The Report to Congress does not provide the scientific information Congress asked for in order to determine which VOC's from paints and coatings contribute to the exceedance of the ozone standard as established by EPA.

EPA did not rank consumer and commercial products on a reactivity-adjusted basis. EPA has not even created a peer-reviewed reactivity adjusted scale.

EPA added three new criterion, volatility of VOC's, volume of VOC emissions, and regulatory efficiency and program considerations. This later criterion will allow EPA to ''exercise discretion in adjusting the product category rankings * * * to achieve an equitable and practical regulatory program.'' EPA views this amendment to the Clean Air Act as at least as equal to those Congress set in Clean Air Act § 183(e).

We are also concerned with EPA's apparent indifference to the disparate impact this rule will have on industry, particularly small business. EPA's calculation of the proposed rule's economic cost does not consider the human terms—lost jobs or lost small, family-owned businesses, an issue that directly mandated to be considered under Clean Air Act Section 309. We are deeply concerned that the negative impact of compliance costs will fall hardest upon lower-income wage earners employed in the coating industry; many minority earners and low-income whites would lose their jobs in the fallout, while not reaching the goal of ozone attainment. EPA must be aware of this reality if it is to regulate an entire industry. EPA's granting of a longer compliance timetable is nothing more than a longer stay on death row for many of these companies—the result of business closure is the same.

The compliance costs of reformulating or reoutfitting operations is staggering. The South Coast Air Quality Management District in California has been regulating consumer and commercial product VOC levels for several years; it is their expert assessment that the economic impact of controls for a desired reduction of VOC emissions of the approximately 18 percent EPA's regulation of VOC's in paints, is over $1.5 billion based upon their experienced determination that paint and coating VOC control costs are $16,400 per ton.

EPA, in various letters to fellow Members of Congress, estimates the cost at $40 million. How can EPA be two orders of magnitude lower than experienced regulators? More importantly, how does EPA think it can pass a rule by ignoring basic scientific principles, by possessing insufficient legal authority, and having the rule cost so much money? Why are you insisting on reducing VOC levels in paint beyond that considered by the statute (assuming such reductions would reduce the potential to contribute to ozone levels which violate the ozone standard)?

We strongly urge EPA to take a long look at the core legal and economic issues, including the effect of this regulation on coating used as an intermediary in various manufacturing processes, as well as the peripheral details surrounding its desire to regulate consumer and commercial products. In no way can EPA exact such a great price from the American public when its science is wrong and its legal authority so tenuous.

What is also clear is that EPA has mishandled our specific charge to them regarding Clean Air Act section 183(e). We urge you to stop any and all regulatory action on this issue until a proper, peer reviewed analysis is conducted pursuant to Clean Air Act section 183(e). Vigilance and oversight is needed to ensure that the paint industry, especially small paint companies, do not pay the harsh price of demise for EPA's lack of understanding.

IMMIGRATION COURT

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 27, 1996

Mr. MCCOLLUM. Mr. Speaker, today I am introducing legislation to establish a new United States Immigration Court. This bill will remove the immigration adjudication functions from the Justice Department and invest them in a new article I court, composed of a trial division and an appellate division whose decisions will be appealable to the Court of Appeals for the Federal Circuit.

The system for adjudicating immigration matters has matured tremendously over the last 15 years. Special inquiry judges have become true immigration judges in just about every aspect but name, and the immigration reform conference report that the House passed on Wednesday rectifies that situation. The Board of Immigration Appeals has been greatly expanded, and the whole Executive Office for Immigration Review has been separated from the Immigration and Naturalization Service.

Yet much of this system, including the Board of Immigration Appeals, does not exist in statute. And while separated from the INS, aliens still take their cases before judges who are employed by the same department as the trial attorneys who are prosecuting them.

I believe it is time to take the next logical step and establish a full-blown adjudicatory system in statute, and I believe that such a system should be independent of the Justice Department. This is not a new concept. I first introduced legislation to take this step in 1982, and I continue to believe that an article I court would allow for more efficient and streamlined consideration of immigration claims with enhanced confidence by aliens and practitioners in the fairness and independence of the process.

The bill I am introducing today provides a solid framework on which to build debate on this important and far-reaching reform. I look forward to working with all interested parties in fine-tuning and further developing this proposal where necessary and enacting this much needed reform in the next Congress.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; TABLE OF CONTENTS

The short title of the bill is the ''United States Immigration Court Act of 1996.'' Subsection (b) provides that all amendments made by this bill are to the Immigration and Nationality Act (INA), unless otherwise specified. Subsection (c) is a table of contents.

SEC. 2. ESTABLISHMENT OF UNITED STATES IMMIGRATION COURT

Subsection (a) establishes the United States Immigration Court under a new chapter 2 title I of the Immigration and Nationality Act. The following is a section-by-section analysis of that new chapter:

Section 111 establishes the United States Immigration Court as a court of record under article I of the Constitution of the United States. The Court consists of two divisions: the trial division and the appellate division.

Section 112. Appellate Division. Subsection (a) provides for the appointment by the President, by and with the advice and consent of the Senate, of a chief immigration appeals judge and five other immigration appeals judges.

Subsection (b) sets the term of office for appeals judges at 15 years, with the first group of judges to be appointed for staggered terms.

Subsection (c) sets the compensation for the chief immigration appeals judge at 94 percent of the next to the highest rate of basic pay for the Senior Executive Service, and the compensation for the other appeals judges at 93 percent.

Subsection (d) makes the chief immigration appeals judge responsible on behalf of the appellate division for the administrative operations of the Immigration Court.

Subsection (e) provides that three appeals judges constitute a quorum.

Subsection (f) provides that the appellate division shall act in panels of three or in banc, and a final decision of such panel shall be a final decision of the appellate division.

Subsection (g) outlines the process for the removal of appeals judges, which shall only be for incompetency, misconduct, neglect of duty, engaging in the practice of law, or physical or mental disability and shall be by the Court of Appeals for the Federal Circuit.

Subsection (h) provides for the payment of expenses for travel and subsistence for appeals judges while traveling on duty and away from their designated stations.

Section 113. Trial Division. Subsection (a) provides for a chief immigration trial judge, to be appointed by the chief immigration appeals judge. Every current immigration judge who is qualified under this Act to be an immigration trial judge shall be appointed by the chief immigration appeals judge.

Subsection (b) sets the term of office for trial judges at 15 years.

Subsection (c) establishes the rates of pay for immigration trial judges.

Subsection (d) makes the chief immigration trial judge responsible for administrative activities affecting the trial division and gives him/her the authority to designate any trial judge to hear any case over which the trial division has jurisdiction.

Subsection (e) provides that trial judges may be removed in the same manner as appeals judges, except removal shall be by the appellate division rather than the Court of Appeals for the Federal Circuit.

Subsection (f) outlines the authority of trial judges in conducting hearings.

Subsection (g) provides that witnesses shall be paid the same fee and mileage allowance as witnesses in any other court in the U.S.

Subsection (h) provides for the payment of expenses for travel and subsistence for trial judges while traveling on duty and away from their designated stations.

Section 114 outlines the jurisdiction of the appellate and trial divisions.

Subsection (a) outlines the jurisdiction of the appellate division as follows.

Paragraph (1) provides that the appellate division shall hear and determine appeals from final decisions of immigration trial judges, decisions involving the imposition of administrative fines and penalties under title II of the INA, and decisions on petitions filed under section 204 for immigrant status and under 205 revoking approval of such petitions.

Paragraph (2) provides that either party to a case may appeal an immigration trial judge's decision to the appellate division. Appeals from final orders of deportation and exclusion are to be filed not later than 20 days after the date of final order. Review of an immigration trial judge's decision shall be based solely upon the trial record, and the findings of fact by the trial judge are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole.

Paragraph (3) provides that a final decision of the appellate division is binding on all immigration trial judges, immigration officers, and consular officers unless and until otherwise modified or reversed by the Court of Appeals for the Federal Circuit or the Supreme Court.

Paragraph (4) requires the appellate division to render a decision on an appeal respecting an asylum claim no later than 60 days after the date the appeal is filed.

Subsection (b) outlines the jurisdiction of the trial division as follows:

Paragraph (1) provides that the trial division shall hear and decide exclusion and deportation cases (including asylum and discretionary relief requests raised in such cases); rescission of adjustment of status cases; applications for asylum referred to the Immigration Court by the Attorney General for adjudication; contested assessments of civil penalties under employer sanctions, contested determinations relating to bond, parole, or detention of an alien; and such other cases arising under the INA as the appellate division may provide by regulation.

Paragraph (2) outlines the duties of immigration trial judges including recording and receiving evidence and rendering findings of fact and conclusions of law, determining all applications for discretionary relief which may properly be raised in the proceedings, and exercising such discretion conferred upon the Attorney General by law as may be necessary for the just and equitable disposition of cases.

Section 115. Rules of Court. Subsection (a) directs the appellate division to promulgate rules of court governing practice and procedure in the appellate and trial divisions.

Subsection (b) provides that each nongovernmental party in a proceeding shall have the privilege of being represented (at no expense to the government), and the rules of the court shall provide for the admission of qualified attorneys and nonattorneys to practice before the court.

Subsection (c) give each division of the Immigration Court contempt power.

Subsection (d) authorizes the Immigration Court to impose such fees as it may provide for under its rules and procedures.

Section 116. Retirement of Judges; Senior Judges. Subsection (a) provides that a judge of the Immigration Court shall be retired upon reaching the age of 70; a judge who is 65 may retire after serving as a judge for 15 or more years; a judge who is not reappointed upon the expiration of his/her term may retire if the judge has served as an Immigration Court judge for 15 or more years and advised the appointing authority of his/her willingness to accept reappointment. A judge who becomes permanently disabled from performing judicial duties shall be retired. Computation and payment of retirement pay, election to receive retired pay, coordination with civil service retirement, and revocation of an election to receive retired pay for and by Immigration Court judges shall be dealt with in the same way as for judges of the United States Tax Court. Judges shall not receive retired pay for any periods during which they accept any civil office or employment with the U.S. government (other than as a senior judge) or during which they provide legal services to clients in a case arising under this chapter.

Subsection (b) allows judges of the Immigration Court to provide annuities to their surviving spouses and dependent children in the same way as provided for judges of the United States Tax Court. Amounts deducted and withheld from the salaries of judges of the Immigration Court for this purpose shall be deposited in the Treasury to the credit of a fund to be known as the ''Immigration Court judges survivors annuity fund''.

Subsection (c) provides for senior immigration appeals and trial judges, who are retired judges who may be recalled, with their consent, to perform duties as an immigration appeals or trial judge.

Subsection (b) is a conforming amendment to the table of contents of the INA adding the new chapter 2 and sections 111 through 116.

Subsection (c) includes effective dates and transition provisions. Except as otherwise provided, the amendments made by this section shall take effect on the date of enactment. Section 113(c) (relating to compensation of immigration trial judges) shall take effect 90 days after the date of enactment.

Paragraph (2) outlines a timetable for establishment of the Immigration Court. The President is to nominate the chief immigration appeals judge and other appeals judges not later than 14 days after enactment. The chief immigration appeals judge shall designate a date, not later than 30 days after she/he and a majority of the other appeals judges are appointed, on which the appellate division shall assume the functions of the Board of Immigration Appeals. The chief immigration appeals judge shall appoint trial judges pursuant to section 113(a)(2) promptly after being appointed. The appellate division shall provide promptly for the establishment of interim final rules of practice and procedure which will apply after the hearing transition date.

Paragraph (3) directs the chief immigration appeals judge, in consultation with the Attorney General, to designate a transition date, not later than 45 days after the date interim final rules of practice and procedure are established under paragraph (2)(C). During the period before the transition hearing date, any proceeding or hearing under the INA that may be conducted by a special inquiry officer or immigration judge may be conducted by an immigration trial judge.

Paragraph (4) provides continuing authority for individuals who are special inquiry officers or immigration judges on the date of enactment and on the transition date to continue to conduct proceedings or hearings after the transition date for two years after the date of enactment.

Paragraph (5) provides for the continuation of all existing powers, rights, and jurisdiction and deems the appellate division to be a continuation of the Board of Immigration Appeals and immigration trial judges to be a continuation of special inquiry officers or immigration judges with respect to deportation and exclusion cases and asylum applications pending as of the transition date.

SEC. 3. JUDICIAL REVIEW OF IMMIGRATION COURT DECISIONS

Subsection (a) amends section 106(a) of the INA to provide that petitions for review of Immigration Court decisions must be filed not later than 30 days after the date of issuance of the final deportation order (currently 90 days except for aggravated felons who have 30 days.) Petitions for review shall be filed with the Court of Appeals for the Federal Circuit. The Court of Appeals shall decide the petition only on the record of the Immigration Court, the Immigration Court's finding of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole, and a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law.

Subsection (b) adds the following new subsections to section 106 of the INA:

New subsection (f) provides that review of determinations relating to asylum applications shall be limited to whether the Immigration Court properly exercised jurisdiction, whether the determination as made in compliance with applicable laws and regulations, the constitutionality of those laws and regulations, and whether the decisions were arbitrary and capricious.

New subsection (g) provides that only the Court of Appeals for the Federal Circuit shall have jurisdiction to hear petitions relating to asylum; only the Immigration Court, the Court of Appeals for the Federal Circuit, and the Supreme Court may entertain habeas corpus applications or grant injunctive or declaratory relief with respect to an immigration matter; the Court of Appeals for the Federal Circuit shall have exclusion jurisdiction to review all constitutional issues relating to an immigration matter by writ of certiorari filed no later than 30 days from the date of the final order of the appellate division relating to that matter; in the case of a writ of certiorari, if a question of fact is presented, a determination of fact previously made by the Attorney General or Immigration Court shall be conclusive if supported in the record by reasonable, substantial, and probative evidence on the record considered as a whole, and if no determination was previously made, the Court may provide for a hearing before an immigration trial judge to make the appropriate findings of fact. Notwithstanding any other provision of law, no court shall have jurisdiction to review decisions by either division of the Immigration Court respecting reopening or reconsideration of deportation or exclusion proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, or the Attorney General's denial of a stay of execution of a deportation order.

Subsection (c) amends the United States Code to expand the jurisdiction of the Court of Appeals of the Federal Circuit in conformance with the amendments made by this Act to section 106 of the INA.

Subsection (d) provides for the amendments of this section to take effect upon the hearing transition date designated under section 2(c)(3).

SEC. 4. REFORM OF ASYLUM

Subsection (a) replaces the current section 208 of the INA provision on asylum with a new section 208, which is consistent in most aspects with the language in H.R. 2202, with conforming amendments to reflect the new role of the Immigration Court.

New subsection (a) provides that an alien in or arriving in the U.S. may apply for asylum, unless the Attorney General determines that the alien can be returned to a safe third country, the alien did not apply within 180 days of arriving in the United States (absent a showing of changed circumstances or extraordinary circumstances), or the alien previously applied and was denied (absent a showing of changed circumstances). Judicial review of a determination by the AG under this provision is limited to the Immigration Court.

New subsection (b) provides that the Attorney General may grant asylum to an alien who has complied with this section whom the Immigration Court or an asylum officer determines is a refugee. However, asylum may not be granted if the Immigration Court

finds that the alien participated in persecution, the alien has been convicted of a particularly serious crime, there are serious reasons for believing the alien committed a serious nonpolitical crime outside the U.S., there are reasonable grounds for regarding the alien as a threat to U.S. security, the alien is excludable or deportable because of terrorist activities, or the alien was firmly resettled in another country prior to arriving in the U.S.

New subsection (c) outlines the status of aliens granted asylum. Asylum may be terminated if the Attorney General asserts and the Immigration Court finds that the alien no longer is a refugee because of changed circumstances, the alien is not eligible for asylum for one of the reasons listed in the previous paragraph, the alien may be deported to a safe third country, the alien has voluntarily returned to his/her country, or the alien has acquired a new nationality. An alien whose asylum status has been terminated is subject to deportation.

New subsection (d) outlines the procedure for applying for asylum. Affirmative asylum applications shall be filed with the Attorney General and reviewed by an asylum officer. Aliens who unquestionably are eligible will be referred directly to the Attorney General; aliens whose eligibility is questionable will be referred to the Immigration Court for adjudication. At the time of filing an application, the alien shall be advised of the privilege of being represented and the consequences of filing a frivolous claim (permanent ineligibility for immigration benefits), and shall be provided a list of pro bono immigration lawyers, which shall be compiled and updated by the Immigration Court. Absent exceptional circumstances, a decision by an immigration trial judge of an affirmative asylum claim shall be issued not later than 45 days after it was referred to the Court. An appeal to the appellate division shall be filed within 20 days of a trial judge's decision granting or denying asylum or within 20 days of the completion of deportation or exclusion proceedings.

SEC. 5. CONFORMING AMENDMENTS.

This section makes conforming amendments to section 209(a)(2) (adjustment of status of refugees), section 234 (physical and mental examination of aliens), section 235 (inspection by immigration officers), section 236 (exclusion proceedings), section 242 (apprehension and deportation of aliens), section 242A (expedited deportation of aliens convicted of committing aggravated felonies), section 242B (deportation procedures), section 243(h) (withholding of deportation), section 244 (suspension of deportation; voluntary departure), section 246(a) (rescission of adjustment of status), section 273(d) (regarding stowaways), section 279 (jurisdiction of district courts), section 291 (burden of proof), section 292 (right to counsel), section 360(c) (exclusion of aliens issued certificate of identity) of the INA and to section 235(b) (expedited exclusion) as amended by section 422 of the Antiterrorism and Effective Death Penalty Act of 1996.

SEC. 6. EFFECTIVE DATE; SEVERABILITY.

Subsection (a) makes the amendments made by section 5 effective on the transition hearing date designated pursuant to section 2(c)(3) of this Act.

Subsection (b) is a severability clause.

MEDICAID CERTIFICATION ACT OF 1995

SPEECH OF

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 24, 1996

Mr. BARCIA. Mr. Speaker, I rise in support of H.R. 1791, a bill which provides the proper respect due osteopathic physicians, who provide a great service to millions of Americans.

With most of the doctors of osteopathic medicine being involved in primary care practices, it is high time that we reinstated osteopathic physicians as an eligible group of physicians to receive Medicaid reimbursement. There are thousands of osteopathic physicians in Michigan, more than in any other State, and a significant number in my own district. When one multiplies this group by the number of patients they serve, it is very easy to see that this error in OBRA '90 is of great consequence to many of our constituents.

I have been a great supporter of osteopathic medicine for some time. In the last Congress I sponsored House Concurrent Resolution 173 calling for the certain inclusion of osteopathic medicine as a key form of care in any health care proposal. It is only right that we take care to make sure osteopathic physicians are included in our current health care arsenal while we continue to work on improvements in our health care system.

One of the great frustrations the public has with the Government is when it seems to take forever for anyone to admit a mistake has been made, and even longer to correct it. This legislation is for the benefit of the health-care seeking public. It restores previously provided treatment that we erroneously terminated, and is long overdue. It deserves the support of all of our colleagues. I urge the adoption of H.R. 1791.

INTRODUCTION OF LEGISLATION TO ENCOURAGE CHARITABLE CONTRIBUTIONS OF CLOSELY-HELD CORPORATIONS

HON. JENNIFER DUNN

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, September 27, 1996

Ms. DUNN of Washington. Mr. Speaker, government at every level—Federal, State, and local—are being forced to reduce spending. At the same time, government should do all it can reasonably do to encourage private philanthropic efforts. Many of these government services can be provided at the local level by charities that know the community best and can supply the most efficient and competent delivery of services to those most in need. Public charities and private foundations already have proven they can distribute funds to a very diverse, wide-ranging group of support organizations at the community level.

One source of untapped resources for charitable purposes is closely-held corporate stock. Today the tax cost of contributing closely-held stock to a charity or foundation is prohibitive, and discourages families and owners from disposing of their businesses in this manner. This legislation, which I introduce today, will correct this problem by once again permitting certain tax-free liquidations of closely-held corporations into one or more tax exempt 501(c)(3) organizations.

Under current law, the problem with giving closely-held stock to charity is that the absence of a market for such stock and the typical pattern of small and sporadic dividends paid by such companies make it difficult for a charity to benefit from ownership of such stock. Accordingly, if such stock is given to a charitable organization, and in particular if a controlling interest is given, the corporation may have to be liquidated either by statute requirement or to effectively complete the transfer of assets to the charity for its use. Under current law, such a liquidation would incur a corporate tax at a Federal tax rate of 35 percent.

This cost is imposed as a result of the tax law changes made in 1986 that repealed the general utilities doctrine and thus imposed a corporate level tax on all corporate transfers, including those to tax exempt organizations. The charitable organization could also be subject to unrelated business income taxes. These tax costs make contributions of closely-held stock a costly and ineffective means of transferring resources to charity, and these are the costs I propose to eliminate in order to free up additional private resources for charitable purposes.

This legislation eliminates the corporate tax upon liquidation of a qualifying closely-held corporation of certain conditions are met. Most importantly, qualification would require that 80 percent or more of the stock must be bequeathed at death to a 501(c)(3) tax-exempt organization. The bill also clarifies that the charity can receive mortgaged property in a qualified liquidation free from unrelated business income tax for a period of ten years. This change parallels the exemption from UBIT for 10 years provided under current law for direct transfers by gift or bequest.

By eliminating the corporate tax upon liquidation Congress would encourage additional, and much needed, transfer to charity. Individuals who are willing to make generous bequests of companies and assets they have spent years building should not be discouraged by seeing the value of their gifts so substantially reduced by taxes. It is worthwhile to note that the individual donor does not receive any tax benefit from the proposal. All tax savings go to the charity.

I urge all of my colleagues to support this important legislation designed to encourage charitable contributions.

TRIBUTE TO GEN. JAMES R. JOY

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 27, 1996

Mr. ORTIZ. Mr. Speaker, I rise today to pay tribute to a great American, Brig. Gen. James R. Joy, USMC, retired. General Joy's retirement from the Directorship of Morale, Welfare and Recreation Support Activity, Manpower Department, Marine Corps Headquarters, completes a brilliant military career.

In June 1957, James Joy was commissioned a second lieutenant in the U.S. Marine Corps. Upon his graduation from the basic