not only fighting inflation and fighting trying to get the consumer to come to their business when their disposal income is going down, but they are fighting rules and regulations, and more and more every day it really concerns me. They are getting more and more discouraged.

A lot of business people are giving up before they really should because they say, "I can't fight city hall," so to speak. One lady said to me, "We wouldn't mind the paperwork and the rules and regulations so much if we could make a profit while we were taking care of these, but it has cut into the profit picture for the small business." In fact, many times it has made the difference. Having to comply with the paperwork and the rules and regulations has made the paycheck of the business owner much smaller because this money has to be paid out to the cost of those regulations, so they have less to take home when inflation is going up.

In my industry I have a very good example of the governmental rules and regulations through the EPA with the Clean Water Act. In the carwash industry they found that our waste water did not meet the standards for the EPA. That had nothing to do with the chemicals that we were using or anything that the carwash owner was doing. It had to do with what was coming off the automobile. It was mostly from oil leaks and gas spilling over the side of the car when somebody is putting it in, and it makes the lead and zinc content high in the waste water. What they are trying to do is require that all carwashes have a 100-percent reclaim system, but the cost of this is unbelievable. For us to put in a reclaim system, we would have to completely get an equipment room put in. We would have to buy more property, and

it would just be prohibitive. We haven't really looked at the cost because we would just have to close the business. According to the National Car Wash Council, if this is passed, if they could make this a regulation, 90 percent of all carwashes would have to close down.

There are 48,000 carwashes in the United States, all of which are small business. This is going to cost a lot of jobs, if this kind of regulation comes through. We are really lucky because we have a very strong trade industry. We have two good organizations, a National Car Wash Council and an International Car Wash Association. They are working hard to make sure we don't have to close our businesses because of this regulation. We are hoping that this bill will be passed to take care of that.

I just got called yesterday afternoon and asked to come, so I didn't have a lot of time to prepare, but I called about 30 small business people that I know and asked them for things that they felt were most unfair to them or things they were most concerned about as a small business person. Not all of these are regulations, but their greatest concern was the cost of an employee: The social security, the workmen's compensation, and the unemployment compensation. For me alone, without giving my employees any benefits, it is costing me 17 percent above gross for those employees, of which they see about one-third of what I pay out on them.

The second most vital interest to them were interest rates. Even if I could afford to go and put in this new equipment, the way the interest rate is, I would never be able to pay it off, practically, at least not in profit situation. The cost of insurance is another big thing that small businesses are really concerned about. The paperwork, of course, but everybody does the paperwork.

I attended the White House Conference for Small Business and there were a lot of things that came out of there. Neal Smith was there, and he said something that I think needs to be said again. He said, "If something isn't done for small business, and now, there won't be such a thing as small business in the next 10 years."

Senator CULVER: Thank you very much, Mrs. Squire. Mr. Clark.

Mr. CLARK: Senators, my name is Lloyd Clark, and I am a community developer, builder, and realtor. I do not have a written statement to present to you this morning because my staff is too busy filling out Government reports. I have been in the business of being a housing producer all my life. I have served as president of the Home Builder's Association of the State of Iowa and of the United States. I served on the board of directors of the Federal National Mortgage Association for 3 years, being appointed there by two different Presidents of two different parties. I have served as chairman of the National Housing Commission and as chairman of the Homeowners Warrant Corporation of the United States, which is a program to insure home buyers that we will have 10 years of insured warranting in their home. Everyone today has talked to you, I think, about specifics. They talked to you about being in support of the tentative bill. I would like to talk to you just a little bit about the philosophy of Government at the three levels of government as well as business.

First of all, I would like to begin by saying that the intent of your bill almost everyone in business would support, large or small. The questions, of course, and I have testified before Congress on this, is that if you read carefully the legislation that is passed, and you look

at the legislative history by which that bill becomes law, that sometimes and most times it is a far cry from what happens once it passes from that point into the executive branch of Government and finally gets promulgated upon most of us across the country.

I would like to give you an example. One of the greatest difficulties that our industry has today is to provide housing, even for middle-income people, much less low-to-moderate, which we have almost given up on. A recent study by the National Association of Home Builders showed that only 15 percent of the people who are gainfully employed in the United States today can afford a new median price home. In 1960, 45 percent of the people gainfully employed in this country could afford a new home. Today 85 percent cannot.

You say, "What brings that about?" Well, Jay Janis, who is a friend of mine and who is now the nominee for the Federal Home Bank Board by President Carter, and the others within the Department of Housing and Urban Development and a number of other groups, have completed a study that is available in Washington, because HUD has published it, which draws the conclusion that about 27 percent of all the cost of housing the American people is as a direct result of unbenefiting Federal, State, and local regulations.

The provision of housing for low-income and moderate-income people has become a burden almost entirely upon the Federal Government and/or State governments or both. Now there has been an attempt on the part of HUD and on the part of the Department of Labor and other departments of Government to try to encourage competition in the provision of low- and moderate-income housing, but the regulation tends to stymie competition.

It results in a geometric growth requirement on the part of a business in order to be able to comply with what Government wants to have happen. The Davis-Bacon Act prevailing wage requirements in Creston, Iowa, being imposed there on the basis they would be imposed in Omaha, Nebraska, inflates the cost of the housing of elderly project in Creston, Iowa, completely out beyond reason. Not only that, but it has an inflationary tendency within the labor market and within the business community as a small town of Creston.

The regulations that have to do with the local and the State governments that are imposed upon our ability to produce housing to people in this country, I know that you are not responsible for, but there seems to be in the public sector, as well as in the private sector, in the adoption of regulations and in the protection of people from competition that it is spreading to our country, I think, presents a real crisis of confidence between small business people and small government as well as large business people and large government.

A person in the executive branch of Government at any level of Government is almost totally isolated from any kind of discipline whatsoever. What they will do is take your intended well-meaning legislation and turn it into regulation of a bureaucratic nature. The Internal Revenue Service will send out a new form, and we will begin to fill out a new form. You barely get to understand what the new form means, and lo and behold you are going to get another new form.

Whereas before we had a 12-page form to fill out, we now have an 8-page form, but they have included a 48-page information book to teach you how to do the 8-page form. I don't mean that to be humorous. I think that we are reaching a point in our country where we have to

realize that all we might try, by regulation, to insulate ourselves, in government as well as in the private sector, from competition, this country will not and cannot isolate itself from international competition. That is where we are, if you will look at what is happening to small business and small manufacturing concerns in the United States. The dollar is becoming less valuable internationally, and our citizens, I think, are in a crisis of confidence in themselves and in their government.

Senator CULVER. I want to thank all the panelists, and particularly you, Mrs. Squire, for filling in at the last minute. We had two other panelists who were ill this week, and we appreciate your help. I think we were fortunate because your testimony was very, very important. I want to just maybe ask a general question of all the panelists, and that is that a major thrust of this regulation that we are talking about is to require agencies, as you know, to solicit public comment upon proposed rules or regulations to gain a better understanding about its likely impact on small business. I remain, frankly, a little concerned as to how this would actually work in practice. The Federal Register, where all notices of proposed rules are published now, contains over 70,000 pages annually and is growing fast.

Just like Senator Dole said, how many kinds of small businesses that you people know of have even heard of the Federal Register, much less read it every week? Is there a need, as I strongly feel there is, for additional public notice or a different kind of notice? Do you have any thoughts in that area?

Mr. CLARK. I have never read the Federal Register. If it contains 70,000 pages, I doubt that I ever shall.

Senator DOLE. But you have people in Washington that read it.

Mr. CLARK. Yes. There are Trade Association people who read it, and the Chamber of Commerce, I am sure, studies it.

Senator CULVER. I wondered if you had any general problem of disseminating information. In a highly complex society we can't all just stand off. You know what I mean. We are all here a short time to try to improve, but can we improve?

Mr. COLSTON. In terms of public notification of the Federal Register, one of the things we do in terms of trying to reduce that written document to some understandable form, so the membership understands it, is that we have a staff person who goes through and extrapolates daily the contents and rules to that particular department that they are concerned with. As to notification to the general public, I am not sure how we would be able to do that. There would be some merit in doing it. The only caution that I would have would be in terms to counterproductiveness with the funding, if given that opportunity, to fund various organizations for the sole purpose of distribution of information. If, in fact, the organization continued to do that, I would have no problems, but if it would, say, diverse itself to start sharing other kinds of information from the original intent of funding, it seems to me it would be counterproductive.

Senator CULVER. Does anyone else have any thoughts?

Mrs. SQUIRE. I thought about this quite a bit, and I really haven't come up with any type of answer.

Senator CULVER. You mentioned that you were fortunate in your industry in that you felt you had effective trade associations. Do they make information about pending regulation available in their newsletters and circulations?

Mrs. SQUIRE. Yes. They keep us right up to date on things that will affect us in our particular industry. I also belong to the chamber of commerce, and they also do, but there are also a lot of small businesses who don't have trade associations, so they don't have that opportunity.

Mr. CLARK. We are inundated with information. It is difficult to allocate the time, as with a small business person it is difficult to allocate the time, to know what is the most productive thing to do with all the information that is coming to us.

Senator CULVER. It is all a pervasive problem in our society. Mr. Clark, are you experiencing problems in terms of duplication in State and Federal reporting requirements? How can we get a handle on that to reduce the nonsense in terms of the overlapping repeated harassment and duplication of filing?

Mr. CLARK. I am not sure I want to use the word harassment. I feel that way sometimes, but—

Senator CULVER. I think it is unfortunately valid in a lot of circumstances. How can a guy run a business if every time he turns around there is another inspector? He has got to stop everything and turn over the same books.

Mr. CLARK. You should meet some of my OSHA inspectors.

Senator CULVER. Then you should be the last one who thinks "harassment" isn't a proper word. We aren't harassing you, if you want to make your case.

Mr. CLARK. I want to tell you that I am very fearful of government, but I don't want to call it government bureaucratic harassing.

Senator CULVER. I have been dealing with it on and off for a long time. You ought to hear what I call it sometimes. Let's get back to this point. Would you give us what constructive suggestions you could in terms of State and Federal Government?

Mr. CLARK. In the State government, we now have a new agency that is for planning. There is some planning that is done. I am talking about land use, energy, all of these kinds of things. This same sort of thing is being done by the Federal Government. In order to build anything larger than a four-family building unit in the State of Iowa, you are going to have to comply with the requirements of a newly created State agency that has to do with examination for the building, examination of meeting the requirements for handicaps, and the same regulations are also imposed sometimes in different form by a Federal agency.

When you go to one and say, "Well, I have done all of these things," then you go to the other one. I will give you an example. In real estate we had a case where we were building 138-unit apartment complexes, and the State agency wanted to decide which was the front door. There are two entries to this building, and they wanted to decide which was the front door, which was in opposition to the regulation, specifically, deciding which it was from the U.S. Post Office. Those kinds of things we have problems with.

Senator CULVER. What kind of job has your association done to try to give us some specific recommendations to eliminate the kind of problems you are talking about, the duplication? Have you made some specific recommendations as to how it could be streamlined?

Mr. CLARK. Yes, we have.

Senator CULVER. Would you share those with us?

Mr. CLARK. The example that I have just given you, the conflicts of regulation between the State agency dealing with the same problem that Federal agencies deal with, and sometimes in conflict with each other. One says, "You do it this way," and the other says, "Do it this way." They do not give you the permits that are necessary until you make them both happy. The time lost in all of that is quite costly.

Senator CULVER. Anything you could give us in this whole area that your association has worked on, I would appreciate for the record.

Mr. CLARK. The Madison-Moss Act was passed by the Federal Government. The idea of that was to give some protection to homeowners from some builders that did not stand behind their homes. As a result of that, we formed a national organization to insure the warrant private sector response. In the hearings about the Madison-Moss Act, it was the intent for private sector people who provided such insured warranties to be exempted. We still haven't got that straightened out. That has been going on now for 8 years.

Senator CULVER. Senator Dole?

Senator DOLE. Is that the HAL program?

Mr. CLARK. Yes.

Senator DOLE. My wife spoke to the realtors about the HAL program in Las Vegas. I got a letter that said, "I would like to vote for you if you could just control your wife, but she has the same attitude you have on it." It is an area where the private sector moved in to try to accomplish something without the government, and I think it is working fairly successfully.

Mr. CLARK. Your wife was quite complimentary, as I remember, in the speech she made about private sectors.

Senator DOLE. This fellow hadn't been there for the speech itself. He had just read it in the paper. Well, she is not running for anything, but the point is that at that time you had 11-percent participation. Now it has gone up, so I think there is some improvement.

Mr. CLARK. We are rapidly improving half of the homes.

Senator DOLE. Not that it makes a great deal of difference, but there are about 4,400 different Federal forms filled out by the private sector annually. I imagine a great majority of them are probably necessary. I mean, there are all kinds of forms, forms for grants and loans, as well as some paperwork. It is not so burdensome if you are getting a grant or guaranteed loan, but it is the turnaround time. It is not that you mind filling out the questions. It is finally accomplishing your goal a little bit late that is bothersome. I think that is the problem we are trying to address. How do we define small business? What is small business?

Certainly yours is a small business, Mrs. Squire. I don't know whether she qualifies as a small business. With two employees, she should.

Mr. STEWART. She is a small business.

Senator DOLE. I just cleared it that you are qualified. You can make all those applications, but how do we draw the line between what is small business and what is some other kind of business? Do you see any way to have some arbitrary cutoff?

Mr. CLARK. It has been suggested, Senator, in terms of numbers for cutoff. Then it has also been suggested in terms of just consent.

If you think you are small, then you are small, which is not even applicable. But in terms of sheer numbers based upon gross sales and then sheer numbers in terms of employees or providers or services that are rendered, it seems to me as though that is the only criterion to deal with.

One of the comments that you made earlier led me back to a concern that I had last week, trying to do some work with a man who was engaged in a couple of contracts with governmental agencies. His turnaround time for being reimbursed for the services rendered was really creating the cash flow program for them. It was not an inordinate amount of paperwork, but just in order to turn the time around, he was really faced with having to close his doors. He had provided his services and done all the work, but it really required a lot of time. He was doing about 80 percent of his work with the U.S. Government. In terms of helping his cash flow, it was really creating a problem for him, but in terms of "how do we deal with the criteria to be used," I don't really have any particular answers on that.

Senator DOLE. I think that would be an invitation for input. The three witnesses here, I assume, all have outstanding organizations in Washington. They are professional, and they may even read the Congressional Record, in addition to the Federal Register, in an effort to comply with everything that shows up in the Federal Register. But as you have indicated, Mrs. Squire, some people don't belong, and even if you do belong, you have mountains of material coming in, and the bigger the business, the more material.

Even if you are notified through your association, sometimes you may miss it, unless you have someone designated to do something about it. I am not certain there is a clear-cut way to distinguish what we define as small business or small government.

You mentioned the handicapped in section 8. I believe there ought to be housing for the handicapped. It doesn't do much good if you are in a wheelchair and you don't have a little wider door or access to the bathroom, and other things, but I can also understand your side. When it comes to trying to meet the requirements, I don't know where you come down when you add 20 percent.

Mr. CLARK. Twenty-seven percent, according to the HUD study.

Senator DOLE. That is the total—local, State, and Federal?

Mr. CLARK. Yes.

Senator CULVER. You referred to, as I recall, unbenefiting regulations in your terms?

Mr. CLARK. Yes. Those regulations that these groups determine. Patricia Harris suggested such a joint study between industry and Government to take a look at the problems of regulations and whether they are cost effective, and if they carry out their purpose, and are they the best way to carry out their purpose. They came to the conclusion that about 25 to 27 percent—and I emphasize again that this is local, State, and Federal—of the regulations were not cost benefited, and, in fact, increased the cost of producing housing for America by about 27 percent.

Senator DOLE. You are getting into the regulation of DOE or IES?

Mr. CLARK. We do get into that act, but that was not a part of the study. For example, Senator Culver's staff called. I always thought I was a good-sized businessman, but after talking to them, they assured me that I am a small businessman, so there must be a lot of small

business people in this country that have the same frustrations that we three do. I think if we could just get the Government out of the way, we can put this country back where it was.

Senator CULVER. Do you want any government at all, a state of anarchy, or what?

Mr. CLARK. Quite frankly, Senator Culver, I think we are about to reach a point of anarchy. With the regulations and the forms and the things that we are having to do, there may become a time, like in France and Italy, where people stop paying income taxes. It becomes a joke to avoid it. It becomes a joke to disregard all of this stuff that comes out of Government that private people are having to comply with. By the way, I am not as smart as you are, but I am not a Senator.

Senator DOLE. That is not a requirement.

Mr. CLARK. I pose the question, but I do not know this answer.

Senator DOLE. I think that everybody is frustrated, and I don't think there is a crisis of confidence. I think the American people are still confident. They are a little frustrated sometimes, but I would guess that if you had two employees, and—are you the boss or is your husband?

Mrs. SQUIRE. Together.

Senator DOLE. That is really a small business. I don't know how much paperwork you have. Maybe you don't have that much Federal paperwork. You talked about this self-containing system with EPA, and I can see that even that would be a load to carry for a small business. At the same time you are providing an income for your own family and two other families. That is productivity, and that is meaningful, as you add up all the employees. In my State of Kansas, I think there are only a small percentage of companies that have more than 100 employees. I think S. 299, if it is not interpreted differently, would be very helpful.

Mrs. SQUIRE. One of the suggestions that came out of the White House Conference for Small Business was that all regulatory agencies should have an incoming WATS line so that when you call in to get an answer, and have to go through 15 secretaries and be put on hold for a half hour, it is put on their time and not yours.

Senator CULVER. All of us have considerable frustration about a lot of things, and I think it is important to keep some of this in perspective. It is our Government. It is a reflection of us. It is like Pogo. "We have met the enemy, and it is us". It isn't some foreign government. In my experience with all the frustrations in dealing in Government, an overwhelming majority of the people are dedicated conscientious fellow Americans, no better, but certainly no worse than the rest of us. The values and the integrity and the character of the people are a reflection of what we have in this society or don't have.

I also think it is important to keep in mind when we talk about our frustrations in Government that every time we take a survey or a poll and people are asked, "What are the problems that we face?" and "Who should do something about them?" the answer is "the Government." Without government you are not going to have basic protections. My judgment is that with health, with safety, with DC-10's, Three Mile Island, fraudulent drugs, price fixing in the economy, and with all due respect to the magic of the free enterprise system, there are occasions where in my judgment Government and only Government can be an appropriate referee between the interests of the enterprise and the public interest.

I don't think we have any fundamental disagreement on that. The only real question is "where and how and when," so that we can maximize the very creative dynamic contributions and genius of the private sector, not smother it in a crib, yet not throw the baby out with the bath water.

The question is, where can Government do a better job? That is really why we are here. We are concerned about it. We think it is essential for the health of the Republic that we get a better mix, a better medley of relationships. I think that we can improve regulation without eliminating and destroying it, and some regulation, I think, clearly is essential. No one but Government can protect the people from some things and I think all of us are basically in agreement on that.

But again, the extent to which it becomes excessive, it becomes intolerable and begins to create conditions running contrary to the very economic health and society of the system. God knows, fundamental changes have to be made, and that is what we are trying, conditionally trying, to look at. I might also say that the benefits from regulation are very hard to quantify. As our society becomes more complex and we talk about quality of life and we talk about the environment and we talk about a lot of other problems, it is relevantly easy to quantify the costs, painful as it is, in terms of man-hours, woman-hours, or time and burden.

But frankly, our methodology is not very sophisticated when it comes to having a sure grip on what the benefits may or may not be. They are longer term. They are very sophisticated. They are subtle. They are incremental. How does one develop a capability to determine the long-term health consciousness, loss of job, insurance rates, work force productivity, moral attitude? There is just a lot of things in these areas, and we are all groping.

But I think when we talk about the balance sheet of costs, we also ought to think about benefits. We have to get a more sure handle on that, but clearly we are going to try as best we can. I know Senator Dole has worked so hard and so conscientiously in this area, and I think we share a common determination to eliminate what, I think, has been a runaway in the situation where the agencies have gone far beyond congressional intent. I don't blame them. I blame Congress. I really do.

I think many of them are in fear that if they have an oversight hearing, we will say, "Why didn't you think of that," and will beat on them and make them look bad and give them a poor fitness report.

However, we are the ones that should be stepping forward and assuming that responsibility.

We are looking at a lot ways to get at this whole situation of agency controls. I just think we ought to be a little careful that we don't just beat on that Government of ours to the point that we don't recognize it is not responsible for all our problems. It is the best system in the world, and I wouldn't trade our problems with the American Government for the problems with any other government in the world. We want to keep it that way. That is why I appreciate very much your participation here today and for your testimony.

Senator DOLE. I'll just underscore that point. I think there is a tendency for those of us in Congress to pass the buck with the agency.

They didn't get that authority without a law being passed, and the authority will change. I think we can properly limit some of the activities in oversight functions which you find. In this Congress, Senator Byrd has said, "This will be the oversight Congress. We are not rushing to pass mountains of new legislation." We're in the process financially to go through the tax code on a section-by-section basis at the legislative level, not at the IRS level, trying to simplify it because every year the tax form gets more complicated.

I would agree with Senator Culver that we always provide a cause for the agencies to have the authority to implement this section, and it is up to us to take a look at that implementation to see whether it does, as you indicated, fit the legislative history. There are always horror stories, and I think this is why we have to take the heat. We are the elected representatives, and if we don't perform, there is always someone else to move in.

Mr. CLARK. I just wanted to underscore what I have said and compliment you and your committee for the intent of what you are trying to accomplish. I didn't want you to think that I was trying to tell you that everything is bad and that you guys are not really doing a good job. I agree with Winston Churchill that, "It is the best we have so far."

Senator CULVER. "It is the worst system of government, except for any other." I was just quoting.

Mr. CLARK. Yes, but it can be improved. One of the things that I think can be improved is to encourage and develop a reward system within Government that has some of the same discipline that we out here in Iowa have imposed upon us, whether we like it or not. That is to encourage people to be practical, encourage people to be reasonable, encourage people to be logical, and let them know they will be rewarded if they are. If they are not, then remove them because it is impossible to remove people from Federal jobs, almost impossible.

Senator CULVER. Except, unfortunately, the elected ones. I want to thank all of you very much. I appreciate your testimony. I look forward to working with you.

Senator DOLE. The next time I drive out here I will get my car washed.

Senator CULVER. Our next panel is Mr. Rolland Grefe and Mr. William A. Bergman. I want to welcome you very much today. Bill has been a friend for 35 years, or something like that.

STATEMENT OF ROLAND E. GREFE, ATTORNEY, DES MOINES, IOWA

Mr. BERGMAN. I am not that old.

Senator CULVER. It is good to see you, and I look forward very much to your testimony this morning. I guess you are going to enlighten us a little bit from your special vantage point as practicing attorneys or the kinds of demands and costs that have been imposed on small businesses in their efforts to comply with various regulatory schemes. Is that essentially the perspective you are going to give us?

Mr. GREFE. That will be the thrust of my remarks, Senator. Senator Culver, Senator Dole, I am pleased to participate in this hearing and to appear before this subcommittee of the Administrative Practice and Procedure of the United States Senate. I am glad to focus on S. 299,

the Regulatory Flexibility Act, which would establish the principle that regulations should be designed to fit the scale and abilities of the institutions being regulated, and the main purpose of which is to require regulatory agencies to adjust their compliance and paperwork requirements to make it easier for small businesses and local governments to comply. I have been a practicing lawyer in Des Moines for over 30 years, and during the period I have devoted much of my own time and effort toward representation of small businesses and their owners as they strive to serve their customers, pay their suppliers, comply with the increasing requirements of Government, and still have something left to provide for their families and the increasing capital needs of a growing business. I have also performed public service in that I served as a board member and was elected president of the Legal Aid Society of Polk County during a 5-year period when Federal funding was initially provided for legal services to the indigent. I served for almost 10 years as an elected member of the board of directors of the Des Moines Area Community College and as president of the board for all but one of those years. Most recently I have served my profession as a member of the board of governors of the Iowa State Bar Association, and I am the immediate past-president thereof.

I can honestly say to you, gentlemen, that the increasingly heavy hand of the Federal Government has been felt not only by my clients but by the Legal Aid Society of Polk County, the Des Moines Area Community College, and the Iowa State Bar Association. Gentlemen, I commend you for those provisions of S. 299 which would direct Federal agencies to study the anticipated impact of compliance with the proposed rules on small businesses and cities before the regulations are issued, and for those provisions which would permit an agency to find that a uniform set of requirements applying to small and large entities alike would place a disproportionate burden on small enterprises and which would then require such agency to determine whether less burdensome reporting and compliance requirements should be developed for small concerns. I would like to call your attention to a notice in the Federal Register on January 16 which advised the public that comments were invited to be submitted to the General Accounting Office by February 5 on a request by the Federal Trade Commission for clearance to send a questionnaire to the bar associations of the 50 States and the District of Columbia. The questionnaire purported to be part of an investigation by the Federal Trade Commission to determine whether or not providers of legal services are subject to acts or practices which are unfair, deceptive or anticompetitive.

A copy of such notice is attached with my statement, which I have entered into the record. The Federal Trade Commission estimated that the respondent burden on each of the 51 bar associations would be 30 hours. Our own analysis of the questionnaire indicated that many of the questions asked on the proposed questionnaire were so broad and so comprehensive that it was almost impossible to answer or to even guess as to whether the answer suggested might fall within the purview of what the Federal Trade Commission had in mind.

The Iowa State Bar Association is a small association of some 5,000 members, and its records are not kept in such fashion as to permit correct and complete answers to many of the questions without an item-by-item examination of most of the committee files and all of

the correspondence files developed during the more than 15 years for which the Federal Trade Commission was requesting information.

Our staff is small and the regular duties of the individual members would not have permitted any time for such research, nor would any of the staff members, other than the executive director, have the professional capability to make the judgments required in answering some of the proposed questions. We advised the General Accounting Office that it would take, in our best judgment, several hundred hours more than the 30 hours set forth in the Federal Trade Commission request, and we stated that this, in our judgment, would place an unconscionable burden on the association and that the expense involved would be disproportionate to any possible benefit to the public or the association or its members.

Upon analysis, other bar associations made similar determinations, and so many protests were filed that responsibility for the investigation was shifted from the Boston office of the Federal Trade Commission to the Cleveland office. I should tell you that the Boston office had developed the questionnaire without consulting a single State bar association with respect to the nature of the records kept and with respect to what might be required to provide the Commission with the information which it felt it needed.

Furthermore, there was no distinction drawn between integrated bar associations and voluntary bar associations, such as our own Iowa State Bar Association. In an integrated bar, membership is a condition precedent to the practice of law, and such associations are strictly controlled by the Supreme Courts in those respective States. In Iowa we have a voluntary association which strives to work in close cooperation with the Supreme Court, which controls the practice of law in the State.

At our invitation, representatives of the Cleveland office visited the offices of the Iowa State Bar Association to discuss informally some of those difficulties which we perceived with the original questionnaire as proposed by the Boston office as well as the nature of the operations of our own office and the availability of information from association records. We came away from that meeting convinced that the questionnaire would be substantially revised and the burden substantially reduced. I tell you this as a basis for my own support of the concept, that the law should permit, as S. 299 does, Federal agencies to develop less burdensome reporting compliance requirements for small concerns than for large.

I would go a step further. I would require development of less burdensome requirements for the small entity, and I would suggest that your committee give serious consideration to amending S. 299 to include such a requirement. One of my clients is a relatively small organization conducting its business in three States. This requires that it duplicate its reporting for unemployment tax, sales taxes, property taxes, and income taxes for all three States. It has only a handful of employees in each location, but in trying to provide a balanced compensation package, it has adopted a pension plan and is now burdened with the dual reporting requirements to the Internal Revenue Service and to the Department of Labor.

Because of these requirements and the constantly changing standards for qualification, this business is now seriously considering the

discontinuance of its present pension plan. It regrets the necessity for such action, but the administrative costs have become unduly vexatious and burdensome. Many of my clients have asked that I particularly object to the information of census reports which the Department of Labor requires on a rather irregular basis. Most all of them regard this as a time-consuming report of data which, after it is compiled, is of no value to any small business.

Such reports seem to them to be designed simply to provide "make work" for a number of additional Government employees. Some indicate that their normal procedure is to ignore these requests until they receive a series of letters threatening penalties for noncompliance. As a last resort, some have even indicated that they submit scrawled, handwritten, and illegible reports on a best estimate basis. Since this seems to satisfy the Labor Department and they never hear from these, they wonder what useful purpose is expected to be served by the idea in the first place.

Another one of my clients is a small wholesale supplier of meats to restaurants, fast food outlets and grocers. He gets a questionnaire from the Department of Commerce which particularly annoys him because it looks like it is designed for grocery stores. It is entitled "Census of Distributive Trades, Groceries and Related Products." His bookkeeping and reporting is on a fiscal year and the form requires data on a calendar year basis, which requires considerable adjustment to eliminate the overlapping months from his fiscal results and to then factor in the same months from the prior year's results.

He tells me the form is 18 inches long and is some six pages. It requires the breakdown of sales by commodity and then asks for percentages. He doesn't keep these kind of records for his own purpose, and it has never been demonstrated to him what useful purpose it serves by his trying to do so for the Department of Commerce. However, he tries to provide what he regards as reasonable estimates.

The form asks for a breakdown of inventory values and then asks for the identity of the person computing the value of the inventory. You might be interested in his answer, which was, "The manager prices, the bookkeeper figures it, and I check it." At one time as part of his operation he operated a small locker plant. Senator Culver, being a native Iowan, I know that you are familiar with the operation of a locker plant and that it is almost always a small operation where only a few animals, usually cattle or hogs, are slaughtered daily, and in due course they are processed, frozen and returned to the customer.

It got to the point where he was filling out so many forms pursuant to the requirements of the "Packers and Stockyards Act" that he was glad to sell the locker plant and be rid of the requirements for completion of the forms.

In my service as president to the Des Moines Area Community College Board I learned of some of the reporting requirements imposed upon a public educational institution by the Federal Government where Federal funds are involved. Under Iowa law the community college system, when it was created, was required to absorb what was then a locally supported junior college system. Here in the Des Moines area, we had only one, and that was Boone Junior College.

It took some 10 years for the Department of Health, Education, and Welfare to understand that that once-absorbed Boone Junior College was part of the Des Moines Area Community College and that

the reporting statistics had been properly combined. However, there were a good many years that separate reports were demanded, and in the early years under threat of punitive actions were provided.

The community college now serves more than 6,000 students annually, and its operations have grown so that there are several employees who spend almost all their time filling out one Government form after another, either pursuant to the requirements of the Higher Education General Information Survey of the Department of Health, Education, and Welfare or with respect to financial aid, some of which are required by the Veterans' Administration.

While the provisions of S. 299 do not address the problems of late availability of forms and short time frames within which to file the same, I would like to call the attention of your committee to the fact that there are many times that a form is past due for filing when the blank is received at the community college level. While this, too, may not be totally germane, I would like the committee to know that the additional costs which are incurred by beneficiaries of Federal funding, such as the Des Moines Area Community College and such as the Legal Aid Society of Polk County, are frequently disproportionate to the benefit originally perceived in such Federal funding.

Since I practice in the Des Moines metropolitan area, I don't have as many farm clients as lawyers practicing in county seats having a small population where many of the residents are farmers. That brings me to the Department of Commerce Census of Agriculture. Again, we have an 18-inch multipage request for the most miniscule kinds of details. Farmers regard providing this kind of detail as a useless exercise that will never do them any good as individuals in their own farming business.

Neither they nor I understand the basis on which some of them are asked to report monthly. Those who are selected for that kind of reporting requirement find it particularly burdensome.

Senator, I commend you for those provisions of the Regulatory Flexibility Act, which will make it possible for agencies to target more effectively their efforts to correct serious abuses of the competitive process and critical threats to health or safety without overburdening small businesses with requirements that simply increase costs but produce no identifiable benefit for the persons who are required to bear such costs.

If federally generated paperwork is subjected to public scrutiny and comment before being imposed on the public, it should in the long run produce more meaningful information. As I said at the outset, I speak for a goodly number of small businessmen, many of whom would like to see a requirement that perceived benefits be identified and recognized and that they then be given an opportunity for input on the question of whether or not the information requested by such agency will make a significant contribution to attaining such perceived benefits.

Senator Culver, I share the belief that you expressed in the editorial in the July, 1979, "Voice of Small Business," that flexible regulations can be an important management tool for regulators. It will enable them to force their ideas toward where it will do the most good and where most of the problems reside by placing the biggest burden on the broadest flexibility regulations. I believe regulations are more likely to be successful. You have heard it, you heard more before me

today. I simply want to join in. Thank you for letting me appear before you to share my views.

[The prepared statement of Mr. Grefe follows:]

PREPARED STATEMENT OF ROLLAND E. GREFE

Senator Culver, members of the Subcommittee on Administrative Practice and Procedure of the U.S. Senate Committee on the Judiciary, I am pleased to have the opportunity to participate in this hearing and to focus on S. 299, the Regulatory Flexibility Act, which would establish the principle that regulations should be designed to fit the scale and abilities of the institutions being regulated and the main purpose of which is to require regulatory agencies to adjust their compliance and paperwork requirements to make it easier for small businesses and local governments to comply. I have been a practicing lawyer in Des Moines for over 30 years and during the period I have devoted much of my own time and effort toward representation of small businesses and their owners as they strive to serve their customers, pay their suppliers, comply with the increasing requirements of Government, and still have something left to provide for their families, and the increasing capital needs of a growing business.

I have also performed public service in that I served as a board member and was elected president of the Legal Aid Society of Polk County during a 5-year period when Federal funding was initially provided for legal services to the indigent. I served for almost 10 years as an elected member of the board of directors of the Des Moines Area Community College and as president of the board for all but 1 of those years. Most recently I have served my profession as a member of the board of governors of the Iowa State Bar Association and am the immediate past-president thereof. I can honestly say to you gentlemen that the increasingly heavy hand of the Federal Government has been felt not only by my clients but by the Legal Aid Society of Polk County, the Des Moines Area Community College, and the Iowa State Bar Association. Gentlemen, I commend you for those provisions of S. 299 which would direct Federal agencies to study the anticipated impact of compliance with the proposed rules on small businesses and cities before the regulations are issued and for those provisions which would permit an agency to find that a uniform set of requirements applying to small and large entities alike would place a disproportionate burden on small enterprises and which would then require such agency to determine whether less burdensome reporting and compliance requirements should be developed for small concerns.

I would like to call your attention to a notice in the Federal Register on January 16 which advised the public that comments were invited to be submitted to the General Accounting Office by February 5 on a request by the Federal Trade Commission for clearance to send a questionnaire to the bar associations of the 50 States and the District of Columbia.

[The notice referred to above follows the prepared statement.]

The questionnaire purported to be part of an investigation by the Federal Trade Commission "To determine whether or not providers of legal services are subject to acts or practices which are unfair, deceptive or anticompetitive * * *." A copy of such notice is attached hereto. The Federal Trade Commission estimated that the respondent burden on each of the 51 bar associations would be 30 hours. Our own analysis of the questionnaire indicated that many of the questions asked on the proposed questionnaire were so broad and so comprehensive that it was almost impossible to answer or to even guess as to whether the answer suggested might fall within the purview of what the Federal Trade Commission had in mind. The Iowa State Bar Association is a small association of some 5,000 members and its records are not kept in such fashion as to permit correct and complete answers to many of the questions without an item-by-item examination of most of the committee files and all of the correspondence files developed during the more than 15 years for which the Federal Trade Commission was requesting information. Our staff is small and the regular duties of the individual members would not have permitted any time for such research nor would any of the staff members other than the executive director have the professional capability to make the judgments required in answering some of the proposed questions. We advised the General Accounting Office that it would take in our best judgment several hundred hours more than the 30 hours set forth in the Federal Trade Commission request and we stated that this in our judgment would place an unconscionable burden on the association and that the expense involved would be disproportionate to any possible benefit to the public or the association or its

members. Upon analysis, other bar associations made similar determinations and so many protests were filed that responsibility for the investigation was shifted from the Boston office of the Federal Trade Commission to the Cleveland office. I should tell you that the Boston office had developed the questionnaire without consulting a single State bar association with respect to the nature of the records kept and with respect to what might be required to provide the Commission with the information which it felt it needed.

Furthermore, there was no distinction drawn between integrated bar associations and voluntary bar associations such as our own Iowa State Bar Association. In an integrated bar, membership is a condition precedent to the practice of law and such associations are strictly controlled by the supreme courts in those respective States. In Iowa we have a voluntary association which strives to work in close cooperation with the Supreme Court which controls the practice of law in the State. At our invitation representatives of the Cleveland office visited the offices of the Iowa State Bar Association to discuss informally some of those difficulties which we perceived with the original questionnaire as proposed by the Boston office as well as the nature of the operations of our own office and the availability of information from association records. We came away from that meeting convinced that the questionnaire would be substantially revised and the burden substantially reduced. I tell you this as a basis for my own support of the concept that the law should permit, as S. 299 does, Federal agencies to develop less burdensome reporting compliance requirements for small concerns than for large. I would go a step further. I would require development of less burdensome requirements for the small entity, and would suggest that your committee give serious consideration to amending S. 299 to include such a requirement.

One of my clients is a relatively small organization conducting its business in three States. This requires that it duplicate its reporting for unemployment tax, sales taxes, property taxes, and income taxes for all three States. It has only a handful of employees in each location but in trying to provide a balanced compensation package it has adopted a pension plan and is now burdened with the dual reporting requirements to the Internal Revenue Service and to the Department of Labor. Because of these requirements and the constantly changing standards for qualification this business is now seriously considering the discontinuance of its present pension plan. It regrets the necessity for such action but the administrative costs have become unduly vexatious and burdensome.

Many of my clients have asked that I particularly object to the information or census report which the Department of Labor requires on a rather irregular basis. Most all of them regard this as a time-consuming report of data which, after it is compiled, is of no value to any small business. Such reports seem to them to be designed simply to provide "make work" for a number of additional Government employees. Some indicate that their normal procedure is to ignore these requests until they receive a series of letters threatening penalties for noncompliance. As a last resort, some have even indicated that they submit scrawled, handwritten, and illegible reports on a best estimate basis. Since this seems to satisfy the Labor Department and they never hear from these, they wonder what useful purpose is expected to be served by the idea in the first place.

Another one of my clients is a small wholesale supplier of meats to restaurants, fast food outlets and grocers. He gets a questionnaire from the Department of Commerce which particularly annoys him because it looks like it is designed for grocery stores. It is entitled "Census of Distributive Trades, Groceries and Related Products." His bookkeeping and reporting is on a fiscal year and the form requires data on a calendar-year basis which requires considerable adjustment to eliminate the overlapping months from his fiscal results and to then factor in the same months from the prior year's results. He tells me the form is 18 inches long and is some six pages. It requires the breakdown of sales by commodity and then asks for percentages. He doesn't keep these kind of records for his own purpose, and it has never been demonstrated to him what useful purpose it serves by his trying to do so for the Department of Commerce; however, he tries to provide what he regards as reasonable estimates. The form asks for a breakdown of inventory values and then asks for the identity of the person computing the value of the inventory. You might be interested in his answer which was, "The manager prices, the bookkeeper figures it, and I check it." At one time as part of his operation he operated a small locker plant. Senator Culver, being a native Iowan, I know that you are familiar with the operation of a locker plant and that it is almost always a small operation where only a few animals, usually cattle or hogs, are slaughtered daily and in due course they are processed, frozen and returned to the customer. It got to

the point where he was filling out so many forms pursuant to the requirements of the Packers and Stockyards Act that he was glad to sell the locker plant and be rid of the requirement for completion of the forms.

In my service as president to the Des Moines Area Community College Board I learned of some of the reporting requirements imposed upon a public educational institution by the Federal Government where Federal funds are involved. Under Iowa law the community college system when it was created was required to absorb what was then a locally supported junior college system. Here in the Des Moines area, we had only one—Boone Junior College. It took some 10 years for the Department of Health, Education and Welfare to understand that once absorbed the Boone Junior College was part of the Des Moines Area Community College and that the reporting statistics had been properly combined; however, there were a good many years that separate reports were demanded and in the early years under threat of punitive action, were provided. The community college now serves more than 6,000 students annually and its operations have grown so that there are several employees who spend almost all their time filling out one Government form after another either pursuant to the requirements of the higher education general information survey of the Department of Health, Education and Welfare or with respect to financial aid, some of which are required by the Veterans Administration. While the provisions of S. 299 do not address the problems of late availability of forms and short time frames within which to file same, I would like to call the attention of your committee to the fact that there are many times that a form is past due for filing when the blank is received at the community college level and while this too may not be totally germane I would like the committee to know that the additional costs which are incurred be beneficiaries of Federal funding such as the Des Moines Area Community College and such as the Legal Aid Society of Polk County are frequently disproportionate to the benefit originally perceived in such Federal Funding.

Since I practice in the Des Moines metropolitan area, I don't have as many farm clients as lawyers practicing in county seat towns having a small population where many of the residents are farmers. That brings me to the Department of Commerce census of agriculture. Again, we have an 18 inch, multipage request for the most miniscule kinds of details. Farmers regard providing this kind of detail as a useless exercise that will never do them any good as individuals in their own farming business. Neither they nor I understand the basis on which some of them are asked to report monthly. Those who are selected for that kind of reporting requirement find it particularly burdensome. Senator, I commend you for those provisions of the Regulatory Flexibility Act which will make it possible for agencies to target more effectively their efforts to correct serious abuses of the competitive process and critical threats to health or safety without overburdening small businesses with requirements that simply increase costs but produce no identifiable benefit for the persons who are required to bear such costs. If federally generated paperwork is subjected to public scrutiny and comment before being imposed on the public, it should in the long run produce more meaningful information, and as I said at the outset, I speak for a goodly number of small businessmen, many of whom would like to see a requirement that perceived benefits be identified and recognized and that they then be given an opportunity for input on the question of whether or not the information requested by such agency will make a significant contribution to attaining such perceived benefits.

Gentlemen, thank you again for permitting me to appear before you to share with you these views of many of your constituents.

Attachment.

[From the Federal Register, Jan. 16, 1979]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of report proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on January 9, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if

applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before February 5, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street N.W., Washington, D.C., 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new, single-time questionnaire which will be sent, under compulsory process authorized by 15 U.S.C. 46, to the bar associations of the 50 States and the District of Columbia. This questionnaire, part of a non-public law enforcement investigation, requests information concerning the regulation of the practice of law. The overall purpose of the FTC's investigation is to determine whether or not providers of legal services are subject to acts or practices which are unfair, deceptive or anticompetitive in violation of the Federal Trade Commission Act. The investigation is focused on restrictions placed on prepaid legal plans, legal clinics and the ownership of entities offering legal services to the public. Also being considered are issues concerning specialty certification or designation and mandatory continuing education requirements for lawyers. The FTC estimates respondent burden will average 30 hours for each of the 51 respondents.

The FTC requests clearance of a new special report "Acquisition and Mergers by Corporate Chains", Forms 1859-A, 1859-B, and Supplement. The FTC will send the special report forms to retail and wholesale food companies. The companies will not have to complete the forms unless they acquire a food retail or wholesale company within the meaning of the Commission's 1967 "Enforcement Policy with Respect to Mergers in the Food Distribution Industry." If such an acquisition occurs, the submission of the forms is mandatory. The completed forms will become a part of the Commission's confidential records. The purpose of the forms is to determine if anticompetitive mergers are occurring in the food distribution industries in possible violation of the laws enforced by the Commission. The FTC estimates that respondents will number approximately 30 annually and that reporting burden will average 15 hours per response.

NORMAN F. HEYL,
*Regulatory Reports
Review Officer.*

[FR Doc. 79-1520 Filed 1-15-79; 8:45 am]

Senator CULVER. Thank you very much for an excellent statement. Mr. Bill Bergman.

STATEMENT OF WILLIAM A. BERGMAN, ATTORNEY, CEDAR RAPIDS, IOWA

Mr. BERGMAN. Senator Culver and Senator Dole, I also am a late-comer replacing somebody that was ill, and I did not have an opportunity to become specific as a witness before this committee, so I am going to address myself not to any particular problem, but basically to time loss, stress in compliance with rules and regulations, and also what difference does it make if the small business doesn't succeed, how important is this to us. Some of the statistics that I will be quoting will be those that I garnered from the National Small Business Association, of which I am a member of their legislative action and policy advisory committee, only recently acquainted.

First of all, Milton Stewart is here, and either he has done it as advocate chief counsel, or the Small Business Administration has somehow done it on their own, but I have never seen such a turnabout in an

agency in their forms and their method of doing business in streamlining, speeding up to get on to the ultimate consumer. They certainly should be congratulated, and I certainly hope other agencies will follow their course of action that they have taken. Our law firm is situated in Cedar Rapids, Iowa, and consists of 13 lawyers. I happen to be the senior partner. At least 80 percent of our practice is in the area of servicing small businesses, at least as I would so define them. Our firm services perhaps 500 small businesses, approximately. Their sales are a minimum of perhaps \$10,000 a year to \$50 million a year. In that group, we represent State banks, manufacturing companies, builders, developers, recreational developers, farmers, cooperatives, and regulated motor carriers.

Most of these businesses employ anywhere from one sole proprietor himself to an extra employee to 500 people. All are owned and run by a small business person who is in business because he or she wants to be independent and wants reasonable freedom in running his or her business. A small business person must be all things to his business, and such a person is the chemist, the salesman, the financial man, the credit manager, the advertising manager, and so on. To be able to survive, he must pay and give all of his attention to these aspects.

He cannot give a fourth of his time to rules and regulations and their reporting requirements, and we should not require him to unless the rules and regulations affecting his business are more important to our general economy and public good than his continuance in business. The small business should be kept free of all but the most carefully screened and absolute necessary rules and regulations and reports because otherwise the wealth of our Nation, a free enterprise system, shall perish. The small business needs all of its time, energy, and resources to carry on its business.

We should treat it with the same loving care we would give the goose who lays the golden egg. The small business is the goose that lays the golden egg for the United States. Do you know—and I am sure that you do—that in the United States 98 percent of all businesses are small business? There are over 14 million small businesses, and they employ an average of four persons each? Small business employs over 59 million people or 60 percent of the work force? Small business controls 43 percent of the gross national product, 70 percent of the dollar volume of wholesaling business, and 72 percent of the dollar volume of retailing?

Small businesses do 85 percent of the total dollar volume of construction and 82 percent of the total dollar volume of service industries. It is surprising, but true, that since 1969 small business accounted for 98 percent of all new employment. The 1,000 companies contributed less than 2 percent of such new jobs. A 1977 report of the Management and Budget states that for each 1-percent increase in employment, there is a \$16 to \$17 billion gain to the Federal Government through payment of various taxes.

The 2 percent employment gained during the last 2 years brought approximately \$36 billion more to Uncle Sam, and 98 percent of the credit must go to small business. It is to our own selfish benefit that we keep these small business people working for us. Our Nation cannot survive as a democracy without them. In the small business, it is the leader's time that is affected by rules and regulations, and this is not necessarily so in big business.

Let's pull a small business out of the straitjacket of rules and regulations. Don't make them swim with their arms and legs tied to the bottom of the pool. Every rule, regulation, and report represents an additional hazard to the continued operation of a business. They steal away at the head person's time, and this keeps him or her from being as productive as we would like for our own benefit. It also gives the head person less time to be with the family and keep the kids off the street and to do civic and church matters.

They say business is a zoo. We all know different species of animals are kept and treated differently. Small business is the golden goose and can cause no serious damage by lack of rules or regulations, unless we throw away our lack of care, and prevent it from laying its golden eggs. Big business is like the elephant. You have to be careful or you might be trampled.

It would be incomprehensible for the zoo to treat the goose and the elephant the same. Yet our regulatory agencies have put small business and big business in the same cage and on the same diet. Something must be done to save our golden goose. I believe Senator Culver's Regulatory Flexibility Act is a good beginning.

Senator CULVER. Thank you very much. Senator Dole, do you want to ask questions first?

Senator DOLE. I think you have given us four or five very good examples to look at and focus on to see how their complaints can be satisfied by this legislation. At least this may be a start in the right direction. The record has been made very clear, and I think they were both excellent statements. It goes back to the question I asked earlier, "What is small business?" You have recited a number of statistics on small business, and I assume the definition used for small business is a Small Business Administration definition; is that correct?

Mr. BERGMAN. I believe that is so. As I said, I got those statistics from the National Small Business Association. Basically, they were going from the 1 to 500 person without using any breakdown on income, gross income, over net income, and so on.

Senator DOLE. I liked your analogy between the elephant and the goose.

Senator CULVER. How about the donkey and the elephant?

Senator DOLE. There are more geese than there are elephants, and we are a minority group. I would like to change that, but it takes time. Again, I think both statements are excellent. I think they added a great deal to our efforts in the Congress.

Mr. Grefe, the examples you cited are just about the kind that John and I get on a daily basis, in our mail from some farmer or some small businessman or somebody with a pension plan. In our State of Kansas, as I said earlier, we have very few businesses with more than 100 employees, and the majority have less than 50, 25, or 20. When you start running a regulation to apply across the board, it doesn't take any genius to understand that somewhere along the line it is not going to be very cost effective. I would hope that S. 299 will address the problem, and if not, we will try to do more in the Congress because it is our responsibility, as Senator Culver explained earlier. I appreciate very much the chance to hear the testimony. I haven't any questions. I may have to leave before the final panel, but I will stay as long as I can.

Senator CULVER. I just have one quick question of both of you, and then, because of the time problem we face, what I would like to do would be to submit two or three questions for written responses. We have some other panelists yet today, and they have time commitments at 12:30.

One of the provisions of this legislation, S. 299, requires agencies to look back at rules that they previously issued, that they now have on their books, and determine whether they comply with the standards outlined in our bill, making the distinction. I know that one of the basic needs of business is to have a fairly high degree of certainty and predictability as to what the rules are in dealing with government, and especially in implementing regulatory requirements.

My question is: Do you think that the benefit that one would hope to derive from running agencies through this drill of checking their existing regulatory scheme against the need to take special care with small businesses under our bill outweighs the cost of the uncertainty that might result?

Mr. GREFE. I would have to answer that question even though I think you are going to get resistance from the bureaucrats in reflecting any willingness to change what they are doing to sling any of it. It is my experience with them that everything is added to and almost nothing is taken away, and to the degree that this makes them take a look, and that the Congress makes them take away, there is going to be merit in it, but I think you are going to have to lean on them.

Mr. BERGMAN. I certainly agree wholeheartedly. There is uncertainty now, and normally the uncertainty is weighed heavily against the businessman, the small businessman, in the interpretation that comes from trade associations of, "Go back and review it for us." At least I would trust that trade association, even though it might be selfishly inclined more toward and for the entire representative group, at least they will get a chance to get another crack in that revision to come within a two-tier type of situation. I think it would be magnificent. The uncertainty could not ever be as unbearable as it is right now for my clients.

Senator DOLE. Do you believe that there should be a legislative veto as a final check on excess? I don't know how we would put it together, but should Congress interfere with regulations or rules promulgated by the FTC or another agency, that could be vetoed?

Mr. GREFE. I think if you had the time to give it your individual attention, there would be merit in it, but if it is going to be looked at by your staff members who are on the board for only a short period of time, I have some serious questions about it, Senator.

Senator DOLE. We would about have to build another building to house the staff.

Senator CULVER. There were 7,000 rules and regulations issued, I believe, by the Federal Government last year. So if every disgruntled party, or just one of the number of parties who felt the rule and regulation was adverse wanted to elect to exercise the machinery in the Congress, it would really require a noble effort to keep the review politically fair, realistic, and constitutional. There would be some very real problems.

Mr. BERGMAN. I wish it could be done, and I agree with you that the problems are tremendous. But I think under your bill at least we will

bring it to the attention of the people that will become effective, and in turn bring it to Congress attention to try to get something done before the rule has been finalized.

Senator DOLE. I would guess that 7 out of 10 people who leave Washington every weekend to get on an airplane are lawyers. I sat down last time and there were five lawyers around me. They were all back working on regulations. I don't suggest that is good business, but they weren't complaining about it. They were working with the FTC on some novel ideas. If you just add up that cost to some businessmen, it is another real problem.

Mr. GREFE. That is one of the problems, I think, in what you are trying to do in getting input from small businessmen. As Mr. Bergman has indicated, the guy is already overextended and just trying to do the things absolutely required, like payroll taxes and withholding taxes and that sort of thing, and he just doesn't have time to read the Federal Register and to find out that there is going to be a hearing on this subject until that questionnaire gets to him. He doesn't know he is going to be affected.

Senator CULVER. The point that you mentioned, that their accounting process, and so forth, is not on a fiscal year or a calendar year, is very important. As much anticipating as should be given going into rules and regulations, there is no reason why they could not be tailored to accommodate currently accepted practices within that particular industry. It seems to me that probably would be another thing that would ease the reporting mood, wouldn't it?

Mr. GREFE. Yes.

PANEL OF LOCAL OFFICIALS:

**STATEMENTS OF THOMAS A. TULLY, COUNCILMAN, DUBUQUE;
LLOYD SIEVERS, MAYOR, ALTOONA, AND CLARENCE C. PERRY,
ENGINEER, HENRY COUNTY**

Senator CULVER. Thank you very much, gentlemen. Our final panel will be Mr. Thomas Tully, Jr., Mr. Lloyd Sievers, and Mr. Clarence Perry. Mr. Tully, would you like to go first since you have to leave by 12:30?

Mr. TULLY. Thank you very much, Senator Culver. My name is Thomas A. Tully, Jr., councilman from Dubuque, Iowa, a community of 64,000. I welcome this opportunity to comment on the proposed Regulatory Flexibility Act. The prospect of easing the burden of Federal regulations certainly gladdens the hearts of thousands of local officials. Blanket Federal reporting requirements, compliance regulations, and eligibility standards are inundating local officials with paperwork, discouraging communities and their leaders, and denying Federal programs to some of those communities which can benefit most.

Federal reporting requirements vary greatly even within agencies. For example, Housing and Urban Development requires that the city of Dubuque furnish 20 copies of the annual audit of our housing assistance program, yet the same Department requires but two copies of the audit of our block grant entitlement. Although the block grant program gets higher marks for requiring fewer copies of the annual audit, its other report requirements are burdensome.

Entitlement cities, such as Dubuque, must furnish an annual grantee performance report of our block grant activities. Unfortunately, this report is cumulative and cities must report each year on projects completed several years earlier. Dubuque's initial report in fiscal year 1975 was 21 pages, our 1978 report was 72 pages, and the 1979 report, now in preparation, will certainly reach 90 pages. The time wasted in plowing old ground could be much better spent in program implementation.

HUD procedures concerning contract wage verifications are likewise cumbersome and require additional valuable staff time. Standard wage determinations for contract laborers are published in the Federal Register. The city of Dubuque maintains current copies of that publication. However, cities cannot verify contract wages without first calling or writing the HUD regional office for a reiteration of those wage standards.

HUD, in response to that telephone call or written communication, then refers cities to the Federal Register. The point is that we already have the Federal Register and the information in hand, yet the procedure requires that we call HUD and be told where to look for it. In this time of increasing competitiveness for scarce tax dollars, it is absolutely essential that every possible cost be stripped from program overhead so that more funds can go toward the accomplishment of the program itself.

A second area that concerns me falls in the area of compliance and eligibility regulations. Many of these regulations reflect legitimate concerns and goals, but their application nationwide without exception is analogous to a surgeon routinely amputating legs as a cure for athlete's foot.

HUD's conflict of interest regulations are a good example. Obviously intended to curb real abuses found in some Government contracts, the regulations themselves are so sweeping that they, in effect, prevent tens of thousands of Americans from serving in local governments. The regulations make no distinction between full- and part-time officials, and this, I believe, is a fatal flaw. Most local elected officials serve on a part-time basis for little or no compensation, and must depend upon another job to provide their livelihood.

HUD's regulations prohibit such local officials from having any interest, direct or indirect, voluntary or involuntary, in any contract involving HUD, and I agree that full-time public officials should have no financial interest in public programs under their jurisdiction. However, many part-time officials or potential officials cannot afford the luxury of turning down customers because that customer holds a HUD-funded contract.

The Community Services Administration, another Federal agency, recognizes this problem and has devised what I consider a very workable set of guidelines concerning conflicts of interest. Basically, these guidelines require open competitive bidding. As a minimum, I believe Federal conflict of interest regulations should require: (a) Full disclosure of any financial interest in pending contracts by local officials, (b) open competitive bidding, and, (c) abstention on the part of the affected official.

A change along these lines would be every bit as effective as the current regulations in protecting the public interest from profiteering by local officials, but would open the door to part-time public service

to thousands of Americans. It is harder and harder for local governments to find qualified elected officials willing to give their time to benefit their community. Federal regulations have, perhaps inadvertently, made it even more difficult. We need to correct this trend if our cities and towns are going to remain the strong backbone of our society.

Another example of an admirable program which failed to recognize individual differences in American communities is found in those programs requiring minority contractor participation. During the implementation of the local public works program a few years ago, it became clear from the experience of both the city and county of Dubuque that the necessity of bringing in imported contractors added significantly to the cost of the work and frequently resulted in windfall profits by certain contractors. We in Dubuque certainly do not object to and, in fact, support the advancement of American minorities; but our population mix, and that of the surrounding market, contains so few minorities that compliance is virtually impossible.

A final area I wish to discuss this morning concerns eligibility standards. As you may know, the city of Dubuque is not now eligible for UDAG participation, although Waterloo, Sioux City, Council Bluffs and Davenport are. It is impossible to document any fundamental differences in the health of the economy of those cities in contrast to our own, but the eligibility criteria makes some arbitrary distinctions based on old and outmoded data that have permitted those other cities some substantial benefits.

In the meantime, Dubuque and many cities like it suffer from many of the same kinds of affliction that have been addressed with UDAG assistance, but are able to do little about it. Our overriding concern is that many Federal financially aided programs are specifically designed to assist cities that are experiencing difficulties; for example, unemployment, finances, lower income households, et cetera.

Those cities which have remained healthy through good management or through circumstances beyond the control of the city are not so assisted. Yet there is little evidence of cities receiving such aid recovering. Government programs need to be structured to assist healthy communities to remain healthy before they experience difficulties.

Some of the problems I have discussed this morning may not be cured by the passage of the Regulatory Flexibility Act. Nevertheless, it is an important step in the right direction. The cities of America, and in particular the cities of Iowa, need it. Thank you.

Senator CULVER. Thank you very much, Tom. Who would like to go next? Mr. Sievers.

Mr. SIEVERS. Thank you, Senator Culver. I am Lloyd Sievers, mayor of Altoona, Iowa, a community of just over 4,000 in population located to the east and nearly contiguous with the city of Des Moines. I appreciate the opportunity to testify at this hearing on S. 299, the Regulatory Flexibility and Reform Act. I would commend Senator Culver and the other cosponsors for taking this first important step in attacking a problem which is becoming widespread in business, industry, and small units of government.

Iowa is a State of many small cities. That fact should make them no less important to the quality of life in this State than any other element of the economy. To be more specific, for every one individual

living in cities above 50,000, there are two citizens in cities below 50,000. A more graphic example is the fact that of the 955 incorporated cities in Iowa, 701 are under 1,000 population.

Local governments in Iowa, out of necessity and a desire to provide the most efficient and cost-effective services to its citizens, have established a relationship with Federal and State government. It is at this point where the problems begin. Smaller units of government just don't have the resources available to furnish and fulfill all their needs. Hence the relationship is formed, and city officials suddenly become aware of the massive bureaucracy that exists on the Federal and State levels of government. With limited staff capabilities, consultants are hired to aid the community in the interpretation and processing of rules and regulations, all in the hopes of cracking the inner circle of Federal aid eligibility.

That brings us to the heart of the problem: compliance. Current agency rulemaking adversely affects smaller units of government. We are dumped into a statistical pot with New York and Detroit and Chicago, and we sink to the bottom. There is no way we can match the number of unemployed or underemployed or disenfranchised minorities as the others can. We cannot match the number of sub-standard housing units or numbers classified in poverty. About all we have been able to do is to send our tax dollars to Washington to support the grant programs for the other cities.

For example, in 1977 Iowa received an average of 79 cents return on each dollar sent to Washington. If a city is lucky enough or knows someone on the inside to get past the first hurdle, they soon discover that the compliance requirements become far too costly on a per capita basis to give any incentive to further pursue the program.

Therefore, I strongly concur in establishing differing compliance or reporting requirements based upon other criteria such as resources available, size, or a system proportionate to the grant request by that individual, business organization, or governmental unit. Rule-making would then be consistent with the capabilities of those being regulated without adverse economic effect.

We all live in a regulated society. To a large degree we have all accepted that fact. We have a proliferation of agencies and rules all created with good intentions, but all failing in citizen confidence and usefulness. Small communities need assistance just the same as large communities. Many times the need is even greater in smaller communities because of the total impact on the system.

The closing of a small business that employs 10 or 15 people can be just as debilitating for a small city as the laying off of 1,000 or 1,500 in a large city. The smaller cities have sewer problems, solid waste problems, public housing problems, waste water treatment problems. We deal with FHA, FmHA, Federal Highway Administration, EPA, HUD, et cetera. In many cases we are required to comply with regulations promulgated by these agencies, but we are denied access to many of the grant programs because of our size or our lack of qualifying criteria, written by agency staff, that thinks Iowa is located next to Idaho. Many times it seems that logical options and criteria for measuring need are unacceptable unless those options are first designed by Federal agency officials.

In closing I would like to cite some specifics. The Iowa Energy Policy Council estimated that Iowa cities lost over \$6.5 million due

to inflation during 1978 in the construction of waste water treatment facilities. This loss was due to a delay of releasing funds by the Federal Government to the State of Iowa. This is assuming a 1½-percent inflation factor per month for construction materials and labor. This is a tremendous loss to the cities of Iowa, and could be remedied by initiating a process of "advanced refunding." This would eliminate gaps or slowdowns in planning, design, and construction.

Other reporting requirements which do not seem proportionately appropriate for smaller cities include the EEOC form No. 164. This is a lengthy and complicated form which requires upward of 3 days to complete. It seems inappropriate for a city that employs only 22. Another requirement is the Davis-Bacon Act. It seems inappropriate that construction projects governed under Davis-Bacon requires employers to submit weekly payroll forms. This creates an unnecessary hardship on the contractor and has no measurable benefit to the work performed. Another is the Bureau of the Census and its forms C-700, CB-79B, CJ-6, et cetera.

All of these forms are required. They are time consuming, and according to other municipal officials, just a portion of the forms that are required. Granted statistics may be of some value, but the smaller communities of Iowa could be relieved of a great burden by somehow incorporating all this into one annual report, or eliminating them entirely.

Although we have not prepared any estimates for our city, data from the League of Iowa Municipalities shows that the total amount of dollars expended annually either in staff salaries or consultant fees amounts to an equivalent of one full-time employee per city for compliance requirements that may not be necessary. In another community, Sioux Center, which is similar in size to ours, this amounts to approximately \$20,000 to \$25,000 per year, which could appropriately be spent for other purposes.

These concerns are not mine alone. The story repeats itself on a daily basis in numerous cities across this State. S. 299 meets the problem head on. It should be considered for adoption. Thank you very much.

Senator CULVER. Thank you, Mr. Sievers. Mr. Perry, it's good to see you again. I appreciated your testimony in Washington on the Iowa bridge problem, when you were out there before. You have moved, haven't you?

Mr. PERRY. Yes. I am now in Henry County, Mount Pleasant.

Senator CULVER. Weren't you in Lucas?

Mr. PERRY. Yes, Senator Culver. I am the Henry County engineer from Mount Pleasant, Iowa, and the past president of the Iowa County Engineers Association. Today I am substituting for Milton Johnson who has asked me to convey his regrets that he is unable to attend. The Iowa County Engineers Association appreciates the opportunity to testify today.

Henry County, Iowa, is a rural county in southeast Iowa, and has a population of 18,000. We are engaged in the maintenance and construction of 750 miles of roadway and some 200 bridges. Quite often our highway projects involve Federal aid funds. Along with the funds come a myriad of regulations and paperwork. An imaginary Federal aid project might begin with an opportunity for a public hearing, next the holding of the public hearing, and then a request for a location

and design study approval. When 4(F) or public lands are involved, an environmental impact statement is required. An archeological study is made and on projects involving bridges a 404 permit from the Corps of Engineers must be received. A noise pollution study must be made and an A95 clearance must be given by OPP having met all Federal requirements. A series of approval must be granted by State agencies. After receiving all clearances necessary, the county is ready to begin the process of acquiring right-of-way. Federal law requires that land to be purchased must have an appraisal, negotiation, and then final payment made by different individuals. This places a burden on a small engineering staff in a small county because we don't have the manpower.

Finally, after right-of-way is acquired, the project is prepared for bid letting and the Davis-Bacon Act is now put into effect. The prevailing wage rate in an area is made the minimum wage rate on a construction project. From start to finish this project takes a minimum of 3 years or as many as 7 years to complete in a small county. I can't criticize all the Federal requirements because many are important. I think in the time of double-digit inflation it is also important to have some way to speed up this process.

A problem I have experienced is the difference in interpretation of Federal law from one district to another in the same Federal agency. I think also more consideration should be given to the recommendations of local people, rather than bogging down the project with bureaucratic process by someone who is far removed from the scene. However, pessimistic as my comments may seem, I do see improvements in the Federal process.

This has happened in the past few years. Mr. Chairman, I think you and Senator Dole should be complimented on your desires to streamline the process. I appreciate your interest in regulatory reform, and I hope my comments will be helpful. Once again, I would like to convey the appreciation of the Iowa counties for this opportunity to testify.

Senator CULVER. Thank you very much, Mr. Perry. Mr. Tully, in your experience as a mayor and now as a councilman, has Dubuque ever decided not to participate in Federal programs that were designed to benefit local communities because of the lack of administrative resources in the city government?

Mr. TULLY. No, Senator. We have not chosen, to my knowledge, to stay away from a program. However, we do face an awfully lot of criticism from the voters of Dubuque, due to the large amount of moneys that we receive that go to administrative expense and overhead. Frankly, I share their concerns and their criticisms. We spend an incredible amount of money filling out the forms.

Senator CULVER. Do you know what your clerical budget is, offhand, or could you supply it for us?

Mr. TULLY. I could supply that for the record.

Senator CULVER. It would be very helpful if you could give us your current budget and also from over the years, some sense of where it is going. Mr. Sievers, I wonder what the clerical budget is for a town of Altoona's size, roughly?

Mr. SIEVERS. I would say around \$40,000, just for clerical.

Senator CULVER. Just for clerical overhead cost?

Mr. SIEVERS. Yes.

Senator CULVER. Who do you have available to collect information and fill out forms?

Mr. SIEVERS. As I mentioned, we rely a great deal on consultants. If the form is simple enough, we may even be able to do it ourselves. As far as Federal revenue sharing, we have done a great deal of simplification, and when it gets to the point that you just sign your name and that is about all, that is very helpful.

Senator CULVER. What must you do when the length of the number of the forms increases?

Mr. SIEVERS. The problem that we have, Senator, with the paperwork is that it becomes so routine it is hard to identify what point you should really start complaining about. It is just something, I guess, we have accepted.

Senator CULVER. How much time must all of you invest just in discovering the Federal regulations which apply to your community? Is that a problem?

Mr. TULLY. I am not sure we know what you mean.

Senator CULVER. Then it is a problem. You just don't know what you don't know.

Mr. TULLY. If somebody might come and look at us, they might find all kinds of problems.

Senator CULVER. You don't have a confidence system that in a timely and routine way notifies you of new regulators? We talked earlier about the Federal Register, how imperfect and inadequate that is to clients.

Mr. TULLY. We do in Dubuque. However, we occasionally get surprised with things. We recently have been surprised with the Fish and Wildlife people and the Corps of Engineers. We were violating a regulation that we were not aware existed.

Senator CULVER. How much of this problem that we are discussing here, in your judgment, stems from what you must do to comply, and how much stems from how long you are given to comply. Obviously, the substantive nature of the information, you are called upon to provide can be greatly reduced, we hope, with this bill in mind. But how much of it is also a problem just of timely notices, that sort of thing? Is that as much a problem, in a general sense, compared as the substantive burdens?

Mr. TULLY. My sense of it in our community is that that is not nearly so great as the magnitude of the requirement. Timing has not been a particular problem. Occasionally a late request comes in, but we generally are aware of the filing deadlines and the filing requirements, and we are able to accommodate.

Senator CULVER. I want to thank all of you very much for your appearance here today and your testimony. I think we will start a markup in the Senate Judiciary Committee, hopefully, in the latter part of September on this and some other legislation with regard to regulatory reform. I can assure you that you have given us some extremely valuable testimony that we can use to muster the necessary support for some of the reforms and changes we want to see effected at that time. Again, my appreciation to all of you.

[The prepared statements of Messrs. Tully, Sievers, and Perry follow:]

PREPARED STATEMENT OF THOMAS A. TULLY, JR.

My name is Thomas A. Tully, Jr., councilman, Dubuque, Iowa, a community of 64,000.

I welcome this opportunity to comment on the proposed Regulatory Flexibility Act. The prospect of easing the burden by Federal regulations certainly gladdens the hearts of thousands of local officials.

Blanket Federal reporting requirements, compliance regulations and eligibility standards are inundating local officials with paper work, discouraging communities and their leaders and denying Federal programs to some of those communities which can benefit most.

Federal reporting requirements vary greatly even within agencies. For example, Housing and Urban Development requires that the city of Dubuque furnish 20 copies of the annual audit of our housing assistance program, yet the same Department requires but two copies of the audit of our block grant entitlement. Although the block grant program gets higher marks for requiring fewer copies of the annual audit, its other report requirements are burdensome. Entitlement cities such as Dubuque must furnish an annual grantee performance report of our block grant activities. Unfortunately this report is cumulative and cities must report each year on projects completed several years earlier. Dubuque's initial report in fiscal year 1975 was 21 pages; our 1978 report was 72 pages and the 1979 report, now in preparation, will certainly reach 90 pages. The time wasted in plowing old ground could be much better spent in program implementation.

HUD procedures concerning contractor wage verification are likewise cumbersome and require additional valuable staff time. Standard wage determinations for contract laborers are published in the Federal Register. The city of Dubuque maintains current copies of the publication. However, cities cannot verify contract wages without first calling or writing the HUD regional office for a reiteration of those wage standards. HUD in response to that telephone call or written communication, then refers cities to the Federal Register. The point is that we already have the Federal Register and the information in hand, yet the procedure requires that we call HUD and be told where to look for it. In this time of increasing competitiveness for scarce tax dollars, it is absolutely essential that every possible cost be stripped from program overhead so that more funds can go toward the accomplishment of the program itself.

A second area that concerns me falls in the area of compliance and eligibility regulations. Many of these regulations reflect legitimate concerns and goals but their application nationwide without exception is analogous to a surgeon routinely amputating legs as a cure for athlete's foot.

HUD's conflict of interest regulations are a good example. Obviously intended to curb real abuses found in some Government contracts, the regulations themselves are so sweeping that they in effect prevent tens of thousands of Americans from serving in local government. The regulations make no distinction between full and part-time officials and this, I believe, is a fatal flaw. Most local elected officials serve on a part-time basis for little or no compensation, and must depend upon another job to provide their livelihood. HUD's regulations prohibit such local officials from having any interest, direct or indirect, voluntary or involuntary, in any contract involving HUD and I agree that full-time public officials should have no financial interest in public programs under their jurisdiction. However, many part-time officials or potential officials cannot afford the luxury of turning down customers because that customer holds a HUD-funded contract. The Community Services Administration, another Federal agency, recognizes this problem and has devised what I consider a very workable set of guidelines concerning conflict of interest. Basically, these guidelines require open competitive bidding. As a minimum, I believe federal conflict of interest regulations should: (1) Require full disclosure of any financial interest in pending contracts by local officials, (2) open competitive bidding, and (3) abstention on the part of the affected official. A change along these lines would be every bit as effective as the current regulations in protecting the public interest from profiteering by local officials, but would open the door to part-time public service to thousands of Americans.

It is harder and harder for local governments to find qualified elected officials willing to give their time to benefit their community. Federal regulations have, perhaps inadvertently, made it even more difficult. We need to correct this trend if our cities and towns are going to remain the strong backbone of our society.

Another example of an admirable program which failed to recognize individual differences in American communities is found in those programs requiring minority

contractor participation. During the implementation of the local public works program a few years ago, it became clear from the experience of both the city and county of Dubuque that the necessity of bringing in imported contractors added significantly to the cost of the work and frequently resulted in windfall profits by certain contractors. We in Dubuque certainly do not object to and, in fact, support the advancement of American minorities, but our population mix and that of the surrounding market contains so few minorities that compliance is virtually impossible.

A final area I wish to discuss this morning concerns eligibility standards. As you may know, the city of Dubuque is not now eligible for UDAG participation, although Waterloo, Sioux City, Council Bluffs and Davenport are. It is impossible to document any fundamental differences in the health of the economy of those cities in contrast to our own, but the eligibility criteria makes some arbitrary distinctions based on old and outmoded data that have permitted those other cities some substantial benefits. In the meantime Dubuque and many cities like it suffer from many of the same kinds of affliction that have been addressed with UDAG assistance, but are able to do little about it. Our overriding concern is that many Federal financially aided programs are specifically designed to assist cities that are experiencing difficulties (for example unemployment, finances lower income households, and so forth). Those cities which have remained healthy through good management or through circumstances beyond the control of the city are not so assisted. Yet there is little evidence of cities receiving such aid recovering. Government programs need to be structured to assist healthy communities to remain healthy before they experience difficulties.

Some of the problems I have discussed this morning may not be cured by the passage of the "Regulatory Flexibility Act". Nevertheless, it is an important step in the right direction. The cities of America, and in particular the cities of Iowa, need it.

QUESTIONS OF SENATOR CULVER AND RESPONSES OF MR. TULLY

Question. (a) Have you, or anyone from your town's government, ever submitted comments about proposed Federal regulations? Do you think there is a need for more opportunities for the affected public to participate in the Federal rulemaking process prior to their adoption of a regulation? What suggestions do you have?

(b) During a session of the White House Conference on Small Business in Des Moines in April, one of the participants related a story about what happened when he asked the IRS to explain one of its rules. In response to his request, the IRS sent him several booklets which only confused him further. He continued calling for an explanation and continued to receive more pamphlets until he had a huge pile of them. And, despite the reams of paper he had received, the man still had no answer to his rather simple question. Have you had any better luck in obtaining adequate assistance from Federal agencies in understanding their regulations?

Answer. I referred your several questions contained in your letter of August 28th to appropriate city staff and their comments can be summarized as follows:

The City of Dubuque has, on occasion, submitted comments in response to published notices and proposed rules. Council and staff, as members of professional organizations, have collaborated on group statements. Additionally, council, as well as city staff, have written directly to Federal agencies as well as to the Iowa Congressional Delegation in reply to direct inquiries.

The management style adopted in Dubuque appears to accept almost at face value, Federal rules and regulations and then correspond with Federal agencies on shortcomings and difficulties as they are encountered. Congressional intervention is only sought on weighty matters. We assume that this procedure assure our congressional delegation of local efforts to solve dilemmas faced with Federal agencies. In the vast majority of instances the city does resolve its differences with Federal people. Consequently, the city of Dubuque enjoys good working relationships with Federal agencies.

It would appear that a more effective way for Federal agencies to gain meaningful input from a greater number of community groups and individuals is to hold public meetings on a regular basis. This enables the writers of published rules and regulations to fully explain their positions and provide meaningful interpretations. This also permits face to face confrontations. Perhaps this procedure could be a function of the Federal Regional Council.

The above suggestion recognizes that it is not practical or necessary in many instances to conduct public meetings on every issue. This suggestion also recognizes that although in the past several years, Federal rules and regulations are

somewhat easier to read, there is still difficulty in fully grasping the intent of some of the language. The regulations do not always follow congressional intent.

Several other items of interest which I wish to convey cover the area of administering Federal programs. Our experience to date indicates that at least 10 percent of program costs are absorbed by direct general administrative costs and that an additional 10 percent is absorbed by program administrative costs. The city of Dubuque has not adopted an indirect cost allocation to be added to program costs. This figure we are not sure of but it is now becoming somewhat important to us to consider in the face of limited financial resources.

We have, in the past several months, rejected participation in the Comprehensive Employment Training Act simply because the number of positions requested was reduced from 16 to 1 by the State enabling agency. We simply could not justify spending as much for administration, supervision and training as we would be receiving in the form of one funded position. This particular program has been difficult to administer due to constantly changing regulations and funding levels over relatively short periods of time.

PREPARED STATEMENT OF LLOYD SIEVERS

I am Lloyd Sievers, mayor of Altoona, Iowa, a community of just over 4,000 population located to the east and nearly contiguous with the city of Des Moines.

I appreciate the opportunity to testify at this hearing on S. 299, the Regulatory Flexibility and Reform Act.

I would commend Senator Culver and the other cosponsors for taking this first important step in attacking a problem which is becoming widespread in business, industry, and small units of government.

Iowa is a state of many small cities. That fact should make them no less important to the quality of life in this State than any other element of the economy. To be more specific, for every one individual living in cities above 50,000, there are two citizens in cities below 50,000. A more graphic example is the fact that of the 955 incorporated cities in Iowa, 710 are under 1,000 population.

Local governments in Iowa, out of necessity and a desire to provide the most efficient and cost-effective services to its citizens, have established a relationship with Federal and State government. It is at this point where the problems begin. Smaller units of government just don't have the resources available to furnish and fulfill all their needs. Hence the relationship is formed and city officials suddenly become aware of the massive bureaucracy that exists on the Federal and State levels of government. With limited staff capabilities, consultants are hired to aid the community in the interpretation and processing of rules and regulations. All in the hopes of cracking the inner circle of Federal aid eligibility.

That brings us to the heart of the problem. Compliance!!! Current agency rule-making adversely affects smaller units of government. We are dumped into a statistical pot with New York and Detroit and Chicago and we sink to the bottom. There is no way we can match the number of unemployed or underemployed or disenfranchised minorities as the others can. We cannot match number of substandard housing units or numbers classified in poverty. About all we have been able to do is to send our tax dollars to Washington to support the grant programs for the other cities. For example in 1977 Iowa received an average of 79 cents return on each dollar sent to Washington. If a city is lucky enough or knows someone on the inside to get past the first hurdle they soon discover that the compliance requirements become far too costly on a per capita basis to give any incentive to further pursue the program. Therefore, I strongly concur in establishing differing compliance or reporting requirements based upon other criteria such as resources available, size, or a system proportionate to the grant request by that individual, business organization or governmental unit. Rule-making would then be consistent with the capabilities of those being regulated without adverse economic effect.

We all live in a regulated society. To a large degree we have all accepted that fact. We have a proliferation of agencies and rules all created with good intentions, but all failing in citizen confidence and usefulness. Small communities need assistance just the same as large communities. Many times the need is even greater in smaller communities because of the total impact on the system. The closing of a small business that employs 10 or 15 people can be just as debilitating for a small city as the laying off of 1,000 or 1,500 in a large city. The smaller cities have sewer problems, solid waste problems, public housing problems, waste water treatment

problems. We deal with FHA, FMHA, Federal Highway Administration, EPA, HUD, et cetera. In many cases we are required to comply with regulations promulgated by these agencies but we are denied access to many of the grant programs because of our size or our lack of qualifying criteria, written by agency staff, that thinks Iowa is located next to Idaho. Many times it seems that logical options and criteria for measuring need are unacceptable unless those options are first designed by Federal agency officials.

In closing I would like to cite some specifics. Iowa Energy Policy Council estimated that Iowa cities lost over \$6.5 million due to inflation during 1978 in the construction of wastewater treatment facilities. This loss was due to a delay of releasing funds by the Federal Government to the State of Iowa. This is assuming a 1½ percent inflation factor per month for construction materials and labor. This is a tremendous loss to the cities of Iowa and could be remedied by initiating a process of "advanced refunding." This would eliminate gaps or slowdowns in planning, design, and construction.

Other reporting requirements which do not seem proportionately appropriate for smaller cities include:

a. EEOC Form No. 164. This is a lengthy and complicated form which requires upwards of 3 days to complete. It seems inappropriate for a city that employs only 22.

B. Davis-Bacon Act. It seems inappropriate that construction projects governed under Davis-Bacon requires employers to submit weekly payroll forms. This creates an unnecessary hardship on the contractor and has no measurable benefit to the work performed.

C. Bureau of the Census:

Forms:

C-700 (SL)—Construction Project Report.

CB-79B—Census of Services Industries—Amusement and Recreation Services.

CJ-6—Survey of Expenditure and Employment of Civil and Criminal Justice Activity.

E-5—Survey of Government Employment—Municipalities and Townships.

F-50—Survey of Local Government Finances—Municipalities and Townships.

C-404A—Annual Report of Building Permits Issued for New Residential Buildings.

EAS-1A—Boundary and Annexation Survey.

All of these forms are required. They are time consuming and according to other municipal officials just a portion of the forms that are required. Granted statistics may be of some value but the smaller communities of Iowa could be relieved of a great burden by somehow incorporating all this into one annual report, or eliminating them entirely. Although we have not prepared any estimates for our city, data from the League of Iowa Municipalities shows that the total amount of dollars expended annually either in staff salaries or consultant fees amounts to an equivalent of one full-time employee per city for compliance requirements that may not be necessary. In another community, Sioux Center, which is similar in size to ours, this amounts to approximately \$20,000–\$25,000 per year, which could appropriately be spent for other purposes.

The above concerns are not mine alone. The story repeats itself on a daily basis in numerous cities across this state. S. 299 meets the problem head on. It should be considered for adoption.

QUESTIONS OF SENATOR CULVER AND RESPONSES OF MR. SIEVERS

Question. How much of the burden of compliance with Federal regulations would be relieved by allowing small businesses and municipalities more time—more time to file the forms, to spend the disbursements, to obtain the data? In other words, how much of this problem stems from what you just do to comply and how much stems from how long you are given to comply?

Answer. My answer to your question regarding the need for time to comply with regulations can simply be answered by saying that the time it takes to comply rather than the length of time given to comply is the real issue—so I guess it relates to what we must do to comply.

Question. During a session of the White House Conference on Small Business in Des Moines in April, one of the participants related a story about what happened when he asked the IRS to explain one of its rules. In response to his request, the

IRS sent him several booklets which only confused him further. He continued calling for an explanation and continued to receive more pamphlets until he had a huge pile of them. And, despite the reams of paper he had received, the man still had no answer to his rather simple question. Have you had any better luck in obtaining adequate assistance from Federal agencies in understanding their regulations?

Answer. In answer to your second question, I believe greatest satisfaction for my needs was met by visiting with agencies on a one-on-one face-to-face basis. For this reason I appreciate the agencies involved making themselves available at conventions or special meetings. One of our greatest problems has been with the agency administering B.O.R. funds. In Iowa it is the Iowa Conservation Commission operating under federal guides. Another is E.P.A. and I'm pleased to hear you have been instrumental in placing limitations on how frequently requirements can be raised.

PREPARED STATEMENT OF CLARENCE C. PERRY

I am the Henry County engineer from Mt. Pleasant, Iowa, and the past president of the Iowa County Engineers Association. I am substituting for Milt Johnson who has asked me to convey his regrets that he is unable to attend this hearing. The Iowa County Engineers Association appreciates the opportunity to testify today. Henry County, Iowa, is a rural county in southeast Iowa and has a population of 18,000. We are engaged in the maintenance and construction of 750 miles of roadway and some 200 bridges. Quite often our highway projects involve Federal aid funds. Along with the funds come a myriad of regulations and paper work.

An imaginary Federal aid project might begin with an opportunity for public hearing, next the holding of the public hearing, and then a request for location and design study approval. When 4(f) or public lands are involved, an environmental impact statement must be filed. An archaeological study is made and on projects involving bridges a 404 permit from the Corps of Engineers must be received. A noise pollution study must be made and an A-95 clearance must be given by OPP. Having met all Federal requirements a series of approvals must be granted by State agencies. After receiving all clearances necessary a county is ready to begin the process of acquiring right of way. Federal law requires that land to be purchased must have an appraisal, negotiations, and final payment made by different individuals. This places a burden on the engineering staff in a small county.

Finally after right of way is acquired, the project is prepared for a bid letting. Davis-Bacon is now put into effect and the prevailing wage rate in an area is made the minimum wage rate on a construction project. From start to finish this project takes a minimum of 3 years or as many as 7 years to complete in a small county.

I can't criticize all the Federal requirements because many are important. I think in the time of double-digit inflation it is also important to have some way to speed up the process. A problem I have experienced is a difference in interpretation of Federal law from one district to another in the same Federal agency. Also I think more consideration should be given to the recommendations of local people rather than bogging down a project with the bureaucratic process by someone far removed from the scene.

However pessimistic my comments may seem I do see improvements in the Federal process over the past few years. Mr. Chairman, I think you and Senator Dole should be complimented on your desires to streamline the process. I appreciate your interest in regulatory reform and I hope my comments are of some benefit to you. Once again I would like to convey the appreciation of Iowa County Engineers for this opportunity to testify. Thank you.

QUESTIONS OF SENATOR CULVER AND RESPONSES OF MR. PERRY

Question. How much of the burden of compliance with Federal regulations would be relieved by allowing small businesses and municipalities more time—more time to file the forms, to spend the disbursements, to obtain the data? In other words, how much of this problem stems from what you must do to comply and how much stems from how long you are given to comply?

Answer. It requires a certain amount of time in highway work to develop a project. Our projects are developed in stages: (1) Preliminary survey, (2) design, (3) right of way acquisition, (4) bid letting, and (5) construction.

But when Federal Funds are available we are given very little time to obligate the funds.

Many projects could not be built without Federal assistance. Projects must be developed up to bid letting due to the short time given to obligate funds. This amounts to a great deal of expense just on the hope that your project may be federally funded. Needless to say, many of these projects are never funded.

In response to your question, it would definitely be an aid if more time were given to spend the disbursements by funding programs for longer periods of time than have existed in the past.

Question. During a session of the White House Conference on Small Business in Des Moines in April, one of the participants related a story about what happened when he asked the IRS to explain one of its rules. In response to his request, the IRS sent him several booklets which only confused him further. He continued calling for an explanation and continued to receive more pamphlets until he had a huge pile of them. And, despite the reams of paper he had received, the man still had no answer to his rather simple question. Have you had any better luck in obtaining adequate assistance from Federal agencies in understanding their regulations?

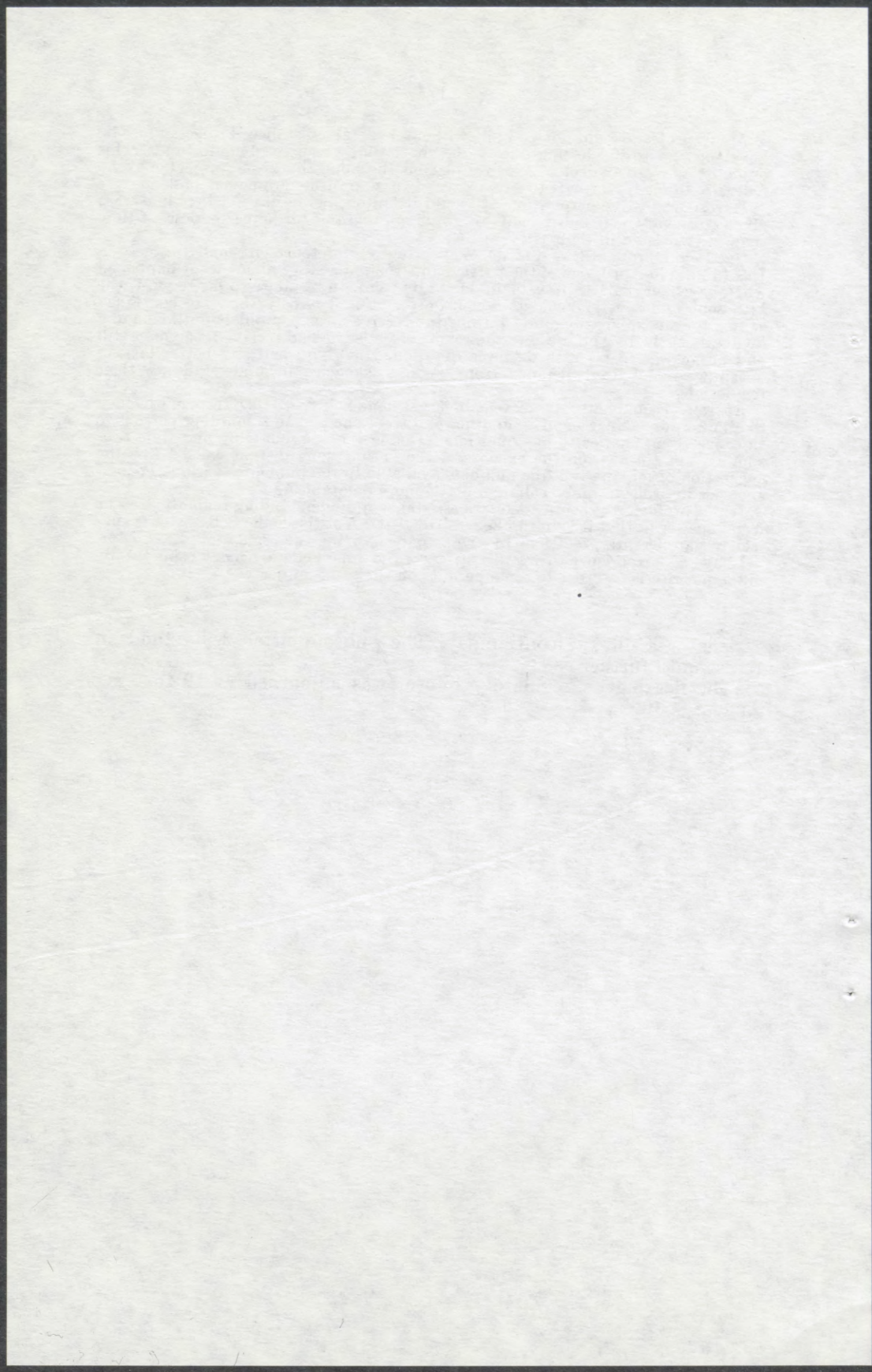
Answer. Usually after many telephone calls and being switched from one agency to another, one department to another and from one person to another person we can receive an answer to our questions. This is very discouraging and time consuming, not to mention the expense of the various long distant calls. I like the suggestion of making toll-free numbers available to the public by various Federal agencies in order to make calling a little more palatable.

It is a problem to secure adequate assistance in understanding regulations. The usual answer in that it is in the Federal Register. Yet the Federal Register is subject to various interpretations by the people enforcing the regulations.

I have had experience with two districts of the same Federal agency using totally different criteria in order to issue permits on the same subject.

Senator CULVER [continuing]. The subcommittee will stand in recess until further call.

[The hearing on regulatory reform was adjourned at 12:45 p.m., August 8, 1979.]



96TH CONGRESS
1ST SESSION

S. 299

To amend sections 551 and 553 of title 5, United States Code, to improve Federal rulemaking by creating procedures for regulatory issuance in two or more parts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 15), 1979

Mr. CULVER (for himself, Mr. NELSON, Mr. THURMOND, Mr. WALLOP, Mr. BAUCUS, Mr. NUNN, Mr. TOWER, Mr. PRESSLER, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend sections 551 and 553 of title 5, United States Code, to improve Federal rulemaking by creating procedures for regulatory issuance in two or more parts, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Regulatory Flexibility
4 Act".

5

FINDINGS AND PURPOSES

- 6 SEC. 2. (a) The Congress finds that—

1 (0) in numerous instances compliance with Fed-
2 eral regulatory and reporting requirements imposes in-
3 equitable demands and burdens on individuals, small
4 businesses, small organizations, and small governmen-
5 tal jurisdictions;

6 (2) regulatory efforts to protect the health, safety,
7 and economic welfare of the Nation have in many in-
8 stances imposed unnecessary and burdensome legal,
9 accounting, and consulting costs upon individuals,
10 small businesses, small organizations, and small gov-
11 ernmental jurisdictions and are adversely affecting
12 competition in the marketplace;

13 (3) the scope and volume of rules or regulations
14 have created high entry barriers in many industries
15 and have discouraged potential entrepreneurs from in-
16 troducing beneficial products and processes;

17 (4) the practice of treating all regulated individ-
18 uals, businesses, organizations, and governmental juris-
19 dictions as equivalent has led to inefficient use of regu-
20 latory agency resources, enormous enforcement prob-
21 lems, and, in some cases, actions inconsistent with the
22 legislative intent of health, safety, environmental, and
23 economic welfare legislation;

24 (5) in many instances reasonable alternative rules
25 or regulations could be adopted to minimize adverse

3

1 economic effects on individuals, businesses, organiza-
2 tions, and governmental jurisdictions subject to regula-
3 tion without significant loss of regulatory efficiency;

4 (6) Government information collection has not
5 adequately weighed the privacy rights of individuals
6 and enterprises against the need of the Government for
7 information because the design of the regulatory proc-
8 ess has encouraged regulators to treat information as a
9 free good; and

10 (7) deep public dissatisfaction with the regulatory
11 process has stemmed in large part from a public per-
12 ception that burdensome rules or regulations fail to
13 correct key national problems.

14 (b) It is the purpose of this Act to establish as a princi-
15 ple of regulatory issuance that regulatory and informational
16 requirements fit the scale of the individuals, businesses, orga-
17 nizations, and governmental jurisdictions subject to a rule
18 and that fewer and simpler requirements be made of individ-
19 uals, small organizations, small businesses, and small govern-
20 mental jurisdictions. To achieve such principle, agencies are
21 empowered and encouraged to issue rules or regulations
22 which apply differently to different segments of the regulated
23 population and are required to solicit and consider alternative
24 regulatory proposals from the public prior to the adoption of
25 final rules.

1 AGENCY RULEMAKING REQUIREMENTS

2 SEC. 3. (a) Section 553(b) of title 5, United States
3 Code, is amended—

4 (1) by striking out the word “and” at the end of
5 paragraph (2);

6 (2) by striking out the period at the end of para-
7 graph (3) and inserting a semicolon; and

8 (3) by adding immediately after paragraph (3) the
9 following:

10 “(4) the goals and purpose of the proposed rule;

11 “(5) the estimated number of individuals, busi-
12 nesses, organizations, and governmental jurisdictions to
13 which the proposed rule would apply;

14 “(6) a statement that the agency seeks and shall
15 consider alternative proposals to the proposed rule
16 which would accomplish the goals and purposes of the
17 proposed rule while substantially reducing the adverse
18 economic impact of the rule on individuals, small busi-
19 nesses, small organizations, and small governmental ju-
20 risdictions affected by the rule through—

21 “(A) the establishment of differing compli-
22 ance or reporting requirements that take into ac-
23 count the amount of resources available to indi-
24 viduals, businesses, organizations, and govern-
25 mental jurisdictions;

1 “(B) an exemption from coverage of the pro-
2 posed rule, or any part thereof, for such individ-
3 uals, businesses, organizations, and governmental
4 jurisdictions whose activities are of a nature
5 which makes the inclusion of such individuals,
6 businesses, organizations, and governmental juris-
7 dictions of minimal value to the realization of the
8 goals and purposes of the proposed rule;

9 “(C) the clarification, consolidation, or sim-
10 plification of requirements of the proposed rule; or

11 “(D) other suitable means, including perform-
12 ance standards and differing timetables for compli-
13 ance for such individuals, businesses, organiza-
14 tions, and governmental jurisdictions; and

15 “(7) with regard to any reporting or recordkeep-
16 ing requirement which the agency anticipates requiring
17 of ten or more members of the public pursuant to the
18 proposed rule—

19 “(A) a statement of the purpose of the re-
20 quirement, its form, its length, and the type of
21 professional skills necessary for its completion;

22 “(B) an estimate of the number of persons
23 who would be required to submit or maintain re-
24 ports or records;

6

1 “(C) a statement of each proposed use of the
2 information required to be recorded;

3 “(D) a statement of the method to be used to
4 store such information, the length of time such in-
5 formation would be maintained, and the identity
6 of the persons who would have access to such in-
7 formation; and

8 “(E) an estimate of the average amount of
9 time necessary for each person to comply with the
10 requirement.”.

11 (b) Section 553(c) of such title is amended to read as
12 follows:

13 “(c) After notice required by this section, the agency
14 shall give interested persons an opportunity to participate in
15 rule making through submission of alternative proposals,
16 written data, views, or arguments with or without opportuni-
17 ty for oral presentation. After consideration of all relevant
18 matter presented, the agency shall incorporate in the rule
19 adopted a concise general statement of its basis and purpose.
20 In addition, the agency shall publish a description of any al-
21 ternative proposals to the proposed rule which were consid-
22 ered and a statement of the reasons for adopting the final rule
23 rather than any alternative proposals which would have had
24 a lesser adverse economic impact on individuals, small busi-
25 nesses, small organizations, or small governmental jurisdic-

1 tions. When rules are required by statute to be made on the
2 record after opportunity for an agency hearing, sections 556
3 and 557 of this title apply instead of this subsection.”.

4 (c) Section 553 of such title is amended by adding at the
5 end thereof the following new subsection:

6 “(f) For the purposes of this section, the term—

7 “(1) ‘individual’ does not include any individual
8 who is affected by a rule primarily in his capacity as
9 an officer or employee of a business, organization, or
10 governmental jurisdiction;

11 “(2) ‘small business’ has the same meaning as the
12 term ‘small business concern’ in section 3 of the Small
13 Business Act (15 U.S.C. 632), and includes such addi-
14 tional businesses as the agency shall establish by rule;

15 “(3) ‘small organization’ includes unincorporated
16 businesses, sheltered workshops, not-for-profit enter-
17 prises which are not dominant in their fields, and such
18 other groups or enterprises as the agency shall estab-
19 lish by rule;

20 “(4) ‘small governmental jurisdiction’ includes—

21 “(A) governments of cities, counties, towns,
22 villages, school districts, water districts, or special
23 assessment districts, with a population of less
24 than one hundred thousand; and

7

8

12

13

A Q

9

1 (b) In selecting and evaluating rules or regulations, the
2 agency shall consider factors such as—

3 (1) the continued need for the rule or regulation;

4 (2) the type and number of complaints or sugges-
5 tions received concerning the rule or regulation;

6 (3) the burdens imposed on persons directly or in-
7 directly affected by the rule or regulation, especially
8 the burdens placed on individuals, small businesses,
9 small organizations, and small governmental jurisdic-
10 tions;

11 (4) the need to simplify or clarify language of the
12 rule or regulation;

13 (5) the need to eliminate overlapping and duplica-
14 tive rules or regulations;

15 (6) the need to resolve conflicts between the rules
16 or regulations of the agency and the rules, regulations,
17 or laws administered by other agencies; and

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

22 (c) Each year, each agency shall publish in the Federal
23 Register a list of rules or regulations which it expects to
24 issue during the following twelve months and a list of rules or
25 regulations to be reviewed during the following twelve

10

.months. Such publication shall be accompanied by a brief description of the rule or regulation, the need for such rule or regulation, and the legal basis for such rule or regulation.

ADDITIONAL PREPARED STATEMENTS

STATEMENT OF EULA BINGHAM

I appreciate this opportunity to describe the ways in which the Occupational Safety and Health Administration has improved the regulatory process to make it more sensitive to the particular concerns of small business.

As Assistant Secretary of Labor for Occupational Safety and Health it has been my earnest endeavor for the past thirty months to make the regulatory process attuned to the special needs of small business employers. Congress has mandated that we "assure so far as possible every working man and woman in the Nation safe and healthful working conditions." Without the active cooperation of the 3.3 million small business employers ^{1/} and their 11.4 million employees who are afforded protection under the Occupational Safety and Health

^{1/} Defined here as an employer who employs 10 or fewer workers.

Act, OSHA would face an impossible task. Were we to try to realize our mandate through enforcement alone, we would find our resources even more seriously strained than they are now. At present there are approximately 1,550 Federal and 1,100 State occupational safety and health inspectors to protect more than 63 million workers in some 4.2 million workplaces. We must create and sustain a climate of awareness and of willing cooperation among employers and workers alike in order to realize the necessary goal of voluntary compliance. We must help, not just police. The active cooperation in this process of small business employers is essential.

OSHA welcomes the initiative this Subcommittee has taken in examining how best to minimize the regulatory burden on small businesses while maximizing the achievement of statutory objectives. Our agency in the past few years has undertaken a number of policies and procedures which have been designed to help small business employers provide a safe and healthful workplace as efficiently and effectively as possible.

Concern about recordkeeping requirements and so-called "nuisance" fines has prompted the agency to adjust its rules with particular attention to the special concerns of small business.

OSHA has reduced and simplified its recordkeeping and reporting requirements for all employers. A single, basic OSHA reporting form, the "Log and Summary of Occupational Injuries and Illnesses," has replaced 3 separate forms which were formerly required. This has reduced the required number of entries by 75 percent. For small business employers, the burden has been reduced still further. OSHA has exempted employers with 10 or fewer workers from virtually all general recordkeeping requirements. Only a few of these employers--less than 2 percent of the 3.3 million establishments of this size--are required to maintain a log of injuries for the annual Bureau of Labor Statistics survey. We note that the Federal Commission on Paperwork estimated that through changes in reporting requirements and other paperwork reform, OSHA saved businesses more than \$100 million a year, money which was thus available for more productive purposes.

In an effort to eliminate so-called "nuisance" fines, OSHA has increased the use of the de minimis classification and has eliminated penalties for non-serious violations when those penalties amount to less than \$50. A proposed fine can be reduced by as much as 30 percent on evidence of good faith on the part of an employer, and as much as 10 percent on the basis of a firm's record or past history. For small businesses OSHA provides special consideration. A proposed fine may be reduced still further, by as much as 40 percent, in consideration of the size of small establishments.

In addition to rules tailored to the particular needs of small establishments, OSHA has given precedence to small businesses in two recent major initiatives designed to build a base for awareness and voluntary abatement of workplace hazards.

In 1978 OSHA instituted a New Directions grant program to assist labor unions, employer associations, educational institutions and other non-profit organizations in developing capability as centers of education in occupational safety

and health for workers and employers. At the outset OSHA established as a primary criterion in evaluating applications for these grants the ability to serve small business. Consequently many of the organizations and universities funded under the New Directions program are now serving workers and employers in small business enterprises. This important educational program is scheduled to be expanded by more than one-third in FY 1980.

On-site consultation is a service offered through OSHA to provide free advice and help to employers in identifying and correcting hazardous workplace conditions. Of benefit to firms of all sizes, on-site consultation has particular utility for small business employers who may lack resources to obtain the services of industrial hygienists and safety engineers. Consultants trained under OSHA guidelines are available in all fifty States to visit worksites at the request of employers and at no cost to them. OSHA requires

that consultants, in scheduling consultation visits, give priority to small businesses, especially those in high-hazard industries. OSHA has estimated that more than half of these took place in businesses with 20 or fewer workers. The agency is continuing this emphasis on service to small firms through an outreach program to inform small business employers in particular of the advantages of on-site consultation.

Let me mention an example of a small businessman in South Carolina who found on-site consultation not only useful but profitable. This employer was cited by OSHA for having electrical equipment situated dangerously close to a paint-spraying operation. Faced with the likelihood of considerable expense in correcting this hazard, he called in a State consultant who suggested a system to interlock the ventilation system with the spraying apparatus so that no painting could be done without adequate ventilation. This change reduced the possibility

of explosion and fire and at the same time met OSHA requirements in a cost-effective manner. Had the consultant been called in sooner, the citation itself could no doubt have been avoided.

Not only has OSHA in the past few years selectively adapted rules to different segments of the regulated population when such differential treatment appeared warranted and compatible with statutory objectives, but the agency has consistently sought to minimize the inconvenience of regulation for all segments of the regulated population when it was possible to do so without a loss in effectiveness. Let me outline two such efforts--first, the streamlining of regulations to make them less cumbersome and more effective, and second, the redirection of agency compliance resources to high-hazard workplaces.

Perhaps the most important step taken was the elimination last year of 928 standards that were not relevant to worker protection, and

were a burden for employers. Deletion of nitpicking and irrelevant provisions has helped workers and employers focus their efforts on serious workplace safety and health hazards.

In addition, all safety standards applicable to the construction industry were consolidated last February into a single volume, thereby making it easier for employers in that industry to utilize OSHA standards to improve workplace safety. This consolidation or "verticalization" of standards was undertaken at the request of both employers and workers in the construction industry. It is worth noting that more than 90 percent of the establishments which have construction contracts employ 25 or fewer workers.

The deletion of nearly a thousand--and consolidation of thousands more--ambiguous, redundant, and ineffective standards has marked only the beginning of OSHA's efforts to simplify and rationalize its standards -- to make them not a burden, but an aid to employers and workers in improving the safety and health of the workplace. Several months

ago OSHA proposed to revise 2,400 fire protection rules adopted en masse at the agency's inception, by boiling them down to a few pages of rational regulations which emphasize worker safety rather than property protection. The proposed revision also includes a performance approach to standards. For example, it will no longer matter at what height a fire extinguisher is hung, but only whether it is within easy reach when needed. A major objective of this change in regulation will be to allow employers greater flexibility in choosing compliance methods, while still maintaining maximum protection of workers.

Further streamlining of standards can be expected in the future. This summer OSHA will propose a revision in electrical safety standards which will vastly reduce the inconvenience of regulation for all employers. Small business employers in particular have found the National Electric Code, a massive regulation which is only referenced in OSHA's general industry standards, to be one of the most cumbersome of OSHA's requirements.

Under the forthcoming proposal, OSHA anticipates retaining essential portions of the code while eliminating many redundant, ambiguous and ineffective requirements which are unrelated to worker protection.

OSHA's effort in the past few years to inject common sense into its regulatory policy has meant, in addition to simplifying and rationalizing regulations, redirection of agency resources to the most serious health hazards and critical safety problems in the workplace. OSHA's worst-first policy requires that 95-percent of scheduled inspections in all covered establishments be conducted in high-hazard workplaces. The agency is also making a concerted effort to improve the quality of inspections by providing better training for compliance officers. Industrial hygienists who have been hired in the past two years will complete their on-the-job training this year and begin making independent inspections. These developments should contribute to more effective inspections by assisting OSHA inspectors in sifting through minor details to focus on serious hazards. At

present OSHA is inspecting less than one percent of the nation's 3.3 million small businesses, and most of these are construction and manufacturing firms which fall in industrial categories with high rates of workplace injuries. ^{2/}

In the past few years, OSHA has also determined that small businesses should have a strong voice in agency rulemaking and policy. The agency has expressly solicited counsel and advice in rulemaking from small business employers. For example, in developing a standard for cotton dust, OSHA held meetings in Mississippi and Texas, in part to permit input from small business employers. The agency has also held informal sessions with representatives of small business to discuss possible future standards before rules have been proposed. A representative of small business now sits on the National Advisory Committee on Occupational Safety and Health, a key source of advice to the agency. Most recently we have appointed a Special Assistant for Small Business, to act as liaison with the small business community to make sure

^{2/} Seventy-nine percent of small business worksites inspected by OSHA in the first six months of FY 1979 were in the construction or manufacturing industries.

that it has an opportunity to make its views and concerns known.

OSHA, then, has been issuing and implementing occupational safety and health regulations with small business employers firmly in mind. We have taken direct action to alleviate the paperwork burden, and in fact have virtually eliminated that burden. We have made adjustments in fines for non-serious violations on the basis of size of a business. And we have designed programs to assist small business in complying with our regulations--to provide education and advice to them on a priority basis.

It is of course necessary that small businesses be covered by safety and health regulations. A small manufacturer of kepone, for example, must be subject to OSHA regulation, however inconvenient it may be, if his employees are to be assured a safe and healthful workplace as the Occupational Safety and Health Act directs. Small grain elevators, as another example, pose a particular threat to their workers. In the first six months of fiscal

year 1979, 203 serious violations of OSHA standards were found in inspections of grain elevators having ten or fewer workers.

Employees in small businesses are entitled to the same degree of protection as workers in larger firms. A worker's life and well-being are worth no less simply because he or she works in a small business. We realize that in the past small business employers have had difficulty complying with OSHA regulations. But this problem is being resolved through more consultation, more advice and technical assistance, more education and training, and elimination of unnecessary rules and simplification of others.

While we have found that special consideration of the concerns of small business has helped us to realize our statutory objectives more effectively, we wish to stress the need for flexibility and discretion. OSHA should be able to determine which rules it will apply, which establishments it will inspect, and what enforcement policies it will follow to best assure the safety and health

of workers. The burden of regulation can, and should, be eased; but the regulating agency should be allowed sufficient latitude to do a good job.

It is our hope that this outline of OSHA's efforts to improve the regulation of workplace safety and health, with particular sensitivity to the concerns of small business employers, may prove helpful to the Subcommittee in its deliberations.

STATEMENT OF IAN D. LANOFF
ADMINISTRATOR
PENSION AND WELFARE BENEFIT PROGRAMS
LABOR-MANAGEMENT SERVICES ADMINISTRATION
U.S. DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee:

In response to your request, I am pleased to be able to review for you measures taken by Pension and Welfare Benefit Program (PWBP), Department of Labor, which we believe correspond to the overall objectives of legislation currently under consideration by this Subcommittee dealing with the Federal regulatory process.

The measures taken in administering ERISA illustrate that government regulations can be simplified while maintaining needed protections. Particularly relevant here, I believe, are the measures we have taken to reduce paperwork burdens for all subject to ERISA, and additional special provisions designed to assist small plans and those who administer them in performing their obligations required by the statute.

ERISA represents landmark legislation. For the first time, the Government committed itself to protecting workers and their families who participate in private pension and welfare plans that provide retirement, health and other important benefits. The law covers 500,000 pension plans with 39 million participants and \$300 billion in assets, as well as 1.3 million welfare plans with 45 million participants. For these plans, title I of ERISA establishes minimum standards in the areas of reporting and disclosure, participation and vesting, funding, and rules of conduct for plan fiduciaries.

Most of the public interest regarding ERISA regulation has been directed to the reporting and disclosure requirements. Consequently, my statement will deal primarily with this subject. I will, however, also discuss one aspect of the fiduciary provisions which has been a source of substantial concern to small businesses, that is, ERISA's prudence requirement.

ERISA's reporting and disclosure provisions require that a plan disclose to participants, and report to the Government, certain important information about the benefit entitlements of participants and the financial condition of the plan. The law requires a number of detailed reports to be furnished to participants, beneficiaries and the Government. These provisions have allowed the participant to understand the rules of the plan for qualifying for benefits and have opened the books to them on plan finances, actions which Congress concluded in enacting ERISA in 1974 are essential for plans of all sizes.

Recognizing, however, that it may not be desirable to apply the same reporting and disclosure requirements across the board to all plans, Congress in enacting ERISA, granted the Secretary certain discretion in applying these standards. Section 110 permits the Secretary to prescribe alternative methods of compliance by pension plans if it is determined that the existing requirements would be unduly burdensome, that the alternative method

is consistent with the law, provides adequate information and would not be adverse to plan participants and beneficiaries. In addition, under section 104(a)(3) the Secretary may exempt any welfare plan from all or part of the reporting and disclosure provisions if the Secretary determines the provisions are not appropriate for such plans.

This authority granted under ERISA to modify reporting and disclosure requirements provides significant latitude that has been used effectively to promulgate meaningful and sensible standards without sacrificing important participant protections. Evidence of our use of this flexibility is apparent with respect to recommendations by the Commission of Federal Paperwork. Actions taken by PWBP to reduce paperwork accomplished 10 of the Commission's 12 ERISA-related recommendations. (Attached hereto are those Commission recommendations effectively incorporated by PWBP.)

We have made major paperwork reductions, for example, by streamlining the Annual Report on which plans must submit financial information

to Government agencies each year. On June 22, 1979, the Department, the Internal Revenue Service and Pension Benefit Guaranty Corporation proposed Annual Report forms that provide a new filing cycle for plans with fewer than 100 participants. Under this proposal, a compliance-oriented report would be filed once every three years, and during the intervening two years, a brief registration form would be filed. The Department anticipates that the new filing system will result in a net reduction in plan reporting. In addition, we expect to receive information more useful in enforcing the law.

Also, on June 22, 1979, the Department proposed additional measures designed to reduce the information included in Annual Reports for plan years beginning in 1979. First, the Department has proposed to simplify the reporting of information regarding a plan's acquisition of insurance coverage that is required to be included in the Annual Report, and in the accompanying Schedule A. Second, the Department has proposed that plans now required to file insurance company financial

reports with the Annual Report would be required to file such financial reports only upon request by the Department.

The Annual Report, beginning with the 1978 Annual Report, has also been revised in terms of the Schedule B actuarial report filed by some plans. On January 26, 1979, regulations were issued which improve the report by providing a more accurate and uniform description of a plan's accrued liabilities and its ability to meet future obligations.

Effective for the 1977 plan year and subsequent plan years, the Department, on March 10, 1978, issued final regulations which implemented a series of revisions to eliminate the filing of unnecessary information in the Annual Report. These include:

- * eliminating the requirement that plan amendments be reported within 60 days;

- * substantially decreasing the reporting of certain investments and transactions on the Annual Report; and
- * implementing a single filing agreement under which the Annual Reports which previously had to be submitted separately to the Departments of Labor and Treasury would be filed only with the Department of Treasury, which in turn would provide DOL with a copy of the reports and the computerized information from them.

Exemptions from annual reporting requirements introduced in previous years for certain major classes of plans continue, of course, to be effective. For example, welfare plans with fewer than 100 participants are not required to file any reports prescribed in title I of ERISA if they are solely funded from general assets of the plan sponsors, by insurance contracts or by both methods of funding. This exemption is estimated to cover slightly

over one million plans. Moreover, of the approximately 450,000 pension and welfare plans with fewer than 100 participants which must file an Annual Report, they are not required to hire independent accountants to give opinions regarding these plans' financial reports.

Pension plans and welfare plans with more than 100 participants, where the former is funded solely by allocated insurance contracts of qualified insurance companies, and the latter is funded solely from general assets of the plan sponsors or insurance companies or both, are exempted from filing the financial statements required to be included in the Annual Report and from engaging an independent accountant.

Day care centers are relieved from all reporting and disclosure requirements, except the requirement to provide the Department with plan documents upon request. Plans maintained primarily to provide benefits for selected groups of management or highly compensated employees, so-called top hat plans, are exempt from all of ERISA's reporting and disclosure provisions if these plans meet certain other requirements.

The Department has also dramatically reduced paperwork by eliminating all future filings of the Plan Description (Form EBS-1). This six-page form, which contained information on plan provisions and which had to be filed when a plan initially became subject to ERISA, and at 10 year intervals, was eliminated by regulations issued on June 1, 1979. It was determined that the information provided by this report could be obtained from alternative sources. While it is slightly more difficult for the Department to collect certain data in this manner, nevertheless, it substantially eases burdens for pension and welfare plans.

Recently, the Department proposed regulations that would alleviate reporting and disclosure requirements for two more types of plans. On June 22, 1979, the Department and the Department of Health, Education and Welfare proposed regulations that coordinate the reporting, disclosure and claims procedure requirements involving qualified Health Maintenance Organizations. And, on June 12, 1979, the Department proposed regulations

that would relieve any apprenticeship or other training plan from all reporting and disclosure requirements under title I of ERISA if the plan files a brief notice with the Department and discloses the information contained in the notice to certain employees.

By regulation issued on April 3, 1979, the Summary Annual Report (SAR), which contains a summary of the plan's Annual Report and must be distributed to all participants and beneficiaries each year, was modified by prescribing a pre-designed format which permits the plan administrator to simply copy the appropriate information directly from the Annual Report. The pre-designed format contained in the regulation minimizes costs to plans and provides participants with an easily understandable picture of the plan's financial activity and condition, along with a statement on how additional information may be obtained.

In view of the above, we believe the Department has appropriately and successfully employed the flexibility provided by Congress in ERISA to relieve plans of burdensome paperwork requirements.

As indicated earlier, in addition to paperwork and reporting, the investment of plan assets under ERISA's prudence requirement has been a matter of significant public concern, especially for small businesses. Section 404 of ERISA provides that a plan fiduciary shall act with the care, skill and prudence appropriate when exercising responsibilities under the plan. Some small business representatives and pension plan investment advisers have expressed concern that uncertainty over the meaning of this standard has been causing pension plans not to invest in certain entities, such as small or new businesses.

On June 20, 1979, after analyzing extensive public comment, the Department of Labor issued a final regulation making clear that the prudence rule is not intended to discourage pension investments in small or new businesses. The regulation reflects the Department's view that an investment in a security issued by a small or new company, although riskier than an investment in a security issued by a "blue chip" company, may be appropriate for a plan when assessed in light of the plan's entire portfolio.

The Small Business Administration, in fact, in a letter to the Department, dated May 10, 1978, commenting on the proposed regulation regarding the prudence requirement stated:

"We think that this proposed rule, if promulgated as published, will provide an environment in which pension plans and their fidiciaries can provide investment funds to a broader spectrum of companies, including companies which are considered small business."

I believe the measures we have taken to equitably administer the "prudence rule" illustrates how, when flexibility is incorporated into the regulatory process, the agency, where appropriate, is able to meet the needs of the many parties affected by Government regulation. This is also true of our efforts in reducing paperwork discussed earlier. It is a positive side of government regulation which is often overlooked.

The measures taken by PWBP lend, in my view, evidentiary support to the testimony of Peter J. Petkas on behalf of the Administration that agencies be provided the flexibility to adopt regulatory alternatives to the extent the application of such flexibility does not interfere

with statutory mandates. One must be cautious, however, not to impose upon the agencies, under the guise of flexibility, obligations inconsistent with their statutory mandate. To do so may subject agencies to greater administrative costs or other restrictions that impair the development of needed regulations.

The task of improving government regulatory practices is an important endeavor, and I am glad to provide whatever assistance I can in this effort.

This concludes my statement. I would be pleased to provide any additional information that you might find helpful.

RECOMMENDATIONS OF THE COMMISSION ON FEDERAL PAPERWORKImplemented by DOL action

Recommendation #1 - ERISA Section 104(a)(1)(D) should be amended to require that notices of amendment(s) to pension plans may be filed in connection with the annual report rather than additional EBS-1's which presently are required within sixty days of a plan change.

Recommendation #3 - Employers should be required to provide simplified statements of accrued benefits and vesting to employees in lieu of the complex financial statements presently required.

Recommendation #8 - To eliminate duplicative information on the Form EBS-1 and Forms 5300 or 5301 requested from pension plan sponsors, the Department of Labor and IRS should come to an agreement to have one agency collect information and forward it to the other agency on a reimbursable basis.

Recommendation #9 - The Commissioner of Internal Revenue and the Secretary of Labor should come to agreement on a single filing date for the 5500 series. Statutory requirements for filing of the Form 5500 should be modified, if necessary, to provide for a single filing date.

Recommendation #10 - The Secretary of Labor and the Commissioner of Internal Revenue should jointly re-examine filing date requirements for all pension plan information and institute changes to assure that as much information as possible is submitted on the same date.

Recommendation #12 - The Commission endorses and encourages the agreement of understanding reached by the DOL and IRS to answer questions arising out of their dual jurisdiction and recommends regular review of the adequacy of the existing arrangements.

Recommendation #13 - The Department of Labor should work with the Commission on Federal Paperwork to consider the least burdensome method of collecting insurance commission information.

Recommendation #14 - Congress and the Secretary of Labor should work with the Commission on Federal Paperwork to consider alternatives to achieving the purpose of the current three percent reporting requirement of ERISA in a

less burdensome manner.

Position Paper R2 - CFP to explore with the Secretary of Labor the possibility of providing for simplified ERISA recordkeeping based on an "elapsed time" method for plans with fewer than 100 participants.

Not Implemented

Recommendation #2 - ERISA Section 104(a)(1)(C) should be amended to eliminate the requirement that a five-year summary plan description be filed with the Department of Labor.

Recommendation #11 - The Department of Labor and the Internal Revenue Service should permit the use of appropriate computer generation and interface techniques for report printing and filings, in lieu of filing Form 5500.

COMMENTS ON S. 299

AMERICAN COUNCIL ON EDUCATION
ONE DUPONT CIRCLE
WASHINGTON, D. C. 20036

SEP 27 1979

DIVISION OF GOVERNMENTAL RELATIONS
(202) 833-4736

September 24, 1979

SEP 26 3 33 PM '79

The Honorable John C. Culver
Chairman, Subcommittee on Administrative
Practice and Procedure
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the American Council on Education, an association of over 1,600 colleges, universities, and organizations in higher education, and the associations listed below, we would like to express support for the concept embraced in S. 299, the Regulatory Flexibility Act, which would reduce the impact of federal regulatory reporting requirements on small businesses and other organizations. We strongly urge you to include all colleges and universities within the coverage of the proposed statute.

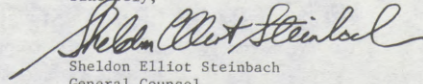
Over the past several years, colleges and universities have begun to experience the same extensive recordkeeping and reporting requirements that are faced by small businesses and local governments. Higher education has been compelled to respond and comply with a host of federal agencies including but not limited to HEW, VA, OSHA, IRS, DOL, EPA, etc. at a time when resources are being stretched to the limit by the increased costs of meeting federally mandated social programs. While we acknowledge that many federal regulations and information gathering requirements are necessary to protect our employees and students and the environment, many of the federal rules when applied to colleges and universities constitute an enormous waste of time, money, and energy and do nothing to advance the public good.

Granting federal agencies the right to issue different reporting and recordkeeping requirements for varying size businesses and organizations, will enable those agencies to make the requirements of their regulations compatible with the unique aspects of particular operations. One of the principal concerns of higher education is that federal regulations issued are incompatible with and not tailored to the particular characteristics of colleges and universities. Institutions of higher education are not asking to be exempted from the protective laws prevailing in society as a whole. We are, however, in concert with the thrust of S. 299 asking to have the unreasonable burdens of federal regulations lifted from upon us.

The colleges and universities of this country are nonprofit entities whose resources are being dissipated by having to comply with unnecessary regulations. We urge that S. 299 be amended to include colleges and universities so that institutions of higher education may apply their full resources to meeting the true goals of higher education: teaching, research, and community service, without having their limited funds squandered by meeting complex and inappropriate requirements that do not generate any real productive improvement in the quality of life.

We would be pleased to meet with you and your staff to explore our thoughts with you in greater detail.

Sincerely,



Sheldon Elliot Steinbach
General Counsel

The following associations wish to join in this statement:

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
Association of American Universities
Association of Catholic Colleges and Universities
Association of Jesuit Colleges and Universities
Council for the Advancement of Small Colleges
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges

cc: Members of the Judiciary Committee



Independent

BANKERS ASSOCIATION OF AMERICA

WASHINGTON
OFFICE

EXECUTIVE DIRECTOR: HOWARD BELL • SECRETARY: GENE MOORE • ASSOCIATE DIRECTOR: BILL McDONALD

JOEL C. McCONNELL JR., LEGISLATIVE COUNSEL - PHONE: 265-1921 AREA CODE 202
SUITE 203, 1625 MASSACHUSETTS AVENUE N.W., WASHINGTON, D.C. 20036

March 20, 1979

The Honorable John C. Culver
United States Senate
334 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Culver:

The Independent Bankers Association of America applauds your introduction of S.299, the Regulatory Flexibility Act, and urges the Senate to act promptly in disposing of this much needed and timely legislation.

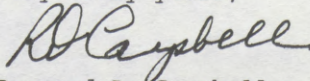
It is unfortunate that the House of Representatives failed to pass the similar bill which last year unanimously passed the Senate. Our Association intends to actively pursue consideration of this issue during the coming Congress.

The Independent Bankers Association of America is a non-profit trade association which represents over 7400 primarily small rural community banks. More than 80 percent of our banks have assets of \$25 million or less, and more than 90 percent are located in towns under 30,000 population. These smaller financial institutions are the most affected by the myriad federal, state and local regulations which have been promulgated in recent years and, like many other small businesses throughout the country, face possible extinction unless something is done to curb the increasing amount of paperwork.

Your legislation appears to be a significant step in alleviating this problem, and you have our wholehearted support in this goal. Our reading of the bill indicates that small financial institutions could be included under the provisions of the Act, but we would urge that a specific amendment be included to indicate that small financial institutions are covered by the provisions of the Act. We have included a draft amendment to accomplish this purpose. If this is not possible, we would certainly hope that report language could be included to indicate Congressional intent to include small financial institutions.

Once again, you are to be congratulated for your efforts, and we look forward to working with you during the coming Congress to see that this very deserving piece of legislation is enacted into law.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Campbell", written in a cursive style.

Raymond D. Campbell
President

Enclosure

JCM:ks

AMENDMENT

On page 7, under Section 3(c)(2), on line 14, after the word "rule", add the phrase, "and shall also include small financial institutions;".

The National
Small Business
Association Building
1604 K Street, N.W.
Washington, D.C. 20006
Telephone
(202) 296-7400



December 5, 1979

The Honorable John Culver
Chairman, Subcommittee on Administrative
Practice and Procedure
Senate Committee on the Judiciary
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Small Business Legislative Council we commend the excellent work that you and your subcommittee staff have been doing in the area of regulatory reform and particularly regulatory flexibility.

As you know, the House companion measure to S. 299, H.R. 4660, has been reported by the House Small Business Committee with 247 cosponsors. This measure is currently pending before the House Judiciary Committee. We have urged Chairman Danielson to report H.R. 4660 as a separate measure rather than to include in it the over-all package on regulatory reform. We urge you to take similar action with regard to S. 299. While we certainly support efforts to have regulatory flexibility included in any regulatory reform measure, we feel very strongly that since you personally achieved passage of this legislation in the 95th Congress and since the House companion measure has so much support at this time, small business would greatly benefit by expeditious handling and passage of these measures without waiting for final passage of regulatory reform legislation.

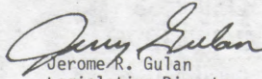
I am informed that a "two-track" approach on this measure is now supported by the Office of Advocacy of the U.S. Small Business Administration, the U.S. Chamber of Commerce, the National Federation of Independent Business, the House Small Business Committee and virtually all long-standing supporters of the concept of two-tiered regulatory flexibility.

*Of the National Small Business Association

Realistically, Senator, passage of S. 299 in the 96th Congress may depend completely on the action of you, your committee and the Senate. We believe it absolutely essential that a separate bill come to the House from the Senate to spur action by the House.

Should you see fit to report S. 299 as a separate measure, we assure you that the Small Business Legislative Council will support your move to the fullest. If you have any questions concerning this suggestion, we would be pleased to sit down and discuss it with you or your staff.

Sincerely,


Jerome R. Gulán
Legislative Director

JG/mm

The National
Small Business
Association Building
1604 K Street, N.W.
Washington, D.C. 20006
Telephone
(202) 296-7400



MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

American Association of Nurserymen
American Textile Machinery Association
Association of Diesel Specialists
Association of Independent Corrugated Converters
Association of Physical Fitness Centers
Association of Steel Distributors, Inc.
Automotive Warehouse Distributors Association, Inc.
Building Service Contractors Association International
Business Advertising Council
Christian Booksellers Association
Direct Selling Association
Eastern Manufacturers and Importers Exhibit, Inc.
Electronic Representatives Association
Furniture Rental Association of America
Independent Bakers Association
Independent Business Association of Michigan
Independent Business Association of Washington
Independent Sewing Machine Dealers of America, Inc.
Institute of Certified Business Counselors
International Franchise Association
Local and Short Haul Carriers National Conference
Machinery Dealers National Association
Manufacturers Agents National Association
Marking Device Association
Minnesota Association of Commerce and Industry Small Business Council
Menswear Retailers of America
Narrow Fabrics Institute, Inc.
National Association for Child Development & Education
National Association of Brick Distributors
National Association of Catalog Showroom Merchandisers
National Association of Floor Covering Distributors
National Association of Home Builders
National Association of Plastic Fabricators
National Association of Plastics Distributors, Inc.
National Association of Plumbing-Heating-Cooling Contractors
National Association of Realtors®

National Association of Retail Druggists
National Association of Trade and Technical Schools
National Beer Wholesalers' Association of America, Inc.
National Building Material Distributors Association
National Burglar & Fire Alarm Association
National Candy Wholesalers Association, Inc.
National Coffee Service Association
National Concrete Masonry Association
National Electrical Contractors Association, Inc.
National Family Business Council
National Fastener Distributors Association
National Home Furnishings Association
National Home Improvement Council
National Independent Dairies Association
National Independent Meat Packers Association
National Insulation Contractors Association
National Office Machine Dealers Association, Inc.
National Office Products Association
National Paper Box Association
National Paper Trade Association, Inc.
National Parking Association
National Patent Council, Inc.
National Pest Control Association
National Precast Concrete Association
National Shoe Retailers Association
National Small Business Association
National Society of Public Accountants
National Tire Dealers & Retreaders Association, Inc.
National Tool, Die & Precision Machining Association
National Tour Brokers Association
National Wine Distributors Association
Power and Communication Contractors Association
Printing Industries of America, Inc.
Sheet Metal & Air Conditioning Contractors' National Association
The Roller Skating Rink Operators Association
Web Sling Association, Inc.
Wine & Spirits Wholesalers of America

SUMMARY OF H.R. 4660
The Small Enterprise Regulatory Improvement Bill,
as ordered favorably reported

The purpose of H.R. 4660 is to authorize and encourage Federal agencies to lessen the regulatory burden on small businesses and small organizations through the use of flexible regulations and reporting requirements.

Agencies would do this in three steps:

1. Once every six months agencies would issue agendas of forthcoming rules which are expected to substantially affect small business, transmitting such agendas to the SBA and notifying small businesses or their representatives by means other than the Federal Register. Under Executive Order 12044, the agencies are already required to publish such six month agendas and to use media other than the Federal Register to notify parties affected by regulations. H.R. 4660 would simply mandate that rules substantially affecting small business be specially noted.
2. Prior to publishing proposed rules substantially affecting small business, agencies would have to consider whether alternative "differing and less burdensome" rules for small business should be adopted. The rule of thumb here would be whether such alternative rules would be "lawful, feasible, and desirable." Alternative rules might include lighter reporting and recordkeeping burdens for small business, different timetables for compliance, the use of performance standards, etc.
3. When the consideration of alternative rules for small business indicates such rules would be appropriate, the agencies may, after standard notice and comment, finalize such rules.

The bill also mandates that the agencies review their existing rules over a ten year period, with an eye toward reducing the burden on small businesses. This requirement is designed to coincide with the ten year review requirement in the major regulatory reform bills now before Congress, differing again, only in the requirement that small business impact be specially considered. Burdensome rules should be eliminated or modified.

The bill defines "small business" according to SBA definitions, but allows the agencies to use their own definition if they go through standard notice and comment procedures. "Small organizations" are also defined.

QUESTIONS AND ANSWERS ON S. 299
THE REGULATORY FLEXIBILITY
ACT

(1) Question: Would allowing the use of differing compliance and reporting requirements for smaller entities result in a lowering of safety, health or social commitment standards? For example, would small companies be able to continue pollution practices which large companies were required to stop?

Answer: S. 299 need not result in any lowering of standards. Under the bill, agencies would still be required to accomplish the goals and purposes of underlying statutes through their rulemaking. Exemption would be permissible only when requiring uniform compliance would be of minimal value to the realization of the goals and purposes of the proposed rule. Nothing in the bill alters any substantive standard contained in any statute.

(2) Question: Why should small businesses and organizations be treated differently than large businesses by Federal regulations?

Answer: The fundamental principle underlying S. 299 is that uniform treatment of all private entities regardless of size does not always result in just or equal treatment. In fact, all the evidence received in hearings over the past three years clearly established that uniform regulations have a disproportionate adverse effect on small concerns. Many social costs created by businesses do indeed vary by business size, and thus, are a variable cost to society. Moreover, smaller entities have higher per unit capital and management costs, higher costs of obtaining capital, and a lesser ability to pass on costs of regulations to the public than large businesses. Flexible regulations actually stand a better chance of achieving statutory goals, and of doing so without unnecessarily harming our smaller institutions.

(3) Question: Will S. 299 not have the effect of slowing down the administrative process?

Answer: S. 299 will require agencies to take greater care in deciding whether and how to regulate. Investment of a little extra time may be necessary. Clearly such additional time and effort is worthwhile, however, if better rules and regulations are the result. S. 299 has been modified from earlier versions in 1977 and 1978 to minimize the administrative burden on agencies to comply with the bill.

(4) Question: President Carter signed a memorandum in January of this year directing agencies to adopt flexible regulations where possible. Why is S. 299 needed?

Answer: President Carter's memorandum is a strong indication of the Administration's full support of the concept of regulatory flexibility. It is a useful first step. However, the memorandum affects only Executive branch agencies and does not bind future Presidents. Enacting S. 299 as permanent legislation makes it clear Congress and the President place a high priority on this matter and would require all agencies to comply with the bill's provisions.

When Washington Regulates the Market, Should It Give Small Business a Break?

The government's steps to soften the impact of health and safety regulations on small business are widely supported, but some are worried they may go too far.

BY JAMES W. SINGER

It's almost like motherhood, country and apple pie.

It's the theory of flexible regulation: tailoring government rules to fit small business.

The concept has wide support and only a few opponents. After all, it's hard to argue with the idea of giving the little guy a break; even some of the big guys support the concept.

Nevertheless, some of the largest corporations in the country are having second thoughts about the idea. Regulatory flexibility, they fear, could mean that they would have to bear the brunt of government regulation.

Other groups are concerned about how the concept might be applied. Organized labor and consumer groups worry that the health and safety laws might be compromised. And the Carter Administration fears that regulatory flexibility might complicate and prolong the government's rule-making process.

But some steps have already been taken to soften the impact of regulations on small business:

- The Agriculture Department, pending a final regulation, has temporarily waived inspection and weighing requirements for grain elevator operators who export less than 15,000 metric tons a year.
- The Labor Department and the Internal Revenue Service are allowing companies whose pension and welfare plans have fewer than 100 participants to file simplified annual reports with the government.
- The Environmental Protection Agency (EPA) has proposed that its new hazardous waste regulations not apply to firms that generate less than 100 kilograms of such waste each month. That would exclude more than 500,000 companies.
- Congress has adopted temporary legis-

lation that generally would exempt an estimated 1.5 million companies with 10 or fewer employees from routine safety inspections by the Occupational Safety and Health Administration (OSHA).

These are examples—and there are more—of a new approach to regulation that small business has been seeking, with some success.

Bills requiring all agencies to consider "flexible" or "multi-tier" regulation are pending before Congress, and President Carter on Nov. 16 directed executive agencies to adopt that approach.

The theory of flexible regulation is simple: uniform rules often impose disproportionate burdens on small businesses, reducing their competitiveness; the government, therefore, should try to ease the impact of its regulations on these firms.

"What may be necessary or tolerable in regulating large corporations is often a disaster when applied to the small firm," said Sen. John C. Culver, D-Iowa, a principal proponent of regulatory flexibility.

The National Federation of Independent Business and the National Small Business Association have taken the lead in working for adoption of the pending legislation. They have the support of Milton D. Stewart, chief counsel for advocacy of the Small Business Administration (SBA).

The Chamber of Commerce of the United States, which includes both large and small businesses among its members, supports the legislation, as does the National Association of Manufacturers, which generally speaks for larger companies.

But the Business Roundtable, an influential voice for the nation's largest corporations, has come out against flexible regulation, saying that the question of whether regulation is a burden to

business should be addressed generally, without making distinctions based on the size of companies.

Some supporters of regulation wonder how to provide more flexibility without punching huge holes in the laws the regulations are supposed to implement.

Proponents of regulatory flexibility suggest four basic ways to tailor a regulation to small business: exempt companies on the basis of size, give smaller ones more time to comply, allow smaller companies to decide how to comply and reduce their paperwork burden. But they insist that none of these should be done if they would undermine the purpose of the regulation.

Organized labor and some consumers are skeptical. "At this point, we have some serious reservations about the proposal because we're not really sure what it means," said Laurence Gold, the AFL-CIO's special counsel. "We're afraid it may be used to allow small firms to cut back on the health, safety and wage protections of their employees."

MAKING DISTINCTIONS

Few deny that small businesses often are hit the hardest by government regulations, but there are no studies to document the point.

"We really don't have much hard evidence," said Milton A. Kafoglis, former senior economist for the Council on Wage and Price Stability. "Most of our evidence is anecdotal."

The SBA's files are filled with such anecdotal testimony. Take Nationwide Homes Inc., for example. The Martinsville (Va.) manufacturer of prefabricated homes, with about 300 employees and annual sales of about \$20 million, is a small business by most definitions (or it was until it was bought out last May by Insilco Corp., one of the country's largest corporations).

Nationwide sells its product to wholesalers and retailers, most of which obtain loans from the government. Nationwide, therefore, must fill out federal forms for 60 to 75 per cent of its sales.

In the past year, the company says, it filled out 899 such forms, at a cost of 8,437 worker hours, or \$64,958. Not very much, perhaps, by the standards of a large company, but significant for one the size of Nationwide.

The advocates of a more flexible approach warn that regulatory uniformity can favor large companies over small ones. The large firms can spread the costs of compliance over a larger volume of production, say Kafoglis, who is now a professor at Emory University, and Robert E. Berney, the SBA's chief economist who is on leave from Washington State University.

By contrast, they say, small companies are more likely to have to raise their prices steeply, and that means a decrease in their ability to compete.

"It appears that the regulatory approaches that have been adopted tend to increase the size of the firm that can survive, thus leading to greater business concentration and possibly driving otherwise efficient firms out of business," Kafoglis testified last May before the House Small Business Subcommittee on Small Business Problems.

He and Berney also say that large companies, with their staffs of lawyers, accountants and other experts, are generally better equipped than small firms to absorb the regulatory burden. It's not unusual, they say, for the top management of a small company to spend time coping with regulatory requirements instead of doing more productive work.

TWO BILLS

The legislation before Congress is intended to force regulators to take these distinctions between large and small businesses into account.

Its proponents say that Carter's Nov. 16 memorandum directing executive agencies to try to give small businesses a break is a helpful first step but doesn't obviate the need for legislation. For one thing, it doesn't apply to the independent regulatory agencies; for another, it could be rescinded by Carter or his successors. In addition, small businesses could not take agencies to court for failing to comply with a presidential memorandum.

Like the Carter directive, the two bills pending in Congress would require agencies to analyze the impact of regulations on small businesses at an early stage in the rule-making process.

The Senate Judiciary Subcommittee on Administrative Practice and Procedure, which Culver heads, approved its version of a regulatory flexibility bill (S 299) on Dec. 19, along with an omnibus regulatory reform measure (S 2147) that includes similar provisions on flexibility.

The House Judiciary Subcommittee on Administrative Law and Government Relations has not acted on a companion bill to Culver's (HR 1971) or on a separate measure (HR 4660) that originated in the House Small Business Committee last summer.

Both sets of bills share the same purpose and similar provisions, and both are supported by the National Federation of Independent Business, according to Frank S. Swain, the federation's legislative counsel.

The measures require government agencies, before proposing rules with a "substantial" impact on small businesses, to review whether they could accomplish their purposes with less stringent requirements for small companies.

Different requirements should be adopted for small companies if they are "lawful, feasible and desirable": agencies that do not adopt different requirements must explain their reasons when they publish their final rules. They would also be required over a 10-year period to review all their rules and to make them less burdensome to small companies where possible.

The "lawful, feasible and desirable" stipulation is a key one. In its report on its bill on Oct. 17, the House Small Business Committee stressed that "no agency should compromise critical matters of public health, safety or economic welfare through the issuance of non-uniform rules."

The Administration, despite its support of regulatory flexibility legislation, prefers that it be adopted as part of the omnibus regulatory reform bill.

Administration officials fear that Congress might decide to accept the popular flexibility measure and fail to act on the broader bill.

The National Federation of Independent Business is less concerned. "We don't oppose having regulatory flexibility as part of a package," said Swain, "as long as it moves. Our goal is to get regulatory flexibility as quickly as possible. If the package stalls, we'll push for a separate bill."

JUDICIAL REVIEW

The Administration is also worried that a new law might provide an independent basis for overturning regulations in the courts.

"We believe an agency's handling of its regulatory flexibility obligations should be one factor to be considered in a court



An OSHA safety and health officer puts an air sampling device on a worker.

review of a regulation, but should not alone be the basis for overturning a rule," said Peter J. Petkas, director of the interagency Regulatory Council. "The whole theory of our regulatory reform proposal is to improve management of the regulatory process rather than to expand the opportunities for litigation."

While their differences with Capitol Hill have narrowed considerably, Administration officials said, they still believe the bills could be interpreted as a basis for challenging a rule. "They would provide a series of grounds—such as whether an analysis was adequate and whether various procedural steps had been followed—to throw out a rule

without regard to whether it was a good rule," an official said.

Congressional aides disagree, and add that they share the Administration's desire to prevent this from happening.

The concern about judicial review was a principal reason that regulatory flexibility provisions were not included last spring in the Administration's omnibus reform proposal. Officials say they were the subject of a spirited debate and strong opposition from many agencies on the ground that the provisions would require them "to jump through more hoops" and could not be drafted to discourage independent legal challenges.

Since the omnibus bill was prepared, however, the Administration decided to support regulatory flexibility. Regulatory Council chairman Douglas M. Costle, Office of Management and Budget director James T. McIntyre Jr. and the SBA's Stewart worked for the presidential memorandum calling on the agencies to try to ease the regulatory burden on small businesses.

"We believe this directive will... help demonstrate additional progress prior to the White House Conference on Small Business in January," they wrote to Carter in October. "This memorandum will provide you with an opportunity to be out in front on the issue and influence the direction legislation ultimately takes."

AGENCY EFFORTS

Even before that memorandum was issued, some agencies had already begun to take steps to reduce the regulatory load on small businesses.

EPA has been one of the most responsive agencies. Frans J. Kok, director of EPA's economic analysis division, said it has issued 48 regulations that either do not apply to smaller firms or apply in less stringent ways.

The agency recently issued a regulation for electroplaters, for example, that exempts firms that discharge less than 10,000 gallons of waste water a day. And a proposed regulation for leather tanners would cut the effluent monitoring responsibilities for small firms in half.

All of EPA's rules are being reviewed, Kok said, to determine whether they should be revised to lessen the impact on small firms. Julia A. Parzen, economic assistance program coordinator, said the agency increasingly has tried to assist small businesses affected by EPA regulations by helping them obtain loans to comply.

Parzen said the agency also is preparing more specific policy guides to help its officials assess the impact of rules on small firms and is revising its regulatory agenda to specify alternatives that would

give small businesses special treatment.

The Securities and Exchange Commission (SEC) has also been active in recent years. In the spring of 1978, the SEC held hearings around the country to find out what problems small businesses had with the commission. It got an earful, and last year set up a special office to deal with the problems.

"What we've done has been to give small businesses more options to raise money," said Mary E. T. Beach, associate director of the SEC's division of corporation finance. "We don't pretend that we can solve all their financial problems, but we want to do all we can while at the same time protecting investors."

The SEC raised from \$500,000 to \$1.5 million the amount of securities a company can sell under special procedures for small firms and adopted simplified procedures for companies making initial public offerings of securities up to \$5 million. It also has proposed a new way for firms to sell up to \$2 million in securities during a six-month period.

The Administration is also preparing legislation intended to make it easier and cheaper for small firms to raise money. The legislation would exempt small businesses from SEC disclosure requirements when they sell securities in large denominations to sophisticated investors.

On another front, the SEC has begun to study whether it should make the same rules for all companies that report to it. "We've always had the same rules for large and small companies on the theory that investors had to be informed, but now we're not so sure that makes sense," Beach said.

Companies with \$1 million in assets and 500 shareholders are required to report to the commission, with about 10,000 currently reporting. "A lot of

people have suggested that we raise the threshold to \$2.5 million in assets, and that could be the first thing we do," Beach said.

Kay Klatt, who is in charge of OSHA's small business efforts, said the agency cannot have different standards for small firms because their workers are entitled to the same protection as employees of large companies. What OSHA is doing, she said, is trying to give small firms as many options as possible to comply with its regulations.

When OSHA adopted its lead standard, Klatt said, industries were given up to 10 years to comply, and the number of small firms in an industry was one of the factors dictating the time for compliance. For its fire protection and electrical safety proposals, she said, OSHA is considering whether to set performance rather than design standards so that firms would have the opportunity to comply in their own way.

OSHA has also redirected its enforcement activities to concentrate on large companies. It has exempted firms with 10 or fewer employees from record-keeping requirements and financed on-site consultation to help employers—particularly small ones—identify and eliminate workplace hazards. (See *NJ*, 1/5/80, p. 31.)

Spurred by the threat of trucking deregulation, the Interstate Commerce Commission has taken steps to help small firms compete for interstate business. In June 1977, the ICC set up a small business assistance office. Last year, it narrowed the circumstances under which carriers can oppose licensing applications and made it easier for firms to become licensed to engage in the interstate trucking business.

Minna S. Golden, small business coordinator for the Food and Drug Administration, said the FDA has received complaints from small businesses about its proposed rules on food industry manufacturing practices and patient information inserts for prescription drugs.

The agency may consider alternative provisions in response to those complaints, Golden said, but if it amends the proposals, the rules probably would be applied to firms of all sizes.

Independent druggists say the proposed rule requiring pharmacists to store and dispense the inserts would be prohibitively expensive. "We'll be taking a hard look at the economic impact of the proposal on the small, independent druggists," Golden said.

All these individual agency actions, combined with Carter's memorandum in Congress, add up to a big effort to give the little guy a break. □

How Big is Small?

Small business. The words seem to paint a picture of a struggling one-man firm, a small family company, a Mom and Pop retail establishment.

Not always. Under the various definitions adopted by the Small Business Administration (SBA), a small business can have up to 1,500 employees and have annual receipts as high as \$22 million.

The definitions vary according to the kind of business, and can include assets and net worth as well as revenues among the guidelines.

In general, however, the SBA considers a business to be small if it is independently owned and operated and if it does not dominate its field.

On the Record

ERISA Simplification from the Viewpoint of Small Business

This article was prepared for the ALI-ABA Invitational Conference on ERISA Simplification, held on April 20-21, 1979, in Washington, D.C.

From the viewpoint of small business, the Employee Retirement Income Security Act of 1974 ("ERISA") introduced overwhelming complexity to an already intricate array of tax and other regulations dealing with qualified pension and profit-sharing plans. During the four and one-half years since the adoption of ERISA, some of the complications in the reporting and disclosure filings, such as EBS-1 Forms, Annual Reports, and Summary Annual Reports, have been reduced. In addition, much of the newness of ERISA has worn off and practically all of the initial requirements to amend plans and establish new procedures have been met. However, too much unnecessary complexity and too many regulations that many managers of small businesses and, in some cases, their advisors cannot understand still exist, so that the overall desirability of a qualified retirement plan for most small businesses is substantially less than it was in pre-ERISA days.

Most small companies that adopt qualified retirement plans select defined contribution plans which are profit-sharing plans, pension plans, or both. Defined contribution plans offer more flexibility at less cost than do defined benefit plans with their seeming complexity, requirements for actuarial support, and fairly rigid funding obligations. Also, owner-employees of small companies look upon the funds going into a plan as the deferred portion of their compensation, and the maintenance of individual accounts for each participant in the plan is consistent with this attitude. In addition, owner-employees usually desire to maintain a high degree

of control over both the investment of the trust fund and the decisions regarding plan administration, including the time and method of distributing plan benefits. All of these feelings can be satisfied in a more understandable way in the context of a defined contribution plan. Because of their high concentration in small businesses, this paper will deal only with defined contribution plans maintained by a single employer.

ERISA'S IMPACT

It is fair to say that in most small plans, the majority of which involve less than 25 participants, ERISA has not resulted in any significant benefit to participants. Although ERISA's coverage requirements bring employees into plans a few months quicker, vesting is often slower than during the pre-ERISA period when many plans provided some vesting after only one year of participation. Many ERISA-amended plans selected slower vesting schedules within the seemingly safe harbor limits of so-called "4-40" vesting to offset the effects of the quicker participation requirements, thus leaving the participants in approximately the same position as they were before ERISA. These ERISA rules, however, have resulted in increased paperwork and costs due to the greater number of employees being brought into the plan, who, in many instances when termination occurs after only a few years of employment, receive little or no benefits, other than the privilege of having been considered a participant.

In another area affected by ERISA, the section 415 limitation on the dollar amount that can be allocated to a participant's account has also resulted in many lower-paid participants actually receiving

On the Record

Continued from page 8

the terminated participant who, for personal reasons, should have funds set aside for his retirement.

SOME ERISA PROBLEMS

Some changes introduced by ERISA, however, are especially burdensome to small businesses.

Participation and Vesting

The lack of symmetry in the rules governing participation and vesting makes them incomprehensible to the average office manager or small business owner. Prior to ERISA, when a greater degree of coordination existed, vesting could be based on years of participation that were easily determinable. Also, in most pre-ERISA plans, if an employee had become a participant, he was also eligible for an allocation, which has not been true to the same extent after ERISA. This asymmetry has resulted in numerous mistakes by plan administrators when determining eligibility and rights to allocations and especially when calculating a terminated participant's vested interest involving "years of service," a term that does not mean what the words generally mean.

Although the terminated participant may occasionally be entitled to an extra year of vesting because of the ERISA designed method of computing years of service, the added complexity of handling participant terminations, a matter that previously had been relatively simple, has increased costs and the need for professional guidance, and has led to some deterioration in employee morale because of occasional misunderstandings about the amount of a participant's vested interest. Also, in describing an employee's rights under the plan, it is difficult — often impossible — for the manager of a small business to understand that an employee may have become eligible to enter the plan as a participant, but not be eligible to receive an allocation of the company's contribution, and that upon his termination of employment, the calculation of his vested interest is not determined merely by examining the company's employment records.

Break-in-Service

The break-in-service rules are not only mystifying to most small business managers but are also troublesome to many of their advisors. It is difficult to explain that a participant who has terminated employment, even if he has left permanently for Alaska, has not incurred a break in service, and that the nonvested portion of his account must be held until the end of the following plan year — which can be almost 2 years from the date of termination — before it can be forfeited and allocated to the remaining participants. Consequently, many errors have been made in forfeiture allocations. Even corporate trustees, which generally rely on the information furnished by the plan sponsor or plan committee as to the amount of eligible compensation, the time for allocating forfeitures, and so forth, make mistakes, since many small trust departments are not much more sophisticated in dealing with qualified plans than the managers of small businesses. Mistakes in determining the time when a nonvested account is to be forfeited can be a serious problem in a pension plan, because errors in computing the required annual contribution can result.

Even more confusing, of course, is the situation of the terminated participant who is reemployed prior to the time he has incurred a break in service. Although the avowed purpose of the break-in-service rules is to keep a participant from losing his retirement benefits when he has only "temporarily" left his job, they have complicated the determination of the status of the participant's account upon his return, especially because of the necessity to employ the algebraic formula under Treas. Regs. §1.411(a)-7(d)(5)(i) to separately compute the vesting of the pretermination nonvested portion of the participant's account. In fact, managers hesitate to reemploy a former participant because of the computation problems involved. Not surprising, therefore, is the growing number of reemployed participants whose pretermination accounts are being vested on a separate basis under the required algebraic formula method. Presently, most plan advisors are not quite sure how the formula works, since as yet there has not been much experience in handling the account of the terminated participant who had been reemployed prior to the time he incurred a break in service.

Some of these problems could, of course, be eliminated by holding the vested account of all terminated participants until a break in service occurs, but to do this is often awkward and increases the expense of the plan, especially when there is a corporate trustee. Still, many plan advisors have encouraged clients to set aside the vested portion of all terminated participants' accounts until a break in service has occurred in order to avoid the complexities involved in the event of reemployment. The reemployment of a terminated participant has also caused problems in other situations — when the plan sponsor does not timely readmit the employee to the plan, and when, upon subsequent termination of employment, the computation of the participant's vested interest requires the assistance of professional help.

Hours of Service

The necessity for using in the plan language the broad definition of hours of service, presumably as the only way to protect against some discriminatory exclusion of service, has not resulted in any benefit to participants of small plans. Small plans never faced the need or the desire to exclude any service from coverage because the cost savings resulting from any exclusion are too slight to be worth the difficulties involved. The requirement that the definition of hours of service in the ERISA regulations must be employed merely clutters the plan with generally incomprehensible language. In some Districts, the IRS has taken the position that if the plan definition of hours of service is not phrased exactly as the regulations read, then notwithstanding that the plan language is equally broad, the plan will not be qualified. Since it is not difficult to cover all service in relatively simple language and since the possibility of abuse is so slight, the IRS is not justified in forcing the language of the ERISA regulations upon definitions of hours of service in plan statements.

Year of Service

The definition of year of service is conceptually difficult for many small business employees and results in a considerable number of mistakes in computing the vested interest of a terminated participant. Even when the participant had never received

an allocation, it may be necessary to document his termination and to be concerned about whether or not he had any rights growing out of his participation.

Fiduciary Requirements

The Title I provisions regarding fiduciary responsibilities, restrictions, and liabilities have gone beyond what is necessary in most small plans to insure the protection of participants. For example, in most cases the bonding requirement merely increases the costs of operation. Other prerequisites, such as the formal claims procedures and the fiduciary liability provisions, have merely served in many instances to turn what was initially a welcome fringe benefit into a cause of friction between the employee and his company. The significant growth of ERISA litigation seems, at least insofar as small plans are concerned, contrary to the philosophy behind the ERISA legislation.

The fiduciary provisions have, in most cases, led to greater documentation of the plan's fiduciary and administrative activities. Although this documentation is undoubtedly good policy up to a point, it has added somewhat to the cost of administration and serves as a negative factor in the decision whether to keep an old plan or adopt a new one.

Investment Diversification

With regard to plan investments, the fiduciary requirement of section 404(a)(1)(C) to diversify the investment of the plan's trust fund "so as to minimize the risk of incurring large losses" may prevent a few investment abuses. The gain may be more than offset by an overly conservative investment philosophy and a reduction in the rate of return on plan investments. Here is a good example of a consumer protection philosophy that seems to have influenced ERISA and much other current legislation — specific restrictions to prevent every possibility of abuse without regard to their cost implications or negative impact.

One problem with the diversification requirement, aside from the fact that it creates fiduciary liabilities of potentially great magnitude and still unknown extent, is that it does not encourage wise investments, especially in a period of high inflation. For example, some authorities have stated that the

diversification requirement, when added to the "prudent man" rule, really demands a fixed-dollar "liquidity." Therefore, some advisors, in order to protect themselves and the plan fiduciaries from criticism and liability, are recommending fixed-dollar investments that are readily redeemable without risk of dollar loss, like certificates of deposit and short-term notes, as the only safe investments. Although these investments may indeed be fine from the standpoint of avoiding liability, and possibly even from an investment standpoint, they may erode values substantially in a period when inflation rises at a higher rate than the earnings on most such investments. Although the general equity market has not performed well over the last decade, equities and other nondollar investments such as art, stamps, diamonds, and gold may serve as better inflation hedges.

Hence, while it is neither prudent nor possible to predict what will be best for participants from an investment standpoint, the statutory diversification requirement may, ironically, result in larger real losses through inflation than would be the case if those responsible for plan investments — most of whom, as plan participants, have a strong personal interest in achieving maximum investment performance — were not constrained by the prudent man rule and the diversification provisions. It would, indeed, seem better in today's uncertain investment climate to allow, especially small plans, greater investment discretion than do the present "cloudy" interpretations of ERISA's diversification requirements.

Prohibited Transactions

The detailed restrictions contained in the prohibited transaction rules of section 406 present another example of the consumer protection philosophy of ERISA which, because of its inflexibility, has, for many small plans, resulted in the prohibition of transactions that offered beneficial investment opportunities. The investment authority in most small plans is in the hands of those persons who have a substantial stake in the trust fund and, therefore, have a strong interest in maximizing its investment performance. The absolute prohibition of transactions between interested parties and the plan, even if consummated on an arm's-length basis and on

favorable terms to the plan, is more than is necessary to prevent abuses. In many small businesses, the plan fiduciaries have both the opportunity and the incentive to enter into transactions that are favorable to the plan, i.e., a lease between the plan sponsor and the trust or a sale of property from a participant to the trust. The prohibited transaction rules, by preventing all "self-dealing" even when beneficial to the plan, has eliminated many valuable investment opportunities. The pre-ERISA rules governing transactions between interested parties and the plan that required arm's-length terms and the use of fair market values were, without question, of greater benefit to the plan and its participants than the present overly restrictive requirements.

Joint and Survivor Annuities

The joint and survivor annuity requirement of section 205 is, for small plans, an extension of ERISA's participant protection philosophy to the point of near absurdity, and has resulted in the elimination of the annuity option in most small plans to avoid the joint and survivor annuity complications.

The detailed provisions in ERISA Reg. §401(a)-11 regarding the information to be given to participants prior to certain dates before retirement, as well as other requirements, have made the annuity option too difficult and expensive for the small business to provide. In a large company with fulltime people handling the company's qualified plan, these requirements may not be too burdensome; in small company plans, the same requirements, in addition to the cost factor, present a serious problem of compliance, since management's normal concerns about an employee's retirement may not occur early enough to meet the dates set forth in the regulations. Generally, most small companies are simply not willing to spend the time and money to establish the required procedures and develop the required information for presentation to the participant in order for him to make his intelligent decision when, in fact, there is only a small chance that the annuity will actually be selected.

It would make much more sense either to abolish the joint and survivor rules altogether, especially for defined contribution plans, or to reverse the sta-

tutory presumption by providing that the participant must make a positive election to choose a joint and survivor annuity and that, unless requested by a participant, the annuity information need not be provided. Then some obligation would be placed on the participant to develop his own information or request the plan administrator to do it. As a practical matter, it would not be expensive for the participant to gather the necessary facts if he, in fact, is in the market to buy an annuity product. On the other hand, if the company prepares this information irrespective of whether there is anyone who desires an annuity, it will incur legal, accounting, and employee costs that will be difficult to justify.

SOME GENERAL CONSIDERATIONS

The general intricacy of the break-in-service rules and the other ERISA complexities force the small company to employ considerable outside help, such as the highly specialized plan consultant, and thereby cause higher plan administration costs. General plan administration is so difficult that it is not practical for the plan sponsor to employ its regular accounting and legal advisors, many of whom in smaller communities lack expertise in the area of qualified plans to do the allocations, make the necessary reports, and attend to the other details. The consequence is greater specialization in the qualified plan industry, with many general practitioners, both lawyers and accountants, professionally incompetent to work effectively in this area. Since many small businesses either cannot afford or do not easily come in contact with specialized plan consultants — a problem that is probably not felt in large communities or by large companies with specially trained in-house personnel — many plans are being terminated or are not in compliance.

Equally important are the reactions of the thousands of attorneys and accountants who have been involved to a small degree in advising clients with qualified plans. Their lack of understanding of the qualified plan area, brought about by the complexity of ERISA, has influenced many of them, in desperation and possibly in self-defense, to advise their clients that qualified plans are no longer worthwhile employee fringe benefits because they

are too complicated to administer and are not cost effective. It may also be another way of saying, "If we can't understand it, it must not be very workable."

Therefore, small businesses located in areas without an adequate number of qualified plan specialists have been even more severely affected by the complications of ERISA, since the managers will continue to rely on their regular professional advisors, in whom they have confidence and trust, when considering whether to adopt or terminate a qualified plan. Even the insurance representatives and mutual fund salesmen who, prior to ERISA, were responsible for many small businesses adopting plans that could be managed with a minimum of legal and accounting costs are no longer able or willing to handle fully all the necessary plan administration. Although some insurance and mutual fund representatives are still encouraging the adoption of new plans, it is difficult for them to be effective because of their own relatively low level of expertise in the field.

If, by some logic, it was beneficial to have a higher degree of specialization and sophistication of practice in the field of qualified plans, then ERISA has indeed accomplished that purpose, since it has been informally estimated that less than 5 per cent of all the attorneys and accountants in the country today have an adequate working knowledge in the area. Many professionals have stated that they "got out of the area altogether since it was impossible to keep up with it," and, as a practical matter, unless a professional represented at least from 10 to 15 plans at the time of the adoption of ERISA, there was simply no way, from an economic standpoint, for him to reeducate himself so as to handle his clients' plans and continue to represent them on a sound professional basis.

CONCLUSION

Small plans, especially those with under 25 participants, should be covered under different rules than larger plans, not only because the administrative costs per participant in small plans is higher, but because the potential for abuse in small plans is not as great on account of the closer personal relationship between the plan administrators and the nonshareholder employees and the self-interest of

the shareholder-employees who generally have a large interest in the trust fund. Without significantly diminishing the ERISA protections, a great deal of simplification and lowering of costs can be obtained by eliminating many restrictions. Thus, encouragement for the adoption and continuation of small plans will be generated.

BIBLIOGRAPHY

See Lindquist, *Simplification for Business Taxpayers: ERISA — Was All This Really Necessary*, prepared for the ALI-ABA Conference on Federal Income Tax Simplification, held on January 4-7, 1978, at Warrenton, Virginia; *UnERISifying the Small Plan*, Report of the Association of Private

Pension and Welfare Plans; United States Department of Labor report, *Estimates of Administrative Costs of Small Plans (1974-1976) Based on Surveys Conducted by Price Waterhouse and Company*, May 1, 1978, BNA PENSION REP. No. 190 at R-2 (May 29, 1978); Report of the Business Roundtable Task Force on Government Regulations surveying ERISA costs during 1977, issued March 14, 1979; Interview with Michael F. Klein, Jr., of Price, Waterhouse, and Company, the responsible partner for the Labor Department study of post-ERISA administration costs, reported in PENSIONS AND INVESTMENTS (July 3, 1978), and in *News Release* by The Association of Private Pension and Welfare Plans, June 14, 1978.

Helping Small Businesses With Their Pension Plans

U.S. Department of Labor
Labor-Management Services Administration

SMALL BUSINESS ACTION

HELPING SMALL BUSINESSES WITH THEIR PENSION PLANS

The Department of Labor has made special efforts, in administering the Employee Retirement Income Security Act (ERISA), to assist small businesses in maintaining pension and welfare plans for their employees and in complying with the law's requirements. ERISA was enacted in 1974 by Congress to protect workers and their families from inequities in private employee benefit plans.

A General Accounting Office report of April 1979 found that at least 410,000 additional employees participate in small pension plans since ERISA's enactment, and about 197,000 small plan participants have greater vested benefits as a result of the law. The GAO report noted that, in spite of the much criticized 18% termination rate of small plans since ERISA's inception, the law's participation and vesting standards have actually increased protection to workers in small businesses.

Most significantly, the Department of Labor's Pension and Welfare Benefit Programs has assisted small plans (plans with fewer than 100 participants) in three areas to strengthen the protection they offer their 11 million participants. The three major action areas discussed here are small business paperwork cuts, investment encouragements, and technical assistance.

PAPERWORK CUTS

The Department estimates that through various actions taken since ERISA's enactment, it has reduced the volume of paper required in report preparation by more than 24,000 pages and 5 million work hours, for an estimated savings exceeding \$11 million. And it is continually taking new steps to trim reporting and disclosure burdens without sacrificing worker protections provided by ERISA.

The following actions taken by the Department have helped to accomplish these objectives.

- Proposed Once-Every-Three Year Filing Cycle. The annual financial report will be filed by small plans only once every three years with a brief registration form to be filed during the other two years, the Department proposes. Important enforcement information would still be received by the Department, while small plan administrators would be relieved of preparation time and costs.
- Squeezed Three Into One. The annual report is now filed only with the Internal Revenue Service, no longer with the Department of Labor. A separate report to the Pension Benefit Guaranty Corporation has also been consolidated into the report to IRS.
- Eliminated and Reduced Information on Annual Report. The Department has limited the reporting of plan securities transactions on the annual report, reduced reporting of plan investments, eliminated reporting of assets both at book value and at fair market value, eliminated statement of buying and selling prices for each category of assets, and reduced reporting of plan assets held in a bank's common or collective trust or in an insurance company's pooled separate account.
- Streamlined Summary Annual Report. A new format for the summary annual report has made it quicker, cheaper, and easier for plan administrators to prepare while being easier for workers to understand and use.
- Eliminated Plan Description Form. The six-page plan description form, which was required to be filed when a plan came under ERISA and at ten-year intervals, was eliminated in June, 1979.

- Abolished Amendment Reporting. Plan amendments no longer must be reported within 60 days. Instead, they will be noted only on the financial report when filed.
- Shortened and Improved Actuarial Report. The actuarial report, filed by some pension plans with their annual reports, has been modified. It requires only information that will provide an accurate picture of the funding and liability adequacies of a plan. The Department is proposing that small plans file this report only every third year when they file their financial report.
- Shortened Small Plan Annual Report Form. A special short form was developed soon after ERISA's enactment for small plans to use in reporting their financial activities.
- Exempted Most Small Welfare Plans from ALL Reporting. Most welfare plans with fewer than 100 participants do not have to file any ERISA reports with government agencies.
- Exempted Small Plans from Accountant's Opinion. Those small plans which must file an annual report no longer must hire independent accountants to give opinions on the accuracy of their financial reports.

SMALL BUSINESS INVESTMENTS ENCOURAGED

Responding to concern from Congress and the small business community that ERISA's "prudent man" standard for investing plan money was discouraging investment in small or new business ventures, the Labor Department issued a proposed regulation on March 25, 1978. The proposal clarifies that investments in small or new businesses can definitely be appropriate and prudent within the total investment picture of a plan's assets. FORBES magazine, later in 1978, speculated that an upsurge in new investments in small businesses was probably due to ERISA's encouragement.

SMALL BUSINESSES ASSISTED

The Pension and Welfare Benefit Programs, which administers the law, has made its resources and expertise available for assistance to the small business community through several on-going services.

- Conducts Small Business Seminars. In cooperation with the Small Business Service Bureau, the Council of Better Business Bureaus, the U.S. Chamber of Commerce, and other organized groups, PWBP personnel have conducted workshops and presented programs to educate small businesses on their reporting and fiduciary duties under ERISA.
- Prepared Booklets and Audio-visual Aids. PWBP prepares and distributes booklets and audio-visual presentations to small businesses that request them, as well as to other organizations or individuals. For example, it prepared a Reporting and Disclosure Guide for Small Plans, an easy-to-use booklet charting a plan's reporting requirements by type of plan. A slide and video-tape program entitled "How to Fill Out the ERISA Annual Report for Small Plan Administrators" has been presented for several consecutive years in field and national offices and in public meetings.
- Established Speakers Bureau. PWBP maintains a roster of ERISA experts available to visit any organization that wants to know more about the pension law. More than 2,500 group meetings had been conducted by PWBP personnel by the end of 1978, many of them for small business groups.

ADDITIONAL SUBMISSIONS FOR THE RECORD

Title 3--The President

[3195-01]

Executive Order 12044

March 23, 1978

Improving Government Regulations

As President of the United States of America, I direct each Executive Agency to adopt procedures to improve existing and future regulations.

SECTION 1. *Policy.* Regulations shall be as simple and clear as possible. They shall achieve legislative goals effectively and efficiently. They shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments.

To achieve these objectives, regulations shall be developed through a process which ensures that:

- (a) the need for and purposes of the regulation are clearly established;
- (b) heads of agencies and policy officials exercise effective oversight;
- (c) opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;
- (d) meaningful alternatives are considered and analyzed before the regulation is issued; and
- (e) compliance costs, paperwork and other burdens on the public are minimized.

SEC. 2. *Reform of the Process for Developing Significant Regulations.* Agencies shall review and revise their procedures for developing regulations to be consistent with the policies of this Order and in a manner that minimizes paperwork.

Agencies' procedures should fit their own needs but, at a minimum, these procedures shall include the following:

- (a) *Semiannual Agenda of Regulations.* To give the public adequate notice, agencies shall publish at least semiannually an agenda of significant regulations under development or review. On the first Monday in October, each agency shall publish in the FEDERAL REGISTER a schedule showing the times during the coming fiscal year when the agency's semiannual agenda will be published. Supplements to the agenda may be published at other times during the year if necessary, but the semiannual agendas shall be as complete as possible. The head of each agency shall approve the agenda before it is published.

At a minimum, each published agenda shall describe the regulations being considered by the agency, the need for and the legal basis for the action being taken, and the status of regulations previously listed on the agenda.

Each item on the agenda shall also include the name and telephone number of a knowledgeable agency official and, if possible, state

FEDERAL REGISTER, VOL 43, NO. 52--FRIDAY, MARCH 24, 1978

THE FACILENT

whether or not a regulatory analysis will be required. The agenda shall also include existing regulations scheduled to be reviewed in accordance with Section 4 of this Order.

- (b) *Agency Head Oversight.* Before an agency proceeds to develop significant new regulations, the agency head shall have reviewed the issues to be considered, the alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation.

- (c) *Opportunity for Public Participation.* Agencies shall give the public an early and meaningful opportunity to participate in the development of agency regulations. They shall consider a variety of ways to provide this opportunity, including (1) publishing an advance notice of proposed rulemaking; (2) holding open conferences or public hearings; (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly.

Agencies shall give the public at least 60 days to comment on proposed significant regulations. In the few instances where agencies determine this is not possible, the regulation shall be accompanied by a brief statement of the reasons for a shorter time period.

- (d) *Approval of Significant Regulations.* The head of each agency, or the designated official with statutory responsibility, shall approve significant regulations before they are published for public comment in the FEDERAL REGISTER. At a minimum, this official should determine that:

- (1) the proposed regulation is needed;
- (2) the direct and indirect effects of the regulation have been adequately considered;
- (3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;
- (4) public comments have been considered and an adequate response has been prepared;
- (5) the regulation is written in plain English and is understandable to those who must comply with it;
- (6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;
- (7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and
- (8) a plan for evaluating the regulation after its issuance has been developed.

- (e) *Criteria for Determining Significant Regulations.* Agencies shall establish criteria for identifying which regulations are significant. Agencies shall consider among other things: (1) the type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulation including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies. Regulations that do not meet an agency's criteria for determining significance shall be accompanied by a statement to that effect at the time the regulation is proposed.

SEC. 3. *Regulatory Analysis.* Some of the regulations identified as significant may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government. For these regulations, agencies shall prepare a regulatory analysis. Such an analysis shall involve a careful examination of alternative approaches early in the decision-making process.

The following requirements shall govern the preparation of regulatory analyses:

- (a) *Criteria.* Agency heads shall establish criteria for determining which regulations require regulatory analyses. The criteria established shall:
 - (1) ensure that regulatory analyses are performed for all regulations which will result in (a) an annual effect on the economy of \$100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions; and
 - (2) provide that in the agency head's discretion, regulatory analysis may be completed on any proposed regulation.
- (b) *Procedures.* Agency heads shall establish procedures for developing the regulatory analysis and obtaining public comment.
 - (1) Each regulatory analysis shall contain a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.
 - (2) Agencies shall include in their public notice of proposed rules an explanation of the regulatory approach that has been selected or is favored and a short description of the other alternatives considered. A statement of how the public may obtain a copy of the draft regulatory analysis shall also be included.
 - (3) Agencies shall prepare a final regulatory analysis to be made available when the final regulations are published.

Regulatory analyses shall not be required in rulemaking proceedings pending at the time this Order is issued if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

SEC. 4. *Review of Existing Regulations.* Agencies shall periodically review their existing regulations to determine whether they are achieving the policy goals of this Order. This review will follow the same procedural steps outlined for the development of new regulations.

In selecting regulations to be reviewed, agencies shall consider such criteria as:

- (a) the continued need for the regulation;
- (b) the type and number of complaints or suggestions received;
- (c) the burdens imposed on those directly or indirectly affected by the regulations;
- (d) the need to simplify or clarify language;
- (e) the need to eliminate overlapping and duplicative regulations; and
- (f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Agencies shall develop their selection criteria and a listing of possible regulations for initial review. The criteria and listing shall be published for comment as required in Section 5. Subsequently, regulations selected for review shall be included in the semiannual agency agendas.

SEC. 5. *Implementation.*

- (a) Each agency shall review its existing process for developing regulations and revise it as needed to comply with this Order. Within 60 days after the issuance of the Order, each agency shall prepare a draft report outlining (1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review. This report shall be published in the *FEDERAL REGISTER* for public comment. A copy of this report shall be sent to the Office of Management and Budget.
- (b) After receiving public comment, agencies shall submit their revised report to the Office of Management and Budget for approval before final publication in the *FEDERAL REGISTER*.
- (c) The Office of Management and Budget shall assure the effective implementation of this Order. OMB shall report at least semiannually to the President on the effectiveness of the Order and agency compliance with its provisions. By May 1, 1980, OMB shall recommend to the President whether or not there is a continued need for the Order and any further steps or actions necessary to achieve its purposes.

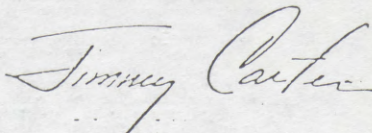
SEC. 6. *Coverage.*

- (a) As used in this Order, the term regulation means both rules and regulations issued by agencies including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.
- (b) This Order does not apply to:
 - (1) regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);
 - (2) regulations issued with respect to a military or foreign affairs function of the United States;
 - (3) matters related to agency management or personnel;
 - (4) regulations related to Federal Government procurement;
 - (5) regulations issued by the independent regulatory agencies; or
 - (6) regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the agency shall publish in the *FEDERAL REGISTER* a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of this Order. Such a statement shall include the name of the policy official responsible for this determination.

SEC. 7. This Order is intended to improve the quality of Executive Agency regulatory practices. It is not intended to create delay in the process

or provide new grounds for judicial review. Nothing in this Order shall be considered to supersede existing statutory obligations governing rulemaking.

Sec. 8. Unless extended, this Executive Order expires on June 30, 1980.



THE WHITE HOUSE,
March 23, 1978.

[LFR Doc. 78-3091 Filed 3-23-78; 12:58 pm]

SUMMARY AND ANALYSIS OF PUBLIC COMMENTS

The draft Executive order on Improving Government Regulations was published for public comment on November 18, 1977. It received an enthusiastic response from the public. Almost unanimously, comments urged action to improve the quality of Federal regulations. People were especially appreciative of the opportunity to comment on a draft Executive order. Letters were received from over 350 individuals and organizations offering many helpful suggestions for changes in the order, and the order has been revised accordingly.

Some respondents pointed out that a basic cause of regulatory problems is legislation that leads to over regulation and instances of overlapping and conflicting regulatory requirements. They, therefore, believe that the Executive order is not addressing the basic cause of the regulatory problem.

We agree that there is no single reform initiative that can address all of the problems created by the regulatory system. Legislative changes are an important part of regulatory reform and that is why President Carter has emphasized the need for legislative action in areas such as transportation regulation. However, many important administrative changes are also needed. This Executive order provides the framework for administrative reform.

The order contains both specific requirements, such as the publication of a semiannual agenda of regulations, and general policy guidance, such as the need to expand the opportunities for public comment. The order attempts to balance the need for clear instructions and common procedures with the flexibility agencies require to design their own procedures and avoid unnecessary delays and paperwork.

The responses to publication of the draft order have been very informative. The public is strongly encouraged to take advantage of the expanded opportunities for participation in the development of regulations afforded by this order. Public comment on the internal procedures of agencies will provide additional help to assure that the objectives of the order are effectively met. Agency reports on their procedures will be published in the *FEDERAL REGISTER* within the next 60 days.

In keeping with the spirit of the Executive order, a response to the major issues raised in the public comments on the draft order has been written in appreciation for the time and effort given by all who responded to our request for views on the order.

Major Issues Raised

Section 1. Policy

Applicability—The Policy section contains the President's overall objectives for improving Government regulations. Many respondents pointed out that these objectives are valid for all regulations issued by Federal agencies and suggested that the language of the draft order be strengthened to indicate the mandatory nature of this Policy statement. Therefore, the Policy section has been revised to make the policy statement mandatory for all regulations issued by Executive agencies. Not all regulations, however, are subject to the other sections of the order. Each section contains an explanation of which agency regulations are subject to its provisions.

Section 2. Reform of the process for developing significant regulations

Agenda

Publication of an Agenda—Many respondents favored publication of a semiannual agenda as a particularly good method of giving advance public

EDITORIAL NOTE: The President's remarks and statement of Mar. 23, 1978, on signing Executive Order 12044, and the text of his letter to the heads of independent regulatory agencies, dated Mar. 23, 1978, will be printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 12).

notice of agency activities. Some opposed the agenda on the grounds that it could delay agency action and make unreasonable demands on an agency. The agenda has been retained. The provision that allows an agency to publish supplements to the agenda when necessary will prevent undue delay. Also, the information required to be published in the agenda is only that information which can reasonably be expected to be known by the agency at the time the decision is made to proceed with developing a regulation. Therefore, publishing this information should not be an unreasonable demand on the agency and should provide a valuable service to the public.

Time of Publication—Many respondents noted that if all agencies publish semiannual agendas in the months of January and July, the public would have to study too much information at one time. Others pointed out that knowing when the agendas will be published would be very helpful. To accommodate these concerns, the order has been changed to allow the agendas to be published on a schedule determined by each agency, with that schedule submitted to the FEDERAL REGISTER for publication on the first Monday in October. Thus, as each agency begins its fiscal year, the public will be notified in one FEDERAL REGISTER as to when each agency's agenda will be published. This change will allow a staggered publication schedule, but at the same time, the public will have the dependability of being able to go to one issue of the FEDERAL REGISTER to find out when each agency will publish its agenda.

Time Covered by the Agenda—Several respondents were concerned that the agenda would cover only a six month period. It is the intention of the order that any anticipated significant new regulations will be included, even if the development of that regulation is more than six months in the future. The order has been clarified on this point.

Work Plan as a Separate Document—Many persons and organizations favored the work plan but wanted it to be made public at an early stage in the development process. Several agencies, on the other hand, pointed out that information required by the work plan was already being provided to agency officials by other means and that a new requirement for a separate document would create excessive and unnecessary paperwork.

The work plan as a separate document has been deleted. The information that was to be included in the work plan has been divided into two parts. Information on the problem being addressed and the legal basis for the action being taken has been added

to the items to be printed in the semiannual agenda. This change responds to requests for early disclosure of these items.

Agency Head Oversight—The remaining information that was to be included in the work plan will now be supplied to the head of an agency in a manner each agency feels is appropriate. The importance of the early awareness and involvement of the agency head in significant regulations is emphasized by this new separate subsection. Early awareness is essential to establish clear accountability for agency action. At the same time, the manner in which information on issues and alternatives is given to the agency head should be flexible, so that the agency can incorporate this requirement into their existing practices. For example, this flexibility will allow agencies to incorporate this information with both the regulatory analysis and an environmental impact statement if either or both are required. Agencies may choose to produce one combined document or they may choose to design separate documents.

Public Participation

Opportunity to Comment—Most of the respondents recommended that the public role in the preparation of agency regulations be greatly increased. A few had reservations as to the effect of increased public participation on the timeliness of publication. Some doubted that agency efforts to increase participation would be meaningful.

The most frequent comment received was a strong request for more time to comment on proposed regulations. Most of the respondents regard 60-90 days as the minimum time necessary for a public comment period. Many people pointed out that it takes two weeks for most organizations to receive the FEDERAL REGISTER and that a comment period of 30 days is not adequate.

The Executive order has, therefore, been amended to provide for a minimum 60-day comment period whenever possible. This extended comment period recognizes that individuals and organizations must often respond to proposals from more than one agency at one time. There is, however, provision for a waiver of the 60-day time limit in instances where specific deadlines must be met in order to avoid undue delay. In those instances, the agency will be required to publish an explanation of the need for a shorter comment period.

Methods To Increase Public Participation—Respondents repeatedly stressed the need for early public participation in the rulemaking process. Since many people believe that a pro-

posed rule is almost impossible to change once published, they want an opportunity to give their views at an early point in the development process.

Many specific ways to increase public participation in rulemaking were suggested. Suggestions included: distribution of issue papers; use of advance notices of proposed rulemaking; use of open conferences; distribution of regulatory analyses to organizations affected by agency regulations; direct notification of trade associations, labor unions, and consumer federations; meetings between the regulation project manager and the public; use of advisory committees or temporary work groups; announcement of proposed regulations in "popular" publications such as general circulation newspapers, newsletters and trade journals; greater consultation with State and local government personnel; and regional public hearings.

The order gives each agency flexibility in choosing the most effective method for increasing public participation in different agency actions. Rather than mandating a specific set of public participation steps, the Executive order encourages Federal agencies to provide early opportunities for public participation in rulemaking and offers some examples of what can be done.

Consideration of Public Comments—Several respondents expressed doubt that agencies take public comments seriously. The Executive order has been strengthened to emphasize the need for public comments to be considered and that a response to the public be prepared before significant agency regulations are approved.

OMB Circular A-85—With the order's emphasis on new and expanded opportunities for public comment, several respondents felt that OMB Circular A-85 would no longer be needed. This circular will be rescinded. However, the objectives of Circular A-85 (early and meaningful consultation with State and local officials on matters that affect them) are such an integral part of this order that the President is issuing a separate memorandum to the heads of departments and agencies to emphasize the point.

Petition Procedure for Rulemaking—Some respondents believed there should be a uniform petition or procedure to initiate rulemaking. A petition procedure is already available under the Administrative Procedure Act and several agencies have already adopted specific procedures for initiating rulemaking. Therefore, a mandatory petition procedure is not being included in this order.

Approval of Regulations

Clarification of Language—This section has been revised to be consistent with changes in other sections of the order and to emphasize that the

agency head is responsible for reviewing the need for significant regulations as well as the validity of the agency proposal. The importance of considering public views has also been emphasized in response to several comments received.

Criteria for Determining "Significant"

Coverage—Several respondents raised questions about the criteria for determining "significant" and the way in which agencies would apply the criteria. It is recognized that "significant" is an imprecise term. Its use is intended to give agencies the discretion they need to determine what is significant to their programs and particular constituencies. Each agency will publish its proposed criteria for determining significance within 60 days. The agency will establish the final criteria after public comment. The agency will then follow those criteria in determining what is a significant regulation.

Section 3. Regulatory Analysis

Need—Respondents were generally in favor of better analysis of the economic consequences of agency actions. Many respondents expressed a belief that such analyses should be done for all regulations. Not all regulations, however, have important economic consequences. Even significant regulations may lack major economic consequences. For example, although a regulation may have a significant effect on the privacy of individuals, it may not have significant economic consequences. For this reason, the requirement for a regulatory analysis is limited to those regulations that have a major economic impact.

Many comments on the regulatory analysis program were particularly supportive of the change in focus from justifying the chosen alternative to better analysis of all feasible alternatives. Some respondents did want to retain the Economic Impact Statement program. However, an evaluation of the Economic Impact Statement program has shown that because these analyses were issued as a justification for a chosen approach, they provided little benefit to agency decision-makers. Economic analysis can contribute more to the development of more effective regulation if it is done at the time alternative approaches to designing the regulations are being considered. The final order, therefore, retains the requirements for an analysis of alternative approaches early in the decisionmaking process. Such analysis could include an examination of (1) the need for very specific requirements versus the benefits of allowing some discretion on the part of those subject to the regulation; (2) alternative types of compliance incentives (for example economic incen-

12-68

THE PRESIDENT

tives, such as loan guarantees, versus administrative incentives, such as reduced paperwork requirements if goals are met); (3) alternative enforcement mechanisms (such as on-site inspections or periodic reporting requirements); and (4) alternative levels of government for implementation (Federal, State or local).

Criteria—There was no clear consensus among the respondents on the specific criteria for requiring a regulatory analysis. Many respondents wanted no financial limitations to be associated with the first two criteria in the hope that this would encourage more analyses to be done. Others believed that without specific figures, many agencies would not do any analyses at all. Several respondents asked that agency criteria established in the Economic Impact Statement program remain in effect.

The final order includes two criteria to determine when a Regulatory Analysis will be required. The first requires that a regulatory analysis must be done if the regulation will have an annual effect of \$100 million on the economy. This amount is identical to the criterion used in the Economic Impact Statement program. Regulations of this magnitude require careful consideration.

This criterion also considers the potential impact on individual industries, levels of government, or geographic regions. The most frequent criticism of the EIS criteria was that the individual industry threshold (\$50 million in one year or \$75 million in two years) was too high. Regulation could threaten the existence of small industry but still not be subject to regulatory analysis under the first criterion. This criterion for regulatory analysis, therefore, is a general requirement which allows each agency to propose the specific threshold level appropriate for its programs. Agencies will determine their own numerical criteria, and the public will be asked to comment on each agency's proposals in order to assure that the criteria are reasonable and effective. The proposed criterion relating to "specific element of the population" was deleted after many problems with definition and application were noted.

The second criterion listed in the order giving discretion to agency heads is to be used in addition to, not as a substitute for, the first criterion. A regulation may not meet either part of the first criterion but may, in the opinion of the agency head, have implications sufficient to require a thorough examination of possible alternative approaches. Several respondents wanted the order to include a provision that would require an analysis if there were sufficient public demand or if the public reaction could be expected to be adverse. By providing the

agency head with discretion, it will be possible for an agency to be responsive to such concerns.

The President has established a Regulatory Analysis Review Group chaired by the Council of Economic Advisers (CEA) to review agency regulatory analyses and to consult with the agencies on the conduct of such analyses. Given the flexibility in these two criteria, CEA expects that each agency administering economic or financial assistance programs will do at least one regulatory analysis a year. CEA expects the Review Group to work with agencies as they carry out the Regulatory Analysis Program and to conduct an interagency review of 10-20 regulatory analyses each year. Some agencies may, in consultation with the Review Group, focus their regulatory analysis on the review of an existing regulation or set of regulations, but most regulatory analyses are expected to concentrate on new regulations.

Factors in the Analysis—Several respondents suggested that specific factors be covered in a regulatory analysis. No mandatory listing of factors is included in the order because the details of each analysis will vary with the situation. However, the Review Group will work with the agencies to ensure that their analyses are complete and responsive to the issues relating to specific regulations.

Information Needed for the Analysis—A few respondents raised concern that the regulatory analysis may lead to significant new information requirements for businesses and individuals. While recognizing that intelligent government decisions require accurate information and data, it is also true that the President has placed major emphasis on reducing unnecessary paperwork demands on the public. Agencies are, therefore, encouraged to gather essential data in the least burdensome way and to eliminate existing paperwork requirements unless they are absolutely essential.

When specific information needed for a regulatory analysis is requested by or shared voluntarily with an agency, current safeguards for proprietary information will be followed.

Availability—Several respondents requested that a draft regulatory analysis be made available at the time of an advanced notice of proposed rule-making. At that point, agencies may still be formulating the information needed to complete a regulatory analysis and a uniform requirement would be inappropriate. However, nothing in the order would preclude an agency from making the analysis available at that time if it chooses to do so.

Section 4. Review of Existing Regulations

Need—Review of existing regulations was strongly favored by a large number of respondents. Some respondents, however, were concerned about

the possibility that periodic reviews might promote noncompliance with a regulation soon to be reviewed. There was also concern that agency staffs might have to be increased in order to conduct such reviews. Choosing to review a regulation does not assume that it will be discarded or that it will not be enforced while under review. It is also arguable that as regulations are updated, clarified, and possibly deleted, fewer resources may be needed to interpret, enforce, and administer them. Given the many benefits of such a review noted by respondents, the review has been retained.

The review of existing regulations required by the Order may involve a major review of all existing agency regulations, such as "Operation Common Sense" in the Department of Health, Education, and Welfare, or it may concentrate on selected smaller projects. In all cases, the results are expected to be the simplification and clarification of regulations and the elimination of regulations that are no longer necessary.

Criteria—Based on suggestions received, the criteria listed for selection of agency regulations to be reviewed have been revised to incorporate such factors as advances in technology and other changing conditions that would necessitate a review of existing regulations.

"Sunset" and Time Limit on the Review—Several respondents suggested that the best way to require agency review of regulations was to issue them with "sunset" provisions. As a result, these regulations would automatically expire after a set time period, often suggested as 5 years, unless the agency justified their continuation. This process would remove any need to establish specific criteria for identifying regulations for review since every regulation would be reviewed under the "sunset" provisions.

Agencies cannot entirely eliminate regulations unless the law which authorized the regulations allows them to do so. Therefore, it is not possible to extend the full "sunset" concept to significant new regulations as suggested.

Other respondents favored the mandatory review of all regulations within a set time, usually 3-5 years after their issuance. This suggestion was not adopted. Instead, agencies are instructed to concentrate on those regulations which no longer serve their intended purpose, which have caused administrative difficulties, or which have been affected by new developments. Since agency resources are limited, the review requirement should concentrate on the areas of greatest need.

Agencies will publish criteria to identify existing regulations for review, and possible first choices for public comment in accordance with Section 4 of the order.

Section 5. Implementation

Agency Reports—Some respondents did not understand the kind of information to be included in the agency reports on implementation of this order. This section has been clarified. Moreover, agency reports will now be published for public comment before being submitted to OMB, so that the views of the public can be assessed before the reports are submitted in final form. Responses to the public comments will be included in the publication of the final agency reports.

OMB Enforcement—Most of the respondents who addressed the question of OMB's role in enforcement urged that OMB be given more clearly defined responsibilities including acting as an appeals body for agency decisions on individual regulations. A formal requirement for OMB to approve or provide appellate review of the substance of individual regulations would be inappropriate and counter to the emphasis on agency accountability in the Executive order. The Director of OMB has assured the President that OMB will closely monitor agency compliance with the order. After allowing the agencies the opportunity to work with the new requirements, OMB will report to the President on the effectiveness of the order and on agency compliance. The Director of OMB will report to the President at least twice a year and will assure the necessary resources to oversee implementation of the order.

Section 6. Coverage

Applicability

Scope—Several respondents found the Coverage section of the draft order confusing. In the final order, coverage has been clarified in each individual section. There are, however, some general exclusions which are listed in the Coverage section.

Confusion also arose over the need for and definition of the term "public". The final order omits any definition of the public and presumes that the reference to the public includes all interested or affected elements of the population.

Exclusions

Formal Rulemaking—Formal rulemaking is excluded from the order. Formal rulemakings tend to be narrowly focused, litigative proceedings conducted by an Administrative Law Judge. They are governed by specific procedural requirements that assure opportunities for public participation and adequate analysis of issues.

International Affairs and Internal Agency Matters—Regulations in these two areas are excluded from notice and comment requirements in the Administrative Procedure Act and are excluded from the order.

THE PRESIDENT

Procurement Regulations—The Office of Federal Procurement Policy has already increased opportunities for participation in the development of procurement regulations. In addition, a major review and consolidation of these regulations is underway. To apply the requirements of this order to procurement regulations is, therefore, unnecessary.

Independent Regulatory Agencies—Many of the respondents strongly urged that the Executive order apply to the independent regulatory agencies. However, several members of Congress stated that the President should not and cannot require these agencies to follow the policies set forth in the order. These agencies are, in their view, "arms of Congress". The Justice Department on the other hand, stated that most of the order could be made binding on the independent regulatory agencies.

President Carter believes that a confrontation with Congress over the applicability of the order to the independent regulatory agencies would only detract from the important reform steps being taken. Therefore, he has asked the chairmen of these agencies to voluntarily apply the policies and procedures of the Executive order. He has asked the chairmen to report their progress to him and to the Congress.

For purposes of this order, independent regulatory agencies include:

- Civil Aeronautics Board
- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- Federal Election Commission
- Federal Energy Regulatory Commission
- Federal Home Loan Bank Board
- Federal Maritime Commission
- Federal Reserve Board
- Federal Trade Commission
- Interstate Commerce Commission
- Federal Mine Safety and Health Review Commission
- National Labor Relations Board
- Occupational Safety and Health Review Commission
- Postal Rate Commission
- Nuclear Regulatory Commission
- Securities and Exchange Commission

Many of the respondents emphasized that it made no difference whether regulations are issued by an

independent regulatory agency or by an executive branch agency since the problems are the same—undue delay, unnecessary paperwork, and excessive intrusion in lives of individuals and the operations of public and private organizations. Clearly, many improvements are needed in the performance of all regulatory agencies. President Carter intends to work with the Congress in a spirit of accommodation, not confrontation, to assure that the regulatory process is responsive to the needs of the American people.

Emergency Regulations—A primary purpose of this order is to assure more effective management of the regulatory process. It is not intended to create undue delays that would impede agency response to emergencies or to mandatory deadlines. In emergency situations, the order requires that a policy official explain to the public why the order has not been followed.

Section 7.

Judicial Review—Many respondents strongly advocated either judicial review or more effective enforcement by OMB to assure that the goals of the order are achieved. As explained in Section 5, the final order relies on strengthened OMB enforcement rather than judicial review. Again, the order is not intended to create more delays by increasing litigation. It is hoped that by improving the quality of regulatory decisions through increased public participation, judicial review of agency decisions will be reduced.

Section 8.

Sunset—Several respondents questioned why the order has an expiration date. A specific "sunset" date is in keeping with the order's emphasis of reviewing existing requirements. Based on an evaluation of the order's effectiveness, OMB will recommend to the President whether or not to extend it.

WAYNE G. GRANQUIST,
Associate Director for Management and Regulatory Policy,
Office of Management and Budget.

THE WHITE HOUSE
WASHINGTON

November 16, 1979

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS
AND AGENCIES

The Administration has made a firm commitment to strengthen the small business sector of our economy. In furtherance of that commitment, I want you to make sure that Federal regulations will not place unnecessary burdens on small businesses and organizations. Regulatory programs are important to the safety and health of the Nation; their goals, however, can sometimes be achieved in ways that minimize the burden on small businesses and organizations.

I want you to take the following steps:

- o Ensure that any new rules and regulations issued by your agency will be applied whenever possible in a flexible manner, taking into account the size and nature of the regulated businesses and organizations while fulfilling the social and economic goals of the underlying statutes.
- o As you review existing regulatory and reporting requirements, take particular care to determine where, within statutory limits, it is possible to tailor those requirements to fit the size and nature of the businesses and organizations subject to them.
- o Identify those rules and regulations in the semiannual agenda required by Executive Order 12044, and in the Regulatory Council's Calendar of Federal Regulations, for which flexible alternatives and plans for implementation are being considered.
- o Assign responsibility for overseeing the examination and implementation process to the agency official you designated in accordance with my June 14, 1978 memorandum on the White House Conference on Small Business, and ensure that that official works closely with your agency's representative to the Regulatory Council.

- o Report the results of the above examination and plans for implementation by December 15 to the Office of Advocacy of the Small Business Administration. The Small Business Administration will work closely with the Regulatory Council and the Office of Management and Budget to ensure that agency-specific actions are consistent with and supportive of the government-wide regulatory reform program.

These measures will continue our progress toward achieving important regulatory goals without unnecessarily burdening the small businesses and organizations that are such a vital force in our Nation's life.

Jimmy Carter

Federal Register
Vol. 44, No. 234
Tuesday, December 4, 1979

Presidential Documents

Title 3—

The President

Executive Order 12174 of November 30, 1979

Paperwork

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to establish procedures that eliminate all paperwork burdens on the public above the minimum necessary to determine and implement public policy and ensure compliance with Federal laws, it is hereby ordered as follows:

1-101. Agencies shall minimize the paperwork burden—i.e., the time and costs entailed in complying with requests for information and recordkeeping requirements—imposed on persons outside the Federal government. Forms should be used only to the extent necessary to gather the basic information required to fulfill an agency's mission. When forms must be used, they should be as short as possible and should elicit information in a simple, straightforward fashion.

1-102. Each agency shall designate an existing official to be responsible for minimizing both the agency's use of forms and the paperwork burden resulting from proposed legislation and regulations.

1-103. Agencies shall pay particular attention to the special burdens faced by individuals and small organizations in responding to requests for information. To minimize these burdens agencies should, whenever possible, forego uniform or universal reporting requirements and rely instead on sampling, reduced frequency of reporting, differing compliance standards, or exemptions.

1-104. Each agency shall prepare an annual paperwork budget, i.e., an estimate of the total number of hours required to comply with requests for information. The budget should itemize each form used, describe its purpose and identify those affected by it. The Director of the Office of Management and Budget shall review and may modify each agency's proposed budget. After the Director has approved an agency's paperwork budget, it may be increased only by the Director upon request of the head of the agency.

1-105. Forms or similar requests for information shall be reviewed within two years after their initial issuance and then at least once every five years. Following review, they should be revised or abandoned to the extent they are not required to meet an agency's basic information needs. These reviews will be conducted by the agencies, and reports of the reviews will be submitted to the Director.

1-106. The Director shall audit compliance with this Order and may issue rules and regulations necessary to implement it. The Director may issue exemptions for agencies whose use of forms is limited. The Director also shall:

(a) Seek to eliminate duplication in requests for information by establishing a Federal information locator system, which will list all the types of information collected by Federal agencies and will be available for use by all agencies. This or similar systems will not contain any information obtained from the public. The Director shall take any other steps needed to prevent duplication, including the assignment to a particular agency of lead responsibility for the collection of certain types of information.

(b) Seek to inform the public and broaden public and agency comment by preparing and publishing in the Federal Register an annual paperwork calendar of significant requests for information. This calendar will be based on the information contained in the agencies' paperwork budgets.

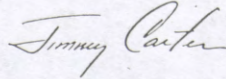
(c) Report annually to the President on implementation of this Order and control of the paperwork burden generally.

1-107. The authority vested in the Director under this Order shall not affect any authority vested in him by any other Order. This Order shall be implemented in a manner consistent with all applicable Federal statutes.

1-108. For purposes of this Order, agency means those agencies covered by Executive Order 12044.

1-109. This Order will expire on September 30, 1983.

THE WHITE HOUSE,
November 30, 1979.

A handwritten signature in dark ink, reading "Jimmy Carter". The signature is written in a cursive, flowing style with a large, prominent "C" at the end.

[FR:Doc. 79-37359
Filed 11-30-79; 3:03 pm]
Billing code 3195-01-M

EDITORIAL NOTE: The President's remarks of Nov. 30, 1979, on signing Executive Order 12174, are printed in the Weekly Compilation of Presidential Documents (vol. 15, no. 48).

STATEMENT OF SENATOR JOHN C. CULVER

I want to applaud the action taken today by President Carter to direct federal executive agencies to adopt the concept of regulatory flexibility in their rulemakings.

This Presidential memorandum represents an important first step toward reducing the disproportionate compliance and paperwork burdens that federal regulations can impose on small businesses.

We have worked closely with the Administration over the past several months in an effort to get a policy of flexible application of regulations implemented in the federal government.

The Presidential directive instructs agencies to clarify, simplify and consolidate proposed rules and to consider exemptions, longer compliance schedules and reduced paperwork requirements for small businesses.

We intend to incorporate many of the provisions contained in S. 299, the Regulatory Flexibility Act, into omnibus regulatory reform legislation being developed by the Subcommittee on Administrative Practice and Procedure.

This memorandum directs federal executive agencies to begin now to carry out the objectives of this legislation and will begin immediately to put in place a procedure which later we hope to enact into law.

I want to join with my colleagues in the Senate and House of Representatives who have worked for the past three years on the development of regulatory flexibility legislation in commending the President for his leadership in this area.

We must, however, continue to push vigorously for legislation to expand existing statutory authority, and give greater assurances that all agencies actually follow through to the maximum extent possible in implementing this much-needed reform.

The costs of complying with federal regulatory standards that amount to billions of dollars annually have fallen unfairly on small businesses. This has caused production inefficiencies, higher costs to consumers and frustration and anger for our nation's small businessmen and women.

STATEMENT OF SENATOR JOHN C. CULVER

I sincerely congratulate President Carter today on his decision to direct Federal executive agencies to take immediate action to reduce the paperwork burden on citizens and businesses.

The Executive Order issued today represents an important first step in attacking this pervasive problem. The American people are sick and tired of being buried under a sea of government "red tape." Over 700 million man-hours in unproductive time last year was spent filling out Federal forms.

I am particularly pleased that the President's Order requires agencies to take special notice of the need to reduce paperwork burdens of individuals, small businesses and small towns. These are groups least able to shoulder the disproportionate reporting burden which falls on them. They are most in need of help.

Since 1977 I have sponsored a bill in Congress, the Regulatory Flexibility Act, to reach this problem. During hearings held on this bill the past two years, I have listened to testimony from small businesses all across our country that uniform reporting requirements fall with particular severity on them. Given the importance of small business to employment and innovation in our economy, this is truly a serious matter.

The President's Order will create new tools to help agencies cut paperwork requirements and eliminate overlapping and duplicating forms. One particularly important concept is the information locator system. This will centralize information requests so that agencies can determine quickly whether information they plan to request is already being gathered by another agency.

Each time I travel in Iowa I hear more examples of people completing local, state, and Federal forms which are virtually identical. While the President's Order deals only with Federal forms, I hope that Congress will be able to deal with the broader intergovernment duplication problem as well.



President's Management Improvement Council

PRESS RELEASE

FOR IMMEDIATE RELEASE
September 14, 1979

FOR INFORMATION CONTACT:
Tom Kell (202) 632-5491

1900 E Street, N.W.
Washington, D.C. 20415

THE PRESIDENT'S MANAGEMENT IMPROVEMENT COUNCIL
IS APPOINTED BY THE PRESIDENT AND COMMENCES WORK

The President today announced the appointment to the President's Management Improvement Council of 19 top leaders from Federal, State, and local governments, private industry, labor organizations, and academic and professional organizations. The Council met today for the first time to discuss its objectives and to consider management improvement activities which it might sponsor.

The purpose of the Council is to advise the President on management problems and issues in the Federal Government, and to assist in efforts to improve Federal management and program performance. In a letter addressed to the members of the Council, President Carter said:

"One of the most consistent efforts of this Administration has been to press for the reform of government and improvement in the quality of service that our government provides to the American people. . . . I view the initiation of the President's Management Improvement Council as an exceptionally valuable resource to advise and assist me and the leaders of my Administration in meeting this management improvement responsibility."

President Carter asked the Council members to suggest ways to draw on the skill and experience available outside the Federal Government in developing solutions to Federal management problems. He directed the Council to concentrate its efforts on finding realistic solutions to practical problems affecting the delivery of services by Federal agencies to the public.

The Council is jointly chaired by Mr. James T. McIntyre, Jr., Director of the Office of Management and Budget and Dr. Alan K. Campbell, Director of the Office of Personnel Management. They will report to the President on behalf of the Council. The day-to-day operations of the Council are managed by a small staff headed by Mr. Charles F. Bingman, Executive Director.

Co-Chairmen McIntyre and Campbell welcomed the members of the Council at an introductory ceremony held this morning in the Roosevelt Room of the White House. The Co-Chairmen reviewed other management programs of the Administration, including Government reorganization, regulatory reform, civil service reform, elimination of fraud and waste, relieving the paperwork burden, and stronger Government budgeting, cash management, and financial administration. The session concluded with a discussion of Council objectives and priorities and its potential roles, activities, and relationships with other elements of Government.

After the welcoming session, the Council met in the conference room of the Federal Home Loan Bank Board building to hear presentations concerning management issues in four specific agency and program areas:

- Admiral Rowland Freeman, Administrator, General Services Administration, described several potential management improvement projects in GSA.
- Leonard Schaeffer, Administrator, Health Care Financing Administration, outlined major management issues and improvement initiatives in HCFA.
- Jerry Bridges, Director, Debt Collection Project, Office of Management and Budget, described the background, objectives, and status of the project to improve Federal debt collection practices.
- Alice Rogoff, Special Assistant to the Director, Office of Management and Budget, reviewed potential methods for reducing the air fare costs for Federal employee travel.

The Council discussed the management problems and issues raised in each presentation and considered ways in which it could contribute to their resolution.

Attached are a list of Council members and a fact sheet which provides additional information about the role and functions of the Council.



President's Management Improvement Council

September 14, 1979

1900 E Street, N.W.
Washington, D.C. 20415

FACT SHEET

President Carter established the President's Management Improvement Council to advise him on management problems and issues in the Federal Government, and to assist in efforts to improve Federal management and program performance.

The Council is jointly chaired by Mr. James T. McIntyre, Jr., Director of the Office of Management and Budget and Dr. Alan K. Campbell, Director of the Office of Personnel Management. They will report to the President on behalf of the Council. Membership of the Council consists of highly experienced and respected managers and leaders from Federal, State and local governments, private industry, labor organizations, and academic and professional organizations. The day-to-day operations of the Council are managed by a small staff headed by Mr. Charles F. Bingman, Executive Director.

The functions of the Council are to:

- Advise the President on significant and critical management problems and issues affecting Executive agencies and Government programs.
- Work cooperatively with agency heads, the Comptroller General, senior program management and administrative officials, Inspectors General, and others to provide advice and guidance on specific management improvement projects involving one or more Executive agencies.
- Where feasible, advise Executive agencies in the development of management systems or management techniques to improve the effectiveness and responsiveness of Federal programs.
- Use the experience of the public and private sectors to identify and facilitate the application to Federal programs of appropriate successful systems and techniques which have been used elsewhere in the public and private sectors.

The Council will work with department and agency heads to develop greater commitment and new initiatives within their agencies for management improvement. The Council will seek to reinforce these initiatives, assist in the conduct of specific management improvement projects, and promote a broader, more vigorous and effective agenda of management improvement activities than currently exists. In addition to their formal meetings, members of the Council may also meet individually or in small groups with top Federal officials to help them define and evaluate specific management improvement projects.

Management improvement projects may be identified for Council action by the President, by agency heads, by the Co-Chairmen, or by Council members. Projects will be undertaken under the auspices of the Council in close consultation with the agency involved and the Office of Management and Budget and the Office of Personnel Management. Priority concern will be directed to projects where real and practical solutions can be rapidly achieved.

Generally, departments and agencies will direct and implement management improvement projects, drawing upon talent from other Federal agencies, State and local governments, private industry, and clientele and public interest groups. The Council will help Federal managers identify and evaluate sources of expertise for particular project task forces.

In the longer term, the Council should become an important forum for the exchange of ideas and information about what is most effective in making Government perform better, and can help to develop policies and approaches for stronger, permanent management improvement systems.

Date: July 19, 1979

Subject: Response Concerning Statement of Mayor Kenneth Robinson,
Bayard, Iowa

The original grant application was received from the City of Bayard in March 1972. A grant was offered in August and bids were opened in March 1973. The consulting engineer recommended rejection of all bids as they were significantly higher than his estimate. High groundwater conditions were given as the reason. Bayard was unsewered at the time.

Information in our files indicates the City initiated discussions with a manufacturer of a physical-chemical package treatment plant and in August 1973, a representative of this office met with the City and its consulting engineer concerning their proposal to use this type system. We advised them this treatment method is not normally recommended for a small town and a cost-effective analysis would be required. A letter was sent to the City confirming our position in October.

Evidently, negotiations with the treatment plant manufacturer continued and the consultant was directed by Mayor Robinson to prepare plans and specifications for the physical-chemical type plant. These were received in September 1974, at which time we reminded the City that we needed justification by cost-effective analysis. During this time, the State advised the City to submit a new application since the original grant was awarded under P.L.84-660 at 50 percent and the 1972 Clean Water Act (P.L.92-500) authorized 75 percent.

In October 1974, we notified the City of our proposal to withdraw the original grant which was accomplished in March 1975. During January 1975, the State requested our evaluation of the revised facility plan which indicated the City's desire to construct a physical-chemical plant. This was the least cost-effective of the six alternatives studied. The present worth of these ranged from \$331,311 for a bio-tower system to \$634,994 for the physical-chemical plant. We rejected the proposed concept in April and in July, the City revised its recommendation to either an extended aeration plant or bio-tower system.

The IDEQ advised EPA in December that they would certify the revised application if we would approve the latest facility planning information. We so advised in January 1976, the certification was issued in February and the grant awarded in September 1976. In November, the City was authorized to award a contract to construct an extended aeration treatment system.

Nine requests for payment have been received and processed on this project.

<u>Request No.</u>	<u>Received</u>	<u>Paid</u>	<u>Comments</u>
1	9/27/76	12/1/76	Needed engineering contract
2	8/3/77	8/9/77	
3	8/26/77	10/3/77	
4	9/22/77	10/3/77	Limited to 50 percent
5	10/25/77	11/16/77	
6	11/10/77	11/16/77	Still held to 50 percent
7	2/23/78	2/24/78	Limited to 80 percent

<u>Request No.</u>	<u>Received</u>	<u>Paid</u>	<u>Comments</u>
8 (final)	9/28/78	----	Mailed final outlay 12/22/78, received additional bills 1/8/79
9 (final)	2/20/79	----	Mailed revised final outlay 2/15/79, received 3/15/79

Payments were held to 50 percent until the sewer use and user charge systems were submitted. These were submitted on November 5, and November 8, 1977, respectively, and payment was made November 16. All the submittals were approved during a period running from June to November 1978. The time between submittal of request No. 8 and mailing of the first final outlay report was spent getting necessary documents from the grantee and the engineer. When additional bills were subsequently submitted, a revised outlay was sent and then on March 23, 1979, the Engineering Branch requested final payment be held until further notice. We are holding \$37,496 of the \$227,896 final grant amount. This is not 20 percent because the final grant is less than the amount on which percentages were based.

The problem of user charges stems from the form used by the FmHA. That form utilized a sliding scale of charges which allows large water users to obtain a volume discount. This means that the average home owner may have to pay more than a fair share of treatment costs if a large user, such as an industry, locates in the City. Because Bayard is a small community with no industry and little likelihood of obtaining any, we were asked to reconsider the proportionality requirement. Upon reconsideration, it was decided to allow use of the user charge system as drafted.

The withholding of funds is not tied solely to the March 1979, backup of sewage in the City system. A routine inspection report by the IDEQ indicated the new system was subject to significant I/I flows on several occasions during the summer and fall of 1978. This report was received on January 16, 1979. The most serious occurrence was in March 1979. Average dry weather flows during December through February 1979, were 23,000 gallons/day (gpd). The peak reached on March 18, was 504,000 gpd, about 22 times over average dry weather flows.

Since this is a new system, we consider these flows excessive and a very serious problem. Normal peaks for new systems constructed in accordance with the contract documents should not exceed two to three times dry weather flows unless illegal I/I connections are made. The City will continue to experience backups during periods of wet weather as more homes connect to the system and operational problems will develop at the plant. Additionally, the discharge of raw or partially treated sewage from the plant will violate State Water Quality Standards and the City's discharge permit.

The excessive flows appear to result from poorly constructed service connections and from foundation drains and roof leaders being connected to the system. This is in violation of the sewer use ordinance approved by

EPA. The City must now face the responsibility for allowing these practices and be held accountable for eliminating them.

On June 27, 1979, EPA advised the City of the steps necessary to reduce the extraneous flows. These include immediate disconnecting of all illegal connections, the City insuring that all future connections are made using good construction techniques and according to the ordinance, and new hookups should not be made until I/I flows have been substantially reduced. When this happens, payment will be released.

Disinfection (chlorination) of effluents from mechanical treatment plants is required by the IDEQ. The City of Bayard must chlorinate during the "full-body contact" season which is April 1 to October 31, according to State rules. The NPDES permit issued by EPA does not require disinfection, although it probably should. When it is reissued in 1982 by IDEQ, we are certain this requirement will be specified.

Date: August 14, 1979

Subject: Response Concerning Statement of Mayor Domonoske
Fallon, Nevada

In response to your request of June 27, 1979, the following information is provided in response to statements by the Mayor of Fallon, Nevada at the June 21, 1979, Hearing on the Regulatory Flexibility Act of 1979.

- 1) The Mayor of Fallon said it took EPA almost four years to discover that they disagreed with the terms of the City's contract and an appeal is presently pending in headquarters on this disagreement.

The four-year period began on August 22, 1974, when the grant was awarded and ended November 2, 1978, when EPA's Audit Report was mailed to the City. EPA does not "disagree with the terms of the contract." EPA disagrees with the amount of money spent in the planning phase of the project that is eligible for grant participation.

The Audit Report questioned \$842 in "service charges" based on the fact that the charges were not substantiated by the accounting records. In addition, a \$3,000 cost for a "Preliminary Expansion Study" was questioned. The compensation for this study project was based upon the Fee Curve, a system which is now prohibited from use. The Fee Curve established an acceptable cost for Basic Services as directly related to the final construction costs. The \$3,000 Study was considered by Audit as a part of Basic Services and should have been included thereunder for compensation. Since this was not done, the cost was questioned.

After a Fallon exception to the Audit Report was received, EPA Region 9 re-examined the allowable costs based on the Fee Curve and found that an additional \$1,903 for Basic Services was eligible for EPA grant participation and could be used to offset a part of the \$3,000 cost of the preliminary study. An appeal of Region IX's final determination has been forwarded to EPA Headquarters for review and resolution of the issues.

Chronology

<u>Date</u>	<u>Event</u>
Nov 7, 1972	Application signed by City
Sep 4, 1973	State Priority Certification and Approval
Oct 16, 1973	Engineering Agreement between the City and A/E firm
Aug 22, 1974	EPA Grant Award
Oct 29, 1974	Construction Contract between the City and Contractor
Oct 30, 1974	EPA Grant Increase
Nov 5, 1974	EPA Grant Increase
Apr 7, 1976	Final Inspection
Mar 10, 1978	Project sent to Audit
Mar 17, 1978	EPA makes 95% payment
May 19, 1978	City request 98% payment
Jun 13, 1978	EPA makes 98% payment
Oct 13, 1978	Audit report to EPA
Nov 2, 1978	EPA sends audit report to City
Nov 13, 1978	City reply to audit report
Feb 22, 1979	EPA Final Determination sent to City
Mar 20, 1979	City appeals Final Determination to HQ.

Financial Breakdown

A) Grants

- 1) 8/22/74 - Grant Agreement
Eligible cost \$291,342
EPA grant \$218,500
- 2) 10/30/74 - Grant Increase
Amount \$40,000
New eligible cost \$345,637
New EPA grant \$259,200

- 3) 11/5/75 - Grant Increase
 Amount \$28,000
 New eligible cost \$382,950
 New EPA grant \$287,200

B) Reimbursements

	<u>Date</u>		
	<u>Application</u>	<u>Scheduled</u>	<u>Amount</u>
1	12/24/74	1/7/75	\$33,600
2	3/13/75	3/24/75	\$59,500
3	4/09/75	4/18/75	\$ 9,000
4	5/02/75	5/09/75	\$34,100
5	5/30/75	7/24/75	\$65,000
6	8/08/75	8/19/75	\$17,700
7	10/15/75	11/14/75	\$45,700
8	6/30/77	3/17/78	\$ 8,240
Final	5/19/78	6/13/78	\$ 8,616

- 2) Under the Safe Drinking Water Act, the town was required to spend in excess of \$8,000 for an arsenic investigation although the Nevada State Board of Health found no traces of arsenic in the town's water supply.

The Nevada State Board of Health may have determined there was no evidence to restrict the use of the Fallon water supply, but the Health Division (the Board's parent entity) recognized the Fallon arsenic contaminant level of 0.1 milligrams per liter (mg/l.) of water as a violation of the recognized Public Health Service standard, which allows for a maximum contaminant level of 0.05 mg/l. The EPA did not require the City of Fallon to spend a specific amount for an investigation. The City hired Wateresource, Consulting Engineers, to determine the cost of compliance with the Safe Drinking Water Act. The fee charged by Wateresource happened to amount to more than \$8,000.

- 3) The minimum cost of treatment to comply would have been over \$5 million.... He resented EPA's recommending huge expenditures for treatment when there is no conclusive

evidence that there is any detrimental effect at the arsenic level in the Fallon water and without EPA's having promulgated final standards for drinking water. The EPA...should be required to publish final standards.

EPA has not recommended the expenditure of large sums for treatment. In its compliance study, Wateresource determined that there were three arsenic reduction alternatives:

- a) Reverse osmosis at a cost of \$11,218,000.
- b) Activated alumina at a cost of \$5,166,000. (While it is known that activated alumina reduces pollutants, it is not known whether it will reduce arsenic.)
- c) Coagulation, sedimentation, and filtration at a cost of \$5,911,000.

As the toxic effects of arsenic are chronic (occurring over a long period) and not acute (occurring over a short period), and the Fallon level of arsenic is below known toxic levels, it is not surprising that no deleterious effects have been observed.

Section 1412(a)(1) of the Safe Drinking Water Act (SDWA), as amended, states that "the EPA Administrator shall publish proposed national interim primary drinking water regulations ... he shall promulgate such regulations with such modifications as he deems appropriate." Section 1412(b)(3) states "Revised national primary drinking water regulations...shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques...." And, Section 1412(b)(4) states "Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed once every 3 years".

Based on the use of the terms "interim" and "revised" in the SDWA, the City of Fallon has taken the position that the regulations are not "final" and is proceeding accordingly.



BOARD OF SUPERVISORS

Polk County Administrative Office Building

Room 300

SECOND AND COURT

DES MOINES, IOWA 50309

(515) 286-3121

March 5, 1980

SAMUEL F. ANANIA
First District

TOM WHITNEY
Second District

RICHARD BRANNAN
Third District

JACK BISHOP
Fourth District

MURRAY E. DRAKE
Fifth District

RAY SEARS
Staff Director
Room 310
286-3128

Ms. Gail Bowman
Subcommittee on Administrative Practices and Procedures
119 D. Street N.E. Room A 509
Washington D.C. 20510

Dear Ms. Bowman:

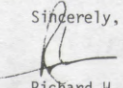
Attached please find a copy of my correspondence to Chris Sarcone dated February 19, 1980. As well, I have enclosed a copy of a November 15, 1979 memo to the Polk County Board of Supervisors from David M. Griffiths and Associates. This firm has been retained by the County to develop an indirect cost recovery plan. This plan, which was forwarded to you in an earlier communication, represents the most recent accounting of indirect costs which result from the administration of federal and state programs. Please note that the plan is for reimbursement of expenses incurred during fiscal year 1977.

The November 15, 1979, memo details claims made for indirect costs totaling more than \$290,000. Although this represents only a portion of the indirect costs which were incurred by Polk County for the administration of state and federal programs, only certain costs are allowable for reimbursement under federal and state guidelines. For the purposes of the subcommittee report these costs may be more appropriate than a best-guess estimate of overall indirect costs incurred by the county.

Should you have any questions relating to this matter, please do not hesitate to contact me. Specific questions related to cost recovery program may be addressed to Mr. David M. Griffith at area 312-564-9270.

Thank you.

Sincerely,


Richard H. Gruber
Administrative Analyst

RG/11



BOARD OF SUPERVISORS

Room 123 Polk County Court House
DES MOINES, IOWA 50309

SAMUEL F. ANANIA
First District

TOM WHITNEY
Second District

RICHARD BRANNAN
Third District

JACK BISHOP
Fourth District

MURRAY E. DRAKE
Fifth District

(515) 284-6074

RAY SEARS
Staff Director
Room 103
284-6411

February 19, 1980

Ms. Chris Sarcone
Staff Assistant to Senator John Culver
Room 344
Russell Office Building
1st and Court Street, NE
Washington, DC 20510

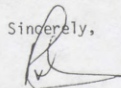
Dear Ms. Sarcone:

David M. Griffith and Associates has been contracted by Polk County to develop an indirect cost recovery plan. Per our telephone conversation, a copy of the current plan, entitles "A Central Services Cost Allocation Plan for Polk County, Iowa", is enclosed. This plan represents the most recent accounting of indirect costs which result from the administration of Federal and State Programs.

The County is attempting to recover overhead costs incurred to administer Federal and State programs. A partial listing of services included in this overhead factor are legal services through the County Attorney's Office, purchasing through the County's General Services Department, administrative services through the Board of Supervisors, and personnel services through the County's Personnel Department. In addition to a copy of the current cost recovery plan, I have enclosed a copy of the first report of recoveries from Griffith and Associates.

If you have any additional questions regarding this matter please do not hesitate to contact me. Questions related to the cost recovery plan may be addressed to Mr. David M. Griffith at area 312-564-9270.

Sincerely,


Richard Gruber,
Administrative Analyst

RG/PC/aj

Encl.



DAVID M. GRIFFITH AND ASSOCIATES, LTD.
Accounting Specialists to Government
666 DUNDEE ROAD, NORTHBROOK, ILLINOIS 60062 (312) 564-9270

November 15, 1979

NOV 19 1979

Mr. Jack Bishop, Chairman
Polk County Board of Supervisors
Polk County Courthouse
Des Moines, Iowa 50309

Dear Mr. Bishop:

On November 2, 1979, warrants were issued by the Iowa Department of Social Services which included reimbursement for the County's social services indirect cost claims for the fiscal years ended June 30, 1977, 1978, and 1979. The remittance advice stated the County's share of refund for the quarter ended June 30, 1979 was \$80,066.91 for claims totaling \$135,048. This amount was determined in the following way.

	<u>Claim</u>	<u>Federal Financial Participation</u>	<u>Amount</u>
General Relief	\$ 1,842.05	0%	\$ -0-
Food Stamps	9,501.97	50	4,750.98
Social Services	123,703.98	60.884	75,315.93
Total	<u>\$135,048.00</u>		<u>\$80,066.91</u>

This recovered amount should be deposited into the County's General Fund.

As indirect costs for general relief were identified in the cost allocation plan, the County should have been reimbursed for 60.884% of the amount shown for General Relief. We will be working with the State to recover the additional \$1,121.51 due the County. We anticipate payment in January 1980.

Child support indirect costs for FY 77 and FY 78 were approved last week so you should receive \$113,901 later this month. A Federal grant

dmq

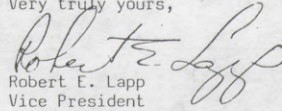
2

award for FY 79 costs is expected soon so another \$42,295.50 can be paid in December.

* * * * *

We are quite pleased that Polk County has finally benefited from our services and plan to begin work on the FY 78 plan in January. We look forward to working together on this program. If you have any questions about your recoveries, please call on us.

Very truly yours,



Robert E. Lapp
Vice President

REL:ks

1/4/83

**U.S. REGULATORY COUNCIL**

Washington, D.C. 20503

EMBARGOED FOR RELEASE
10 A.M., EST, February 29, 1980U.S. Regulatory Council Releases Report
On Small City Attitudes Towards Regulation

Washington--Feb. 29--The U.S. Regulatory Council today released a report detailing the attitudes towards regulation of the citizens of a small Wisconsin city.

The report, entitled "Regulation: The View From Janesville, Wisconsin And A Regulator's Perspective", was commissioned by the Council for several reasons: to give the Council independent verification of public perceptions of the benefits and burdens of regulations without relying on opinion polls or interest group reports; to allow the Council to gain perspective on public attitudes towards regulation from outside Washington, D.C.; and to re-evaluate the Council's observation that public concern about the regulatory burden focuses on state and local as well as Federal regulation.

The report was prepared for the Council by Paul Danaceau, a free-lance writer, who conducted 75 interviews over a two-month period. The report also contains a letter from Council Representative Carol Foreman, Assistant Secretary for Food and Consumer Services, Department of Agriculture, which gives a regulator's perspective on the report.

Janesville, Wisconsin was chosen as the case city because of its size, location, diversity of industry, and willingness of city officials and business leaders to participate in the exercise.

The report contains the verified perceptions of persons interviewed by Danaceau. The facts underlying each of the perceptions were not independently verified by the Council's member regulatory agencies, since the report is an examination of attitudes and not of particular agencies or regulations.

Among his findings, Danaceau reports that in Janesville:

- Criticism of regulation frequently is directed at state as well as federal actions.
- People in business, labor and city government often see little connection or relationship between the activities regulation has imposed on them and the social goals regulation is suppose to achieve.
- Lawyers, accountants and regulators are judged to be primary beneficiaries of government regulation.
- There is a sense that regulation has saddled smaller communities with the burden of responding to problems that are occurring elsewhere.
- Regulatory agency representatives who deal with local people are accused of transforming the regulatory process into an adversary proceeding.

- 3 -

Before publishing this report, the Council circulated a draft among its member agencies to obtain their views. Overall, member agencies found the report useful, and they believed it achieved its purpose, although the agencies do not all subscribe to all of Danaceau's observations.

In her letter to the Council on the report, Ms. Foreman observed that:

- While many unnecessary regulations have sprung up, it is difficult to alter regulations to suit different situations "without running the grave risk that such alterations would soon become much more arbitrary and capricious than the regulations they replaced."
- The regulator as adversary -- at least in part -- is inherent in the kind of society we have. For better or worse, emphasis on the development of voluntary organizations, interest groups and individualistic behavior breeds antagonisms and disagreements. "In the same way, our legal system operates on the premise that truth only emerges from confrontations."
- The government can successfully weed out regulations that serve no useful purpose, or regulations whose costs are out of proportion to any potential benefits. The government could also do a better job of explaining the benefits of regulation and strive for more reasonable application

- 4 -

of the regulations. "But I do not think we can ever expect regulation to be a smooth and happy process. Such expectation ignores not only the logic of regulation, but also the dynamics of our history and political culture."

In summary, the Council hopes that the report will elevate the debate surrounding regulation and will help others think through attitudes towards regulation.

###

For Press Information Contact:
Michael Volpe (202-395-6110)

REGULATION:

THE VIEW FROM JANESVILLE, WISCONSIN

AND

A REGULATOR'S PERSPECTIVE

United States Regulatory Council

February, 1980

PREFACE

In April, 1979, the U.S. Regulatory Council asked Paul Danaceau, a free-lance writer, to prepare an impressionistic report on how government regulation is viewed by citizens in a small city. The report was commissioned for three reasons:

- 1) We wished to have some independent verification of public perceptions about the benefits and the burdens of regulation without relying on elaborate and expensive opinion polls or on secondary reports from interest groups with particular points of view.
- 2) In setting our work agenda and policy priorities we believed it critical to gain a perspective from outside Washington with as little filtering, re-packaging, and second-guessing as possible.
- 3) We wished to re-evaluate our own observation that public concern about regulatory burden focusses on state and local as well as federal regulation.

The report was not intended to encompass a statistical sample or to draw scientifically valid conclusions. Rather, it was designed as a case study providing indepth information from a small but generally representative city.

Method of Preparation

After consultation with Council staff and with a variety of Congressional, agency, and private observers, Danaceau chose Janesville, Wisconsin, as the case city. Its size, location, diversity of industry, and the willingness of city officials and business leaders to participate were all factors in its selection. Danaceau conducted 75 interviews over a two-month period.

While preparing his draft report, Danaceau rechecked the accuracy of his material with his interviewees. The report contains the verified perceptions of persons interviewed by Danaceau. The facts underlying each of the perceptions were not independently verified by the Council's member regulatory agencies, since the report is an examination of attitudes and not of particular agencies or regulations.

Before publishing this report, the Regulatory Council circulated a draft among its member agencies to obtain their views. Overall their response was positive. Council members found the approach useful. They believed it achieved its purposes, though they do not all subscribe to all of Danaceau's observations.

One of our Council Representatives, Carol Foreman, Assistant Secretary for Food and Consumer Services, Department of Agriculture, returned a set of particularly thoughtful comments regarding the Janesville study in a letter that is part of this report.

The Author's Findings and Agency Comments

Danaceau found that in Janesville:

- People in business, labor and city government often see little connection or relationship between the activities regulation has imposed on them and the social goals regulation is supposed to achieve.
- Lawyers, accountants and regulators are judged to be the primary beneficiaries of government regulation.

- There is a sense that regulation has saddled smaller communities with the burden of responding to problems that are occurring elsewhere.
- Criticism of regulation frequently is directed at state as well as federal actions.
- Regulatory agency representatives who deal with local people are accused of transforming the regulatory process into an adversary proceeding.

In commenting on the paper, Assistant Secretary Foreman stated the following:

- "Every so often someone writes a paper or makes a speech that changes the tone of a debate. Regulation: the View from Janesville, Wisconsin, is that kind of a paper. Even though there are factual errors and methodological flaws in the report, it nonetheless elevates the debate surrounding regulation. It does this by concentrating on some of the important political questions that lie at the heart of administering a 'government of laws.'
- Over the years many unnecessary regulations undoubtedly have crept into our repertoire, but it is difficult to see how, on a geographic basis at least, one could alter regulations to suit

different situations without running the grave risk that such alterations would soon become much more arbitrary and capricious than the regulations they replaced. The principles of diversity and uniformity will inevitably be in conflict -- our system is designed precisely so that this will take place. My own view, however, is that the place to fight such battles is not in the Federal Register, but in the halls of Congress, where the fundamental political battles can be joined.

- The regulator as adversary, at least in part, is inherent in the kind of society we have. We are not the homogenous group in which Chumley the Regulator and Smedley the Businessman can sit down and work out all problems because they went to the same schools, come from the same place, know each other's families, and generally trust each other to act in the general welfare. For better or worse, our emphasis on the development of voluntary organizations, interest groups, and individualistic behavior breeds antagonisms and disagreements.

In the same way, our legal system operates on the premise that truth only emerges from confrontations.

- I think we can successfully weed out regulations that serve no useful purpose, or regulations whose costs are clearly out of proportion to any potential

- 5 -

benefit. I think we can do a much better job of explaining the social benefits of many other regulations. We can also strive for more reasonable application of regulations. But I do not think we can ever expect regulation to be a smooth and happy process. Such expectation ignores not only the logic of regulation, but also the dynamics of our history and political culture."

Conclusion

The Janesville report has served the Council's original purposes in helping us set our own goals. By publishing it, we hope it will help others think through attitudes toward regulation. We welcome your comments on this report.

U.S. Regulatory Council

February, 1980

REGULATION:THE VIEW FROM JANESVILLE, WISCONSINI. INTRODUCTION

Steve Van Galder, who with his brother Dave, owns and operates a bus company their father started 32 years ago in Janesville, Wisconsin, and which provides public school transportation, limousine service to and from the Chicago and Milwaukee airports, and tour transportation to different cities throughout the country, says he favors government regulation. "I want people to know I operate a safe, reliable company."

But the clear social purpose of passenger protection is the farthest thought from Van Galder's mind when he talks about how regulations affect him on a day-to-day basis. Instead, he thinks about the \$10,000 in legal fees he spent four years ago fighting a 25-count case initiated by an Interstate Commerce Commission (ICC) inspector and dismissed by the judge.

Or he thinks about the records inspections which occur on an irregular and unannounced basis. Van Galder understands the need for unscheduled visits when verifying records regarding the people who drive his buses, the speed at which the buses are operated, and the number of consecutive hours an individual driver is on the road. However, he does not understand the behavior of some inspectors. "They never make an appointment," Van Galder complains, "not even for the same day. They just walk in when they feel like it and expect you to drop everything. Once they came on the first day of school, our busiest day of the year, and wanted us to bring everything to a halt. Another time an inspector walked right into my office and went through my files when I was out. I guarantee you that if I went to Madison [the state capital] or Washington to see them I would have to make an appointment. I'm not trying to cover up or hide something. All I want is the same courtesy."

Regulation probably hasn't made many people feel closer to their government. But in Janesville, a city of 50,000 people in southwestern Wisconsin, with a median family income of almost \$20,000 a year, a population shift of only one percent per year, and more than 65 different manufacturing concerns, the reaction against regulation seems surprisingly strong -- especially since regulation does not seem to have caused any overwhelming hardships on the city as a whole or on any individual business.

It's not that the city isn't accustomed to regulation. It is. Milk inspection has existed for 50 years. The Federal Communications Commission has regulated WCLO, the local radio station since 1934. The Interstate Commerce Commission has set the framework for the way Janesville Auto Transport Co., which delivers cars and trucks built at the General Motors Assembly Division plant in Janesville, and the W.R. Arthur Co., its predecessor, have conducted business for the past 44 years. And regulation certainly isn't new to either General Motors or Parker Pen, the town's other large employers. Nor is anyone surprised that a large number of people in this affluent community resent any outside presence in their lives and regard regulation as an insidious intrusion into local affairs that interferes with free enterprise and stifles initiative and innovation.

The surprise is that people who never thought they would feel isolated or estranged from either the federal or the state government are beginning to feel this way and, because of their experience with regulation, are starting to question the support traditionally accorded federal and state activities at the local level. "When I first went into local government," said Philip L. Deaton, the city manager, in describing this point of view, "I told people I chose local government because I probably wasn't smart enough or quick enough to be in state or federal government. But I also told them that if I ever got into a jam, I knew there would be someone at one of those other levels of government who would have the answer and

could help me out. Now I am beginning to understand that the opposite may be closer to the truth, because our experiences with other levels of government, particularly those involving regulation, do not build in us the confidence that we are dealing with people who can help us or who understand our problems."

II. THE RIGID AND UNYIELDING REGULATORS

A specific criticism levelled against regulation by supporters and detractors alike is that the people who administer and enforce regulations, irrespective of whether they represent the federal or state government, are too rigid and unyielding in their dealings at the local level. People in Janesville want a spirit of accommodation in which the two parties, the regulated and the regulator, try to work out a mutually acceptable solution to a common problem. Instead, an adversary relationship develops in which the regulators more often than not try to force something down the throats of the regulated because it is written down in a manual, not because it is supposed to be a better solution.

"The thing that bothers me more than anything else," says city manager Philip L. Deaton, "is when someone from the federal or state government comes down here to talk with us about regulation and the first thing they do is pull out a document and point to the section that says they have the authority to tell us what to do. In a legal proceeding, the theory is that you are innocent until someone proves you guilty. In a regulatory proceeding, you are made to feel guilty until you can prove your own innocence."

The situation that epitomized this phenomenon for both Deaton and Roy Eckrose, the city's director of public works, was the four and a half year battle the city waged recently with the Wisconsin Department of Natural Resources (DNR) over Janesville's new sanitary landfill. The central question was whether the city, in constructing the new landfill, could add clays and other materials to the ground in order to purify water from solid wastes that filtered down to the Rock River or into underground sources of drinking water; or whether the city would have to conform to the DNR requirement that water from landfills had to be captured and transported to a sewage treatment facility.

After spending \$50,000 on geological and engineering studies, the city concluded that a landfill would be more effective in filtering out pollutants than the sewage treatment plant. The geological study, Eckrose said, showed that the Janesville area had the type of soil system which, by adding certain kinds of clay, would result in an ion-modification process that would clean the water before it reached the river or other sources. The engineering study said this system would be the most environmentally sound way to handle leaching from the landfill. The city, Eckrose said, had no quarrel with the general finding of an earlier body of literature that indicated landfills should not be constructed on sand and gravel. Its point was that the study of Janesville geology should take precedence over a generalization. More to the point, said Eckrose, was the city's contention that no drinking water had been

contaminated during the 27 years the old landfill was in operation. "We told the state," Eckrose said, "that based on what our engineers said, the process we proposed would have produced water that would have been orders of magnitude cleaner than what would have come out of the treatment plant. The state responded by asking us what was going to happen 50 or 60 years from now. When we said we couldn't guarantee or prove there would never be any contamination, they said we would have to conform to their system."

The 1973 regulation which gave the state its authority in this case says that "solid waste land disposal operations are prohibited *** (d) within an area from which the department finds that leaching from solid waste may have detrimental effects on ground water quality." Vague phrases such as "may have detrimental effects," says Eckrose, could have contributed to the problem because the state used this language to cover all situations and did not judge each situation individually.

"But regulations, per se, are not the problem," he explains. "The problem is the manner in which the regulations are applied. There is just an extreme hesitancy on the part of those applying regulations even to entertain a new thought or to make a decision. The regulation becomes the decision. The majority of people in the DNR thought we had a good design proposal that would have advanced design knowledge, but they flat-out said there was no way they would approve it until somebody else proved it first. If

everybody waited for somebody else to prove something new would work, we would still be riding mules around here."

Janesville, Eckrose and Deaton point out, is willing to spend money on the environment. "But," says Deaton, "we would love to hear someone say to us: 'These are acceptable standards. Now you work out your own way to meet them.' If the intent is to protect the groundwater system, then the regulations should set up rules that say what kind of material can and cannot be in the water. They should set up performance standards. But they take the position that if one jurisdiction is required to take a specific kind of action, then everyone else must be required to take the same action." The DNR, Deaton says, as a further illustration, recently required signs near all dams warning boaters to remove their craft from the water. Janesville, he said, is required to place signs between two dams a half mile apart on an unused part of the Rock River. "When we get someone into a boat to set those two signs in place," says Deaton, "that will be the first time anyone around here will have seen a boat on that part of the river."

Public works director Eckrose says his problems have not been limited to state regulations. Three of his complaints about federal regulations occurred in the course of obtaining a \$2 million Urban Mass Transit Administration (UMTA) grant to purchase 19 new buses, build new shelters at nine bus stops and improve a garage.

First, a regulation requiring a study to determine how the city's transportation system could be improved caused a two-year

delay, Eckrose said, because that was how long it took the consultant hired by the state to complete the task. "I still don't know why the study was done," Eckrose says. "We were not proposing any changes in our system, not even route changes. It seemed to us that the study was mostly a boondoggle for consultants. At the end they came out with a thick volume describing the transportation system we already had with little in the way of recommendations."

Second, UMTA told the city its public hearing on the matter was invalid because the city issued notices announcing the hearing on garage improvements without specifying the exact street address where the hearing would be held. The notice said the hearing would be at the Memorial Drive-Parker Drive Interchange. UMTA contended that the notice should have said the hearings would be held at 900 Parker Drive. "If you looked hard," says Eckrose, "you could find that maybe five percent of the people who live here know where 900 Parker Drive is. But everyone knows where the Memorial Drive-Parker Drive Interchange is." A second hearing was held: nobody attended it, and the net result was that the grant application was delayed another two months.

Third, in November of 1977, with the second hearing out of the way, the city began looking forward to receiving its grant. More than three years had passed; and the public, as well as city officials, long ago had tired of the old buses, many of which had been driven for more than 90,000 miles and spewed black smoke from their exhausts. But when February of 1978 rolled around and the city still had not heard from UMTA, the city officials went

ahead and decided they would purchase the standard design bus currently in use in many cities because it costs less than the advanced design bus. A month later, the bus company told the city it was not producing the standard design vehicle anymore. Six days after that, says Eckrose, UMTA approved Janesville's grant.

"Between November of 1977 and March of 1978," says Eckrose, "nothing was done with our application. There were no changes, no modifications, and we received no requests for additional information. I am firmly convinced that the people who administer and interpret the rules and regulations sat on our application until we couldn't get the current design bus. The timing is just too close for coincidence." The fact that the federal government is paying 80 percent of all costs is beside the point, says Eckrose. "When we started this process in 1973," he said, "we could buy a bus for around \$60,000. When we were able to think about submitting a bid in 1978, the price was around \$80,000 for the current design bus and \$20,000 more for the advanced design bus. As it now stands, we are going to have to pay \$760,000 more than we would have paid in 1973, and \$380,000 more than we would have paid last year for the standard design bus. I attribute that difference to regulations."

Eckrose also has been engaged in a long dispute with the Department of Transportation (DOT) over a regulation that says land acquired for recreational purposes never can be converted to another purpose. At issue is whether the city can build a bridgehead on 3.7 of more than 200 acres of park land acquired in 1967

with Department of Interior money. The bridge, which has been discussed since 1921 and which finally entered the design state in 1976, would connect the south and west sides of the city. Eckrose says the bridge would not adversely affect the park because the acreage in question is in an awkward and narrowing finger-shaped corner that can't be used for much else. The city has offered to replace the 3.7 acres with four acres that border another corner of the park land, which are unoccupied and which the owner is willing to sell. DOT, however, insists the bridge be built on private land. According to Eckrose, two families are living on the only other land that is available.

"I don't think we have more than a 50-50 shot of getting DOT to bend its rule," says Eckrose. "It's just going to be a damn shame if we end up being required to move some people out of their homes when we have suitable land available and better replacement land that we can buy, merely because this one section was labelled as a park instead of a bridgehead 12 years ago." Eckrose concedes, however, that the city probably should have labelled the 3.7 acres as "bridgehead" when it applied for the Interior money in the first place but that he just didn't foresee this as a problem. "At the same time," he explains, "we were rebuilding a highway in the area of one of our oldest and most developed parks without causing any serious problem. We are not insensitive to park needs. This city

- 11 -

has over 1500 acres of parks on open space land. But we also realize we can work with that parkland system and not disrupt its primary function."

The Community Development Authority (CDA), which administers various housing, redevelopment, open space and recreation programs, is another public agency that found itself in a confrontation with regulators.

In June of 1978, the Wisconsin Department of Local Affairs and Development (DLAD) sued the CDA for failing to file a proper relocation plan in connection with a downtown redevelopment project and sought a temporary injunction against the \$5 million project. Although state law requires local communities to file relocation plans in any area where they have condemnation power, the city felt it did not have the power to condemn those parcels of land that would be put to private use. Accordingly, the city filed a relocation plan only for those parcels that would be put to public use. The state contended this violated the law because when an entire project has a public purpose -- a special tax district was being created that would generate additional revenues for public improvements -- the city's condemnation power exists for each parcel. Though the injunction was lifted, the state won its case in court several months later, and the city now is required to file the additional relocation plan.

- 12 -

"We never had a problem with the state enforcing its interpretation of the law," says David Feingold, who was chairman of the CDA at the time. "We objected to the way the state bludgeoned us into a lawsuit. Apparently, the state wanted a test case because to my knowledge there never was a letter or any form of communication saying we had to file a different kind of relocation plan, and that if we didn't they would sue us. If we had been advised of the potential suit, we probably could have worked it out. We are not unreasonable people. But instead of seeking a cooperative solution, they took the heavy-handed approach. This was a case of a larger government agency taking advantage of its greater authority by not giving a smaller agency adequate opportunity to comply with a law before filing a potentially destructive lawsuit."

That the controversy centered around a law, not a rule or regulation, is a moot point to Feingold because, he says, the DLAD's regulatory activities were at issue. "To me," he says, "whenever a regulating agency tries to control what a local government does, then it's regulation. Regulation is a process whereby people assume the authority to influence the lives of other people in some way. Whether the influencing is done by statute or written rule, or whether it is done by statement or claim of authority, they all can become problems for the local community. In this case, it appeared to be a situation in which the state was more concerned about establishing its own authority than with the content of a local decision-making process."

The following March, CDA representatives testified before a state legislative committee about ways that the DLAD and local communities could establish better working relationships. After the hearing, says Feingold, the CDA received a "highly critical" letter from the DLAD. "We had made a number of proposals about how state and local agencies could proceed in the future," he said, "and all we wanted to know was whether they thought it was feasible. Instead, they acted as though we had no right to question what was going on inside the pristine walls of bureaucracy. That was a shock to me. I thought they would have responded in some way, or at least said they were doing the best they could. But they just said our complaints were not true, and they made no effort to solicit additional comments.

In his testimony, Feingold made the following statement: "The public is suspicious of big government for a good reason: the government sometimes acts too big to bother with the real problems of people and their communities. We do not need DLAD as an enforcer of state law, but rather as an interpreter of the process requisite for rejuvenation of our community." One of his recommendations called on DLAD to provide aides and on-site support to local authorities. Another would have turned DLAD into a "genuine local assistance agency" by transferring its regulatory responsibilities

- 14 -

to another agency. "Compliance with the law should be part of local assistance," the testimony said, "but enforcement should not be placed above cooperation."

In retrospect, says Feingold, he has come to the conclusion that there ought to be a great deal of deference to or respect for the judgment of local authorities and residents. "For the state government, or even federal government, to say that something should be done because they are the experts," he says, "is insufficient. If they cannot say the local process will be harmful, and be specific about the ways in which it will be harmful, then the local community should be encouraged to go ahead and develop its own plans, projects and initiatives."

In the private sector, there are fewer complaints from any single source about the way regulators go about their jobs. Still, the complaints are there. The case that Dave MacDougall, another attorney, remembers best occurred 20 miles from Janesville in a town called Hanover.

One of the businesses in Hanover, a town of about 200 people, is a junkyard called Hanover Auto Salvage. Three men operate the business as though they are partners, but only one is the actual owner. The three traditionally have worked 60 hours a week and have received equal amounts of money from the business each week. The junkyard also employs seven or eight other people. For reasons MacDougall still does not understand -- no complaint ever was filed against the business -- Department of Labor (DOL) representatives from

- 15 -

Madison and from Rockford, Illinois, conducted a full-scale investigation of labor practices at Hanover Auto Salvage. "The only thing I can think of," says MacDougall, "is that they were looking at auto wrecking in general and they just happened to pick this name out of a book or off a list." At the end of their investigation, the government people told the salvage company owner he owed the other two men time and a half for the extra 20 hours a week they had been working. The two men were entitled to back wages, the investigators said, because they were not supervisors and therefore not exempt under the Fair Labor Standards Act. The owner, who didn't have the money to begin with, also was threatened with a stiff fine, said MacDougall. "He was told," MacDougall said, "that he had too many chiefs for a business this size. The irony of it all was that the two employees didn't want back wages because they didn't feel they should be paid more than the man who owned the place."

Although the DOL regional office in Chicago eventually dismissed the case, MacDougall believes it never should have gone that far to begin with. "Federal regulators," says MacDougall, "never should have placed that owner in a position where he had to pay attorneys' fees. I have no doubt that the law and the regulations they were enforcing are good. It's good for Chicago, it's good for New York, it's good for Janesville, and probably even for Hanover. A person who is paid an hourly rate should get time-and-a-half for overtime. But there has to be some flexibility and common sense used when you

apply regulations. There wasn't in this case, and the result was that a small business was going to be penalized because it wasn't sophisticated."

While it did not happen in this case, MacDougall says there are instances where people who start out as supporters of government regulation have encounters with regulators that lead them to question that support. He described one case in which a filling station owner tacked a "free ice" sign on a billboard that advertised his station as a tourist stop; because the sign increased the overall size of the billboard, it violated a state regulation. The state highway department, MacDougall said, told the sign company it would tear the whole thing down if the "free ice" sign was not removed in 30 days. That's what happened because, according to MacDougall, the state people in charge of the program were trying to declare the billboards illegal rather than pay the compensation required by federal law when a billboard is removed for highway beautification purposes. "The regulation itself isn't bad," says MacDougall, "but in this case the regulators caused one sign company to hate them forever."

The experience of Dan Wiedman, who is in charge of sanitation at the Wisconsin Provision Co., an eight-employee meat processing packing plant, is another case in point.

Wiedman never questioned the need for regulations and inspections. "Without inspection," he says, "there is a tendency to slack off in certain areas. I know there have been times when

we have not cleaned the tables or the pans or the bandsaws or the grinder properly so it's good that an inspector is there to make sure you don't slack off." But, he goes on, the Department of Agriculture (USDA) inspections have deteriorated to such a "picky" level that he has begun wondering whether regulations are worth the trouble. "I am at the point," Wiedman says, "of wanting to throw them all out the window because my resentment of what is happening is so strong."

The social objective of regulation -- to have clean, wholesome meat -- has pretty much gone by the boards, in Wiedman's judgment, because the USDA inspector assigned to the plant keeps looking at "smaller and smaller" items. One day, says Wiedman, the inspector tells him the grass growing outside the building is too high. The next day the complaint is about weeds growing through the cracks in the sidewalk around the building. "I guess," Wiedman surmises, "he feels that if the outside isn't neat, then the inside isn't sanitized. That's the only thing I can think of." His most bizarre experience, says Wiedman, was when the inspector found mold under the inside rim of a toilet bowl. "He must have used a dental mirror to find that," Wiedman says.

Wiedman blames the inspector's supervisor at the USDA office in Madison more than he blames the inspector himself because, says Wiedman, the inspector seems to find something "smaller and pickier" each time he visits with his boss. "I think he found the mold in the toilet after one of those meetings," says Wiedman.

Wiedman's own boss, Robert Cunningham, president of the company, agrees. "I blame the supervisor," says Cunningham, adding that other meat packing companies have had the same complaints about the same supervisor, "because he is the one who orders the inspector to do this and who rates him for promotion. We have no argument with compliance. Under the Wholesome Meat Act of 1977, the USDA has a job to do, and we support and participate in that work. Our complaint is with the harassment, and the fact that many complaints lodged against us are not valid. My complaint is because I don't understand why an inspector should be assigned full-time to a plant with only eight employees."

The "harassment," says Cunningham, is expensive both in terms of money and personnel. Last year, he said, the company spent close to \$6,000 removing paint and then sandblasting walls because the inspector found a piece of paint on one wall not near the meat processing area that he could pry off with a knife. Then two of Cunningham's employees, a plant manager and a foreman, quit when he placed them in charge of responding to regulations. Now, says Cunningham, Dan Wiedman is on the verge of resigning.

A pharmacist for a publicly-funded health care facility reports a similar experience. He said a state health department inspector told him that unless he found something wrong on each visit, federal health officials wouldn't think he was doing his job. "It was the strangest thing I ever heard," said the pharmacist. "I remember he asked me why I had found nothing wrong on my inspections of the

nursing stations and I told him because there weren't any problems for a couple of months. And then he said that he had to find something to write about every time he came here."

The pharmacist doesn't question the legitimacy of the problems the inspector finds, even if they are minor, although he once was told to write six separate protocols for various treatment units when he could find nothing in any rules manual that required him to do so. "I guess they just want to make sure their bosses have something to read," he says. However, he does question the apparent policy of finding one problem per visit instead of conducting a more thorough inspection. "I don't know why they can't do it that way," he says. "If I was in that position, I would try to find everything at once, then let the person work on it. But it's just a strange process from beginning to end. Even after they tell you to change something, they don't really check on the next visit to see if you have followed through."

Another pharmacist, he said, told him he once was questioned about why the temperature in the refrigerator where certain drugs were stored was different when the pharmacist read it than when the inspector did, even though the difference amounted to only two degrees and was well within the acceptable range for drugs that need refrigeration.

There are people in Janesville who feel the day of the hard-nosed or inexperienced regulator is disappearing and that, as government agencies and their employees develop a stronger sense

of the impact that some of their decisions and actions are having, the regulatory machinery and process will improve. Roy Eckrose wants to be one of these people. Earlier this year, Eckrose entertained some hope that, at the state level at least, the worst was over. He had just spent two years on a legislative committee composed of five state senators, five representatives, and four other public members. The group was charged with looking at the role of law and regulation in dealing with hazardous, solid and nuclear wastes. The group produced two bills. Both became law, and Eckrose felt the one that established a system for selecting, transporting and reporting hazardous wastes was the best law of its kind in the country. The "hooker," he said, was a provision requiring legislative review of major regulations written to implement the law.

The first version of the regulations came out in June, and Eckrose is discouraged. "The people who wrote the regulations have just ignored the legislative intent in many cases," he said. "There are some regulations that are so far beyond the bounds of reasonableness and so far exceed the authority given to the DNR that no amendment to the regulation is capable of restoring it to anything meaningful." Eckrose says he keeps hoping that in this, and in other situations, the people who write and enforce regulations will "temper the text with some good common sense judgment." He fears, though, that regulatory agencies don't want to do that.

- 21 -

While most complaints center around how regulators do their job, Bill Forrest, business manager of Carpenters Union Local #836, is upset about what regulators do not do; specifically, what he regards as their failure to enforce certain laws and regulations. Last winter, says Forrest, a contractor who used a crew from outside the Janesville area on a Department of Housing and Urban Development (HUD) housing project was required to pay \$50,000 in back wages to journeymen carpenters the contractor had listed as apprentices. "That didn't happen because the HUD people in Milwaukee were on top of the situation," Forrest explained. "They don't have enough people to initiate these cases. It happened because we filed a complaint and sent our own auditors in after a disgruntled employee called me." Forrest was upset for two reasons. First, he felt somebody besides the union should have been policing regulations regarding payment of prevailing wages. Second, no penalty was imposed on the contractor. "That case took about nine or ten months to resolve," he said. "If the contractor put that \$50,000 in the bank, then at today's interest rates, he came out okay. There has to be a penalty in a situation like that. Otherwise, there is no incentive for him to stop, and it's just like issuing him an invitation to try it again and make some more money."

Forrest is more concerned, though, with the 12 to 15 violations of Employment Retirement Income Security Act (ERISA) regulations in which the union becomes involved each year. "This

is a great law," he says, "and the contractor who fails to pay in benefits is in clear violation because he is cheating people out of their health and retirement benefits. But I have yet to see one employer have charges brought against him for ERISA violations. The federal people seem to take the attitude that they don't have to look for violations of laws and regulations because they know we will protect our members. If they went after just one contractor, the word would spread like wildfire and we would not have this problem."

III. THE COSTS OF REGULATION

The cost factor is the bottom line of complaints about rigid enforcement of regulations. Roy Eckrose charges that regulations and regulators caused the city delays of a least two-and-a-half years and additional costs of at least \$380,000 to obtain a mass transit grant. Steve Van Galder spent \$10,000 in legal defense fees before the charges brought by the ICC were dismissed. Bill Forrest estimates that his Carpenters Union spends between \$35,000 and \$50,000 a year in audits, attorneys' fees and hearings in cases involving ERISA regulations -- an investment for a function he feels should be borne by federal regulators.

Dollar costs are not the only complaints, although they are most easily measured. Janesville residents also complain that regulations generate too much paperwork, that inspections take too much time, and that the often duplicative and sometimes seemingly unnecessary processes of enforcement waste time and energy.

For instance, Walter Wilk, vice president of Janesville Auto Transport Co. (JATCO), the firm that delivers the cars and trucks made at the GM plant, says each driver he sends out on the road must carry about 60 different forms and certificates in order to comply with the various state regulations regarding trucking. Moreover, he says, because states differ in terms of the kinds of vehicles they allow on their roads, the JATCO fleet contains three different sizes of vehicles.

At the office of the superintendent of schools, Doris Anderson, a clerk, says the calendar of regulations published by the Wisconsin Department of Public Instruction (DPI) shows at least 200 different forms, both federal and state, that must be filled out each year. Both she and Don Mrdjenovich, the superintendent, feel the job of complying with regulations could be simplified if agencies which ask for detailed head counts once or twice a year, as DPI does as the agent for the Department of Health, Education and Welfare on civil rights matters, would also ask whether any significant changes had occurred since the forms were last filled out. "I am sure surveys about racial and ethnic composition are useful in large cities," says Mrs. Anderson. "But we have few minorities here. Why can't we just say there have been no major changes and let it go at that?" Janesville is 99.09 per cent white. Only 89 blacks and 21 people of "other races" were counted in the 1978 census.

- 24 -

Duplication of effort concerns not only Bill Forrest, the carpenters union official, but also the executive vice president of a neighborhood bank who preferred not to be quoted by name.

A nationally chartered bank, the neighborhood banker said, only has to undergo one examination a year because the Federal Deposit Insurance Corporation (FDIC) generally accepts the findings of the Comptroller of the Currency. But his state-chartered bank, as well as every other state-chartered bank in the country, he claims, undergoes two examinations because the state banking commission will not accept FDIC findings. "They pretty much look at the same things," the banker said, "but they never exchange information. I don't know why they couldn't share at the state and federal levels as well." The most recent FDIC inspection cost his bank \$3,900, and the most recent state banking commission examination cost \$1,800. "One of those expenses," the banker said, "was unnecessary."

Regulations that require construction firms with government contracts to hire a certain percentage of minority and women apprentices also concern Bill Forrest. The regulations themselves are no trouble, says Forrest, who has 35 apprentices among his 358 working members and who, although having only four minority and women apprentices, says this is enough to meet current quotas of DOL and the Equal Employment Opportunity Commission. The problem, he says, begins when a compliance officer believes a contractor

is in violation. At that point, says Forrest, the following events transpire:

First, the contractor asks the union to write a letter saying he has tried to find a minority or female apprentice but that none are presently available. The union does this and, to protect itself, adds a sentence saying that if the contractor finds such an apprentice, the union will be happy to meet that person and the contractor. That letter goes to the contractor, the compliance officer and the DOL regional office in Chicago.

Next, the compliance officer writes back to the union for a more detailed explanation. A succession of correspondence ensues and, in the process, the union staff begins pulling the files and making charts, graphs and lists that show the union has about 50 different construction jobs involving federal contracts going on at any one time but only 35 apprentices to put on these 50 jobs. Of these 35, only three are minorities and only one is a woman, although a second woman will be apprenticed shortly. More correspondence is exchanged, and then the union also sends data on apprentice unemployment and explains that Wisconsin state law prohibits indenturing new apprentices if some already are out of work. In other words, the union is not permitted to bring on any additional minority and women apprentices if apprentices who are not minorities or not women are unemployed.

"If this happened once or twice a year, I suppose I could live with it," says Forrest. "But it happened eight or nine times in

- 26 -

the last year alone. And each time it does, my staff can count on spending three hours a day for anywhere from two to five weeks going through the files, drawing up the charts and writing letters. We have had as many as 15 to 20 pieces of correspondence go out from this office on some of these cases."

According to Forrest, it makes no difference if he receives a second inquiry from a compliance officer who has just finished corresponding with him on a previous case. The whole process must be put in motion again. "There never has been a person who dealt with us once who then came back a second time and said we were reliable and there was no reason to duplicate the letters and forms," he said. "If that ever happened I would faint. I'd also faint if anyone ever came in here to look at our records. We have told them our files are open and they can spend as much time as they want checking them. But nobody has ever showed up. There has been no personal contact at all."

None of the foregoing complaints or criticism are particularly extraordinary or unusual: They are just routine examples of the kinds of things you would expect people who are being regulated to complain about. Yet, say the people who make these complaints, that is the whole point. Since these are not major items or policy issues, people cannot understand why something cannot be done to improve the situation so that at least the climate in which regulation occurs would be better. As the owner of a small manufacturing firm put it:

- 27 -

"I can't really say that I am overburdened by regulation. And I think a lot of others are in the same situation. But on the other hand, I cannot emphasize to you enough the sense we have that we are being nickled and dimed to death by the so-called 'small' or 'trivial' problems that government agencies probably don't think are worth bothering about."

Other small businessmen say they are in the same situation. One says he resents "the implied threat that if you don't fill out government forms about your business something bad is going to happen to you." Another says that although regulations don't place him in "an overwhelming crunch," paperwork expenses are becoming greater for small companies because the information the government seeks often is "peripheral" and "there is no way to cover the cost of filling out the forms." A third says there's just enough paperwork to make him "question whether it's worth a piddly damn." A small manufacturer feels he is "lucky" to be located on a third floor loft because not many government people know he is there and he avoids the forms that federal and state bureaucrats leave when they come through town.

And George Poppas, a former city council member who owns three small businesses -- a ten-car cab company, a company that sells bus tickets, and a company that makes awnings -- contends that government agencies think the most important thing any businessman has to do during the course of a day is to fill out one of their forms. In the first place, says Poppas, the information

a small business has is "not on a computer waiting to be punched up" as it often is in a larger company. In the second place, he continues, since the owner often is the only person who can fill out that form, the "innocuous looking two-page form that should take only 20 minutes to complete sometimes ends up taking two to four days." Furthermore, he says, a small business doesn't have the margin for lost time a larger business does. "We can't afford to take a loss," Poppas explains. "We operate on a small margin, and the time we spend filling out forms that are non-productive hurts us even though it doesn't seem that way to others. If I spend 30 to 40 hours on some non-productive reports I am out of business. It's as if I had a partner and he wanted me to take a few hours off each day to play golf. I would tell him he was crazy. But that's what the government is asking me to do."

Several years ago Poppas had a run-in with the Federal Trade Commission's (FTC) Division of Financial Statistics over one of those innocuous looking two-page forms. Poppas told the FTC he didn't have time to fill out the form, and that even if he did he would have to shoot from the hip and give very rough answers. "They told me that I was chosen as a representative company and that they needed reliable information for some kind of estimate about the gross national product," he said. "I told them that if this was how we get information about business in this country, from people like me who don't have time to do it well, we're in trouble." Poppas kept putting off the FTC; and the FTC, he said, kept sending

letters and telegrams warning him that serious consequences would result if he didn't comply. That's when Poppas said he flatly refused and told the FTC they could bring the U.S. marshalls in to close him down if they wanted but that he would have a TV crew on hand when they arrived. "They never asked me to fill out the form after that," he said.

Because the GM Assembly Division plant is Janesville's largest employer (7,100 employees) and part of a huge corporation, small businessmen who feel regulation is too time consuming and costly invariably point out that they are not GM and don't have the resources GM does. "Big companies have their own legal staffs," says Richard Cope, secretary-treasurer of Ossit Furniture, a company that has manufactured church furniture since 1867. "Time and cost is not of the essence to them, so they can afford to be just like the government." In one respect, GM executives in Janesville agree. "We have tremendous in-house divisional and corporate level capacity," said one. "We just couldn't keep up with regulations any other way. We also have an advantage in that the bigger you are, the less you feel the impact of regulations in the cost of your product. Economy of scale takes over, and the cost can be passed along more easily because it amounts to a smaller percentage of the total product than it might at a small company."

Many regulatory concerns of the Janesville GM plant are in fact handled primarily at the corporate level. These include

mileage standards, air bags and lead standards for employees working inside the plant. This may explain why questions about regulation don't seem to produce the impassioned or exasperated response at GM they do elsewhere in Janesville. On the other hand, GM executives say they share the concerns of smaller companies about delays and paperwork. The DNR, for example, has proposed increasing from 90 days to 280 days the period it can wait before issuing a permit for an industrial development that affects air quality standards. While this would greatly expand opportunities for public groups and individuals to comment on such matters, GM executives feel 280 days is much too long. "The state might not take the full 280 days," said a GM spokesman, "but if it did that would be close to a year and hold our production up beyond what we feel would be a reasonable amount of time. We think the present limit of 90 days or three months really ought to be enough time to get review and comments on any proposal." And B. J. Brown, personnel director at the plant, said it takes one person working full-time for two months to compile its annual affirmative action report for the DOL's Office of Federal Contract Compliance Programs showing what steps the plant has taken in order to seek out minorities and women.

"That whole report," said Brown, "is not a report on how many minorities and women we have on the job. It simply tells what we have done as a good faith effort, who we contacted, where we advertised, everything we plan to do in the name of affirmative

action in the future. We are supposed to analyze our past performance and tell them how we plan to do better. But there has got to be a better way of getting this information than having one person spend two months doing it."

The question Brown, many other businessmen, labor leaders and city officials have is shared by Al Burrough, comptroller at the J. P. Cullen and Sons construction company. Each week Burrough punches up a special computer printout on payrolls and forwards it to a project owner or developer who is required to file the printouts to show that everyone on the job is being paid at prevailing wage rates for the area. "On a \$4 or \$5 million job," says Burrough, "we can fill up two file drawers with paper. It's computerized so it doesn't take a lot of work for our staff, though it probably does for some of the subcontractors. But every time we do it, and do it according to the special accounting methods the government wants, I can't help wondering if anybody ever looks at it."

IV. THE GROWTH OF REGULATION

Within the last decade, a "new generation" of regulations has been developed that focuses more on social than on economic objectives. They have developed in the wake of a growth in federal and state programs that provide financial assistance to state and local governments; laws aimed at protecting public health and safety, the environment and the consumer; as well as laws aimed at protecting the rights of and providing security for such broad classes of

people as employees, minorities and the handicapped. These regulations in turn have resulted in more and different kinds of businesses, as well as more and different kinds of governmental activities being brought within the scope of government regulation.

Sometimes this "new generation" of social regulations produces unexpected results. When a visitor commented to City Manager Deaton about the access ramps for the handicapped on the downtown sidewalks, the lifts for the handicapped on 10 of the 19 new city buses, and the ramp leading up to the Municipal Building, Deaton looked at the ramp behind his window and said: "Let me tell you about the ramp. In three years I have never seen a handicapped person use it, but the guy who delivers the Cokes thinks it's terrific."

The concern of people in Janesville about the growth of regulation often centers more on a single regulation or government agency, or the one aspect of regulation that bothers them the most, rather than on the total number of regulations that affect individuals.

George Fink, for example, who operates the King's Pub, one of the city's most popular restaurants, was startled to learn that, in addition to the five licenses he already had and the health inspections state and local regulators conducted, he still needed one more license plus daily and weekly USDA inspections in order to make sandwiches during his afternoon "dead time." "My understanding," said Fink, "was that if I sold \$18,000 worth of meat sandwiches a year, I would be subject to the same regulations and inspections

as a wholesale meat processing and packaging plant." Fink obtained preliminary approval from USDA, but decided the venture was not worth the effort when he learned he also would have to label each sandwich with a list of ingredients.

A union official believes the growth of regulation has led to too many restrictions on individual lives. "I support regulations that deal with air and water pollution, smoking in public buildings and occupational safety," he says, "because these are all cases where one's actions have an effect on someone else. But it should be my choice whether I want to spend \$300 for seat belts in my car or wear a helmet when I ride a motorcycle. We are supposed to be an adult society. People should have the opportunity to decide for themselves in situations where other people are not going to be injured or adversely affected."

And Charles Rydberg, executive director of the CDA, says his main problem is that "sometimes there are so damn many regulations or assurances that have to be met that you can't possibly know whether or not you are in compliance. You just sign on the dotted line and hope nobody complains. The Community Development Block Grant Program, Rydberg says, has six single-spaced pages of assurances alone. "These merely identify the regulations we have to meet," he explains. "For each regulation and revision there can be as many as 50 pages in the Federal Register."

For Dave Kessler, director of public services for the city of Janesville, the Environmental Protection Agency (EPA) is the target. Kessler is upset about two sets of EPA regulations. One set, based on long-standing Public Health Service standards for safe drinking water, requires communities whose drinking water comes from underground wells to check these wells every three years for certain inorganic compounds, pesticides and radioactive wastes. If a substance exceeds allowable limits and a decision is made to continue using the wells, the public is to be notified and told what precautions are being taken.

Kessler has no quarrel about testing the drinking water from Janesville's five underground wells for contaminants. He always has done that, and, he adds, he doesn't need EPA to tell him to notify the public if he finds something dangerous. But that's a minor complaint. The major flaw in the regulation, Kessler says, is the requirement that the public be notified every time a substance exceeds the maximum permissible limit. That, he says, could lead to public panic. "It would be one thing," Kessler says, "if these were short-term health hazards that if you ingested today you would die in a week. But some of these are substances they are just beginning to identify as possibly being carcinogenic if you ingest them over long periods of time. And EPA requires us to test them at such low levels of concentration that our city labs can't even do it."

Furthermore, says Kessler, the regulations only require the wells to be tested every three years. That means, he continues,

that a dangerous substance could turn up three months after the inspection and, theoretically at least, nobody would know for another two years and nine months. "If they are willing to put up with that situation," he asks, "then how serious a problem can it really be? I think it's an example of regulatory overkill."

Although some of the pesticides on the list are suspected carcinogens, they were included in this set of regulations because of other toxic effects. All the radioactive substances, however, are on the list because of their carcinogenic effects. EPA and other federal agencies consider a substance a possible carcinogen if it causes cancer in animals at high doses of lifetime exposure. The three-year period between inspections is based on the fact that the concentrations of the substances covered by the regulations change very slowly.

The second set of regulations that disturbs Kessler consists of industrial pre-treatment regulations currently being developed by EPA. These relate to pollutants which have sometimes destroyed the effectiveness of municipal sewage treatment plants, or which, in small concentrations, can escape treatment and pose an environmental health hazard. When the regulations are completed in 1983, EPA will have developed standards for 34 different types of industries and for 129 individual industrial pollutants. Standards for seven industries already have been developed. Local communities eventually will be responsible for incorporating EPA industry standards into sewage treatment permits for any of the 34 industries that exist in their community, for monitoring the performance of

those industries after the three-year compliance period has ended, for testing non-covered industries for excessive levels of any of the 129 pollutants on the list, and for setting standards for industries that exceed those limits.

Kessler says a local ordinance that both identifies the substances allowed in the sewer treatment system and specifies the permissible amounts already addresses this problem. His main concern, is that the regulations will force him to monitor every industry in town for a certain period of time rather than follow the present policy of monitoring the waste water treatment plant and then working with whichever industry causes a problem.

"As I understand the regulations," Kessler says, "EPA is saying we have to monitor all the industries on the list on a regular basis, and that we also have to test those industries not on the list on a less frequent basis to see if they are discharging any of those 129 substances named in the regulations. In other words, in the beginning we will have to lean on everybody regardless of whether or not they are causing a problem, and initially at least we probably will spend as much time and money on an inspection at a laundry as we will on an inspection at General Motors." Kessler estimates the regulations will cost about \$50,000 to \$60,000 a year in equipment and salaries and that this money will have to come out of his budget.

"I can't deny that some things are needed," Kessler says. "But where and when does it end? We are at the point now where .

they regulate everything, and I'm beginning to wonder why I am being regulated in the first place. To stay alive an extra year? If we eliminate carcinogens, you know something else will be on the list next. We all have to die of something, and we all have to die sometime. Regulations can't change that.

"I think what bothers me the most," Kessler continues, "is that regulations start out as somebody's pipe dream and then people in my position are stuck trying to find a way to make them work. Or they start out as an attempt to correct a single isolated problem and then they are written to cover any possible situation so that in the end they cause all sorts of problems at the local level because they don't really apply to any specific situation. I know there are laws in Janesville that are passed for one person, and I can't believe the same thing doesn't happen in Washington or Madison. It's just as wrong for it to happen there as it is for it to happen here."

Meanwhile, the people who speak broadly about the growth of regulations admit they don't have any data to document the extent to which a particular business or city agency is regulated. But the executive vice president of a 14-employee, \$12 million neighborhood bank says he doesn't need to know the total number of regulations he must deal with every day or every week in order to know there is "no way" he and his assistant can stay current with all the regulations that affect his bank. "I mean there's a five to six foot stack of regulations on our shelves," he says.

"I would have to spend 60 percent of my time on regulations alone if I wanted to have a good sense of what was going on. As it is, I just limit myself to those I absolutely must know." That effort alone, this bank executive says, has resulted in his spending as much as four hours a day reading regulations from FDIC or the Federal Reserve System. He also says he spends at least an hour or 'two a day just following up on the regulations he already has read, through such activities as additional reading, meetings with bank employees and discussions with attorneys.

An ex-banker, Bob Peterson, said he finally resigned as executive vice president of the Bank of Milton in a small town just seven miles outside of Janesville because "I just couldn't keep up with the regulations. It was impossible," Peterson recalled. "We had nine employees in the whole bank, and I was the one who had to know all the rules. A larger bank could hire an attorney and tell him to keep them out of trouble, or a branch bank could have some of its work done by the main office. But I had to do it myself. There were so many regulations that I could have spent eight hours a day, five days a week just reading them and trying to decide what the proper interpretation was."

The regulations were "no big thing" when they first started coming, Peterson said. None was "too big a load" in and of itself. "But suddenly," he recalled, "it was like a snowball rolling down the hill. It just gathered steam. It got to the point where every

time I made a loan I was not sure that I had interpreted the regulations properly and that as a result I could end up in court." Moreover, he said, it was not unusual for changes to occur in the forms the bank was supposed to fill out. "I must have looked stupid to some people," he said, "because I didn't know which forms they were supposed to get."

Peterson said he had to consider between eight and twelve different sets of regulations every time he made a mortgage loan, the type of transaction that accounted for most of the loan business in Milton. The regulations included those written in conjunction with the Truth in Lending Act, which was passed so consumers would know how much interest they actually were paying each month; the Fair Credit Billing Act, which prevents lenders from harassing consumers about repayment; the Equal Cost Opportunity Act, which was designed to end discrimination in the credit market; the Home Mortgage Disclosure Act, which seeks to prevent red-lining and discrimination in the lending market; and the Real Estate Settlement Procedures Act, which requires a full explanation of all settlement costs the borrower is paying.

The growth in banking regulation and the problems associated with those regulations are real. Twelve major banking laws, each with its own set of regulations, have been passed within the last decade, and according to a study conducted by the Valley National Bank of Phoenix, Arizona, banking regulations increased 76 percent between 1975 and 1977 alone. Housing authorities confirm

that the regulations and forms of the secondary mortgage programs of the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation stand three feet high. They represent only a small proportion of the total number of regulations that affect financial institutions. In addition, the office of the Comptroller of the Currency reports it has received letters from bankers in many communities claiming they are spending inordinate amounts of time on regulations, and that executives in small banks have written to say regulations are causing them to consider quitting.

Because regulations start a process that forces people to alter traditional ways of doing business or getting their job done, they invariably produce strong negative reactions. But there is a sense in Janesville that the growth of regulation also has changed the nature of some jobs. "I used to think of myself as a business manager, a problem solver," said Joe Nemeth, comptroller of Mercy Hospital. "Now I think of myself as a person who complies with regulations." Two loan officers at a downtown bank made a similar complaint. "Bankers," said one, "used to go to special classes to learn how to develop their banking skills. Now we go to compliance meetings. Our main job seems to be to learn how to survive the regulations."

Glenna Miller, who has been a speech therapist in the Janesville public school system for 19 years, feels regulations have changed her job, too. "I always felt my strong suit was gearing material to the individual child," she said. "But as the need for

reports and paperwork increases, I feel more and more bogged down, and I find I am spending less time developing my programs."

Mrs. Miller plans to spend one more year in the public schools before taking a job in the parochial school system. After that, it will take "something unusual" to get her to change her mind, she says, because the parochial schools are not heavily regulated. "I am afraid," Mrs. Miller says, "that we have reached the point where process has become more important than substance, when meeting all the requirements regulations impose on us takes precedence over determining what is best for the child."

Bob Peterson, the ex-banker, is in general agreement. The problem, in his judgment, is not only that there is too much regulation or that too much regulation has come too fast, but also that regulations often don't even seem to benefit those they are supposed to help. Banking regulations, like truth in lending and those that apply to settlement procedures, he says, were as confusing to his customers as they were to him. They eventually ended up costing the customer about \$150 per loan more in service charges, he says. "The average person taking out a mortgage doesn't want an hour's worth of explanation about what federal and state regulations require bankers to tell them," Peterson says. "They don't want brochures full of information they aren't going to read. They want to know what the interest rate is and how much money they will have to pay out each month."

What regulations are doing instead, says Peterson, is driving small banks out of business. Other bankers agree that small banks are "falling like flies" in Wisconsin. The city of Oshkosh, one banker points out, no longer has an independent, locally-owned bank, and Janesville is one of only two major markets in the state where there are no out-of-town holding companies.

How much of a factor regulation has been in the growth of banks owned by out-of-town holding companies is not clear. Nor is it clear that consumers are as uninterested in or unaffected by truth in lending and real estate settlement regulations as bankers contend they are. What is clear, however, is that many complaints about regulation reflect an apprehension about the future as much as a concern about the present. Lester Fillgrove, a chemical engineer at the Sherex Chemical Co., a 63-employee firm that reportedly is the world's largest manufacturer of the main ingredient used in laundry softener, is responsible for about ten percent of his company's regulatory matters and says they "don't add up to more than a minor inconvenience." But that is not the issue, says Fillgrove. The issue, he says, is this:

"The more regulation we have, the more government will come into our lives. Eventually it will all come down to the ability of government to enforce those rules. And government won't be able to do the job. That's when the people who wanted the rules for the good they hoped they would do will be disenchanted. They will see all the money that has been spent, and they will see how the price

of the products they buy has increased, and they won't see much more than that."

Where will Janesville fit into this picture? Fillgrove says neither the city nor the company he works for is very large in the overall scheme of things. "We'll both float along with the tide," he says.

V. CONCLUSION

A case could be made that the Janesville interviews represent a distorted view of both federal and state regulation, a series of unsubstantiated assertions. For every complaint about regulation, for example, a regulator might have a valid counter complaint or explanation. In addition, regulation is similar to preventive medicine in the sense that when it works, nobody notices, which means that a single bad experience can be used as the basis for discrediting an entire agency or the regulatory process as a whole. Moreover, there are people who are eager to receive federal money but who want to avoid completely the conditions attached to those funds. Finally, within Janesville itself, there are those who contend the majority of criticisms are narrowly-focused grievances made by people who don't want to accept the fact that the city cannot isolate itself from the rest of the world. "It's a lot easier to have a knee-jerk reaction against regulation," said one woman who is active in civic matters, "than it is to study an issue and find out what it really means." A local homebuilder echoed that sentiment. "People complain," he said, "because they don't know how to function under regulations and they don't want to take the time to learn. Regulations are no

big problem, but too many people won't spend an extra nickel or an extra hour unless they can reap an immediate benefit. Just because a regulation doesn't benefit Janesville directly doesn't mean it isn't a good regulation."

On the other hand, at least as many people concede that while they might not openly advocate any further increase in regulation and might prefer to see some current regulations eliminated, they believe most regulations do have a valid social purpose behind them. "I don't like the idea of government regulations," says Bill Agnew, a local farmer, "but it's the only way to get something done and still be fair to everyone." Agnew feels the agriculture census the Department of Commerce conducts every five years is "too personal" and says "some people doctor the figures just to throw the government off." He feels, however, that this shortcoming is more than balanced by regulations implementing the Toxic Substance Control Act that have led to training sessions about the use of dangerous chemicals. "We farmers like to think we're the smartest people in the world and that we can ignore instructions and just get things done by our own instincts and skills," he says. "That's true for machinery. Every farmer I know can take apart and overhaul his machinery without ever looking at the manual. But chemicals are different. They are much more dangerous, and those classes help us prevent a lot of injuries and other accidents."

"It doesn't make any sense to fight government regulation," says Dick Felton, an engineer with J.P. Cullen and Sons, a construction

company that builds commercial projects such as hospitals, power plants, office buildings and shopping malls. "Everything we do in construction is inspected. If it isn't the federal or state government, it is the owner or the architect. We have found that you never win the battle by fighting the system. You have to work with it. There is no way you are going to eliminate inspections and regulations. So rather than cause a big stink, we see if regulations can give us an advantage. If we can improve the quality of our work and be better builders because of regulations, then we are ahead of the game."

Dave Cullen, the fourth generation of his family to be involved in the business his great-grandfather started 87 years ago, conceded there are aspects of government regulations that disturb him and areas where the government could make more of an effort to help firms that are trying to comply with its rules and requirements. Occupational Safety and Health Administration (OSHA) inspectors, Cullen says, "sometimes go a little overboard" looking for violations. Federal agencies, he continues, could go a long way toward achieving the goal of having minority contractors receive ten percent of government construction contracts if they would provide general contractors with lists of reputable and approved minority firms in different areas of the country. But, says Cullen, he sees "the basic good" in the minority subcontracting requirement and feels OSHA regulations have brought more benefit than harm to his firm. "A safe company," Cullen explains, "can put out a lower bid on many projects because we can

keep our injury and disability costs down. Posting injury reports also helps us because it helps make the project safe and gives workers a better chance of deciding if they want to be on a job." Executives at the GM plant also had a favorable word for OSHA, noting that OSHA mechanical regulations were "some of the easiest regulations to comply with" and that the agency "has been reasonable" in these matters.

So what does it all add up to?

Basically, there are several points which merit serious attention by regulators because, though stated in terms of the Janesville experience, they raise issues that are not limited by geography. They are the following:

First, people in business, labor and city government often see little connection or relationship between the activities regulation has imposed on them and the social goals regulation is supposed to achieve.

Although most people interviewed felt regulations originally were developed to help protect the public or the consumer, they did not believe the actions they were required to take in order to comply with regulations contributed to that goal. As a result, regulation, though supported in principle and often in practice, is viewed primarily in negative terms, as a process that has the potential to create more problems than it can solve. The most one hopes for, it often seems, is that regulation does not lead to too much paperwork, expense and disruption of normal working procedures and patterns. Meanwhile, more than a few people who count themselves

as advocates of regulation say they are hard pressed to say how regulation has benefitted them or the city as a whole. As one person put it: "I don't think regulations have hurt us, or at least I don't think they have hurt as much as some others think. To my knowledge, nobody is out of a job and none of the local plants or businesses has been forced to shut down. But on the other hand, I can't say that I am better off or that the city is a better place to live because of regulations. I suppose the main result is that my taxes are a little higher to support these activities or that prices are a little higher or that there have been times when regulations have been thrust upon this city in an arbitrary manner."

Second, lawyers, accountants and regulators are judged to be the primary beneficiaries of government regulations.

Regulation may have started as an effort to defy and defend the public interest in different fields and situations, but the view in Janesville is that the public goals got lost somewhere along the way, and the regulatory process developed a life and momentum of its own. Public acceptance of regulation, it is argued, will come only when the people who are being regulated believe that regulations benefit them at least as much as the people who make their living through the regulatory process and when the people who are being regulated have some understanding of how the activities that regulations and regulators require of them contribute to a better quality of individual and community life. Until then, lawyers, accountants and regulators will continue to be perceived as the ones

with the most to gain; lawyers and accountants because more regulation means business; regulators because more regulation means more jobs and more power.

Third, there is a growing sense that regulation has saddled smaller communities with the burden of responding to problems that are occurring elsewhere.

A common view in Janesville is that a large number of the regulations people must comply with have come about because of the ability of small, organized and articulate special interest groups to convince legislative bodies and government agencies of their special needs. The grievances, injustices, abuses, concerns and problems that presumably led to those regulations are not questioned; however, the extent to which the problems regulations address actually exist in the community is questioned. Residents who hold widely divergent political and social views contend, for instance, that no local industry has created a health hazard, no financial institution has been ripping people off, and there aren't that many minorities in town to make discrimination or denial of equal opportunity an issue. People here say they are willing to comply with government regulations but wish someone would identify the specific problems regulators believe exist in their community that warrant attention and justify the regulation. If this happened, they say, then regulators would have to abandon the practice of developing one standard for the entire country and begin to recognize that different kinds of communities have different kinds of problems.

Fourth, criticism of regulation frequently is directed at state government and not just at the federal government alone.

So much attention has been paid to the mistrust, fear and anger with which local communities apparently regard the federal government that there is a tendency to forget that big government, as one person in Janesville said, "isn't an address, it's an attitude." Some of the major complaints about regulation were directed at state government agencies located just 40 miles away. The troubles people have had with state regulatory agencies surprised them -- "we just expected more from the state," one businessman said -- this has not created a situation in which federal regulatory agencies take the blame or suffer the fall-out for the perceived shortcomings of another level of government. People do distinguish between federal and state regulations. If anything, state agencies may take some unjustified criticism because they often are in the position of administering federal regulations. On another level, a trucking company executive claimed that 95 percent of his regulatory problems stemmed from the fact that the regulations affecting his business vary from state to state.

Fifth, regulatory agency employees who deal with local people are accused of transforming the regulatory process into an adversary proceeding.

This is a restatement of the earlier complaint that the people who enforce regulations often are too rigid and unyielding. The people who make this charge claim they are not trying to disrupt or dismantle the regulatory machinery. Their contentions, which bear

repeating, are that the regulatory process often seems to be controlled by people who are more interested in flaunting their own power and authority than in working out a mutually acceptable solution to a legitimate regulatory problem; that regulations are pre-empting the decision-making process at the local level; and that the decision of local communities should be respected and deferred to unless regulators can say specifically what harm will occur if the local decision is implemented or allowed to stand. "Right now," says David Feingold, an attorney, "it's as if we have lost the phrase 'government of the people, by the people, for the people.' That phrase, fully understood, is all we are talking about."

The immediate implication of these findings is that the public needs to be more informed about regulation and that regulators need to be more responsive to public concerns, regardless of whether they agree with them. The public needs to know more about how regulations are developed; the reasons they are developed; who has decision-making authority in the regulatory process; how that authority is granted; and how and when regulatory decisions can be appealed. Regulatory agencies, on the other hand, must begin answering, in more detail than they apparently have in the past, such questions as whether regulations really do represent special interest groups getting their own way; why a Janesville, Wisconsin, should have to comply with the same regulation as a Chicago, Illinois; how the regulations with which people in local communities must comply actually benefit, or stand to benefit them, how regulation at the local level fits into a

national pattern; and why local communities and businesses cannot be judged more in terms of substance than process, by whether the goals of regulation are met instead of whether the details of the process are followed to the letter.

Although each regulatory agency could mount its own effort in this area, a coordinated government-wide program might be more sensible and effective. The program, however, should not become bogged down in assessing the specific validity of each criticism levelled at a regulatory agency. The fact that a criticism is fully valid, partially valid or based on misinformation or misunderstanding is less important than the idea that each of these situations represents a problem that needs to be addressed.

Finally, the Janesville findings suggest that the image of America as a government of laws may be giving way to an image of America as a government of regulations. If this proves to be true in other locations and circumstances, it argues for nothing less than a fundamental re-thinking of the regulatory system as a whole: its goals, the methods developed to achieve those goals, the workings of the regulatory process, and the impact regulation has at the local level. For a growing number of people, regulation has become either their first or most frequent direct contact with government. If they feel the regulatory process ignores them, if they believe they have no voice or influence in decisions regarding regulations, and if they are convinced that those empowered to correct this situation have chosen not to do so, the result may be far more serious than turning people away from regulation. It could also turn them away from representative democracy.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

31 JAN 1980

Mr. Peter J. Petkas
U.S. Regulatory Council
Washington, DC 20503

Dear Peter:

Every so often someone writes a paper or makes a speech that changes the tone of a debate. "Government Regulation, The View from Janesville, Wisconsin" is that kind of a paper. Even though there are factual errors and methodological flaws in the report, it nonetheless elevates the debate surrounding regulation. It does this by concentrating on some of the important political questions that lie at the heart of administering a "government of laws." Instead of permitting the argument to languish at the level of whether the costs outweigh the benefits of regulation, Paul Danaceau tries to ask important questions about the nature of representation in our Federal system, the current limits on discretion that we place on officers of the government, and the ability of government to cope with complex technological issues around which social consensus may not exist.

Through the use of various examples, Danaceau comes to the conclusions that government ought to "assess more thoroughly the impact regulations can have on small communities and small businesses" and that "regulatory agencies . . . must begin answering, in more detail than they apparently have in the past, such questions as why a Janesville, Wisconsin, should have to comply with the same regulations as a Chicago, Illinois." It is, of course, not surprising that Danaceau would find in Janesville, or in any American community for that matter, sentiment that local preferences should prevail. That is precisely why we have a Federal system, i.e., a system in which that which is good for the goose (or New Hampshire) does not have to be good for the gander (or California). For further discussion of this American tendency, one has to look only at the Articles of Confederation, or the debate surrounding the adoption of the Constitution.

For a good part of our history, and on certain critical issues, however, another force has prevailed. The drive for equality of rights, for equal treatment, for uniformity if you will, has been the moving force in American life. It is deeply imbedded in Federal regulation, as agencies attempt to find objective or neutral principles that can be applied to every industry, indeed, to every citizen. Over the years many unnecessary regulations undoubtedly have crept into our repertoire, but it is difficult to see how, on a geographic basis at least, one could alter regulations to suit different situations without running the grave risk that such alterations would soon become much more arbitrary and capricious than the regulations they replaced. The principles of

Mr. Peter J. Petkas

2

diversity and uniformity will inevitably be in conflict--our system is designed precisely so that this will take place. My own view, however, is that the place to fight such battles is not in the Federal Register, but in the Halls of Congress, where the fundamental political battles can be joined.

I am not sure that it is appropriate for regulatory agencies to take it upon themselves to fashion different standards based on local differences or differences in, say, the size of the business being regulated. We can talk about relevant differences, but it becomes difficult to apply this notion when you get down to actual cases. For example, whether one produces antibiotics in Janesville or Chicago is in my view irrelevant: consumers must have a quality product. This is not to say that Government must be totally blind in the kind of assistance and guidance it provides in meeting equal standards. It strikes me that this latter area is one in which the Federal Government can and should deliver significantly more aid. Perhaps the focus should be less on adapting regulations to local circumstances, and more on providing advice and expertise on how to comply with regulations.

At the most fundamental level, Danaceau asserts that the regulatory discomfiture being experienced is dangerous to representative democracy. These are the kinds of statements usually dismissed as the overwrought platitudes of writers trying to find summary paragraphs for their reports. And indeed, it is true that Danaceau gives us no real analysis to lead from his assertions that people are angry about regulation to a conclusion that the foundations of the regime are at stake. It is important, however, that we take this assertion seriously, if only because the kinds of complaints made to Danaceau may represent the opening volley of a more serious problem. People, fortunately, only complain when something can be done about a problem; they take to the streets if their freedom is truly threatened. To nip the problem in the bud, then, requires an examination of the problems of technological complexity and inspection discretion that, I believe, lead to much of the complaint.

Danaceau accurately points out that many people cannot see the relationship between demands made by inspectors and the social goals involved. Any of three hypotheses can account for this fact: (1) "Bad" regulation is at fault--i.e. there is no reason for the particular regulation; (2) difficult cause and effect problems are present, in which the effect either occurs a long time after the cause, or in such small increments that the effects are cumulative but difficult to measure; or (3) there is no real consensus around the social goal. The first explanation yields relatively easily to the kind of footslogging regulatory reform that is currently underway in the Federal establishment. Sunset laws, regulatory reviews and the like can gradually weed out what are essentially implementation problems caused by the lack of adequate analysis. Either the ghost of unintended consequences has been

Mr. Peter J. Petkas

3

at work, or--believe it or not--the American work ethic that demands that people continue to work on problems after they have essentially been solved. Bureaucracies are particularly subject to this problem which, while vexing, is ultimately manageable.

It is more difficult to attack the problem of cause and effect because both can be real but esoteric. In health and safety regulation particularly, it is precisely the absence of common sense that requires regulation. One cannot see microbiological contamination, or the effects of small amounts of toxic chemicals. People are generally not dying in the street. The work is based on sophisticated laboratory analysis that defies the ability of the average businessman to cope. It is trite but true to say that we need to educate the average businessman to the basics of toxicology, if we are to have any chance at all.

At an even deeper level, much of the recent health and environmental regulation runs into the question of consensus. Even though laws have been passed that presumably legitimate the objectives of environmental, occupational and consumer products regulation, the fact remains that large numbers of people disagree on the magnitude, and extent of the problems, as well as the ability of the government to cope with them. We will not effectively regulate carcinogens, for example, until we have both the technology and the will to see us through to the end.

Even if we assume that all of the conceptual problems can be swept aside, we must still face the kinds of difficult implementation problems about which Danaceau writes so effectively. Many inspectors are rigid in their application of regulations. Some of this rigidity can be dealt with by better explanations from the top about the purposes of regulation, and more support from upper level supervisors to develop personal strength in ways that do not require authoritarian behavior. I am afraid, however, that the regulator as adversary--at least in part--is inherent in the kind of society we have. We are not the homogeneous group in which Chumley the Regulator and Smedley the Businessman can sit down and work out all problems because they went to the same schools, come from the same place, know each other's families, and generally trust each other to act in the general welfare. For better or worse, our emphasis on the development of voluntary organizations, interest groups, and individualistic behavior breeds antagonisms and disagreements. In the same way, our legal system operates on the premise that truth only emerges from confrontations. We cannot ask the regulators to be different from the society in which the rest of us live.

More practically, Danaceau is asking for a fundamental change in social policy to give regulators more authority by giving them more discretion. The "government of regulation" that Danaceau describes is the outgrowth of the modern attempt to curb arbitrary and capricious behavior by the government. By reducing rules to paper, we have operated on the theory

Mr. Peter J. Petkas

4

that it is better to be adversarial and take a problem to court than it is to "work it out." We have assumed that in the "working out of problems," the public at large often gets less than it pays for.

I do not want to get bogged down in a rebuttal of the specific complaints on which Danaceau bases his general conclusions. Danaceau recognizes that his study is impressionistic and he is very explicit about not including the regulators' side of the story. As you might expect, we have for our own purposes checked out the complaints concerning meat inspection, and not surprisingly, we have found that there is indeed another side. Without attempting to decide whether the particular complaints are valid (as Danaceau indicates, such judgments lie beyond the scope of his study), I would like to cite one of them as an illustration of the points I have been discussing.

The attempt to regulate the length of grass outside a meatpacking company offers one of those reductio ad absurdum arguments on over-regulation. Frankly, I don't know at this point whether inspectors should concern themselves with the length of grass. Some people in our inspection program argue that we should, because tall grass is a rodent harborage. Perhaps we should not worry about the grass, and should simply concentrate on not allowing trash to accumulate immediately outside plants. The grass issue aside, however, the central point is that we instruct our inspectors to enforce a number of rather specific sanitation requirements, and these requirements lead inevitably to the sort of impressions that Danaceau has recorded. While it is easy to perceive the cause and effect relationships between general sanitation and safe meat, the link between a specific requirement and the health of consumers is often based upon experience and specialized knowledge. Moreover, our inspectors have little discretion in applying most requirements. The health and safety "judgments" occur in the formulation of the standards. Finally, most of the requirements are enforced across the board (the exception is that some sanitation requirements are not enforced as strictly at small plants).

We obviously could devise a system that would give inspectors more discretion and would tailor requirements to the needs of individual plants. We could even have inspectors concentrate less on prevention and more on the attempt to determine whether meat is in fact adulterated (thus, eliminating part of the cause and effect problem). However, we would soon encounter the difficulties I discussed earlier. Greater discretion poses the problem of how to avoid being arbitrary and how to ensure fairness. The question of fairness is not merely one of abstract justice, but has direct economic consequences. Every day, inspectors must enforce requirements that cost plants money. It is therefore extremely difficult to draw the line between meeting individual needs, and providing unfair economic advantage. In attempting to bridge the gap between cause and effect, and to explain the purpose of specific

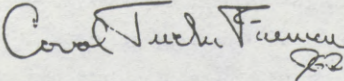
Mr. Peter J. Petkas

5

requirements, we must come to terms with the difficulty I mentioned earlier: many of the scientifically known risks now associated with food (or for that matter, other environmental risks) are not self-evident and sometimes even appear to defy common sense.

In sum, the Janesville study defines several of the challenges now facing regulatory agencies. I think we can successfully weed out regulations that serve no useful purpose, or regulations whose costs are clearly out of proportion to any potential benefit. I think we can do a much better job of explaining the social benefits of many other regulations. We can also strive for more reasonable application of regulations. But I do not think we can ever expect regulation to be a smooth and happy process. Such expectation ignores not only the logic of regulation, but also the dynamics of our history and political culture.

Sincerely,

A handwritten signature in cursive script that reads "Carol Tucker Foreman". To the right of the signature is a small, stylized monogram or initials, possibly "CF".

CAROL TUCKER FOREMAN
Assistant Secretary for
Food and Consumer Services

United States Regulatory Council

President Carter established the U.S. Regulatory Council in 1978 to improve coordination of Federal regulatory activities and encourage more effective management of the regulatory process.

Presently chaired by Environmental Protection Agency Administrator Douglas M. Costle and directed by Peter J. Petkas, the Council is composed of 36 departments and agencies with major regulatory responsibilities.

The Council seeks to eliminate duplication, gaps and contradictions in existing and proposed rules. When several agencies regulate the same product or sector of the economy, the Council may analyze the cumulative regulatory impact and correct any specific problems created. The Council's semi-annual Calendar of Federal Regulations provides a comprehensive overview of major regulations under development, and a summary of the analytical basis for them. It is designed to encourage greater public participation in the regulatory process, to identify areas of multiple regulatory impact and to assist the regulators in developing clear and cost-effective regulations.

Other Council activities include:

- * Developing national policies relating to control of cancer-causing chemicals;
- * Resolving special regulatory problems of small business;
- * Chairing an interagency automobile committee looking at both short and long term effects of regulations on the industry.

- 2 -

- * Identifying and reducing inconsistencies in regulations affecting the hospital and coal industries;
- * Assessing the benefits of regulation on the non-ferrous metals industry; and
- * Encouraging innovative approaches to regulation and better economic analysis.

Memorandum of Agreement
Regarding Flexibility in Rulemaking
Between the
Occupational Safety and Health Administration
and the
Small Business Administration

1. Purpose

The purposes of this Memorandum of Agreement, agreed to by the Occupational Safety and Health Administration (OSHA) and the U.S. Small Business Administration (SBA) are:

- (a) To assure that any new rules and regulations issued by OSHA will be applied whenever possible in a flexible manner, taking into account the size and nature of the regulated businesses while fulfilling missions of the Occupational Safety and Health Act of 1970 and the Small Business Act of 1958.
- (b) To establish a program by means of which OSHA and SBA can work cooperatively to carry out the provisions of paragraph (a), thus providing the positive means of conveying to OSHA in connection with its standards-setting responsibilities, the special concerns and unique circumstances of small business.

2. Interagency Coordination

The Special Assistant for Small Business in OSHA and the Chief Counsel for Advocacy in SBA will be responsible for the coordination and implementation of activities under this Agreement.

3. Implementation

OSHA and the SBA, through its Chief Counsel for Advocacy, intend to promote flexibility in OSHA rule making by:

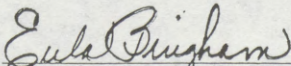
- (a) Gathering and disseminating data and information during the rulemaking process as early as possible.
- (b) Identifying small businesses by type of industry and industrial classification that may potentially be affected by the rule.
- (c) Providing potentially affected small businesses opportunities, including public hearings and conferences, to present information, data, or their concerns to OSHA as early as possible during the rule-making process.

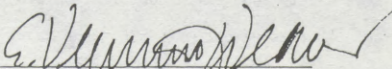
- (d) Providing the Office of Advocacy and small businesses identified as potentially affected an opportunity to present suggested alternatives to minimize the financial and technical burdens of the proposed rule on small businesses.
- (e) Providing information on special characteristics of affected small businesses in order to facilitate the designing of educational, training, and consultative programs to assist small businesses in meeting objectives of the rules.

4. Cooperative Program

- (a) As early as possible in the rule-making process for which a regulatory analysis is being performed under the requirements of Executive Order 12044, or under the President's memorandum of November 16, 1979, OSHA will give notice to the Small Business Administration, through the Chief Counsel for Advocacy, of its intent to propose rules and guidelines and notice of data needed to implement flexible rule-making for small businesses.

- (b) Upon such notice, the Chief Counsel for Advocacy will gather the requisite data from the small business community and transmit it to OSHA.
- (c) The Chief Counsel for Advocacy will prepare analyses and recommendations on proposed rules. The Special Assistant for Small Business will consult with the Chief Counsel for Advocacy and small businesses on proposed rules and make appropriate recommendations to the Assistant Secretary.
- (d) The Special Assistant for Small Business will also arrange for OSHA to furnish to any small business groups desiring to participate in OSHA rulemaking information of a technical nature that is necessary to a clear understanding of a rule, the rule-making process or compliance with a rule.


Eula Bingham, Assistant
Secretary of the Department
Labor for Occupational
Safety and Health


A. Vernon Weaver
Administrator
for the Small Business
Administration

Executed this 10th day of April 1980.

News

United States
Department
of Labor



Office of Information

Washington, D.C. 20210

OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION

USDL -- 80-244

Contact: James F. Foster
Office : (202) 523-8151
After Hours: XXXXXXXXXXXXXXXX

FOR RELEASE: IMMEDIATE
Friday, April 11, 1980

OSHA AND SBA COOPERATE TO INCREASE CONSIDERATION OF SMALL BUSINESS IN JOB SAFETY
AND HEALTH RULEMAKINGS

The Occupational Safety and Health Administration and the Small Business Administration today announced a cooperative effort to increase participation by small business in OSHA rulemakings and introduce more flexibility in the application of new job safety and health standards to smaller firms.

Dr. Eula Bingham, head of the Labor Department's OSHA and SBA Administrator Vernon Weaver, said that the goal of a memorandum of agreement signed yesterday by them is to ease the financial and technical difficulties small businesses may face in complying with OSHA standards.

"It's no secret, and no surprise, that smaller firms have much more difficulty than larger ones in complying with federal regulations," said Dr. Bingham. "During the past few years we at OSHA have tried to reduce the regulatory burden on small businesses by reducing paperwork, refocusing inspection priorities, and establishing free safety and health consultation programs.

"Our agreement with SBA," she said, "is a further step in our efforts to take into account the special compliance problems and capabilities of small business employers without, in any way, compromising their responsibility to provide safe and healthful working conditions for their employees."

Weaver also hailed the agreement and said it "parallels other efforts within SBA and the Administration itself to reduce the regulatory burden on small business.

-more-

- 2 -

At January's White House Conference on Small Business, delegates from across the country made clear that one of their top priorities was to trim government regulation," Weaver said. "This agreement between SBA and OSHA is a major step in recognition of that small business priority."

Dr. Bingham explained that the agreement calls for her Special Assistant for Small Business, Ms. Kay Klatt, to work closely with the SBA's Chief Counsel for Advocacy, Milton Stewart, to identify and share information with potentially affected small businesses as early as possible in the rulemaking process. She noted that the agreement implements a Presidential directive of last November on flexibility in regulating small businesses.

The new agreement calls for OSHA and SBA to work together to identify small businesses that may be affected by new OSHA standards. Small business employers will be given the opportunity and encouraged to present their concerns to OSHA as early as possible in the rulemaking process. They will be encouraged to suggest alternatives to any proposed regulation in order to minimize the financial burdens on small employers. Technical assistance in testifying at hearings and making comments for the record will be provided to any small business group requesting it.

The anticipated result of these programs to involve small firm employers in OSHA rulemakings will be job safety and health standards that may be more flexibly applied to small businesses. This kind of flexibility is already embodied in some current OSHA regulations, such as the lead standard which allows for varying exposure levels and compliance schedules depending on the industry segment affected.

In a separate memorandum, the two agencies have also agreed to participate in special efforts to provide informal assistance to small business employers. For example, someone receiving an OSHA compliance loan may need help in locating the most cost-effective method of eliminating problems with chemical fumes. The two agencies would then provide assistance as appropriate.

- more -

-3-

Also under discussion is a new agreement to improve the method by which OSHA and SBA cooperate in granting loans to small business employers needing financial assistance to meet OSHA requirements.

###

THESE REMARKS REPRESENT THE VIEWS OF A MEMBER OF THE STAFF OF THE FEDERAL TRADE COMMISSION. THEY DO NOT NECESSARILY REPRESENT THE VIEWS OF THE COMMISSION OR ANY INDIVIDUAL COMMISSIONER.

Small Business: A Critical Element
Of The American Economy

Remarks of

Alfred F. Dougherty, Jr.
Director
Bureau of Competition
Federal Trade Commission

Before the
Antitrust Committee
Chicago Bar Association
Chicago, Illinois

January 24, 1980

Small Business: A Critical Element of the American Economy ¹

A subject receiving increasing emphasis in Washington is the role and significance of small business in the American economy. Just this week, the President's White House Conference on Small Business concluded its proceedings. The Conference focused on the problems faced by small business today -- especially those caused by Government -- and various remedial proposals offered by representatives of the small business community. I believe that many of these proposals will find strong support in the Administration and Congress, and will become an "agenda" for action in the 1980's.

The concerns of small business expressed at the White House Conference are well-founded: Small business appears to be in greater trouble today than ever before. In order to understand the problem, it is necessary to review the role of small business in the American economy.

There are over thirteen million small businesses in the United States. These businesses comprise 90% of all corporations. They produce 43% of our Gross National Product (over \$670 billion), and provide 55% of the Nation's jobs.

1. These remarks represent the views of a member of the staff of the Federal Trade Commission. They do not necessarily represent the views of the Commission or any individual Commissioner.

Moreover, between 1969 and 1976, small business created almost two-thirds of all new jobs in the national economy. ².

In addition, small businesses, particularly those in advanced technological fields, appear to be the "cutting edge" of American industrial innovation. Small business created a preponderance of the major industrial innovations between 1953 and 1973 ³, and, through the development of new products and processes, created important new markets. The growth of these markets has far outstripped that of the "mature" markets served by large, established firms. ⁴ This should not be surprising. Small business appears disproportionately to harbor the true entrepreneurs in American society; the imaginative, aggressive, possibly non-conformist individuals who have been the "sparkplugs" of American industry. ⁵

However, by many economic indicia, small business is enjoying a decreasing share of the economic pie. The situation is particularly acute in manufacturing, where the two hundred largest U.S. manufacturing firms increased their share of manufacturing assets from 46% in 1947 to 62% today. Sales of

2. See Study of the Program on Neighborhood and Regional Change, Massachusetts Institute of Technology, reported in "Small Business: Job Role Highlighted," N.Y. Times, January 18, 1980, at D1. "Small business" was defined as a firm with twenty or fewer employees.

3. National Science Board, Science Indicators (1977), at 92.

4. See The Role of New Technical Enterprises in the United States Economy, Commerce Department (1976).

5. See e.g., "Dreams Prove Profitable for Small Businessman," Washington Post, January 17, 1980, at C1.

manufactured goods show a similar picture, with the two hundred largest manufacturers increasing their share from 36% in 1947 to 52% in 1972.

Not only is concentration high within the economy as a whole; it is often even higher within individual industries. A survey by the Census Bureau of 488 industries found that the four largest firms controlled over half of the market in 142 industries.

At the same time, economic theory and antitrust policy have paid insufficient attention to the role of small business in the competitive process. By implicitly assuming that all firms within a market are of equal size and financial strength, micro-economic theory fails to recognize the actual competitive conditions under which most small businesses operate, and the degree to which small businesses are vulnerable to larger, more powerful firms. As Professor Galbraith observes:

Indeed few features of the neoclassical economics arouse more admiration for its effect than the way it rationalizes and conceals the disadvantages of the weak. One theory of the firm applies for all. There is, accordingly, no basic presumption of difference in advantage between one group of firms and another . . . [F]or no clear theoretical reason, the neoclassical monopoly is almost invariably discussed as it affects the consumer. Almost no attention is given to its control over the costs of the weaker firms from which it buys or to its control over the prices at which it sells to other and weaker firms. Thus the problem of the terms of trade within the economy, as these favor some firms and are adverse to others, it almost totally out of view.⁶

6. Economics and the Public Purpose (1972), at 243.

Our failure to recognize the importance of small business has led to a number of serious failings on the part of the Government. Laws and regulations designed for application to large firms are applied with equal stringency to small businesses, even though the problems that give rise to governmental action often are caused primarily by large firms. At the same time, large firms, with the benefit of greater financial, legal and managerial resources, tend to receive a disproportionate amount of attention from Government decisionmakers in the course of regulatory and policy deliberations.⁷ Small business thus finds itself in a double-bind: Included within an industry perceived to require regulatory control, yet unable effectively to influence regulatory policies.

In short, small business, though of enormous importance to the economy of the United States, has increasingly become the "forgotten man" of government policy.

How can the problems of the "forgotten man" best be analyzed, and what implications do these problems have for the FTC as an antitrust enforcement agency?

An inquiry into the problems of small business entails what may be termed "competition analysis". While antitrust principles are included within it, competition analysis encompasses many other subjects as well. Thomas Kauper, former Assistant Attorney General in charge of the Antitrust Division, has described

7. See Chemical Bank Study of Concerns of Small Businessmen, reported in Business Week, November 11, 1979.

competition policy as "a variety of actions, beyond simple enforcement of the antitrust laws, that are designed to make competition the primary regulator of our markets and to assure that competition forces exist." ⁸

In other words, competition policy establishes the framework, including the statutes, regulations, and Government policies for action or inaction that determine the manner in which competition operates in particular industries. The question of what Government should and should not be doing has two distinct elements. Often, by "not doing", Government best assists small business' efforts to compete more effectively. To me, this is the thrust of the so-called "two-tier" regulatory reform proposals currently being considered by Congress. These proposals, which I will discuss more fully below, provide a "sliding scale" of regulation based on the size of affected firms. Through the "sliding scale" system, Government, by applying regulatory policies to small businesses less stringently than to large firms (i.e. by "not doing"), may redress the imbalance inherent in the present regulatory system. The result should be lower costs and greater productivity for small business and a greater small business presence throughout the American economy as a whole.

For this reason, issues like regulatory reform, tax policy and capital formation are intimately related to antitrust policy. With the benefit of effective Government policies in the

8. See T. Kauper, Competition Policy and the Institutions of Antitrust, 23 S. Dak. L. Rev. 1, 21 (1978).

former areas, small business will be a more vigorous competitor in the marketplace and may serve as a more effective check on the abuse of market power by large firms. The result should be a more competitive American economy and less need for the "emergency" restorative efforts entailed by the major Government antitrust case.

Returning to a competition analysis of small business, at least four areas deserve attention: Government Regulation; Access to Capital; Tax Policy; and Antitrust Policy.

Government Regulation

No area of Government activity has proved potentially more damaging to the competitive vitality of small business than Government regulation. Within the general subject of regulation, two issues are of particular interest; (a) the differential impact of regulation, and (b) regulation as a barrier to entry by small businesses.

(a) Differential Impact of Regulation

Practical experience and economic theory both strongly support the argument that regulatory requirements applied "neutrally" to all members of an industry often cause a disproportionately greater burden on small firms. This differential burden disadvantages small firms in their efforts to compete with large rivals.

The economic argument linking regulation and competition was articulated by Dr. Milton Kafoglis, then a member of the President's Council on Wage and Price Stability, in testimony before the Senate Subcommittee on Administrative Practice and

Procedure. Dr. Kafoglis analyzed the effect of regulation on a small firm facing a "dominant" large rival in the following terms:

There seem to be clear economies of scale imposed by most regulatory endeavors. Uniform application of regulatory requirements thus seems to increase the size firm that can effectively compete. The cost curve of the firm is shifted upward and to the right with its minimum point . . . occurring at a larger output. If one employs the economists' theoretical "dominant firm" model and introduces such upward shifts in cost curves (the small firms' cost curve shifting more than that of the dominant firm) the share of the dominant firm will increase while that of small firms will decrease. As a result, industrial concentration will have increased. This hypothesis has not been questioned and is consistent with most of the case analyses that have been completed. It suggests that the "small business" problem goes beyond mere sympathy for the small businessman, but strikes at the heart of the established national policy of maintaining competition and mitigating monopoly.

Why does "neutral" regulation have a differential impact on large and small firms? Two general observations should be made. First, even if actual regulatory costs are equal between competing large and small firms, small firms have fewer units of output over which to spread such costs and must include in the price of each unit a larger component of regulatory cost. Second, where small firms have smaller actual regulatory costs than large firms (as is generally the case), small firms remain at a competitive disadvantage because they are unable to take advantage of the "economies of scale" of regulatory compliance.

9. Hearing Before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary, October 7, 1977, Part 1 at 26.

Large firms generally already have extensive "in-house" data compilation and reporting systems and specialized staff accountants, lawyers and managers whose primary function is regulatory compliance. Small firms, by comparison, must either hire additional personnel or purchase expensive consulting services in order to acquire the necessary regulatory expertise.

Differential regulatory costs may become critical when regulation imposes a specific technology on all firms within an industry, rather than a "performance" standard to be met by the technology of the firm's choice. Technologies favored by Government agencies tend to be the most advanced, sophisticated and expensive presently available. The imposition of a "regulatory investment" of this type on a large firm may require an adjustment of the firm's general investment plans. The imposition of the same investment on a small rival may often force the small firm to defer indefinitely necessary capital improvements. Thus, the imposition of a "neutral" technology may severely hinder the small firm in its competitive efforts vis-a-vis its large rival.

Of course, it is difficult to measure precisely the competitive effects of regulation. In some cases, less competition and higher concentration in an industry may be necessary prices for the achievement of other national goals. Nevertheless, the competitive burden imposed on small business by regulation is an issue that must be considered throughout the regulatory process.

Fortunately, the Administration and Congress have already begun a comprehensive examination of the adverse impact of Government regulation on small business. The Small Business Administration has undertaken a Paperwork Measurement and Reduction Program ¹⁰, designed to simplify Federal Government reporting forms and to eliminate duplicative information requests by Federal agencies. This effort is long overdue and will, I hope, provide a model for similar efforts by state and local governments.

More comprehensive regulatory reform efforts are also underway. During the past few years several members of Congress have introduced bills that would require regulatory agencies to tailor proposed regulations so as to avoid adverse competitive impacts on small business. While details vary among the bills, these statutory proposals generally would require regulatory agencies, in the course of rulemaking, to solicit the views of the public concerning the regulatory burden that proposed rules will impose on small business. Where an agency determines that an alternative rule less burdensome to small business is feasible and consistent with the agency's statutory mandate, the agency must adopt this rule or justify in the rulemaking record its determination that the more burdensome rule is necessary. In addition, regulatory agencies would be required over a period

10. See Paperwork Measurement and Reduction Program Discussion Draft, "Cutting Paperwork for Small Business: An SBA Priority," U.S. Small Business Administration (1979).

of years to review all "major" rules already in effect in order to determine their effects on small business.

The concept of "two tier" regulation deserves support by both small business and Government competition policymakers, bearing in mind, however, that in certain areas, for example, health and safety regulations, the imposition of a uniform standard probably is appropriate.

(b) Regulation as a Barrier to Entry

In addition to the differential impact of regulation, an important issue from a competition perspective is regulation that systematically excludes or impedes the entry of new markets by small firms. The FTC has become increasingly sensitive to this issues and has undertaken several initiatives.

For example, the FTC has actively intervened before the Interstate Commerce Commission and the Civil Aeronautics Board to remove restrictions on entry and pricing in the airline and trucking industries. In both areas, it is foreseeable that the dismantling, or at least the liberalization, of regulations may result in the creation and entry of smaller regional air carriers and trucking firms into markets now dominated by large companies. An illustration of this activity is our intervention in the ICC's trucking "protest standards" proceeding. To enter a particular interstate freight route, a firm is required to petition the ICC for a "certificate of convenience and necessity." When such a petition is filed, existing certificate holders, including firms that have not been actively carrying freight, may file protests against the petition. An expensive

and time-consuming proceeding is thus assured, deterring many smaller truckers from petitioning in the first place. The FTC has advocated tightening protest standards by confining protests to firms actually involved in freight carriage in the relevant market. This should facilitate entry by small truckers.

Similarly, the FTC has on many occasions provided comments to and testified before the Department of Energy concerning the adverse impact of proposed DOE price and allocation rules on small petroleum refiners and marketers. These and other "deregulatory" activities will continue. Finally, the FTC's standards and certification rule, if adopted, would afford small manufacturers an opportunity to participate more effectively in the standards setting process.

Access to Capital

Access to capital has been called small business' greatest problem.¹¹ Indeed, policies favoring greater access to capital by small business may be the most effective method by which Government may contribute to the vitality of the small business segment of the American economy.

The critical issue in this area is whether the higher capital-raising costs of small firms reflect accurately the greater risks entailed by many small business ventures, or represent a built-in capital market prejudice against small enterprises generally. However, regardless of the nature of this

11. See Testimony of Walter Stults, Executive Vice President, National Association of Small Business Investment Companies, Before the Subcommittee on Antitrust, Consumers and Employment, House Committee on Small Business, July 28, 1978.

discrimination between large and small firms, the disadvantages of the small firm in its capital-raising endeavors have substantial competitive consequences.

Until a firm can break the "capital barrier", the firm will remain small and possibly capable of only a limited impact on national markets. Small firms without the benefit of capital often remain competitively vulnerable to large rivals, especially diversified firms whose operations in one market can be financed to some extent by profits earned in others. Large diversified firms have a greater ability to cut prices, to engage in expensive promotion campaigns, and otherwise to enter new markets and expand shares in existing markets.

Furthermore, even where a small firm is relatively secure in its niche, the unavailability of capital often limits the firm's ability to expand its business. This may result in a merger with a larger firm capable of providing the capital necessary for development. In this sense, unequal access to capital serves as a "barrier to mobility" within the industry.

This problem may be particularly acute in "emerging" industries. Emerging industries are industries in which one or more pioneer firms have developed and are seeking to exploit commercially a new product. This process consists of two stages; the development of a critical invention, patent or device, and the creation of a commercial market for the new product. While many firms are capable of introducing a new product and producing it on a limited basis, few have access to the capital necessary to undertake full commercial development. It is at this stage

that merger or corporate affiliation with a large firm appears necessary.

The ultimate competitive effect of the acquisition of small firms by large companies is uncertain; nevertheless, the exclusion of small firms from the commercialization of important new products is troublesome, particularly in light of the fact that small business has proved itself the primary source of innovation in our economy. As William C. Norris, the founder of Control Data Corporation, recently stated.¹²

With the exception of those hardy souls who start and operate small businesses and a few large companies, today's private enterprise is distinguished by a lack of new products and service innovations. Such innovations yield increases in productivity that permit a higher standard of living and at the same time subdue inflation and create jobs.

But innovation demands risk taking - a way of life for the small-business person. It is unavoidable in starting a business and achieving profitable growth in an environment dominated by giant corporations. In short, small businesses innovate, take risks, or die.

* * *

Our representatives in Congress must pass new legislation that removes the disadvantage placed on small business, . . . In contrast to the present situation, Congress would do well to give small business a competitive edge because of its willingness to innovate, take risks, and create the new jobs that Americans need so badly - in recognition of its proven performance in each of these areas. For these reasons, the creation of greater opportunities for

small firms to acquire capital should be an important priority for the Government. Unfortunately, until recently, Government

12. Business Week, January 28, 1980, at 20.

capital market policy unintentionally has had almost the opposite effect: While Federal regulation of the securities markets has served the necessary function of protecting investors and maintaining the integrity of the markets, this regulation has created high barriers to the financing of small businesses.¹³ Fortunately, important changes have already occurred and are underway. The SEC has recently adopted a number of rules amendments that would lower substantially the cost of capital formation for small firms already regulated by SEC. In addition, the Carter Administration has proposed legislation that would permit small businesses to sell without SEC registration an unlimited amount of securities to large institutional and private investors, thus bypassing the entire regulatory system.

These are welcome first steps on the road to a revitalized small business community. In order to assist this movement, the FTC has undertaken jointly with the Small Business Administration a research program designed to explore the relationship between competition and financial, tax, and business strategy considerations. The relationship between access to capital and competition will be an important area of inquiry within this study.

Tax Policy

Another area in which a growing sensitivity to small business needs is developing is that of tax policy. The relationship between tax policy and competition has not escaped

13. See Testimony of Walter Stults, note 11, supra.

Congress' eye, and recent amendments to the Tax Code have provided substantial benefits to small business. For example, the 1978 lowering of the maximum tax rate on capital gains has been cited as the principal reason for a sharp increase in the amount of venture capital made available to small firms in the past two years. Since the amendment, the total money committed to venture capital firms for investment in small businesses has been approximately \$1.2 billion, more than in the nine previous years combined. ¹⁴

However, capital gains tax relief to date has been afforded across the board. No attempt has been made to tailor capital gains relief to small businesses alone. Thus, capital gains taxation, while ostensibly a "neutral" tax policy, has had unfortunate consequences from a competition perspective.

For example, under the Tax Code presently, small business owners wishing to sell their businesses are inclined to undertake tax-free stock swaps with large, "blue chip" companies in order to avoid the capital gains tax attendant to sales of stock for cash. This tends to foreclose small businesses from acquiring other profitable small businesses, since small firms generally can offer the selling owners only cash or the acquiring company's securities, which may be less stable and hence less desirable than the securities of a large firm. This promotes the acquisition of successful small businesses by large firms, and

14. See Statement of Stanley Pratt, Editor, Venture Capital Journal, Before White House Conference on Small Business (January, 1980).

relegates small firms to a position where they must grow by internal expansion or not at all. In the context of the capital disadvantages under which most small firms already operate, the inability of these firms to grow by acquisition widens the competitive gap between large and small firms. This is precisely the trend that should be reversed.

How can this be remedied? Several small business advocates have called for a capital gains "rollover" tax,¹⁵ similar to the "rollover" that occurs when a homeowner sells one house and purchases another within a limited time period. Under this proposal, a stockholder, following the sale of stock in one company, would be able to defer capital gains taxation if the stockholder used the proceeds of the sale to purchase securities in a qualified small business. Capital gains taxes would be paid only after the sale of the small business stock.

The merits of the "rollover" proposal aside, the proposal serves to highlight the general tax disadvantages under which small firms operate. I believe that amendments to the Tax Code according differential tax treatment to small and large firms should be explored as appropriate means by which to strengthen the small business sector and to permit it to compete more effectively.¹⁶ We are beginning to develop expertise in the

15. See Testimony of Walter Stults, note 11, *supra*; Testimony of Arthur Burck, President, Arthur Burck, Inc., Before the Subcommittee on Antitrust, Consumers and Employment, House Committee on Small Business, July 26, 1978.

16. See generally, Testimony of Professor Alan L. Feld, Before the Subcommittee on Tax Expenditures, House Committee on Ways and Means, March 23, 1979.

competition aspects of tax policy and expect to play an increasing role in advising Congress in this crucial area.

Antitrust Policy

As is evident from this discussion, competition analysis encompasses many subjects. However, no subject may be of greater importance to the small business community than the enforcement of the antitrust laws. In discussing the impact of antitrust enforcement on small business, it is useful to focus separately on two different sectors of the American economy, manufacturing and distribution.

(a) Manufacturing

Small firms in the manufacturing sector are in a difficult situation, particularly in consumer goods industries. These industries have become increasingly characterized by heavy advertising, often accompanied by artificial brand proliferation. Small firms seeking to enter or expand in these industries face an almost insurmountable capital barrier, and, as a result, are often either totally excluded from the market or locked permanently into small regional markets. Even in such regional markets, small firms may remain vulnerable to the market power of large national rivals. For example, the "beer wars" between major national brewers in the 1960's may have driven many small local and regional brewers from the market. Whether or not this activity should be challenged under the antitrust laws is a difficult question for the antitrust enforcer.

Unquestionably, some advertising and promotion serves the consumer and is procompetitive, though sometimes small firms may

be unavoidably disadvantaged. In other cases, advertising and promotion may be anticompetitive, as when firms with existing large market shares employ these practices with the intent of driving smaller rivals out of business or excluding potential competitors from the market. The critical question from a law enforcement perspective is to differentiate between the pro and anticompetitive uses of what may appear to be legally neutral marketing techniques.

The Bureau of Competition believes that advertising and promotion contributed to substantial entry barriers in an important pending case, the Kellogg ("Cereals") case. In this case, we allege that the three largest manufacturers of ready-to-eat cereal created a large number of artificially differentiated products whose intensive advertising has created a barrier to entry by other firms.

The issues raised in the Cereals case are difficult and require the reexamination of existing theories of exclusionary conduct. Nevertheless, I believe that antitrust enforcement authorities should place increased emphasis on examining the predatory and exclusionary activities of dominant firms if efficient smaller firms are to have a chance to survive in the market and to offer consumers an alternative.

(b) Distribution

Small firms engaged in the distribution sector of the economy face a different, although equally serious, set of competitive problems than those faced by small manufacturers.

To begin with, the presence of small business in distribution is statistically much more significant. For example, in 1977, retailers with assets of \$10 million or less accounted for 58% of all retail sales, 50% of net retail income, and 52% of total retail assets. The importance of these figures from an antitrust perspective is inescapable. As one observer has noted, "small business probably comes in contact with antitrust policy more in the field of distribution, simply because of the predominance of small business in the distributive trades." 17

Small businesses engaged in distribution are frequently caught between "a rock and a hard place." First, distributors suffer indirectly from imperfect competition at the supplier level. As suppliers merge or are driven out of business, fewer distributors generally are needed to serve the needs of the remaining large suppliers. 18 Alternatively, suppliers seeking to maximize their own profits may impose vertical restrictions on distributors. Such restrictions may limit the distributor's freedom to determine its prices, terms of sale, range of products offered, customers and geographic markets.

In addition, small distributors may face competition with large distributors acting as "power buyers", who seek to extract

17. Holton, "Antitrust Policy and Small Business," in Phillips, ed., *PERSPECTIVES ON ANTITRUST POLICY* 195 (1965).

18. See Testimony of John White, Executive Vice President, National Beer Wholesalers Association, Before the Subcommittee on Antitrust, Commerce and Employment, House Committee on Small Business, July 28, 1978.

more favorable terms from suppliers than can be obtained by small firms.

The FTC has actively pursued these problems through various law enforcement programs. For example, the FTC has recently promulgated a rule governing the sale of franchises. This rule requires franchisors to disclose to prospective franchisees, who are almost all individuals or small businesses, material information concerning the historical success (and failure) of past franchises, and other information relevant to the prospective franchisee's decision to purchase the franchise.

The FTC has also pursued distributional issues through litigation. In the area of resale price maintenance, we have entered into a settlement with Levi-Strauss Company barring that clothing firm's policy of restricting discounting practices by retailers of Levi products. Similar settlements have been obtained in cases involving manufacturers of audio components. These settlements have been instrumental to the growth of the audio market generally, and the growth of a strong "discounter" segment in particular.

Exclusive dealing contracts have been another traditional method by which large suppliers have restricted the competitive freedom of small firms. In an important challenge to a system of exclusive dealing, the FTC has brought suit against General Motors for its refusal to market repair automotive body parts to anyone but its franchised dealers. Over 30,000 independent body shops are thereby forced to acquire repair parts from GM dealers, who are their competitors for the repair of GM cars. Although

Administrative Law Judge recently held that this practice did not violate the antitrust laws, the Bureau continues to believe in the validity of the complaint and has appealed the case to the Commission.

In a suit against the only publisher of a comprehensive listing of all U.S. commercial passenger flights, the FTC recently found that the Reuben H. Donnelly Corporation, by refusing to list flights of smaller intrastate or commuter airlines in the same tables and on the same terms as those of larger airlines, has unreasonably restrained competition between the commuter lines and the large carriers. This is a potentially important holding for the small business community since it declares that a monopolist has a duty to deal fairly, even when its alleged "unfairness" is not directed at incipient or potential competitors.

Another important aspect of the FTC's law enforcement mission historically has been the enforcement of the Robinson-Patman Act. The FTC recognizes that, to the small business, the availability of products at prices and upon terms substantially the same as those offered its rivals is essential if the small firm is to survive. However, because price discrimination cases often have proved enormously costly in terms of resource commitment, the FTC must focus on those cases with the largest potential industrywide deterrent effect. Such cases usually involve large, national sellers in concentrated consumer industries, and often will involve price discrimination in favor of national "power buyers."

However, notwithstanding the costs of law enforcement, the FTC remains committed to the protection of the integrity of the distributional system. During the past decade it has become fashionable to declare that "antitrust protects competition, and not competitors." This view, based ostensibly on a very strong commitment to principles of short-term allocative efficiency, loses sight of the essential fact that there can be no competition without competitors. The importance of a diversity of firms in our markets generally, and of small firms in particular, runs throughout the legislative histories of the antitrust statutes. In my view, the goals of the small business movement today reflect and are consistent with the central principles underlying the concept of antitrust.

As noted earlier, competition analysis entails an examination of what Government should and should not be doing. Until now I have been discussing the role of Government as the guardian of a fair market place in which small business can compete (the "should" question); but what of the role of Government as a prosecutor of small business? What kinds of cases should and should not the Government be bringing against small businesses? Or, more fundamentally, should small businesses always be judged by the same antitrust rules applicable to large businesses? If differential treatment for large and small firms is appropriate in the areas of Government regulation, access to capital and tax policy, why not in antitrust enforcement?

This is a very difficult question for an enforcement

agency. Clearly, under certain circumstances, for example, where a group of small firms dominates a highly concentrated regional market, concerted action among them can substantially injure consumers. Similarly, a boycott by small firms of another small firm can have a significant adverse impact on both the boycotted firm and the market. These observations suggest that a blanket immunity from antitrust prosecution for small business is clearly inappropriate.

However, it is equally necessary to recognize that antitrust enforcement officials, in their exercise of prosecutorial discretion, generally should consider both the nature of the practice and the market power of the parties. Practices that clearly violate the antitrust laws when undertaken by large firms may have relatively insignificant anticompetitive effects when undertaken by small firms in the same market. Furthermore, such practices may be necessary in order for the small firms to compete more effectively with their large rivals.

For this reason, I believe that the antitrust authorities should move cautiously in certain areas, for example, when small businesses have established buying cooperatives engaged in joint advertising campaigns, or created joint research and development programs in order to achieve efficiencies already available to large "power buyer" or "power seller" competitors.

Conclusion

In conclusion, small business, as a provider of jobs, new goods and services, and national wealth, has a vital role to play in the American economy. However, if this role is to continue, a

greater sensitivity must be developed by Government to small business problems. Government policymakers, too long concerned exclusively with the problems of big business, must begin to recognize that there are two distinct business communities, rather than one, in the United States. The economic health of our Nation depends on a competitive balance between them. Clear-sighted and effective Government policies designed to maintain this vital balance are long overdue.

AGENCY REGULATORY FLEXIBILITY PERSONNEL1. COMMERCEA. Bureau of Economic Analysis

Lester G. Welch, Management and Organization Branch
523-0505

B. Bureau of the Census

Vincent P. Barabba, Director of the Bureau of the Census
763-5190

C. Assistant Secretary for Economic Development

Robert T. Hall, Assistant Secretary
377-5081

D. Industry and Trade Administration - Not AvailableE. Assistant Secretary for Maritime Affairs

Richard P. Knutsen, Assistant General Counsel for
Legislation and Regulation
377-2469

F. National Oceanic and Atmospheric Administration

Eldon V.C. Greenberg, General Counsel
377-4080

G. Assistant Secretary for Administration

Thomas J. Cox, Jr., Office of Organization and Management
377-3743

H. Office of Regional Development

Daniel J. Schulder, Acting Special Assistant to the Secretary
for Regional Development
377-5257

I. Patent and Trademark Office

Joseph F. Nakamura, Solicitor
557-3525

J. Assistant Secretary for Communications and Information

Sam Williams
377-1840

K. U.S. Travel Service

Jeanne Westphal, Acting Assistant Secretary for Tourism
377-4752

2. TRANSPORTATION

- A. Wilbert Contey, Director of the Departmental Office of
Small and Disadvantaged Business Utilization
426-1930

3. FEDERAL TRADE COMMISSION

- A. Christian S. White, Executive Director
523-3740

B. Bureau of Competition

Alfred F. Dougherty, Jr.
523-3601

C. Bureau of Consumer Protection

Albert H. Kramar
523-3727

D. Bureau of Economics

William S. Comanor
254-7720

4. CONSUMER PRODUCT SAFETY COMMISSION

- A. Richard A. Gross, Executive Director
301-492-6550

5. NUCLEAR REGULATORY COMMISSION - Not Available6. GOVERNMENT PRINTING OFFICE - Not Available7. INTERSTATE COMMERCE COMMISSION - Not Available

8. FEDERAL MARITIME COMMISSION
Arthur Pankopf, Managing Director
523-5800
9. FEDERAL COMMUNICATIONS COMMISSION
Erica Jones, Acting Chief of Consumer Assistance Office
632-7000
10. CIVIL AERONAUTICS BOARD
Richard B. Dyson, Associate General Counsel for Rules and Legislation
673-5444
11. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION - Not Available
12. EXPORT-IMPORT BANK
John P. Bierman, Senior Vice President
566-8806
13. MERIT SYSTEMS PROTECTION BOARD - Not Available
14. CIVIL RIGHTS COMMISSION - Not Available
15. FEDERAL EMERGENCY MANAGEMENT AGENCY
John W. Macy, Jr., Director
254-6827
16. OVERSEAS PRIVATE INVESTMENT CORPORATION
J. Bruce Llewellyn, President
632-8584
17. INTERNATIONAL TRADE COMMISSION
Russell N. Shewmaker, General Counsel
523-0350

18. VETERANS ADMINISTRATION- Not Available

19. GENERAL SERVICES ADMINISTRATION- Not Available

Gerald McBride, Assistant Administrator for Acquisition Policy
566-1043

20. ENERGY - Not Available

21. STATE

Thomas M. Tracy, Assistant Secretary for Administration
632-1492

A. Agency for International Development

Joseph R. Ellis, Office of Management Planning
632-4030

22. LABOR

Dr. Judy Sorum, Special Assistant to the Secretary
523-9184

23. INTERIOR

Larry E. Meierotto, Assistant Secretary for Policy, Budget,
and Administration
342-6181

24. COMMUNITY SERVICES ADMINISTRATION - Not Available

25. SECURITIES AND EXCHANGE COMMISSION

Mary E. T. Beach, Associate Director
272-2585

26. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

K. J. Kier, Director of Small and Disadvantaged Business
Utilization
755-2288

27. TENNESSEE VALLEY AUTHORITY - Not Available
28. NATIONAL SCIENCE FOUNDATION - Not Available
Theodore W. Wirths, Director of the Office of Small Business
Research and Development
357-7464
29. ENVIRONMENTAL PROTECTION AGENCY
William Drayton, Assistant Administrator for Planning and
Management
755-2900
30. FEDERAL RESERVE BOARD - Not Available
31. FEDERAL DEPOSIT INSURANCE CORPORATION
William M. Issac, Director
389-4441
32. NATIONAL CREDIT UNION ADMINISTRATION
Robert S. Monheit, Senior Attorney
357-1030
33. AGRICULTURE
Alex Mercure, Assistant Secretary for Rural Development
447-4581
34. FEDERAL ENERGY REGULATORY COMMISSION - Not Available
35. HEALTH, EDUCATION, AND WELFARE
Richard Clinkscales, Director, Office of Small and Disadvantaged
Business Utilization
245-8871
36. DEFENSE - Not Available

