REGULATORY REFORM INITIATIVES AND THEIR IMPACT ON SMALL BUSINESS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

WASHINGTON, DC, JUNE 7, 2000

Serial No. 106–60

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE

67–560 WASHINGTON : 2000

COMMITTEE ON SMALL BUSINESS

JAMES M. TALENT, Missouri, *Chairman*

LARRY COMBEST, Texas
JOEL HEFLEY, Colorado
DONALD A. MANZULLO, Illinois
ROSCOE G. BARTLETT, Maryland
FRANK A. LOBIONDO, New Jersey
SUE W. KELLY, New York
STEVEN J. CHABOT, Ohio
PHIL ENGLISH, Pennsylvania
DAVID M. MCINTOSH, Indiana
RICK HILL, Montana
JOSEPH R. PITTS, Pennsylvania
JOHN E. SWEENEY, New York
PATRICK J. TOOMEY, Pennsylvania
JIM DEMINT, South Carolina
EDWARD PEASE, Indiana
JOHN THUNE, South Dakota
MARY BONO, California

NYDIA M. VELAZQUEZ, New York
JUANITA MILLENDER-MCDONALD, California
DANNY K. DAVIS, Illinois
CAROLYN MCCARTHY, New York
BILL PASCRELL, New Jersey
RUBEN HINOJOSA, Texas
DONNA M.C. CHRISTENSEN, Virgin Islands
ROBERT A. BRADY, Pennsylvania
TOM UDALL, New Mexico
DENNIS MOORE, Kansas
STEPHANIE TUBBS JONES, Ohio
CHARLES A. GONZALEZ, Texas
DAVID D. PHELPS, Illinois
GRACE F. NAPOLITANO, California
BRIAN BAIRD, Washington
MARK UDALL, Colorado
SHELLEY BERKLEY, Nevada

HARRY KATRICHIS, *Chief Counsel*
MICHAEL DAY, *Minority Staff Director*

CONTENTS

	Page
Hearing held on June 7, 2000	1

WITNESSES

Spotila, John D., Administrator, Office of Management and Budget	4
Coyne, James, President, National Air Transportat Association	33
Thomas, Duncan, President & CEO, Q-Markets, Inc.	37
Selzer, Kenneth, National Association of Home Builders	41

APPENDIX

Spotila, John D	51
Coyne, James	65
Thomas, Duncan	71
Selzer, Kenneth	80

REGULATORY REFORM INITIATIVES AND THEIR IMPACT ON SMALL BUSINESS

WEDNESDAY, JUNE 7, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:05 a.m., in room 2360, Rayburn House Office Building, Hon. Jim Talent (chair of the committee) presiding.

Chairman TALENT. The committee will come to order. The ranking member and I would like to welcome Mrs. McCarthy. Thank you for attending. I am sure other members will come in as we proceed.

Our hearing today is the first in a series of hearings that will be held by the full committee and Subcommittee on Regulatory Reform in preparation for this committee's reauthorization of the Paperwork Reduction Act in the year 2001. This hearing will focus on a topic of interest to all members of the committee: The regulatory burdens imposed on small business; whether the administration's regulatory relief efforts have effectively reduced not just the number of government regulations, but the cumulative regulatory burdens, including reporting and recordkeeping requirements in small business.

I have called today's hearing to review these efforts, hear from small businesses that are in the trenches when it comes to regulatory compliance, and explore what changes are needed in the Paperwork Reduction Act, the Reg Flex Act or other statutes in order to ensure that Federal regulators only impose those burdens necessary on small business in order to satisfy the mandates given them by the Congress.

On September 30, 1993, President Clinton stated, "The American people deserve a regulatory system that works for them, not against them, a regulatory system that improves the performance of the economy without imposing unacceptable or unreasonable costs on society, the regulations that are effective, consistent, sensible and understandable."

During my tenure as chairman of this committee, I have not seen a regulatory system that works for small business nor have I seen a regulatory system that has eliminated regulations to spur economic growth for small business. Instead, I have seen a system that continues to impose burdens on small businesses whether by regulation codified in the code of Federal regulations, through guidance masking as regulation or in the instructions to various forms that must be submitted to the government.

During the past 3 years, this committee and its various subcommittees have examined the significant adverse impact on small businesses of the following proposed rules: the proposed changes to the competition standard and the Federal acquisition regulation; the proposed comprehensive health and safety program; proposed modifications to OSHA's injury and illness reporting and recordkeeping requirements; EPA's proposed changes to the national ambient air quality standards for ozone; and numerous other regulations as well.

And these only begin to skim the surface. The April 24th, 2000, issue of the Federal Register alone contains approximately 1,300 pages of proposed and final regulatory actions. I do not believe a small business owner given the scope of this semiannual agenda would say that their regulatory burdens are ebbing. Nor does the data from OMB indicate as much. In its latest draft report to Congress, OMB noted that the total annualized cost of regulation on the economy is anywhere between $174 and $234 billion.

Many regulatory actions in the name of interpretive guidance, instructions for completing various reporting requirements and executive orders impose substantial costs on small business. For example, the IRS published in that periodical to which all small business owners subscribe, the Internal Revenue Bulletin, a revenue procedure modifying the use of cash accounting. This committee examined the substantial adverse impact of that revenue procedure. Nevertheless, these costs would not be included in OMB's report to Congress on the costs and benefits of Federal regulation; because it wasn't put in the context of a rule.

Even more problematic is that these regulatory actions issued under the rubric of guidance are issued without going through the analytical requirements mandated by the APA, the Reg Flex Act or Executive Order 12866. Agencies may then miss cheaper and more efficient mechanisms to accomplish compliance with their regulations.

The guidance is not the problem. Rather, it is how the agency uses the guidance that can have a severe impact on small business. If the agency uses compliance with guidance as the measure of compliance with the underlying regulation, then the guidance becomes a de facto regulation itself, imposing substantial costs on small businesses. We need to recognize this problem, determine its scope and ensure that guidance remains just that.

Today's hearing will examine these issues. We will be hearing testimony from John Spotila, Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. He will be addressing the efforts of the administration to reduce regulatory burdens on small business, and I expect to examine ways to ensure that the regulatory process does not impose unnecessary costs on small business.

We will also hear from representatives of the small business community, who will tell their story about the administration's efforts to reduce unnecessary regulatory burdens on small business. I also will be interested in hearing from the small business representatives whether they feel the current regulatory process, including those associated with the Paperwork Reduction Act, ade-

quately measure the cumulative regulatory burdens on their business.

I will now recognize the ranking member, the distinguished gentlelady from New York, for whatever statement she may wish to make.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

We are here today on a very important matter, one that goes to the heart of small business concerns. The burden of regulations for small business can sometimes be overwhelming. The time spent sorting through all the requirements takes away from productivity, and complying with regulations can add significant costs. What is more, regulations can be confusing and even contradictory, and yet we know that in a growing and sophisticated economy a certain number of regulations are necessary. While they may be burdensome, many regulations offer needed protections to workers, consumers and even small business owners themselves. And it is not that small business is opposed outright to regulations; sometimes it even requests a regulation to address a need or to save money.

But the bottom line for small business owners is that they want regulations to be clear and well thought out. They want to be included in the process, and we in government bear the responsibility for making that happen. As with many things in life, the key is finding the right balance, and I think this administration has done a good job of trying to find that middle ground between onerous, confusing, conflicting and unnecessary regulations and sound, reasonable protections for all parties involved. It has systematically examined regulations and opened up the process to small business, and certainly Congress has also tried to do its part.

So I think we can agree that a lot has been done to reduce the regulatory burden on small business, but I think we can also agree that a lot more needs to be done. While complaints from small business are down, the number of regulations are up by 3 percent last year alone, and it is important to keep in mind that the Internal Revenue Service fuels this bill here, being as it is responsible for 90 percent of the paperwork associated with regulations. That is why Congress needs to pass H.R. 1882, which will bring the IRS under the panel review process and give small business a seat at the regulatory table.

Regulatory analysis is nothing new to Federal agencies. Because of the costs imposed by Federal agencies, every President from Carter to the current administration has established a formal system to review new regulations before they are issued.

Today, we will examine the process this administration has used to further this reduction and reform. First, we will look at how we can continue to make the Office of Information and Regulatory Affairs, or OIRA, more effective. OIRA is the division of the Office of Management and Budget that is charged with helping agencies simplify and reduce excessive regulations.

Second, we will consider how to keep the pressure on agencies to listen and respond to small business concerns.

And third, we will be looking for ways to ensure the regulations are clear and understandable.

Reform efforts during the last 8 years have done a lot to move us toward a balanced process. This is another opportunity for us

to fine-tune the system. It is also an opportunity to enhance the openness and communication fostered by this administration. I think we can agree that this has resulted in a more thoughtful analysis of the impact of regulations on small businesses.

Thank you, Mr. Chairman, and I look forward to hearing from our panelists.

Chairman TALENT. I thank the gentlelady, and we will go right to our first panel, which consists of one witness, the Honorable John D. Spotila, who is administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Thank you for being here, Mr. Spotila. You can give us your statement.

STATEMENT OF THE HONORABLE JOHN D. SPOTILA, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. SPOTILA. Good morning, Mr. Chairman and members of the committee. Thank you for inviting me to appear before you today to discuss regulatory reform and paperwork reduction.

I would ask that my entire statement be submitted to the record, and I have a shorter version here. We appreciate your interest and welcome the opportunity to work closely with the committee on additional constructive efforts at reform.

The President has often emphasized his belief that small business is vital to our economy. Small business owners have generated millions of new jobs, leading the way with their energy, creativity and hard work. We share the goal of reducing the burden imposed on them by Federal reporting, recordkeeping and regulatory requirements. We need to adopt common-sense measures, promoting the public good while reducing the costs of compliance wherever possible.

This is a subject of particular interest to me. Prior to my service in Washington, I was a small business owner myself for many years in New Jersey. As general counsel of the SBA for 5 years, I led its efforts to reduce the regulatory and paperwork burden on small businesses. I know the importance and the difficulty of achieving meaningful reform.

In cooperation with the Congress and with the help of small business owners, the administration has made real progress. Much more needs to be done, however, and we can only be successful if we work together in a constructive way.

The administration has made a significant effort to listen to small business and consider its needs. The President has been aware from the beginning that Federal regulations and paperwork can seem daunting to small business owners. At his request, agencies have reached out to small business owners and asked them what changes were needed most. The message came back that small business wants an early voice in regulatory development, clarity and consistency in regulations, compliance assistance, and less red tape and paperwork.

We have listened to this message and have followed up on each point, working within the administration to implement new policies that respond to small business needs. While the job is not finished,

these approaches have proven successful and have made significant contributions to the American people.

The President addressed the regulatory process in 1993 when he issued Executive Order 12866 on regulatory planning and review. As the Chairman noted, there he directed Federal agencies to create a regulatory system that works for, not against, the American people. Pointing out that good regulations are essential to protecting the public's health, safety environment and well-being, he emphasized that agencies must follow sound regulatory principles, issuing rules only when necessary and assessing the costs and benefits of available regulatory alternatives in order to maximize net benefits.

He gave my office at OMB specific responsibility to review all significant Federal rules before publication and to oversee compliance with the order. We currently review more than 500 significant rules each year to ensure their compliance with the order. We also work closely with the agencies to help them improve their development efforts.

In March 1994, OIRA and SBA launched an interagency Small Business Forum on regulatory reform, engaging EPA, OSHA, IRS, the FDA, DOT and other agencies in examining the aggregate impact of Federal regulation on five small business industry groups: chemicals and metals; restaurants; food processing; trucking and environmental disposal; and recycling services. A second working group focused on tax-related issues that affected all of the designated industry sectors. More than 230 small business representatives and agency employees participated, discussing new ways to reduce the regulatory and paperwork burden on small businesses.

After a series of roundtables and work sessions with the small business representative, the forum released a report in July 1994 with some 140 recommendations. Many were specific to the industries studied, while others had a broader focus. They supported early involvement by small business owners in the development of rules, greater use of electronic docket, broader use of information technology to disseminate information, and an emphasis on compliance assistance efforts rather than harsh enforcement. The participating agencies took these recommendations seriously and began work on implementing them.

In late 1994, the Vice President led an agency effort to consider new approaches in the regulatory area. SBA participated throughout this process, drawing on the insight gained in the forum process to draw attention to the needs of small business owners. On February 21st, 1995, the President lent public support to this effort, directing regulatory agencies to do four key things in the regulatory area: cut obsolete regulations; reward results not red tape; create grass-roots partnerships; and negotiate, rather than dictate.

On March 4th, 1995, he called on the agencies to conduct a page-by-page, line-by-line review of all of their existing regulations to determine which might be revised or eliminated. The agencies responded with an enormous effort, revising or eliminating thousands of pages of regulations in the ensuing months.

On May 22nd, 1995, the President signed into law the Paperwork Reduction Act of 1995, a statute he strongly supported.

In June of that year, the President and the Vice President welcomed some 1,600 delegates to Washington for the White House Conference on Small Business. Acknowledging the tremendous contributions of America's small business owners, the President emphasized again the importance of reducing paperwork and regulatory burdens on small business. The delegates later approved 60 policy recommendations and sent them to the President and to congressional leaders. Several of these recommendations dealt with regulatory reform.

The President asked SBA to coordinate implementation of the recommendations. And as SBA's chief counsel for advocacy has reported, the administration and Congress have taken meaningful action on more than 85 percent of those recommendations.

In the regulatory area, we have responded to the key needs identified by the small business community.

In the past, small businesses have often felt that they were left out of the regulatory process until it was too late. The Small Business Regulatory and Enforcement Fairness Act of 1996, SBREFA, which the President strongly supported, codified one of the important recommendations made by small business participants in both the 1994 Small Business Forum and the 1995 White House conference.

SBREFA created special panels, consisting of SBA's chief counsel for advocacy and officials from OIRA and either EPA or OSHA, that now discuss regulations under development by EPA and OSHA with small business representatives from the industries affected. The panels meet at an early stage. OIRA, the chief counsel, and both agencies have worked hard to make the panels a success. To date, the results have been enormously helpful in improving EPA and OSHA regulations. Nearly every panel has identified potential changes that have improved the proposed regulation and benefited small businesses.

Another concern voiced by small businesses at both the 1994 forum and the 1995 White House conference was the need for judicial review of the Regulatory Flexibility Act. Early in the administration, President Clinton and Vice President Gore endorsed the concept of allowing a right of judicial review for any failures to comply with the act. With their support, Congress included a right of reg flex judicial review in SBREFA and affirmed the chief counsel for advocacy's authority to file briefs in any small business appeals regarding agency actions. There is now much more sensitivity to the importance of regulatory flexibility analysis, and we are seeing much better results.

The President and Vice President have also set out to change the culture of regulatory enforcement from an adversarial approach to one that emphasizes working closely with the regulated community. They have emphasized the benefits of partnership, encouraging agencies to reward good-faith efforts to reach outcome-based goals such as safer workplaces or clean air, while reserving the traditional enforcement for the worst actors.

On April 21st, 1995, President Clinton directed Federal agencies, where appropriate, to waive fines for first violations of regulations by small businesses, if the violation was inadvertent and the viola-

tion could be corrected within a reasonable period of time. SBREFA later codified the President's directive.

SBREFA also established a new small business ombudsman at SBA, with regulatory fairness boards in 10 regions across the country. Small business owners now have a new place to turn if they feel an agency has acted unfairly during an enforcement action.

Each year, the ombudsman and the boards hold hearings around the country so small business owners may present their stories in person. The ombudsman then files an annual report with Congress. A review of these ombudsman reports suggests that a fundamental change has taken place in the way most agencies relate to small businesses. According to the latest report, the ombudsman in fiscal year 1999 received only five complaints each against OSHA and EPA.

OSHA has seen the value of increasing compliance assistance to fulfill its mission, rather than relying exclusively on enforcement. By partnering with management and labor, OSHA has since improved workplace safety for the vast majority of employers who want to do the right thing. This has freed the agency to target enforcement resources where they are most needed.

OSHA's consultation program, which operates totally separate from enforcement is available to small businesses in most parts of the country. An OSHA consultant will inspect a business site at an owner's request and provide a confidential safety and health assessment. The President's budget for 2001 includes funding to place one of these specialists in every OSHA area office, to give every business a local OSHA official to call for help.

EPA also is using voluntary partnership approaches as part of its efforts to encourage compliance and prevention to address environmental problems. Working together with business and industry, EPA is finding that strong economic performance and strong environmental performance often go hand in hand.

The use of plain English, particularly in guidance materials to help small businesses understand their regulatory obligations, was a strong recommendation of both the 1994 forum and the 1995 White House Conference on Small Business. At the direction of the President and with strong support from the Vice President, agencies increasingly have been using plain language in their drafting of new regulations and supporting guidance.

We have found that plain language writing leads to substantively better rules. To write clearly, one must think clearly, identifying and answering all relevant questions. When proposed rules are clear, the public can more readily understand them and suggest ways in which they might be improved further.

Some agencies report that when they carefully draft regulations and required regulatory guidance, using plain language, regulated businesses understand what they have to do and there is less need for any additional guidance.

These efforts at regulatory reform form a backdrop to our work on paperwork reduction. My office works with the agencies to improve performance in this area. We review some 3,000 information collections a year to ensure better compliance with the Paperwork Reduction Act.

The Federal Government collects and uses information so that it can better serve the public. Agencies can only deliver services to individuals and businesses if they know who they are, what they need and what they want. Better information can help agencies make better decisions about how well the government is working, whether new services are needed, and whether existing programs are still necessary. Indeed, the government's provision of information to its citizens can be an important service in its own right.

In the Information Age, the public needs timely, accurate information. Investors need quick and easy access to public filings at the SEC. Residents want to know if they have exposure to pollutants in their community. Taxpayers expect quick responses from the IRS and fast income tax refunds.

Although agencies are working hard to minimize collection burdens, success in burden reduction is often overcome by new information collections that are required by new statutory and program responsibilities. Most of the information needs of the Federal Government arise from statutes passed by Congress. Some requirements reflect agency decisions on what information they need to implement programs. The Taxpayer Relief Act of 1997 and the Tax and Trade Relief Extension Act of 1998, for example, made numerous changes to the Internal Revenue Code. These and other legislation required the IRS to add and revise reporting requirements that increased paperwork burden for taxpayers by approximately 150 million hours in fiscal year 1999.

While we have achieved a number of successes in this area, we understand that more must be done to alleviate small business burden. As part of our continuing efforts, OIRA has joined with other agencies this spring in launching a new initiative to look at how we might improve the quality and usefulness of the information the Federal Government collects while reducing the burden involved in supplying that information.

Together, we are working with small business representatives and other interested parties to identify problems and develop workable and constructive solutions. We are genuinely hopeful that this information initiative will lead to tangible improvements. We are examining best practices and listening carefully to the ideas and suggestions of our private sector participants.

We know that agencies must change business processes, streamline legacy systems, develop technical standards, protect privacy and security, and adopt new ways of interacting with customers. We welcome constructive ideas from others outside government on how we might best accomplish these goals.

In closing, we strongly support the goal of easing regulatory compliance costs and the paperwork burden on small business owners. The key to doing so is to find a way to reduce burden while still meeting the needs of the American people. We are open to considering new approaches for addressing the concerns of small business owners. We look forward to working with the committee and others in the Congress in a cooperative effort to achieve meaningful progress in this area.

Thank you.

[Mr. Spotila's statement may be found in appendix.]

Chairman TALENT. Thank you for your statement, Mr. Spotila. I am going to get to the heart of one of my big concerns and then defer to the members who are arriving, so they can ask you some questions.

Let me preface by saying, what I try to do when I focus on regulatory burdens with the committee is to advance what I think is a consensus on the committee, that we don't want regulations that hurt or oppress small business people and that accomplish little or nothing. It is one thing if you have a legitimate conflict between an OSHA rule and, you have to pay more to comply, but you really do get worker safety. I mean, that is one thing.

It is another thing when you have got a burden that is imposed and the person on the ground who has credibility comes to you and says, look, it is nothing, it is like crossing the Ts or dotting the Is. On that at least, we have a consensus.

And it seems to me that for all of your efforts, there is some sense in which this system is still broken; and I think everybody here on the committee has had the experience of having people from their district or from associations come to them complaining about regulatory conduct that is not only unreasonable, but often just arbitrary, and there seems to be no form of relief. It is the kind of stuff that you would expect that when a normal person found out about it and was in authority to do something about it, it would stop because it is just stupid.

And then you tell me what we can do to sort of fix this thing because I would like to know. We have passed all these laws and you all are doing all this stuff, and I have some specific questions I am going to ask you later, but you tell me how we are going to fix this thing.

We had a hearing a few weeks ago on the IRS's current policy of going back and making small contractors who have typically used the cash method of accounting use the accrual method of accounting.

Are you familiar with this controversy?

Mr. SPOTILA. I haven't been involved with it, but I am generally aware there is this controversy.

Chairman TALENT. I think you were a lawyer, weren't you, in private life?

Mr. SPOTILA. Yes.

Chairman TALENT. So you will be able to pick this up. So they go to somebody who does paving or painting or something and say your paint is merchandise, as if you were a paint store, so you have to use the accrual method; and not only do you have to use the accrual method, but we are going to go back 3 years and we are going to audit you, and if we find any time when you mistimed the payment of the taxes, we are going to say, you owe interest and penalties for the last 3 years.

And so these contractors, who may have been audited 5 or 6 years in the past and then the Service signed off on their using the cash method, now they are confronted with $1- or $200,000 in liability, and there is simply no way a reasonable person could have known that they were supposed to use the accrual method and, in fact, probably they were. If this ever gets litigated, the courts will probably sustain the taxpayer.

So we have this big hearing here and the guy from Treasury comes over, and on both sides of the aisle we are sitting there saying, why are you doing this to these people, and it goes on.

Now, what can we do in the system? And I really mean this, this goes on administration after administration. I think the last President who viewed himself as the administrator of the government the way you viewed yourself as the head of your law firm or the way my brother runs his tavern; he cares about what goes on—was maybe Harry Truman. I think if Harry Truman got up and read about this in the paper, he would have called up the Commissioner of the IRS and said, okay, stop doing this.

Now, Presidents since then haven't done it. Is it just as simple as that, that maybe we all ought to encourage Presidents to run the government again and not worry about all the rules and red tape? Tell me how we can do something about that kind of situation. What would you do?

Mr. SPOTILA. I guess I should say, first of all, that every now and then this President—I think all Presidents do—read things in the newspaper and call people up and say, what is this?

Chairman TALENT. I am really not being critical. There is a generation of Presidents that have not viewed themselves in that kind of a role.

Mr. SPOTILA. This is a serious question. Treasury sets tax policy at the Department of Treasury. The IRS often gets the blame when set policy is unpopular. I think they try to balance a number of considerations. We are not typically involved in the setting of that policy.

We do have some capability, the White House certainly has some capability to try to facilitate broader discussions; and I think, in part, the issue that you have raised, which has not been brought to my attention formally before—I have heard about this from small business people who have told me about it—is one that, it sounds to me, bears some further discussion. I am not familiar with the merits, but as I understand it, this is something that perhaps bears further discussion; and I would certainly be willing to work with the committee and try to help encourage further discussions with Treasury about it.

In the broader sense, how do we prevent stupid things from happening? I think that—the starting point, I believe and based on my experience, is communication. One of the reasons stupid things happen from time to time is that people actually in decision-making roles are unaware that they are happening, and bringing it to the attention of more senior people is the first step in trying to take a fresh look.

Sometimes, also, the problem is that in order to resolve it, you need a creative solution, and that means you need to bring the, if you will, "best minds" to bear on how to best solve the problem. That is part of the function of information and a willingness to reform or look at new ways. It is partly a matter of an exchange of views and sometimes compromise as to how it might be done.

As you can imagine, that is hard to do for the entire government. This is like moving a supertanker. So we look for our areas of success, and we try to prioritize: What is most important? What do we do?

Several years ago there was a substantial controversy in the small business community about HCFA rules, for example, which affected many small business providers.

Chairman TALENT. Another classic example.

Let me just interrupt because we are having a serious discussion here. I am not talking about something that an agency does either because it has a very strong, and the top-level political leaders of the administration have a very strong policy orientation they are carrying out; or even, dare I say it, politics. Okay, I am not talking about something where I can look and say, I understand why they are doing that, because this particular interest group really wants it. Those are fairly rare.

Most of the time this is just—it is happening and nobody really can explain it in terms that political authorities can understand; and it is hurting people.

I wouldn't care if it was just sort of something for a law review article. But these contractors come before us, and some are going out of business. And some of these are family businesses that I have had—I am expressing indignation about the problem, but not at you; I am really not.

There has got to be some way of getting a handle on these kinds of problems.

Mr. SPOTILA. I would agree. In the case of HCFA, we had a situation where—again, I wasn't directly involved in it, but learned something about it afterwards—a statute was passed, the agency was very busy, had a deadline facing it, pushed out rules, I think, without understanding the full implications. It caused a lot of concern in the small business community that was expressed through the SBREFA panels and in other ways.

Ultimately, the agency engaged in discussions I know with the Chief Counsel for Advocacy at SBA and has now been doing some things that are much more sensitive to small business than before. The communication—the realization that a problem had been created and that there was a need to fix it, and the insight that that reflected a broader need for better communication and closer cooperation, I think led to some improvements.

Part of what we need is for small business owners to express themselves as early as possible and get word to SBA, get word to the committee, get word to the White House when there are areas that really matter, so that we can distinguish between purely anecdotal and sort of individual circumstances and broader problems that do warrant review and perhaps change.

Chairman TALENT. I am coming from the perspective where—you mentioned HCFA; there is a classic example. I am sure everybody on this committee has talked to providers in the health care business, and it is beyond anecdotal. That is an agency that is just hurting people.

And I am not saying anybody who is running it is bad. If it were, I would be relieved if it was a person who was just a jerk, and then you get rid that of that person and it changes.

But one other thing then, because it seems to me that in order to try and change this you have got to get a handle on it, and there is a trend which we need to stop and that is a trend towards circumventing the rules that you have put in place in Executive

Order 12866, and that we have put in place in the APA and SBREFA by calling regulations guidance—by taking actions that should be taken in a formal process that would be subject to these executive-mandated rules or restraints and congressionally mandated restraints; and doing it in the form of guidance instead, so that in fact you don't have to go through the APA, you don't have to be answerable to anybody. So if you are OSHA, you just say, we are not going to promulgate the rule, we are just going to give guidance to our inspectors in terms of what they call a fine.

Now, you mentioned small businesses have got to get out and communicate to us. Well, they don't even know this is coming, because this isn't in some manual back in somebody's office.

You see, the IRS item I mentioned is a classic example. That was never promulgated as a rule; somebody just told the auditors out there to start making people use the accrual rather than the cash method.

How can we make certain that they do promulgate rules as rules, that we have law instead of just some sort of interpretive guidance or guidelines in the background that are not subject to 12866 or our rules?

Mr. SPOTILA. I think this is again a very important question.

Let me start by saying, I think that clear guidance is something that is very important to everyone in the regulated community, and it is particularly important to small business owners.

We have done a lot to encourage agencies to put out guidance, and I think it is very important to keep that in mind so that concerns such as those you have expressed don't become an attack on the idea of guidance.

The solution is not for agencies to stop giving guidance. The solution is for agencies to make good decisions about what belongs in a rule, to go through a notice-and-comment process and what legitimately does form guidance.

You know, though there may be recent concern about this, this is actually not a new issue. The APA has been in existence for 60 years, and for 60 years people have been arguing about what is a rule and what isn't. We turn to the courts, litigants turn to the courts to get good decisions about that. They often turn on fact-based circumstances.

I haven't seen, in a broad sense, a lot of instances that have come to me of situations in which agencies have used guidance where they should have used rules. If they do come to me, or if I become aware of them, I have some ability at OIRA to intervene. So we tend not to be involved on the IRS side, but for the other agencies that is the case.

And so when I say, I haven't seen a lot of these, they have certainly not been brought to my attention that we have a broad and growing problem. That is not to say we don't.

I would be interested in learning more about specific areas of concern in that regard, again to be able to work with the committee and my staff to work with the committee staff to try to look for ways to improve this.

We do engage in discussions with agencies about what should be in a rule and what need not be in a rule. We try to apply, I think in good faith, the standards the courts have laid down; and as I

say, I think that there is much to be said for encouraging agencies to put out guidance so that people know what it is that is expected of them.

Chairman TALENT. The thing, though, I think you have to keep in mind is that there are institutional tendencies within agencies to attempt to avoid restraints that are put upon them by their political masters either in the executive branch or the Congress. This is documented as a matter of bureaucratic science, and they will tend to do this.

Now, it is fine to say small businesspeople need to come forward and communicate, et cetera, that they can go to the courts. But you see, you are dealing with a situation where, as a practical matter, a court remedy 99 times out of 100 is not a remedy for a small businessperson. It is too cumbersome. It takes too long. It costs too much. And in the meantime, they have gone out of business while they are waiting for some answer.

And I know you know this. To some extent, you being here is sort of like the choir we are preaching to. But if I can come away with a message to you—and I am trying to make this as impartial and as nonpartisan as I can, because ultimately, if we are going to resolve this, it is going to have be done on a bipartisan basis or we will never get it done. They will defeat in the agencies any partisan-type measure.

The Republicans and Democrats have different attitudes toward government, but I think we have the same sense of the dangers of concentrated power, whether in public life or private life; and I am concerned, I will just tell you—and I am leaving this body—I am concerned about the tendency in the agencies to slip their leash, and go off on the basis of what really isn't even law anymore. It is guidance, or in the guise of flexibility, it is arbitrariness; or decisions are being made out there in the field by somebody who is not really subject to anybody. And real people who are trying to make a living and support their families are getting hurt by it. And I just—from our perspective, or my perspective anyway, I see a lot more of it maybe than even you see; and I hope we find some way to work together to restrain it because I am concerned about the impact on the economy and the society if we don't.

And I will be happy to—I want to recognize the ranking member.

Mr. SPOTILA. If I may respond just for a moment?

Chairman TALENT. Sure.

Mr. SPOTILA. I share that desire that you have expressed to work in a nonpartisan or bipartisan way to look at and assess the nature of the problem and see what, if anything, more can be done about it. As with you, I view this also in institutional concerns. As with you, I am working hard now, but I won't be here past this administration in this position in all likelihood.

So I think it is important to think in institutional terms, how do we institutionalize what I think has been a very, very positive change in attitude and in approach over the last 7 years? How is it that we build on the progress that has been made to go forward? And I think that is very important.

I would also mention, though, I think that one of the reasons we are seeing, that you may be seeing some of these concerns is that there has been progress, there has been more transparency and

there are better lines of communication; and that to some degree, we are hearing complaints that may not only have existed, but been more of a problem in the past. But we are hearing more of it now. That is not to say we shouldn't be sensitive, quite the contrary; but it is important to keep in mind that progress has been made, and we should build on that progress, and we should encourage those in the agencies who are acting in good faith and trying to do the right thing.

Chairman TALENT. My friend will, of course, have as much time as she wants. I think she knows and the committee knows, this is a subject of interest to me. I don't go on with questions unless it is.

Let me suggest that you consider also, as much as we try to institutionalize things, some kind of a sincere executive-legislative partnership where notwithstanding whatever restraints we put in place, something gets through where all of us look at it and after 15 minutes we say, this is a problem. Like this cash versus accrual thing, you haven't had a chance to study it, but you seem like a reasonable person; I guarantee, when you study it, you are going to say, this is a problem.

There has got to be some means of also putting out the fires that get started, notwithstanding our restraint, and we tried here a little bit in SBREFA when we set up this, what do they call it—the Corrections Day; we have some expedited process for fixing or overruling regulations that on a bipartisan basis we didn't like. It hasn't worked well here institutionally; people are too sensitive about maybe we will overrule too many regulations or something.

But, see, if we can get an agreement on that, it would be helpful.

I am just concerned about these people who are trying to build America and their communities and often find the government to be a problem. It undermines the credibility of the good work that the government is doing when people get alienated in this fashion.

I guess I wasn't willing to let you have the last word. I will recognize the gentlelady from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I have to say that it has been really a pleasure working with the chairman for the last 18 months, and again today you demonstrate your sense of responsibility in addressing the fact that it is not a Republican or Democratic approach when we deal with the issue of regulatory reform and how this impacts the community, the small business community.

The fact of the matter is that we need to see the different factors that are affecting this, are preventing Federal agencies for doing their work in a constructive way, either because there is a human factor to it or because there is a congressional mandate that has driven more regulations.

But—we need to strike a balance that will benefit the small business community, but at the same time that we have the responsibility to make sure that regulations are there, in place, that will protect consumers, small businesses and the many people that are involved.

Mr. Spotila, I am going to be here next year. The chairman, I wish him well, but I want to continue to work on this issue, be-

cause it is an issue that I really consider to be very important to small businesses.

And so I want you to help me understand the whole process of your office. We understand that the Federal agenda that each agency publishes every year, that they still appear to be very lengthy. How do they compare to past administrations?

Mr. SPOTILA. Well, actually, the Unified Agenda is a publication, as you mentioned, that comes out twice a year, and it consists not only of rules that are about to come out, but actually anything in a regulatory arena that agencies are working on. We emphasize to the agencies that in the interest of disclosure they should tell everyone everything that they might even be working on or that—some of these may be over a 10-year period, so we inform the public.

When one looks at the—and this includes many—a vast majority of them are actually routine, very routine things, everything from the schedule for hunting season to various kinds of other smaller permanent requirements.

Within there, perhaps 3 percent of those are really more important, big rules that will be coming out that will affect everyone. If one looks at those agenda, I think what one would find is that the number of entries was going up and up. It probably peaked in the late-Bush/early-Clinton years. It has come down, I think, since '94, perhaps by 15 percent. I don't think that is as extraordinary a statistic or as important a statistic as some others in that there are so many routine matters that are mixed in with it, but I think it is clear that we do a lot of regulating.

The American people benefit because important regulations are put out in the areas of health and safety and the environment and consumer protection, but we have to be very sensitive to the aggregate impact of those regulations. We need to make certain that they are done properly and the burden is minimized.

Ms. VELAZQUEZ. After you reviewed the agenda, did you offer to sit down with the agency and give them your insight regarding the new regulations?

Mr. SPOTILA. We sit down with agencies on an ongoing basis.

You asked how my office is set up. We have actually at my office about 50 people that do accommodation of regulatory policy, information policy—we have substantial responsibilities there—and statistical policy. So there are a couple of dozen that do regulatory work. They each have agencies that they work with, and they do engage with the agencies proactively to discuss what things are coming, how the agency may be going about it.

We also work certainly at my level at trying to work with senior policy officials and to look for opportunities on a broader basis to pursue review form.

So there are discussions of this sort that will vary based on the agency, and we try to prioritize based on the areas where we think it matters the most.

Ms. VELAZQUEZ. Do you think it is helpful?

Mr. SPOTILA. I think it is helpful. I think it is very important that we not view this strictly on a case-by-case individual basis, but that we work with the agencies in a constructive, cooperative way. We find we get much better results that way than if we are

adversarial, and I think ultimately the American people benefit much more.

Ms. VELAZQUEZ. Let us talk a little bit about the IRS, and, you know, every time that we mention the IRS, people open their eyes. It seems that the IRS accounts for the majority of the new regulations coming from the Federal Government.

Mr. SPOTILA. Well, in terms of the IRS, the IRS puts out a lot of interpretive regulations. Those actually are not typically reviewed by my office.

We do get information collection. The IRS is a huge collector of information, as you know.

Ms. VELAZQUEZ. Can you tell me how much of this regulation coming out from the IRS is driven as a result of congressional legislative action?

Mr. SPOTILA. Well, we track—let me talk about paperwork burden for a moment because of information collection.

The IRS generates about 80 percent of the burden hours that we track in the information collection area and generates—it is the greatest, the big gorilla, if you will; and we do work with them on trying to reduce that and streamline that, and they have made significant progress there, but nearly all of that is driven by the complexity of the Tax Code. And as I mentioned in my testimony, we have had a lot of efforts to try to streamline paperwork, and then two statutes were passed for good and important reasons that generated 150 million new hours.

So this is not strictly a matter of what the agency does or doesn't do. It is a matter of they have to enforce the law and implement it.

On the regulatory side, their regulations again are designed to implement statutes. So we might look at whether, or someone might look at whether those regulations are wise or properly done or whether there has been enough consultation or discussion, but they are certainly all driven by efforts to implement the Code.

Ms. VELAZQUEZ. Thank you, Mr. Spotila.

Chairman TALENT. Mr. Bartlett.

Mr. BARTLETT. Thank you very much.

I would like to return for a moment to the IRS problem that Mr. Talent brought up. The witness was asked, at the end of the day when the business is liquidated, will any more or less taxes have been collected, depending on whether the owner used the cash method or the accrual method; and he agreed that there would be no difference in the amount of taxes collected. It is not whether they will pay the tax; it is only when they pay the tax.

Now, you have been an observer of the thought processes of these agency people, and as Mr. Talent said, this new procedure is very, very hurtful to a lot of our small businesses. Since not another dime comes into the Federal coffers by forcing them to go to the accrual method, at the end of the day the tax revenues will be exactly the same. As a matter of fact, because there are more people working, harassing our poor small businesses, the cost to the taxpayer is actually greater. The taxpayer loses by this.

Why would they do this when no more taxes are collected? Can you understand why they would want to do this at all?

Mr. SPOTILA. As I mentioned, I am really not familiar with the reasons behind the decision. I have made a note of it, and I will look into it.

I start by being very sympathetic to the plight of small business. I was a small business owner. I was on the cash method, I must tell you, and I don't want to prejudge what Treasury may or may not have done here, but I am happy to look into it.

Mr. BARTLETT. I appreciate that, but this is a really excellent example of the kind of regulation the chairman was talking about, which didn't accomplish anything, that was just hurtful with no basis. Because no additional taxes are collected; exactly the same amount of money is collected.

It is not whether you collect the tax, whether you will pay it as a small business, only when you will pay the tax; and this is an enormous burden that they are placing on our small businesses, and they are putting them out of business.

How can this possibly be to the benefit of the taxpayer? This appears to be a totally arbitrary and capricious and mindless implementation.

The chairman also mentioned a lot of regulations out there that don't appear to accomplish much. I remember several years ago the EPA would rather not have the administrator sit at a Cabinet-level position than be required to do a cost-benefit analysis for their regulations. In other words, they didn't care that the implementation of a regulation cost us more than we benefited by it.

As the old farmer said, "I don't think I would do that; the juice ain't worth the squeezing." well, there are many, many of our regulations where the juice ain't worth the squeezing.

Is there an incentive on the part of the administration to look at our regulations to see which of those are worth the effort and which of them are simply a burden on our people that accomplish less than the cost imposed on them?

Mr. SPOTILA. I believe there is, and let me address that in two ways. We have, I think, been doing an increasingly good job, speaking now from my viewpoint at OIRA, at working with the agencies, including EPA, on assessing the benefits and costs of prospective regulations and alternative approaches.

Mr. BARTLETT. How about the ones in existence already?

Mr. SPOTILA. I will get to that in just a moment. I want to put this in the context.

Our sense is that it is very important, as any new regulations come down, that we work with the agencies, in part so that decisions are better and in part to increase the capability within agencies to do this type of analysis and to change the culture so that their approach takes these factors into account.

When it comes to looking back at past regulations that are already in effect, actually the Regulatory Flexibility Act calls on the agencies to do this on a periodic basis, and we have instituted some measures to track agencies that are doing it, to try to put that information in the regulatory agenda. We have a separate page now that lists that. We try to encourage the agencies to do so.

Candidly, there are resource constraints, and the agencies tell us that it can be very time-consuming and resource-intensive to try to go back to existing regulations. And although many of them have

good intentions, my experience has been that some of them just simply indicate they lack the effective capacity to do as much of this as perhaps you and I might like them to do.

That could well be an area of opportunity going forward because I share with you the sense that it is productive to look back at important regulations to try to assess how they are doing and to make certain that the approaches that were adopted in the past reflect the best ways of accomplishing goals that perhaps we would all share.

So, again, I would welcome the opportunity to work with the committee to identify areas that may perhaps need more attention. I think we would need to prioritize our efforts, but we are certainly not averse to discussing that further.

Mr. BARTLETT. Thank you, Mr. Chairman. My time is up.

I would just like to note that in reading the Declaration of Independence, I came upon something that would appear to be a pretty good definition of our current regulatory agencies:

"he has erected a multitude of new offices and sent hither swarms of officers to harass our people and eat out their substance," was one of the reasons for our Revolution, and I suggest that it might be a reason for a revolution at the ballot box now.

Thank you very much.

Chairman TALENT. Well, I thank the gentleman for his comments. Let me pick up on one thing he said.

I mentioned before one trend that I am concerned about is a gradual elimination of law in the sense that you and I, as lawyers and as we have always understood it either in the form of statutes or regulations that tell people what their legal responsibilities are—I mean, law is restrictive, but also it has a liberating side because what isn't illegal under a law is then allowed. But the more that you make the actual legislative process in the form of guidance or regulations that appear to be flexible, but require things that are basically arbitrary standards, the more possibility for arbitrariness or, really, kind of tyrannical activity; and I have sensed this out there, and I wanted to flag on that.

The other point you mention in terms of cost-benefit, and this is what is really perverse about some of this, and I want your comment on it, if you would. If you don't do this process right, you can end up spending scarce enforcement resources, basically harassing people who aren't doing anything wrong, and then the corner-cutters out there love it.

I get a feeling that HCFA spends all their time, for example, going after basically honest providers, and the ones who are defrauding Medicare, they love that because they know HCFA is never going to have an opportunity to go after them because they are spending all their—so you get neither, you get neither more freedom for people nor more accomplishment of the regulatory agenda. And I can give you so many examples. Maybe we should have been working with you for the last 4 years more than we have been, because I can give you so many examples. Will you comment on that? Are you seeing that at all?

Mr. SPOTILA. Actually, let me start by saying, to kind of echo a theme I had mentioned earlier, that I think there has been a sea change in many of the regulatory agencies in their approach to en-

forcement, in their emphasis on compliance assistance, rather than harsh, sort of "gotcha" enforcement. They are not perfect, but they have come a very long way, I think. When we look at agencies like OSHA and EPA, which had very bad records in the small business community, I think they are doing a far better job today, and we need to encourage that, and we need to urge them to do more of that.

It is important that we give guidance, because by giving clear guidance, people understand what it is that is expected of them. They don't have to hire lawyers to explain very complicated or dense rules; they can see what is needed and they can try to comply. And the strong message we have gotten consistently from small business owners is that they want to know what it is they are supposed to do. They want the rules to be sensible, and then they want to understand them easily so that they can do the right thing and get on with their business. Having said all of that, they don't want their competitors to have an unfair advantage.

So they do want enforcement for the people that, as you say, are cutting corners or whatever, because otherwise those people get a cost advantage and they suffer. So we have tried to shift the agency's approach, and the President has emphasized this over and over again to one which helps people who act in good faith to understand what is required of them, gives them help in complying and targets enforcement resources on the people who know what the rules are and just deliberately choose to avoid them to gain an economic advantage.

We are not doing it perfectly yet, but there has been progress.

Chairman TALENT. Let me understand. That is not—it is important to me that you see this, even if we don't necessarily agree on how big a problem it is, but you recognize that this is a problem. There is a difference between being flexible and saying, okay, we want to work with you so that we achieve voluntary compliance, which is a good principle but sometimes—here's how that manifests itself. It manifests itself in vague regulations or guidance that say we want you to do everything that you reasonably can do, let us say, to have a good safety and health program at the workplace. Now on the surface this appears, oh, yeah, we want you to do everything that you reasonably can do. But you see the guideline or the regulation is so arbitrary that in effect almost anything is potentially illegal and then it is simply a question of the discretion of the inspector. You can see how something that was designed—started off to be flexible can end up being even more tyrannical because now there is no law to protect you. You can never be certain that your safety and health program complies with the law because the standard is so vague. It is almost Orwellian. In the beginning of 1994 they say, well, there aren't any more laws anymore because if there are laws people know what they can and can't do. I am not accusing this of being necessarily vast. I am saying this is a tendency I see growing up in these agencies and I am really wanting you to agree with me that at least this is out there.

Mr. SPOTILA. There are occasions when that happens clearly. We work pretty hard in reviewing the significant rules to identify areas like that and try to add clarity. We rely a great deal on public comments that we get from people who understand sometimes the im-

plications of language more than we might, and when I said earlier that it is important that people comment, it is because that is how we find out.

Chairman TALENT. I agree with you. Otherwise we don't know. There is no other means of knowing.

Mr. SPOTILA. I would completely agree with you that we ought not to have those situations where we have very unclear, ambiguous regulations that then will vary with enforcement.

Chairman TALENT. This has an impact far beyond—even if it is more limited than I think it is, because what it does is it destabilizes and frightens people. They never know when the next one may be coming so it has this—it is worse really than even a tax burden because that at least they know but the regulatory burden they don't know when it will come down and they are afraid that somebody can walk and do something terrible to them and they didn't know about it and couldn't know about it.

Others are waiting. I thank the committee for its indulgence. I have Mr. Barrett next. He is not here. Mr. Pascrell.

Mr. PASCRELL. I always looked at the FEMA–SBA team when they go into an area after a natural storm or catastrophe of some sort and the response team is sent all over the place. I think we have some great people leading SBA and FEMA. I notice how many times we have been able to cut through red tape and I often wonder why don't we do that all the time. Why don't we begin by thinking in our minds that there is always a natural catastrophe of some sort. The red tape wasn't necessary in the first place and there is never enough being done.

Let's face it. Let's be honest. Regardless of what administration, regardless who the governor is of a state, which party they belong to or who the President is, it is the second level management that makes these regulations and makes our life miserable, whether it is EPA, whether it is the Small Business Administration or whether it is FEMA. I often wonder if we go and cut to the chase and think of this thing as always an emergency because people need help all the time. I don't need a flood to need help.

Chairman TALENT. Weren't you a mayor, Bill?

Mr. PASCRELL. Yes, I was.

Chairman TALENT. Will the gentleman yield for a minute.

Mr. PASCRELL. Sure.

Chairman TALENT. You ran the city. I am sure if somebody came to you with something that somebody was doing in the city administration or bureaucracy that you thought was senseless, you took care of it, didn't you?

Mr. PASCRELL. We tried to. Many times you dealt with agencies that you yourself appointed the people to, whether it is a planning board or a board of adjustment. You could put one of your parents there and once they get into that position and they read those regulations, this is how it has to be done, and this is the other thing, we are not asking—and we are not assuming nor are we recommending anybody breaking the law. That is not what we are saying. What we are saying is much of this is not needed. You talk about 80 percent of the regulation of the IRS being promulgated through our actions here in the Congress is probably true, but what about the other agencies. How do you suggest that we imple-

ment laws—that is not our job—but how do we implement those laws that we make in this Congress? Who stands between the Congress and your job and many other jobs in implementing the very laws that lead to the regulations, that lead to the requirements that many Federal bureaucrats—I don't mean that in a negative sense—need to apply? Shouldn't we have oversight as to how these laws are going to be implemented? Shouldn't there be a review to the Congress at every new Congress; this is what was passed in the 106th and this is what happened for the Federal agencies in implementing this. Don't we have a right to know whether or not the intent of the law exists or whether or not we simply added on the frills in order to keep a lot of other people working?

I am not assuming any answer. I am just saying through the Chair we are never doing as good as we should do. I have had to deal with it. When you are a mayor, you have to deal with a hands-on situation every day, Saturdays and Sundays are not excluded. The Federal bureaucracy they are for the most part. But every day. So what you try and do is cut through red tape. You know, we set up enough red tape to cut the red tape and we never get to the objective. We never get to the end result. We really don't. I know there has been a lot of effort. There have been many pages written about what this present administration has done in cutting red tape. Jobs have been cut. Red tape has been cut and yet I still get the same complaints. I still—maybe I am different than any folks that are here—about whether we are EPA.

I mean, that is a nightmare and a half. I fret when I vote—I have got a pretty good environmental record, but I fret when I vote about environmental bills because I know how they are going to grow and mushroom by the time the first person comes through the door and says I have got a nightmare to talk to you about, Congressman, and I am really concerned about that. What is our oversight? What are our duties and responsibilities to basically say, hey, we didn't intend this. Why did you set up all these regulations? We passed this rule—or we passed this law. You established this rule. How did we get to all of these rules in terms of the intent of this legislation?

I think every Congress we should have a review of what was done the Congress before, before we start to even put in bills. Maybe this would prevent us from putting in this plethora of legislation that everybody knows on both sides of the aisle is never going to get passed. Maybe we should have a review in January of each new Congress. This is the laws. This is what we have done since. Nothing has been done.

Now, I am looking back at what the Clinton administration, quote-unquote, did since it came into business in 1993 to now, certain things that OMB did, certain things—executive orders, right down the list, 1993, 1995, 1996, the presidential memorandums, the Small Business Regulatory Enforcement Fairness Act. What is our box score on these? Who keeps the report card? Are these being implemented? Who do I go to? Through the Chair, who do I go to?

Mr. SPOTILA. You made a wide range of points there, but let me address some of them. I will try to be as helpful as I can. Let me first of all start by agreeing there are two key aspects that you have touched on, one that agencies have a responsibility individ-

ually to implement in a proper way with common sense measures the laws that are passed that affect them and that Congress has a responsibility and a right to oversee how agencies operate in that respect. Those are givens that I agree with completely.

What may be a—because this is a Small Business Committee I think it would be worth touching upon an effort that SBA engaged in when I was there as general counsel not only because it is of interest to you because of small business but because there may be a lesson there that has a broader application also.

I have outlined a number of the measures that were taken to try to increase contact with small business owners. At SBA we identified from the very beginning that access to capital was one of the most important needs to small business then as it is now. And what we try to do in speaking to small business owners and to resource partners, lenders, and others is to identify the obstacles that were preventing SBA from helping improve access to capital to the extent necessary, even within the context of limited resources. And from the general counsel's role that you had at the time, we were very much aware that just as lawyers can be facilitators of change, they can also be great obstacles to change. We made a commitment to try to do all that we could to remove obstacles and to help the agency perform its mission better here. So we identified things in our own regulations that we thought interfered with the delivery of capital to small business. Sometimes they interfered because they added cost and they made programs ineffective. You all heard about the LODOC program where we reduced a very cumbersome loan package for small loans of under $100,000 to one page; the SBIC program where we completely revamped both the operating regulations and the substantive regulations so that that program could be basically kick started, and it has blossomed into a terrific program for small business now. We completely reinvented the 504 program from the standpoint of streamlining processes, changing the regulations, making things clearer.

The real answer as to how we did that was to engage career employees at the agency in an effort—they wanted these programs to be successful. They needed leadership and they needed it to be given priority but these jobs were done by career people here and all across the country. We set up teams of people who really started from scratch, looked at each of these programs, took the comments we had gotten from small business and rethought the way SBA was approaching this. And by getting them energized and by getting them to not only understand the importance of it but to free them up, to actually provide solutions, I think we were able to achieve extraordinary results. We took 100 percent of the agencies' regulations and in less than a year, in 10 months we were able to transform them.

We then moved into the standard operating procedures. We eliminated thousands—we had operating procedures, books and books of it on the wall that no one used, no one read because we all knew they were obsolete. The only people that had to pay attention to them were the small business owners and the people the agency dealt with who had to try to master these things that the agency didn't pay any attention to. We had regulations when we sat down to write more clearly. We had regulations that our own

people disagreed, and in Washington our own people disagreed about what they meant. We were the people giving advice. Depending on who you talked to, you got different advice. We fixed all that. We changed it all because we identified the questions, we supplied clear answers, we tried to look at it from the standpoint of users and resource partners and we tried to get out of the way so that the agency could get capital to small business more effectively and more efficiently. This could not have been done without energizing career employees and empowering them to make these changes.

I think, as I say, there is a broader lesson here and I think from the standpoint of the committee when an agency like SBA takes steps along those ways it is very important, I think, that the committee on a bipartisan basis acknowledge that progress and encourage it because it sends a very important message to the career employees that this was worth doing, that we are not politicizing and similarly when we are dealing with other agencies in other areas, I think it is perfectly reasonable to ask other agencies why don't you try something like this. If it worked here why can't it work with you. That is something we will do from my standpoint, but it doesn't hurt if the Congress asked those questions also.

Mr. PASCRELL. Mr. Chairman, I am sorry I am extending my time but I just wanted to get into one other point if I may.

Chairman TALENT. Yes.

Mr. PASCRELL. I am glad you said what you did because I think it is important that we hear it and now we have got to see it. We are looking for tangible evidence. I want to leave the committee and the witness with one example. It has nothing to do with small business, but I think it leaves a sour taste in my mind about what we do down here and many times we place obstacles unbeknownst. We pass laws that are going to encourage obstacles, as you just displayed. It is like immigration policy. We have placed so many obstacles, so much bureaucracy.

We debate flat tax on the floor. We ought to debate flat immigration policy to encourage people to be documented coming into the country. We established all of these. We pass these laws and then the INS has all these rules and regulations. Just one aspect of it, fingerprinting, if you had the history of fingerprinting in the INS in the past 4 years since the Immigration Act of 1996, you would rather take the chance of being undocumented than go through the hassles that we caused, that this Congress caused and that the bureaucrats and INS put together. Who is going to determine the fingerprints? The FBI, the Vermont offices of the INS, which led to 6 months, 12 months delays, even in the very elementary reviews of immigration applications. And I use that as an example.

We need to get flat on our rules and our regulations, Mr. Chairman, if I can use that term "flat" here. We need to get flat and we ought to do it together and we ought to insist upon it and every administration never does enough to do it. There is never going to be enough. And I am glad you have been very frank and I appreciate the opportunity. Thank you.

Chairman TALENT. I recognize the gentlelady from New York, Ms. Kelly.

Mrs. KELLY. Thank you. Mr. Chairman, because we have another panel, I am going to ask if you will be holding this open for a period of days following the——

Chairman TALENT. Sure.

Mrs. KELLY. Thank you very much because I have several questions and too many questions to get in. I just want to start by asking you how many total regulations have you eliminated? Because we have very little time, if you can just give me a number, that would be sufficient. If you don't know, please say so and you can answer that later.

Mr. SPOTILA. I think—I am happy to answer it in more length later but what I would suggest respectfully is that it is not the number of regulations that we should be counting in terms of past regulations because it is too easy to lead to misleading results.

Mrs. KELLY. I am interested just in that number.

Mr. SPOTILA. I understand that. Let me explain what I mean by this. When we look at a particular title in the Code of Federal Regulations, it isn't broken down by the number of regulations. If one eliminates a provision, the chapter is still there, the title is still there, the program is still delivered. The issue is not whether the regulation is eliminated, but whether the regulations that implement a program or that affect a program have been improved or clarified or streamlined.

Mrs. KELLY. No, I ask about elimination.

Mr. SPOTILA. I understand that. I am saying it is not a number that is tracked because it is not a number that is meaningful.

Mrs. KELLY. Maybe we could work with you to try to find some——

Mr. SPOTILA. I would be happy to explore that further.

Mrs. KELLY. I find it very interesting that you use the Federal Motor Carrier Safety Administration as an example of an agency that successfully streamlined their regulations when this agency has received a lot of public criticism for the impact of the proposed hours of service rule and the impact it will have on the small motor coach operators. I believe there was an article in the business section of the Washington Post yesterday about this. The bus industry says that DOT hasn't done any research and has done no studies to better understand the industry. Is the DOT devoting resources to streamline while they are ignoring the duty to properly analyze new regulatory revisions and what effect are you going to have on this?

Mr. SPOTILA. First of all, DOT is devoting effort, it is streamlining and I think that has been a good thing. The hours of service rule, which we have had some involvement in, we reviewed it before the rule was proposed. We met with parents of children who had been injured or in some cases killed by tired truckers causing accidents. There is a lot of concern out in the community about this. We ultimately put out a proposal for comment and there were areas, and motor coaches is a good example of one, where we did not feel, we or the agency, knew enough about the impact of a change in hours of service rules on that industry. We heard a lot about truckers, particularly long distance carriers. We had frankly concerns about the impact on local truck deliveries from people who do local trucks. We were concerned about motor coaches. We have

a public comment period and we decided to try to take advantage of that comment period to learn more about this area.

Mrs. KELLY. How did you publicize the public comment period, how many responses did you get, and what was the length of time of that comment period?

Mr. SPOTILA. First of all, the comment period is still open. It is the agency that published the proposal in the Federal Register.

Mrs. KELLY. Only the Federal Register?

Mr. SPOTILA. I would be happy—I don't have that information off the top of my head because we don't do that specifically. We will find out.

Mrs. KELLY. It seems to me that this is really an—this is an example of a real sort of an agency blatant failure to comply with the Reg Flex act.

Mr. SPOTILA. I think that what it actually reflects, respectfully, is an agency that is interesting in hearing more about what the impact might be so that it can make better decisions, and there hasn't been a final decision as to what this rule should contain. I actually was very encouraged by the publicity that these provisions got and I would hope that we would hear more from people so that ultimately if there is a final rule that it would be crafted as well as possible.

Mrs. KELLY. Is there any other way that you see yourself advertising what is happening so that the small motor coach operators are going to be able to know that this is actually happening? Not everybody reads the Washington Post or the Federal Register.

Mr. SPOTILA. I understand that. I think that we can always do a better job at communication. The agency in fairness has done some things, uses its Web site and tries to get out information to trade associations and others it understands it will be impacting, but it has been a classic problem for small business owners to find out about rules and prospective rules. That problem hasn't gone away. There have been some improvements, but there is still need for more opportunities there.

Mrs. KELLY. You earlier stated that the small business owners need to express themselves earlier in the process. I am quoting you, words that I wrote down here. In fact, it is almost impossible for many small business owners because they are one or two person shops and they don't read the Federal Register. Do you consider that part of what your job is at OIRA?

Mr. SPOTILA. Let me start by saying individually, personally, I am very sympathetic to the concerns that you are raising. I have been a small business owner and I know how difficult it is.

Mrs. KELLY. You know how we are drowning in red tape.

Mr. SPOTILA. I know what it is like to be on both sides of the fence, if you will. But having said that, the agencies have the primary responsibility—the Department of Transportation has gone out in the field. They have held listening sessions. They have tried to have public meetings and the like. They are not going to reach everyone when they do that. I would hope that they reach enough people so that at least the views are expressed. It is not necessary that every small business owner comment on this. It is necessary that every view is expressed by someone so that we know what the alternatives are and we know what the impact would be. And we

would be happy to work with you further and with the committee on how additional steps might be taken to improve these lines of communication. I agree completely they are very important.

Mrs. KELLY. My time is up and, Mr. Chairman, I have quite a number of questions here but we actually are going to have another followup hearing tomorrow so perhaps some of these questions will be able to get through tomorrow. Thank you.

Chairman TALENT. I know I have taken up time airing my concerns. Mr. Phelps, any questions?

Mr. PHELPS. Real brief, Mr. Chairman. Thank you. Thank you for coming and sharing with us. I hadn't caught all of your remarks, but very enlightening. Let me just express—I may have a couple of questions here—some frustrations that not only as a new member but someone who served in the Illinois legislature and have our own state bureaucracies to deal with, as a former teacher and a former small business owner, one of the most frustrating things is for someone who has been given, quote, the authority to pass down judgments and requirements and regulations that really haven't walked in the shoes. Let me just pass that along. If there would be bureaucracies, agencies, departments that had more staff—and I know many times we read about how they were recruited from the field of small business owners and so forth in this case what we are talking about, but other regulatory agencies that have been mayors, that have been those people in the grass roots level that bring the mentality to the agencies and say, look, before you do this, let me just tell you what happens from the standpoint of this size of city or this size of community. It is like—as a former teacher you have—some of the professors I had at Southern Illinois University teaching me how to teach have never been in the classroom and the administrators that we were doing the evaluations of who is a good teacher never taught a day in their life.

So it seemed to me like that mentality is somewhat perpetuated from the standpoint of who decides on the intent of the law, how it is implemented, and sets up the rules because if we had—for example, if you were, I guess, able to prepare a chart simply for me or other members that would help justify some of the positive changes rather than answering questions from a negative standpoint of the differences between then and now, so to speak, that you address some, a chart that just skims some of it like this was a few years ago, this is now, this is how we have streamlined, and I know we are still going to as members harbor and emphasize on those that still seem like common senseless regulations that still exist no matter how good a job you've done, but it just seems like that would be a simple way to hand out sheets saying before you get on these other things that we haven't—that still needs to be improved, here's a list of good stuff that we have changed from a positive standpoint. But I guess I just want to—because what happened, as Members of Congress already see, is that when we can't answer a question from the common sense standpoint when we are in a town meeting or a constituent contacts us in our office about can you tell me why this is, and I am thinking most laws, I want to rather think, were actually made from responses or inquiries or suggestions from groups, interest groups, from individual citizens. They just didn't appear on the books because someone dreamed up

an idea and wanted to be great. I am sure there are a few of those but for the most part they are here because people brought them to our attention. So how did they get from this intent to where you don't even recognize what it was designed for.

I don't want to be in the shift blaming type mode of service where I am as a government official saying, oh, it is not us; this was a rule making process because people are essentially—they are not dumb. They are saying, well, who has the ultimate authority and if we can't answer common sensical why certain things are being in a regulatory mode that doesn't go back and reflect to a specific law or recognize what the specific intent was, that puts us in a real bad light, and you understand that. So I don't know, do you have a then and now chart?

Mr. SPOTILA. Let me actually respond to two things you have said. The first point is I would agree with you about the importance of recruiting into public service people who have some understanding of the impact of government on private citizens and small businesses. I think that when I look back, I had known the President a long time personally and he asked me to come to the SBA because he wanted to upgrade its performance, and I joined it in 1993. I think we did a pretty good job at SBA and in a lot of others and he asked me to come to the White House to do this job because he understood that I would bring with me this perspective and it is what he wanted in this job and I think that is to his credit.

Mr. PHELPS. By the way, I want to commend you, but do you recognize people that work within the agency share some of the backgrounds?

Mr. SPOTILA. Many of them and as I mentioned earlier I think there has been a much more cultural change and much more sensitivity to this area, but this is not a process that is done. This is a dynamic process and the need will remain to continue to bring in people like this and to sensitize people who are career employees that mean well and just need to learn more about what the impact of what they are doing might be.

On the issue of charts I don't have charts for you but I am happy to go back and work with you and others on the committee if there are things that we can provide. As we are going to be answering questions, we can see what we can provide.

Mr. PHELPS. I will follow up on the same thing. It just seemed like someone—for example, in the transportation regulation that Congresswoman Kelly mentioned to you, if someone that was an over-the-road truck driver in past years and had somehow evolved in the agency that is looking at what we are talking about from the standpoint of road safety for over-the-road trucks common sense would tell you someone has got to relieve drivers after a certain matter of time before they become such a threat, especially as our vehicles get bigger and our railroads get smaller and our roadways and interstates carry more responsibility. Somebody ought to be able to say, look, this is pushing it before——

Mr. SPOTILA. There is and I can tell you I have heard this from people who have their lives transformed negatively because of tired truckers. There is a problem. There is a safety problem here. How we go about fixing that problem or addressing that problem is a

fair question but there clearly is a risk here to the public safety and I think everyone who has looked at it acknowledges that.

Mr. PHELPS. Thank you. Thank you, Mr. Chairman.

Chairman TALENT. Let me just ask a couple of questions for the purpose of the committee's deliberations on paperwork reduction and some other things to get your opinion on a couple of things for the record.

When an agency submits a proposed reporting requirement to you for review, does your review check for consistency between the instructions and the underlying regulation to make certain that they are not putting things in the instructions that go beyond what they are supposed to be doing from a regulatory standpoint? If you don't do that, do you think that that is a sensible idea and something we ought to consider in reauthorizing the Paperwork Reduction Act?

Mr. SPOTILA. Let me start by saying I think it is a good thing to do and we do attempt to do that. I think we do it reasonably well. As I mentioned earlier, we review 3,000 information collection proposals a year and so it is an imperfect process but our people work very conscientiously to try and make certain this is done correctly. It helps—this is a process that actually has two public comment periods for each information collection proposal. So we are very dependent on people coming back to us if they spot a problem that we didn't see. Then we can react to it. So I think that is also a very important aspect of this.

Chairman TALENT. That is something you think should be—that we may want to consider when we reauthorize.

Mr. SPOTILA. We are happy to discuss with you how this might be done. I think actually it is being done now. We review these things done now but we can certainly work with you further and would like to if any language improvements are needed, how that might be done.

Chairman TALENT. The panel process——

Ms. VELAZQUEZ. Mr. Chairman, I would just like for you to yield for a second because it is related to the previous question you just asked.

Chairman TALENT. I will yield to the gentlelady.

Ms. VELAZQUEZ. Can you state for the record what is OIRA's annual budget and staff size because you mentioned that you review over 300?

Mr. SPOTILA. We have, as I mentioned, about 50 people on our entire staff and they do—they have responsibilities in a number of areas. We do the review of all significant regulations. We do the review of all—the 3,000 information collections. We do information technology policy, including the IT acquisition process in the government tied to the budget. We do statistical policy coordinating it for the government. So we have a very wide range of aspects here. We have a relatively—we are part of the Office of Management and Budget, which of course has a budget, so there is an allocation within the OMB budget for us which is probably something in the area of maybe 3 or $4 million.

Ms. VELAZQUEZ. Do you have the manpower necessary to do your job?

Mr. SPOTILA. I think that everyone would always like more resources if they could. We work with what we have and we prioritize well, I think. OMB is very sensitive to using its resources very effectively. We are, I think, deliberately lean if you will and we get very good people and they work very well. I think resources for OIRA have to be reviewed in the context of resources for OMB.

Ms. VELAZQUEZ. Thank you.

Chairman TALENT. One thing we might need to do, staff tells me they don't always submit the instructions with proposed reporting requirement. Maybe we need to make certain that they do that.

The SBREFA panel process has proven useful in finding alternatives that lower regulatory burdens to small businesses. Do you think that we should extend that process for any agency that proposes significant rulemaking either as that term is described in the executive order, the Congressional Review Act and let me before you answer so you know everything that is out there on this, we have been trying to include the IRS in this. As you noted, they do an enormous amount of regulations that affect small business. They have been fighting us on it and it is hung up in the Ways and Means Committee, and a whole other problem is these little cabals that exist between some of the agency people and staff and certain committees here. But do you think we should extend that panel process more to other agencies?

Mr. SPOTILA. Let me start by reaffirming that I think that the SBREFA panel process has worked very well for EPA and OSHA. It is a resource intensive process. That is something that certainly affects the Office of Advocacy at SBA, it affects OIRA, to some degree the agencies, although they probably have greater resources available to it. This is something that bears further discussion. I think the agencies, we would have to identify where it was needed and what the circumstances were, and IRS perhaps is a good example. They have raised—I am aware they have raised concerns about confidentiality, about people taking advantage and the like and without trying to address the merits, what it suggests to me is that if we were in good faith having further discussions, one should look to see whether the panel process should be adjusted or refined, whether there is some modified approach that would add value and still address those kinds of concerns.

Chairman TALENT. One of the things I have emphasized to these agencies and I agree with you, I think OSHA in particular has benefited from doing this and we have had some pretty good response from OSHA over the years, it is idle to assume that you can do something that hurts small businesses and nothing happens. I mean, they come here and they complain. They come to you and they complain and you end up spending a lot more time and effort having to defend a rule after the fact than you would if you did this panel process in the first place. To me that is something I have been trying to drum in their heads. I think it would make a lot more sense if you talk about it beforehand with people, at least give them the opportunity, tell them about it and if they don't want it, fine, but I would like to extend the panel process. You think it is possibly a valid idea that warrants further discussion?

Mr. SPOTILA. I think it warrants further discussion. I think there are concerns that have been raised, they are serious concerns and

I think they need to be addressed. If there is a way to address them, then let's see what that might be.

Chairman TALENT. Is there a practical way of measuring the cumulative burden of regulations at least per industry? You take them on a one-by-one basis now. Is there a practical way of sort of adding it up and—I remember, for example, there was a period of a couple of years and we just seemed to be, every time the restaurant owners turned around they were getting nailed with something new and whether by coincidence or whatever, is there some way of measuring that on a cumulative basis?

Mr. SPOTILA. I would say yes or no. Let me explain that. When we do individual rules, when a new rule comes in, the EPA just put out a rule that affects diesel, the level of sulfur in diesel and the like. It will have a huge impact. We looked actually at doing a cost-benefit analysis, working with EPA on assessing benefits and cost. We look at the baseline. What is the impact on the refinery industry, which includes small refineries, because there are a lot of things affecting that industry now because of other important measures. We actually I think do a reasonable job of assessing what the world would be like with or without a particular regulation.

Having said that, if one were to look at the refinery industry and say what is the sum total aggregate cost of all regulation, Federal, state and local presumably, on the refinery industry, I don't think we have that information. I don't know that it actually can be done no matter how well intentioned we might be. It may not be necessary to do that. By that I mean one doesn't have to have a precise number, I think, to try to improve decision making, and when one looks at where the key priorities would be, what are the big things that are affecting that industry, my experience has been if you talk to the refinery industry, they will tell you. They will tell you what they think has the biggest cost impact and often they will tell you what they think makes the least sense, and that is a starting point.

Chairman TALENT. Here's another point. I feel strongly about this and would be interested in knowing what you think. We have mandated the preparation of regulatory impact analyses in a number of cases and the executive order does similar types of things. But we haven't told the agencies how they are to prepare those in any consistent fashion. They each sort of do it their own way. Now, there is a precedent for this. In the late 70's President Carter had the Council for Environmental Quality issue guidance governmentwide on how you prepare environmental impact statements. I more and more think as we work through rules on a rule-by-rule basis that it would be good to have some kind of governmentwide guidance for those reg flex analyses or regulatory impact analyses for the things that the executive order requires. Do you think it would be appropriate for either OMB or maybe Office of Advocacy, and you are in a good position because you have served in both the SBA and this, to prepare some kind of governmentwide guidelines either just as required by the executive branch or for us to put it in a statute?

Mr. SPOTILA. Actually, there are some guidelines out there. That should be the starting point. We have put out guidance for benefit-

costs analyses, which is the key part of regulatory impact analyses. I would be happy to supply that to the committee. We actually just amended that guidance recently. The Office of Advocacy has put out guidance since it has special responsibility for oversight of the Regulatory Flexibility Act. It has a set of guidelines that it has put out for the agencies that is 80 pages long that tries to help agencies in doing the reg flex analyses. I mentioned that that should be the starting point because if there is further guidance that is needed, if there is clarification that is needed, then we certainly would be open to discussing with you——

Chairman TALENT. Staff wrote a note saying it is not binding on them. I guess what I am saying, should we do something either from an executive standpoint or legislative standpoint saying these are the guidelines, you need to follow them as you prepare this so we get some uniformity and people know what to expect?

Mr. SPOTILA. What we are finding from the standpoint of the benefit-cost guidelines we put out, we in our centralized review of the regulations do ask the agency to follow those. Sometimes there are differences of opinion about the applications of the guidelines. There are some areas where economists differ about how one should treat things. What we do, actually do in that regard is ask the agencies to follow these guidelines. If there are areas that we recognize where we think there is a problem, then we try to do more. I would leave that open. That is to say if there are areas that you or other members of the committee feel need to be enforced, I think that is a starting point. That is even before one would look to codify it in law.

Chairman TALENT. I am going to wrap it up. I appreciate your testimony. I just——

Ms. VELAZQUEZ. I just have——

Chairman TALENT. I would be happy to recognize the gentlelady.

Ms. VELAZQUEZ. We are here to see what is working and what is not working. Previously you mentioned that there has been a cultural change, OSHA, EPA, and again the chairman asked a question about the panel review process regarding IRS, if we should extend it to include the IRS, and you raised the issue of confidentiality, that that is a major concern. But isn't it true also that SEC has an issue of confidentiality and yet they participate on the SBREFA panel review process?

Mr. SPOTILA. The Securities and Exchange Commission?

Ms. VELAZQUEZ. Yes.

Mr. SPOTILA. I don't know that we are involved in exactly these types of review panels.

They may have instituted one on their own that is similar to it. I am not that familiar with it.

Ms. VELAZQUEZ. My staff is telling me that they have.

Mr. SPOTILA. I would reaffirm what I said earlier that I think this is a subject that certainly bears further discussion.

Ms. VELAZQUEZ. Thank you.

Chairman TALENT. I was really enlightened by your comments about engaging the high level career people, and I think we have to from our perspective not think of this as necessarily an adversarial type thing where the mid level and high level career people aren't going to want to do this and we have to go out and get them

all the time and we have an adversarial system. They will probably frustrate any attempts to do it if we accomplish that.

I would ask you in a closing comment what you think of this. It is important that they see that, look, this is the direction on a unified basis that political authorities want them to go because in SBA, whose job after all is to advance small business, it is probably much easier to get career people to say this would be good for small business because it is part of what they view as their core mission. The IRS views their core mission as get as much money as they can out of people. EPA is regulating for the environment. OSHA is regulating for worker safety. We want them to be zealous in pursuit of those missions. Unless we really in a unified way say to them we want this to be part of your mission to do this in a way that engages most small business people, does it—once we do that then it seems to me it would be easier to recruit them. If they believe by postponing and delaying action, Spotila will go and the next guy will come in and we will be able to work around him, then we are never going to get their cooperation. You see what I am saying?

Mr. SPOTILA. Absolutely. Perhaps I can respond with an anecdote, a true anecdote, because I think it is an example of why I believe so strongly that career employees actually are—they can be the solution and need to be.

When we were doing that regulatory reform effort I mentioned at SBA where we were trying to streamline all of our regulations in 10 months, we had a deadline. We either could get the regulations to the Federal Register by a date certain or we would miss for a whole year having it published in the Code of Federal Regulations. We knew that was very important for small business. One of our key senior career employees working on the project in kind of an overview fashion was Dave Kohler, who is now the Deputy General Counsel, had been there for 20 something years and would probably be your classic, if you will, career lawyer bureaucrat. You may remember these dark days that we had two government shutdowns and then we had a huge snowstorm that shut the city down the end of January of 1996. And Dave was in charge of the final reviews in getting it to the Federal Register and the morning of the huge snowfall when government was shut down, the guard at SBA's building, noticed—he looked out the window and he saw footprints in the snow, and it was deep snow, a foot and a half or whatever we had gotten and he followed it into the building. He saw wet footprints. He was worried from a security standpoint and he followed the footprints into the building and found Dave Kohler. He lived in Maryland and he rented a hotel room that night on his own with his personal expense, rented a hotel room so he could walk through the snow the next morning, go to his office, finish the job because it had to be at the Federal Register the next day and he didn't want to miss it.

That kind of dedication to me is an example of what we need all our people to do and they will respond to leadership when they get it.

Chairman TALENT. I will tell you also that the Small Business Committee staff during that similar time showed a similar amount

of dedication in making sure they made it to the Irish Times every night.

We have some good witnesses coming up in the next package. You probably need to go but I hope somebody from your office——

Mr. SPOTILA. I am going to leave someone from my office here.

Chairman TALENT. Because you'll hear exactly the kind of thing we hear all the time and all these trends that I have mentioned to you, you are going to hear coming—and this is not—the eerie thing about it to me is none of them are going to be talking about areas where there is some political imperative that is moving the political actors to do something that may be difficult for small business. In each case it is like—well, it is HUD, it is FAA, it is late night safety at convenience stores with OSHA. It is not stuff that is hot political topics. It is just cases where small business people really feel very insecure, and I am glad you are leaving somebody from your office and if we do a memo I hope you will take a look at it. I appreciate your coming back. I thank you for your patience.

As Mr. Spotila leaves we will have the next panel come up.

I thank the second panel members for their patience and we will begin with the testimony and begin with our former colleague, Congressman James Coyne, who is the President of the National Air Transportation Association here in Alexandria. Jim, thank you for coming.

STATEMENT OF CONGRESSMAN JAMES COYNE (RET.), PRESIDENT, NATIONAL AIR TRANSPORTATION ASSOCIATION, ALEXANDRIA, VA

Mr. COYNE. Thank you, Mr. Chairman. It is a real honor to be with you today. I have prepared a written testimony which I would, with your permission I would like to have submitted for the record and perhaps be allowed to summarize any comments a little more personally.

By way of background, the National Air Transportation Association might very well be considered the most heavily regulated industry in the country and I say that somewhat cautiously because before coming to Congress, I was a member of the chemical industry and many of the other industries that are referred to by the previous witness as being the focus of much Federal regulation, but when you think about the burden of regulation on small businesses, I submit that the air transportation service industry is the most heavily regulated industry in the history of the government.

Every single one of our products have to have a Federal certificate to operate. Each of our individual companies operate with a Federal license. The vast majority of our employees have to have a Federal license to work for us. Each of our companies has a full-time Federal inspector who presents to us a directory, a manual of how we should operate our businesses. In fact, we cannot begin to work until we have completed this federally blessed manual, and then finally all of these Federal products, Federal employees and federally certificated companies operate in a federally controlled airspace system where literally each and every one of our actions has to be taken only after a Federal employee approves it. So I truly submit that we are the most heavily regulated set of businesses in the country.

And you asked me very pointedly some specific questions that I would like to address as simply as I can. Besides being the most heavily regulated industry by the Federal Government, I think we are also the one where those regulations produce the greatest negative benefit because when you think about what aviation is, we are in the business of saving time for our customers. That is what we sell. We sell time because our transportation, speedy transportation is designed to save time and when our regulatory burden creates delays, creates inefficiencies, it not only adds to our costs but it degrades the ability of us to meet the needs of our customers.

Last week many of you saw here in Washington a story about an 8-hour delay from a United Airlines flight that came from Chicago, supposed to go to Dulles, and people were sitting on the ground for 8 hours. Much of that delay in the press was alluded to because of weather, but the reality is most of that delay was because of a regulatory burden imposed by flight and down time limits on that crew. They could not find the crew quickly enough and many of those—even though the crew was capable of flying, two pilots and so forth, the Federal regulations made all those passengers sit on the ground for hours and hours and hours. And we are seeing this more and more today across the spectrum of aviation.

I am here to tell you quite bluntly that we are facing regulatory gridlock in aviation in the next 10 years if we do not relieve the tremendous paperwork and regulatory burden that exists on aviation today.

You have asked me specifically 5 years after President Clinton's review of the Code of Federal Regulations has there been a reduction or an increase in regulatory burden on the member companies in our industry. NATA represents over 2,000 of the 10,000 small businesses across America, 99 percent of which are classified as small businesses. We are the backbone of aviation in America. There is a few dozen large airlines but these thousands and thousands of small businesses are really what make aviation work in this country, and I would submit that if I went to each and every one of those 2,000 member companies, I could not find a single one who could honestly say that the paperwork burden or the regulatory burden has decreased, not one. Every single one of them would say that over the past 5 years despite the well meaning intentions of the administration, the empathy that we hear from representatives from the White House and others about the concerns that they have, the sympathy that they give to us, the simple fact of the matter is that regulations are increasing faster now than ever before.

If I had to put it in a very simple way, I would say I have called many of our members and tried to have them explain it in terms of—in ratios that you all might understand. The result ranged of course because every company was a little bit different, but generally speaking these businesses felt that for every hour their planes are in the air, for private charter operators, flight schools, small scheduled airlines and others, for every hour that they are in the air, the paperwork burden alone represents between 2 and 17½ hours per hour of flight time, and this is growing dramatically today.

You have also asked me very specifically whether NATA has noticed that informal regulatory burdens have increased. You have really put your finger on perhaps the greatest burden that our industry is facing, the informal regulations that come under the guise of what the FAA calls handbook guidance. There is a lot of oxymorons in Washington these days, but I submit that one of them we have to put at the top of the list is the concept of a handbook. Handbook should be something that you can carry in your hand. Well, there aren't too many people that can carry this load of thousands of pages that make up the Federal guidance handbook. This handbook today is five times as big as it was 10 years ago.

More and more guidance is coming out of the regulatory workforce without giving the industry the opportunity to have public hearings or discussions or debates about this guidance and, worst of all, this guidance produces not only more paperwork but it produces tremendous new delays because at the same time that the level of mandatory guidance and regulations and paperwork have gone up, the ability of the administration, the FAA to turn around that paperwork has declined. We have stories of where it has sometimes taken as long as 2 years, 2 years for the FAA to get back providing answers or returning the forms that we have submitted before we can get a certificate or a license. This is especially hazardous to the aviation community.

Right now aviation is going through one of the most exciting technological revolutions in its history as the computer industry has started to produce dramatic new products and equipment to go into our airplanes, and yet routinely, routinely it is taking between 1 and 2 years for a simple operator of an airplane to get this new equipment certificated so he can put it in his plane. The FAA has not only the paperwork burden but they control the entire timeline of the implementation. As that happens, we are flying with less safe, less modern equipment and the new equipment is being delayed week after week.

Chairman TALENT. So a charter service might want to buy some new safety or guidance mechanism for its plane and it has to ask the FAA for permission to install that in the planes?

Mr. COYNE. It has to get a special type certificate amendment or supplemental type certificate so that the original airplane can be, quote, modified with this new box. The modification may be simply taking out an old 30–year-old what they call an NDB, for example, an old fashion kind of navigational device and replacing it with a new state of the art GPS equipment using our satellites, and yet it will take literally months and months and months for these new pieces of equipment to get the approval to be installed because frankly the FAA's inspector workforce is not familiar with this new equipment and so their lack of familiarity delays them from trying to come up with a procedure to install it, and when they do become familiar with it, they don't have the manpower to deal with all these locations across the country. We really are facing regulatory gridlock.

You also asked me whether these informal burdens, these handbook guidance has increased. As I mentioned before dramatically but even more importantly it has led to confusion. There is no

other word for it out in the real world. We have a concept in aviation of course of being able to move our planes from one location to another and typically many of our company members will have locations in different parts of the country, but they are dealing with different FAA regions or FAA inspectors in their different regions and in one region the inspector will say that it is—the answer is black. In the other region the answer will be white. They will have completely different interpretations of the rules, and what we have ended up doing is something called forum shopping, which you have heard of in the legal world, where companies will try to find an area that will either give them a favorable ruling but most especially give them an answer quickly because more and more we are finding these tremendous delays.

You asked for some specific examples of the abuse we think of in our industry. There was some brief discussion of the question of fatigue in the highway operators community. This has led to a similar regulatory proposal from the FAA this past year, something that is called flight and duty time regulations, which are proposals to regulate when a pilot can work, how many hours of rest he must have before he has gone to work, how long his duty day may be and so forth. These regulations are being proposed in a "one size fits all" proposal from the FAA essentially designed to meet the objectives of the airline pilots union, who have perhaps a separate economic agenda with regard to these work rules, but nevertheless the rules are being promulgated to affect every other operator in the country equally.

For example, a charter, a medical charter pilot who has to be there much like an ambulance driver ready to take a sick person or an organ transplant literally on a minute's notice, these rules are being proposed for those same types of pilots. If ever there was an example of apples and oranges, this is it. It is as though the Federal Government is saying we are going to put the same rules for bus drivers as we are for ambulance drivers and that is effectively what has happened. When the proposal was submitted for comment, the FAA in their own wisdom said we have no idea what the economic impact of this will be on the industry. They simply said the impact is unknown, whereas we have calculated the impact could be as much as $6 billion. So we are very strongly concerned that the regulatory authority of the FAA is being advanced without giving even lip service, even lip service to the responsibility that they have to come up with economic justification for the rules that they propose.

In addition, you also asked me to describe any changes that are needed in the regulatory process. Frankly, I only have a few seconds left but we could go on for hours on this topic. One of the obvious changes is to move toward some measure of uniformity and public information awareness about interpretations of rules both within the promulgated rule body and within the guidance. We seem to be ignoring the benefits that can come from the computer age in the rulemaking world. You and I know that we can go onto most computer sites and get frequently asked questions or facts and get answers to the things that most ordinary people have about a new software program or a new company or whatever, but can you go to the Federal Government and ask is there a Web site

where we can get frequently asked questions answered about a regulatory environment? No.

What could be simpler than to mandate that these Federal agencies are required to produce standard answers that apply nationwide to the frequently asked questions about the rules that all of us have and make it available on the Internet so that we don't have to hire a lawyer, that small businesses have an easy way to find out what is expected of them so they can meet the responsibility. In addition, of course, I think we have a tremendous obligation, especially in technologically complex rulemaking areas like aviation, to insist—I think one of you made the point earlier—that we have people in the regulatory workforce who know what they are doing.

Aviation is a very diverse area, and unfortunately right now there is a tremendous shortage of technical people in all areas of aviation. Sadly, one of the areas that is losing the best people the fastest is the Federal Government inspector workforce. Twenty years ago people would be proud to call themselves a Federal safety inspector in aviation because that would have a certain level of prestige and status and people would know that you knew what you were talking about. Today we have daily horror stories of people who don't virtually know one end of an airplane from another merely coming out to our offices to go through reams and reams of paperwork to make sure that each box has been checked but not understanding the fundamental technical issues that underpin all of this.

I could go on at great length about my other concerns that we have, but I want to commend the committee for undertaking this hearing. We have a long ways to go and I hope that we can continue this dialogue in the weeks and months ahead. Thanks very much.

[Mr. Coyne's statement may be found in appendix.]

Chairman TALENT. Thank you. That is compelling testimony.

Our next witness is Mr. Duncan Thomas, who is the President and Chief Executive Officer of Q-Markets, Inc., from Richmond, Virginia, on behalf of the National Association of Convenience Stores. Mr. Thomas.

STATEMENT OF DUNCAN THOMAS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, Q-MARKETS, INC., RICHMOND, VA, ON BEHALF OF THE NATIONAL ASSOCIATION OF CONVENIENCE STORES

Mr. THOMAS. Thank you, Mr. Chairman. I will try to give you a summary of my testimony which has been submitted.

As representatives of small business, both the association and myself appreciate this opportunity to present our views on the regulatory burdens imposed on our industry by the Federal Government and on attempts by the Clinton administration to reduce some of these burdens. While not directly on point with the committee's reauthorization of the Paperwork Reduction Act, the National Association of Convenience Stores would like to offer related comments on the Small Business Regulatory Enhancement and Fairness Act.

At the onset, let me just offer my general conclusion that my cumulative regulatory burdens, as well as those on the convenience store operators, have increased since President Clinton ordered Federal agencies to reduce the paperwork burdens by 25 percent over 5 years ago. Neither the National Association of Convenience Stores nor I see the situation improving in the near future. Simply put, while some of the paperwork requirements may have eased, there is more and more that convenience store marketers such as myself need to know in order to remain in compliance with the complex array of Federal, as well as State and local, regulations.

EPA and OSHA are just two of the Federal agencies which affect convenience store operators on a daily basis. While I am sure that others at this hearing will have testified about the burdens imposed by the Internal Revenue Service, NACS and I echo these views. Convenience store operators also have had to deal with new rules over the past few years from the Food and Drug Administration, such as restrictions on the sale of certain goods, such as No-Doz, that could be used in the manufacture of drugs, as well as the Department of Transportation's hazardous materials registration program.

These are just a handful of examples of how regulatory burdens affecting Q-Markets and other similar, small convenience store operators have increased over the past 5 years. It is important for the committee to remember that these additional mandates do not occur in a vacuum. Our NACS Members and others are dealing with a range of other regulatory programs, such as compliance with EPA's underground storage tanks regulations. All of these regulatory requirements have costs that often place me, as well as other small business marketers, at a competitive disadvantage when trying to assure and maintain compliance.

As members of the committee know, most compliance is demonstrated through keeping and producing records. There have been earnest attempts by the Federal agencies to reduce some of the paperwork burdens associated with the compliance. For example, the EPA recognized that there was little value in requiring gasoline retailers to keep the product transfer documents for 5 years to demonstrate compliance with the agency's new fuels regulations. The agency correctly did eliminate this requirement. The DOT is allowing small businesses required to register under the hazardous materials program to pay the annual fee for several years at a time, reducing the time needed to comply and giving a small discount.

However, such efforts at paperwork reductions have not had any significant effect on reducing my company's regulatory compliance costs. For example, when I began my company in 1994, I filled out all the necessary paperwork myself or in-house. Since that time, my managers spend an additional two hours per week filling out paperwork. I also have been forced to hire an outside agency to assist my company with recordkeeping at an annual cost of $3,000 per store. For my 10 stores that is at least 1,000 additional hours and $33,000 that I did not have to incur 6 years ago. These totals do not include my personal time in reviewing and sitting with the various outside organizations and signing these forms. My personal per store average is typical for other NACS members like me.

To assist its petroleum marketer members, NACS compiled its petroleum marketers' book of Federal compliance forms, which I have right here. This book includes all forms which petroleum marketers need to fill out in order to assure compliance with Federal regulations. This book has nearly 300 pages and it includes 46 forms. And that is a fact, we counted. When you look at the index page, it includes 46 forms. However, to fully understand and properly fill out these 46 forms, one must read hundreds and hundreds of pages of supporting materials, including the rules themselves.

Informal regulatory burdens have also increased for convenience store operators like myself. This really is a double-edged sword. On one side, the EPA and OSHA and other Federal agencies are making good faith efforts to assist small businesses in understanding and complying with regulations. These agencies publish plain English guidance and other documents to simplify what I need to know about compliance. EPA often asks NACS to review and comment on the drafts.

Chairman TALENT. Excuse me a second. Would you just mind if I could take a look at your handbook there.

Mr. THOMAS. Yes.

Chairman TALENT. Thank you. I want to take a look at one of these. Go ahead.

Mr. THOMAS. EPA often asks NACS to review and comment on the drafts. The Internet has made access to these materials faster and cheaper. NACS would give most Federal agencies high marks for these easier to read materials. However, despite such compliance assistance, it still remains necessary to read the rules in their entirety.

On the other side, there are concerns that guidance documents and similar materials are being substituted for traditional notice and comment rulemaking or are establishing standards of care that can be used against the small business in lawsuits. For example, OSHA's guideline on late night retailing is not a regulation. However, OSHA can use the guideline for an enforcement action under the agency's general duty clause. Moreover, the guideline can be used as evidence of industry practice if I were to be sued in a tort or wrongful death action, even though the document has been widely criticized by the convenience store industry.

It is difficult to answer the committee's question on whether facility inspections have increased. Many of the Federal regulations affecting convenience stores are enforced by State and local governmental officials. The levels of enforcement vary widely among the States. Small businesses like mine, who have spent considerable sums to comply with the law, support even-handed and consistent enforcement. Unfortunately, this is not the case in some regulatory programs.

EPA's underground storage tank program is a case in point. The agency relies primarily on State enforcement laws. It was recently reported that just the State of New Jersey had some 170 tanks that were not in compliance with the December 22, 1998, requirement to upgrade. Yet at the same time the State itself imposed huge penalties on small petroleum marketers who missed the deadline. When questioned, the State said that it did not need to penalize itself because there was no deterrence value. What happened to the

protection of the environment? There is no difference when the State's tank leaks compared to one from a convenience store operator's tanks.

In terms of improving the regulatory process NACS has two suggestions to make. First, the association has been a long-standing advocate of the Small Business Regulatory Enhancement and Fairness Act. NACS has been involved with numerous panels convened by EPA. While this act has led to the greater sensitivity to small business regulatory impacts, the process is far from perfect. These panels and reviews should be required at the outset of any rulemaking.

It is NACS' opinion that by the time most of these panels are convened EPA staff working on rulemaking are already well entrenched with their opinions on the regulatory options. Sadly, much of this process simply becomes throwing a bone to small business.

Many of the panels only address what I would call the Tier I impacts. For example, under EPA's diesel fuel desulfurization rule, the agency focused on regulatory impacts on small refineries, who would be required to make substantial equipment upgrades. There should also have been a substantive review for the Tier II, such as supply storage issues for small businesses like mine that retail the gasoline and fuel.

Second, as part of the Paperwork Reduction Act Federal agencies should be required to identify complementary or conflicting reporting forms and justify why these forms cannot be consolidated when seeking renewal of control numbers from the Office of Management and Budget. A similar process should be imposed on permit applications. Given the increasing and widespread use of the Internet, there is no reason why many of these forms and applications cannot be combined and streamlined and then the data can be used in the relevant agency's program.

From Q-Markets' paperwork experience, as I mentioned earlier, the annual burden on the convenience store industry is significant and expensive. While the computer software and the Internet have made many routine tasks simpler and easier to track, the convenience store industry has not seen an improvement since 1995. If anything, some of the efforts by the Federal agencies may have merely slowed the rate of increase in overall regulatory burdens.

In conclusion, Mr. Chairman, NACS and I believe a mixed bag exists on the questions posed by the committee for this hearing. While there have been good faith and actual efforts to reduce paperwork burdens generated by federally mandated regulations, they have not made a dent. The larger problem remains that the flow of new regulations has not let up for the convenience store industry. There simply is more to know about and this leads often to confusion, inadvertent noncompliance and considerable expense. The association recommends changes to the Small Business Regulatory Enhancement and Fairness Act and the Paperwork Reduction Act to keep the process of burden reduction moving in the right direction.

It has been a privilege to share NACS' and my views with the committee, and I will be happy to answer as many questions as you might have. Thank you. [Mr. Thomas' statement may be found in appendix.]

Chairman TALENT. It looks like you would have to actually fill out most of those forms except the tax forms, which I can see that maybe you wouldn't have to fill out all those. It looks like you have to fill out most of these forms.

Mr. THOMAS. That is correct, Mr. Chairman.

Chairman TALENT. The next witness, Mr. Kenneth O. Selzer of the Kenneth O. Selzer Construction Company, Cedar Rapids, Iowa, and he is testifying on behalf of the National Association of Home Builders. Thank you, Mr. Selzer.

STATEMENT OF KENNETH O. SELZER, KENNETH O. SELZER CONSTRUCTION CO., CEDAR RAPIDS, IA, ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. SELZER. Good morning, Mr. Chairman and members of the subcommittee. My name, as you mentioned, is Kenneth O. Selzer. I am owner of Kenneth O. Selzer Construction and four related real estate companies and have been in the home building business since 1954. I have served as President of the Greater Cedar Rapids Area Home Builders Association and the Home Builders Association of Iowa. I have also served as an Area 10 national vice president of the National Association of Home Builders, of which I have been a member since 1976, and am currently an NAHB Life Director and member of the Federal Governmental Affairs Committee. Thank you for giving me the opportunity to testify on an issue of great importance to the home building industry, regulatory barriers and their impact on housing affordability.

NAHB and its 200,000 members believe that homeownership is the cornerstone of family security, stability and prosperity. It strengthens the Nation by encouraging civic participation and involvement in schools and communities. It provides a solid foundation from which Americans can work to provide for their families, enhance their communities and achieve their personal goals, and yet it continues to be besieged by a torrent of government regulation.

The common notion of a home builder tends to be that of a high volume constructor, someone who can spread production and regulatory costs across many projects. This is simply not true. Over half of NAHB's members build fewer than 10 homes per year and close to 75 percent build 25 or fewer homes or less. Myself, I never had more than four employees and the most homes I ever built in 1 year was five. A typical NAHB member firm is truly a small business employing less than 10 workers.

So while low interest rates and a booming economy have contributed to the recent growth in homeownership, many families are still denied the opportunity to buy a home because, despite reform efforts, no growth policies and regular costs of home building are expanding and pushing housing further out of the reach of thousands of Americans. Right today, about 25 percent of the people who bought a home 10 years ago would get in their car and drive around the block and come home. With today's income, today's cost of that home, they could not afford the home that they are living in today.

Most Americans do not fully realize the extent to which overregulation drives up new home prices. The issue is complex and dif-

ficult to quantify, and the impact of regulation can vary significantly even within the same State or region. Yet, government at all levels continues to blanket every aspect of the housing industry with layers of regulation. This is not to say of course that housing or any other industry should be left completely unregulated. What we need are sensible, appropriate, balanced guidelines at all levels of government. At home right now, the town I live in, our building inspector for the last 10 years mowed grass and cleaned sewers. Now he is inspecting construction, plumbing, heating and electrical, and he is the authority. We need to identify unnecessary and repetitive regulation, eliminate them and make sure the new regulations are absolutely necessary before they are proposed. It is clear that without a serious effort to make sweeping changes in the way that construction of new homes is regulated costs will continue to rise, stifling the ability of builders to provide affordable housing and expand homeownership opportunities for families throughout the country.

NAHB appreciates your interest in addressing this issue, Mr. Chairman, and we are pleased to present testimony before you and your committee today.

Efforts to reform the regulatory process in the U.S. are not new. Unfortunately, in many instances, past attempts have only led to increased layers of regulation and more bureaucracy. While the building industry recognizes the need for certain regulations, we believe that even the most necessary regulations should be administered in a fair and efficient manner. Over the last several years, as increased Federal regulations have been layered upon existing State and local requirements, the cost of regulation has been increasingly felt by the new home buyer.

An NAHB survey, conducted in the summer of 1998, found that about 10 percent of the cost of building a typical new home can be attributed to unnecessary regulation and regulatory delays, fees associated with building, plumbing, electrical, and tree removal permits, disposal of construction wastes. This one has just gone off the chart for the cost of disposing of material from the site. We are no longer allowed to burn it on site as we had for many years. In fact there are some 60 categories of fees and regulations altogether. In some highly regulated markets the costs can total 20 percent or more of the sales price of a typical home.

In addition to increasing fees, builders also face obstacles such as increasingly stringent design codes, the latest being the change in the rise in the run in stairways. It has eliminated every plan that we know for the last 100 years.

Chairman TALENT. Let me just ask you to suspend for a minute. Here is what I am going to suggest because I want to be certain we have time for questions. I read your testimony last night, and I commend it to all the members of the committee. I really want the committee to focus on what you have to say about wetlands regulation. Would you do me a favor and skip to the wetlands part of your testimony? It is a page or so ahead of where you are now, and it isn't that the rest isn't important. That is mostly local stuff. It is important the committee understand that what we do federally is on top of all this stuff locally, which for home builders particularly is very significant, but I want the committee to hear what

is going on with wetlands regulation and the history of that. So you have about three or four pages on that. I want to be certain we hear that. Would you skip to that, please?

Mr. SELZER. I would be happy to do that. Wetland regulation. A striking example of burdensome regulation is the wetlands permitting process, which has become increasingly onerous over the years. In fact, NAHB feels so strongly that the Corps', referring to the Army Corps of Engineers, new restrictions are unfounded and will result in a bloated bureaucracy rather than a streamlined permitting process that we have had to resort to legal action against the Corps. This action comes as a last resort after many attempts to find a reasonable solution to the conflict between a workable permitting process and the reach of Federal regulators.

Here is some background on the issue. Section 404 of the Clean Water Act requires permits for the discharge of dredged or fill material into waters of the United States, a definition regulators have steadily expanded to include wetlands. Wetlands are defined broadly to include countless isolated pockets of land that oftentimes are too dry to meet the common sense definition of the word "wetlands." .

The U.S. Army Corps of Engineers and the Environmental Protection Agency jointly administer the program. The Corps issues the permit, while EPA maintains an oversight with power to veto any permit.

There are two kinds of permits available under the section 404 program: Individual and general. Individual permits are issued for a specific activity in a specific location. Individual permits require extensive scrutiny, the preparation of reports and the completion of an alternatives analysis. Individual permits typically take over a year to obtain. That would be very fast to get one in a year. General permits on the other hand are meant to provide an expedited permitting process. These permits allow developers around the country to perform similar activities without the delay that usually accompanies the issuance of individual section 404 permits.

In 1977, the Nationwide Permitting Program, NWP, became part of the Clean Water Act under the 1977 Clean Water Act amendments, showing that Congress endorsed the program as a way to provide administrative efficiency in activities that have minimal environmental impact. The most common nationwide permits used by the development industry are 12, this covers utility lines; 14, minor road crossings; 26, filling of isolated or headwater wetlands which are unconnected to rivers, streams and waterways. The earliest version of 26 allowed discharge in up to 10 acres of wetlands.

In 1978, the Corps removed the acreage limitation on NWP 26 as a result of President Carter's executive order to make regulations less burdensome. Almost immediately, the National Wildlife Federation filed suit against the Corps, arguing that removing the acreage limitation would harm the environment.

In 1982, as a result of that lawsuit, the Corps issued new regulations: The maximum acreage limitation of 10 acres was reinstated; agencies such as the U.S. Fish and Wildlife Service, the Environmental Protection Agency and the National Marine Fisheries were required to be part of the decision making process; the builders and developers using NWP 26 were told to file a predischarge notifica-

tion with the Corps 20 days prior to filing for fills between one and 10 acres.

In 1996 the use of NWP 26 was modified again: Acreage limits were reduced to between one-third of an acre and three acres; predischarge notification was increased to 45 days; wetland mitigation was made mandatory—if you have a question I will explain that—26 could not be used in tandem with any other NWPs. The Corps also announced that NWPs would be phased out and would be replaced with a set of so-called successor permits in 1998.

In 1998 the Corps announced a series of activity-based wetland development permits or successor permits to 26. One of the more notable permits allowed some limited flexibility on wetlands fills in master-planned communities which utilize considerable environmental and land use planning. Soon after its introduction, however, the Corps revoked the master-planned permit. The Corps also placed restrictions on the use of NWPs in flood plains and certain waters of the U.S.

On July 21, 1999, the Corps published in the Federal Register a notice of intent to issue five new and six modified NWPs to replace the existing 26 when it expires.

In the fiscal Year 2000 Energy and Water Development Appropriations bill, Congress required the Corps to complete a study of the change in permitting workload and regulatory costs that would result if the replacement package, as proposed, were implemented.

They estimated that the cost would be about $48 million annually, which NAHB believes is a gross underestimate. These direct costs reflect out of pocket expenses incurred by the regulated community to complete permit applications and comply with permit conditions. The replacement package would also impose indirect or opportunity costs on the regulated community that are not reflected in the out-of-pocket expenses.

In addition, the Corps analysis indicates the average time it takes the Corps to process an SP—SP is a standard permit—application and the number of the end-of-year pending, that is the backlog they haven't gotten to, applications awaiting Corps processing would rise steadily each year under the replacement package.

Nevertheless, on March 2000, the Corps announced new and modified NWPs to replace NWP 26 as well as some notable new restrictions, including one-half acre limit on the use of most new and modified nationwide permits and a preconstruction notification requirement on any activity affecting more than one-tenth of an acre, all of this despite a lack of evidence to substantiate the need for the new acreage limits to protect wetlands.

That pretty well summarizes up the wetlands problem.

[Mr. Selzer's statement may be found in appendix.]

Chairman TALENT. What I would like to do, Mr. Selzer, is in the interest of time just to commend to the members of the committee the housing impact analysis in your testimony, an idea which agencies would have to consider the impact of new regulations on homeownership, which was incorporated in the bill the House passed almost unanimously earlier this year, and thank you for your testimony.

I would like to make certain we have plenty of time for questions, and if I could start I would like to start with the wetlands. Now you are a developer?

Mr. SELZER. I have done some developing. Only in one instance was I involved in this. I backed off and used an engineering firm named Hall and Hall. The two people in the agency that I worked with was Monica Wannamuk and Ubo Agena. They worked very little with me but they worked directly with my engineers, and what we were doing is taking the top of the hill out of a wetland when the bottom of the hill was not in a wetland.

Chairman TALENT. Give me an idea of how this works. Let us take a typical home builder. Let us say that he gets six or seven acres of land, he wants to put in some houses, okay. Now the problem occurs, does it not, when some part of that parcel he finds is a wetlands? So how much of it has to be a wetland before it triggers these permit applications?

Mr. SELZER. One-tenth of one acre.

Chairman TALENT. And what is the working definition of a wetlands that you use in the home building business? How do you know something is a wetland?

Mr. SELZER. If it has nonpoint water.

Chairman TALENT. So it has water standing on it, if it is wet part of the year; is that right?

Mr. SELZER. Part of the year.

Chairman TALENT. How many days does it have to be wet?

Mr. SELZER. In 1993 our area normally gets 36 inches of rain. In nine months we got 85 inches of rain. The entire State was a wetland by this definition. You couldn't build a house any place.

Chairman TALENT. I have heard that said, that my backyard, for example, would be a wetland. I have a third acre lot and the backyard's kind of wet a lot of times. Is that really true? It is funny as a joke. Is it true? I mean the average development that a developer tries to undertake with a property, is it likely that he or she is going to have a wetlands on that property?

Mr. SELZER. No. The prudent builder before they purchase the land would investigate to see if there's a wetland on it.

Chairman TALENT. And of course would not develop it if there is a wetland on it?

Mr. SELZER. No. Just due to the time and efficiency and cost of money they would stay away from it. They would go to more expensive land to buy, which I suppose tit for tat runs the cost up just as much.

Chairman TALENT. So as a practical matter, there is not a whole lot of people out there even bothering to go through this?

Mr. SELZER. Not anymore. They are struggling with it, but when we get down to Louisiana, Mississippi, Florida, it is a huge problem there compared to Iowa. Under the wetland regulations, Washington, D.C., would not be sitting here.

Chairman TALENT. It would be a wetland, wouldn't it? Suppose you had eight or 10 acres you were trying to develop and let us say a tenth of an acre was a wetland. Could you in developing that property leave that area undeveloped and then not have to go through the permit process, I mean build houses around it but that is the retaining pond or something like that?

Mr. SELZER. You could do that or you could do what I alluded to, the mitigating problem. I could go over to Joe over here, I could buy a tenth of an acre of wetland that is going to forever and ever and ever be a wetland, then get permission to fill mine in because I have replaced it with another.

Chairman TALENT. But you would have to go through the whole permitting process then to do that?

Mr. SELZER. Oh, absolutely, sir, yes.

Chairman TALENT. I am trying to figure out how you get around that permitting process. I guess you just don't develop that. If you have got a little piece of wetland in the middle of a development property and you leave it alone, you don't develop that, are you safe then? Or do you have to get a permit? Does anybody know?

Mr. SELZER. As long as you have the Army Corps of Engineers they will designate the wetland and you can stake around that so you stay out of it.

Chairman TALENT. But you have got to go to the court to get them to do that?

Mr. SELZER. Oh, yes.

Chairman TALENT. If you are just developing dry land, you don't have to go to the court, do you? You just develop it then, right?

Mr. SELZER. Well, dry land sometimes is called wetland. That is the bugger.

Chairman TALENT. All right. That has got to be different than what the Congress intended, doesn't it? I suppose—I wasn't here when they passed that originally. I suppose probably people were thinking of like the Everglades. Were you here when the thing passed?

Mr. COYNE. No. That was shortly after mine, but I was at the White House at the time and followed it pretty closely. I think you are right. I think the intention was much more restricted. George Bush's view of the wetlands were really places that were wet all year around and had duck life and things like that.

Chairman TALENT. Part of the ecosystem of some body of water is really what was thought of.

Mr. COYNE. And has been expanded by the Army Corps.

Chairman TALENT. Let me move to you, Congressman Coyne, because with the first panel I went into great length about my concern over the elimination of laws. In other words, you have regulations but you don't have laws. That is really what you are talking about with this handbook thing, isn't it?

Mr. COYNE. Absolutely. I could give you hundreds and hundreds of examples where the FAA has really created a new regulation, you know, without going through the mandated regulatory process, giving those of us in the industry an opportunity to say that is wrong for at least my part of the industry.

A good example might be a handbook regulation that is developed for an airline operator or an airline manufacturer, a huge company, and yet that handbook regulation is then applied on the field to companies that have two or three or four employees, and if it had gone through the normal regulatory process, we would have had the right to question the justification of the rule that broadly, and more than likely the FAA would have exempted certain categories of companies from the application, but when it is

done in the handbook, it is not only done in sort of the stealth of night but it is also done in a way that the handbook, the inspectors out in the field feel a kind of authority that really doesn't belong to them. It gives them a kind of almost Gestapo right to go in and say this is my handbook and I will do whatever I want with it. It is a very frustrating environment.

Chairman TALENT. Have you ever sued on behalf of your members to challenge this overall process? If not, why not?

Mr. COYNE. Well, in my own case, it is largely because I really don't believe that the litigation route is the right way. It really fundamentally gives to the courts a responsibility that belongs with our legislatures and I would believe and hope to continue to believe that our legislatures will look at this and exercise the appropriate legislative authority that they have to expedite—now, we have made appeals within the FAA from time to time on the most egregious examples, but lots of times we just don't know about them because as you can see this is so mammoth that it is really hard to know.

Chairman TALENT. And of course, your individual members, first of all, it is very costly to sue, it is time consuming to sue, and secondly, you mentioned something in your testimony that I want to bring up for the record and did not bring up during the first panel and probably should have. There is also a fear about suing, isn't there, because if you sue the FAA, that same inspector is back the next month and he is not appreciating being sued over his decision, is he?

Mr. COYNE. Not even a question of being sued, if you just try to go to the level up, I mean I was interested by your sort of philosophical discussion with the earlier panel, as though this was all being debated in a college seminar, but in the real world, no matter how intelligent the people here in Washington might be and how open minded and speaking all the right empathetic, we want to work, out in the field there are some petty bureaucrats, there is just no doubt about it, who as soon as they find out you have gone over their head to Washington to try to overturn something, then you have a bull's eye in the back of your wallet for the rest of your life.

Mr. SELZER. That is what I was referring to as the local building inspector at home. I forgot more than that man will ever know, and when he came on a job and picked up a nail and asked me is this a 16 penny spike, I told him if he didn't know what the hell a 16 penny spike was he didn't have any business inspecting my work, which was probably a very ignorant thing to do but——

Chairman TALENT. Maybe a little impolitic to say that, Mr. Selzer. All right. I will recognize the gentlelady from New York.

Ms. VELAZQUEZ. Thank you. Congressman Coyne, I don't need for you to answer this question because you answered it before. I would like to ask the other two gentlemen. You have all mentioned regulations that you felt were burdensome or obsolete, and I am sure that you are aware but I know that if you are not the association that you represent or belong to are, that under the Administrative Procedures Act you are allowed to request review of any regulation that has an impact on your business. To your knowledge, have you or your association or any member of your associa-

tion requested such a review on any regulation of any of the agencies?

Mr. SELZER. Well, on the Paperwork Reduction Act I used to do a lot of FHA and VA building, and one day I was a little bit tired of the paperwork and I called in and asked where do I send this to. Nobody could tell me where to send it. They said you have to fill it out. I said, well, what do I do with it then. Well, then you turn it in. Who do I turn it in to? To this day they have not answered where I send it. The only thing they know is you do the paperwork and if we want it we will get ahold of you.

Ms. VELAZQUEZ. Are you aware of any formal requests from your association to a specific agency regarding a regulation?

Mr. SELZER. On wetlands, yes. On wetlands we have asked them.

Ms. VELAZQUEZ. What was the outcome?

Mr. SELZER. It is still up in the air. We haven't got a finalization on it.

Ms. VELAZQUEZ. Mr. Thomas.

Mr. THOMAS. I am not aware of any particular one but I will look into that, and we do have opportunities I am aware of that we have. Several times we have raised and asked questions and there are several instances that we have been able to present our concerns and our views and as an association have done that.

Ms. VELAZQUEZ. Mr. Selzer, representing New York City, I am very concerned about the lack of affordable housing. So when you spoke about the fact that regulations account for 20 percent of the cost to new homes, really I got concerned. Could you provide this committee with where the estimate came from, the 20 percent? How can you come up to that number?

Mr. SELZER. It goes all the way back to the start of the timber industry being regulated, the Canadian import duty, which I think is wrong. We pay more for the lumber because after you get 14 billion feet in from Canada you pay a higher import duty so you pay more for that right there. It takes tremendous energy to burn cement in its process. They are being regulated because they are dirty, they are raising the cost of cement. Insulation, it takes tremendous heat to burn fiberglass. They are being regulated tremendously. Fiberglass is going up. Sheetrock has better than tripled in price due to regulations. So every component part coming into the house from its inception is being regulated and the ultimate consumer pays the bill.

Ms. VELAZQUEZ. Sir, out of the 20 percent what percentage is related to State regulations?

Mr. SELZER. To safety regulations?

Ms. VELAZQUEZ. No, to State regulations.

Mr. SELZER. To State regulations. There would be more. On local government, it is time delay. You buy this piece of ground, you go in to get it rezoned, it takes six, eight, 10 months, then it takes three readings. You have to start in July so you are ready by spring. If you start in spring, you are ready in December. We have to protect the 46 inches of frost in Iowa. You lose the whole winter then.

Ms. VELAZQUEZ. So 20 percent is a big number, but I would just like for you to help me to understand how much of that percentage, because this has a big impact on the cost of housing, how much is

related. Half of that 20 percent is related to State or local regulations or what?

Mr. SELZER. It is probably half and half, half related to State and local regulations, impact fees for hooking on to sewers. You have to pay to hook on to a sewer but in the last 10, 20 years the cost of hooking on to a sewer has gone up maybe 20 times what it was before and yet the line is still there.

Ms. VELAZQUEZ. The 20 percent was as a result of a study that was conducted?

Mr. SELZER. Yes. It was a survey and 52 percent of the people that received the survey responded, and we felt that 52 percent was a big enough representative that we could use it.

Ms. VELAZQUEZ. Thank you. Congressman Coyne, I share your pain with the three handbooks that you have there. I just would like to ask you, to the best of your knowledge, does the FAA have a small business office or some kind of ombudsman that helps some of the 10,000 small businesses in this field?

Mr. COYNE. Not to my knowledge, no.

Ms. VELAZQUEZ. And I think the chairman and I would agree that these type of offices have been successful in helping small businesses like the small business office, business affairs at the IRS. Would you think that this type of office could be of any benefit?

Mr. COYNE. Well, you know, it sounds like it might help but there is a tendency within bureaucracies for offices like that to really not have much power, and the question is how much authority it would have. I have seen agencies create special offices at the direction of Congress, and then I have seen the entrenched bureaucracy, which we were talking about before, essentially give those people only lip service, and I would be concerned, but if the top management—I mean, this is the issue you were raising before—if the top management really felt that these concerns of small business were a priority of theirs and were directed in that way, either from the White House or Congress, then I think that agency would be improved if it had that kind of small business ombudsman.

Ms. VELAZQUEZ. But in the process don't you think that if you have someone there that would help alert top management that a regulation is having an impact?

Mr. COYNE. It is a positive step. We feel there has got to be an appeals process within the FAA to go to when you feel that the concerns of small business have been ignored. It doesn't exist now, and we have recommended that in my written testimony, but I don't want to say that this is a panacea because the instincts of a bureaucracy is to grow and to basically have the view that every problem can be solved with more regulation. This is endemic in our society today, and I worked in the Reagan White House 15 years ago directing something called the Office of Private Sector Initiative, and President Reagan had the view that a lot of the problems that are presented to the Federal Government as needing new rules maybe don't need a new rule after all, that the private sector on its own could in fact develop solutions, and I think that is in fact as true today as it was then.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I don't have any other questions.

Chairman TALENT. Well, that is all I have, too, and I appreciate your patience and your explanations and thank the committee for its patience as well and I will adjourn the hearing.

[Whereupon, at 1:55 p.m., the committee was adjourned.]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

TESTIMONY OF JOHN T. SPOTILA
ADMINISTRATOR

OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET

before the

COMMITTEE ON SMALL BUSINESS
US HOUSE OF REPRESENTATIVES

June 7, 2000

Good morning, Mr. Chairman and members of the Committee. Thank you for inviting me to appear before you today to discuss next year's reauthorization of the Paperwork Reduction Act of 1995 (PRA). The Administration supports the PRA strongly. It has been an important part of our efforts to help small businesses, and we appreciate your interest in this area.

The President has often emphasized his belief that small business is vital to our economy. In many ways, it has been the engine driving our economic train. Small business owners have generated millions of new jobs, leading the way with their energy, creativity and hard work. We understand the importance of helping them so they can continue to contribute to our economy and our society in the years ahead. We share the goal of reducing the burden imposed on them by Federal reporting, recordkeeping, and regulatory requirements. This is not to say that we believe they should be altogether free of such requirements. Rather, we need to adopt common sense measures, promoting the public good while reducing the costs of compliance wherever possible.

This is a subject of particular interest to me. Prior to my service in Washington, I was a small business owner for many years in New Jersey and an attorney representing other small businesses. As General Counsel of the Small Business Administration (SBA) for five years, I led SBA's efforts to reduce the regulatory and paperwork burden on small businesses. Having struggled with the impact of regulations and paperwork from both sides of the fence, I know the importance and the difficulty of meaningful reform.

This task is harder than it looks. It requires action on a daily basis. With the help of Congress and with valuable input from small business owners, the Administration has made real progress. We understand, however, that much more needs to be done and that we can only be successful if we work together in a constructive way. My testimony today will not only discuss past Administration efforts along these lines, but also give an update on a promising new information initiative, our current interagency look at "Collecting Information in the Information Age."

Administration Efforts to Consider Small Business Needs

The President has helped raise the profile of small business in Washington, naming his SBA Administrator to the Cabinet for the first time in history. He has been aware from the beginning that federal regulations and paperwork can seem daunting to small business owners. At his request, agencies have reached out to small business owners and their representatives and asked them what changes were needed most. The message came back that small business wants an early voice in regulatory development, clarity and consistency in regulations, compliance assistance, and less red tape and paperwork. We have listened to this message and have followed up on each point, working within the Administration to implement new policies that respond to small business needs. We have worked to reduce burden while maximizing the benefit arising from needed regulatory and information collection requirements. While the job is not finished, these approaches have proven successful and have made significant contributions to the American people.

The President first outlined his preferred approach to the regulatory process on September 30, 1993, when he issued Executive Order (E.O..) No. 12866 on "Regulatory Planning and Review." In this Order, he directed federal agencies to create a regulatory system that works for, not against, the American people. Pointing out that good regulations are essential to protecting the public's health, safety, environment and well-being, he emphasized that agencies must follow sound regulatory principles, issuing rules only when necessary and assessing the costs and benefits of available regulatory alternatives in order to maximize net benefits. He gave the Office of Information and Regulatory Affairs (OIRA) at OMB specific responsibility to review all significant federal rules before publication and to oversee compliance with the Order.

Under the able direction of then Administrator Sally Katzen, OIRA immediately assumed a leadership role in implementing the President's policy. On March 17, 1994, in coordination with the President's National Economic Council, OIRA and SBA launched an interagency Small Business Forum on Regulatory Reform. This Forum engaged the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Internal Revenue Service (IRS), the Food and Drug Administration (FDA), the Department of Transportation (DOT), and other agencies in examining the aggregate impact of federal regulation on five small business industry groups: chemicals and metals; restaurants; food processing; trucking; and environmental disposal and recycling services. A separate working group focused on tax-related issues that affected all of the designated industry sectors. More than 230 small business representatives and agency employees participated, discussing new ways for Federal agencies to reduce the regulatory and paperwork burden on small businesses. After a series of roundtables and symposia involving senior Administration officials, and work sessions with the small business representatives, the Forum released a report on July 27, 1994 with some 140 recommendations. Many of these recommendations were specific to the industries studied, but others had a broader focus. They supported early involvement by small business owners in the development of rules, greater use of electronic dockets, broader use of information technology to disseminate information, and an emphasis on compliance assistance efforts rather

than harsh enforcement. The participating agencies took these recommendations seriously and began work on implementing them.

In the late fall of 1994, the President asked the Vice President to lead a series of internal meetings with the agencies to consider new approaches in the regulatory area. Representatives from SBA participated throughout this process, drawing on the insights gained in the Forum process to draw particular attention to the needs of small business owners. On February 21, 1995, the President lent public support to this effort, directing regulatory agencies to do four key things in the regulatory area:

- cut obsolete regulations;
- reward results, not red tape;
- create grass roots partnerships; and
- negotiate, rather than dictate.

On March 4, 1995, he issued a Presidential Memorandum, calling on the agencies to conduct a page-by-page, line-by-line review of all of their existing regulations to determine which might be revised or eliminated. The agencies responded with an enormous effort, revising or eliminating thousands of pages of regulations in the ensuing months.

On May 22, 1995 the President signed into law the Paperwork Reduction Act of 1995, a statute he strongly supported. He observed that "the PRA recognizes that the private sector is the engine of our prosperity, that when we act to protect the environment or the health of our people, we ought to do it without unnecessary paperwork, maddening red tape, or irrational rules." The PRA, he noted, "helps us to conquer a mountain of paperwork that is crushing our people and wasting a lot of time and resources." He then directed the agencies "to further reduce these burdens,...to continue to review their regulations, to eliminate the outdated and streamline the bloated."

In June of 1995 the President and the Vice President welcomed some 1600 delegates to Washington for the White House Conference on Small Business. Acknowledging the tremendous contributions of America's small business owners, the President emphasized again the importance of reducing paperwork and regulatory burdens on small business: "small business is the engine that will drive us into the 21st century....you employ most of the people, create more than half of what we produce and sell, and create more of the new jobs, and we need to respond to that." In separate addresses to the delegates, he and the Vice President highlighted the progress that agencies had made in responding to small business concerns and expressed strong interest in hearing from the delegates on their most important concerns. The delegates later approved 60 policy recommendations and sent them to the President and to Congressional leaders. Several of these recommendations dealt with regulatory reform, emphasizing the need for early involvement in the regulatory process and reaffirming the importance of analyzing the likely impact on small business of suggested regulatory approaches. The President welcomed the report and asked SBA to coordinate administration-wide implementation of as many of the

recommendations as possible. Indeed, as SBA's Chief Counsel for Advocacy has since reported, the Administration and Congress have taken meaningful action on more than 85% of the recommendations of the 1995 White House Conference, a significantly higher percentage than preceding Administrations reached for either of the two previous White House Small Business Conferences in 1980 and 1986.

In the regulatory area, we have done a great deal to respond to the key needs identified by the small business community.

Regulatory Development

We agree with the White House Conference delegates that consultation with those most affected by a rule is vitally important in producing better regulations. In the past, small businesses have often felt that they were left out of the regulatory process until it was too late. The Small Business Regulatory and Enforcement Fairness Act of 1996 (SBREFA), which the President strongly supported, codified one of the important recommendations made by small business participants in both the 1994 Small Business Forum and the 1995 White House Conference on Small Business. SBREFA created special panels, consisting of SBA's Chief Counsel for Advocacy and officials from OIRA and either EPA or OSHA, that now discuss regulations under development by EPA and OSHA with small business representatives from the industries affected. The panels meet at an early stage. OIRA, the Chief Counsel, and both agencies have worked hard to make the panels a success. To date, the results have been enormously helpful in improving EPA and OSHA regulations. Nearly every panel has identified potential changes that have improved the proposed regulation and benefited small businesses.

For example:

- EPA's Proposed Rule on Wastewater Pretreatment Standards for Industrial Laundries. This panel recommended that EPA solicit public comment on a "no-regulation" alternative to this proposed rule. Comments from small entity representatives during the panel process and comments on the published proposal convinced EPA that industry discharges were not significant enough to warrant national clean water standards industrial laundries. Based on this input, EPA decided to withdraw its proposal.

- EPA's Final Rule on Tier 2 Gasoline Sulfur Standards. EPA adopted almost all of the recommendations made by this panel. EPA granted small refiners an automatic four-year delay of the final gasoline standards while providing the possibility of up to a two-year extension for those small refiners that were still unable to obtain the necessary financing at the end of the four-year period. During this delay, small refiners would be required to comply with interim standards that are less stringent for those refineries with higher levels of sulfur in their gasoline.

- EPA's Final Rule on Air Pollution Control from Recreational Marine Engines. This EPA rule established emissions limits for recreational marine boats. The final rule included a panel recommendation to delay implementation for small mariners for five years to allow them to spread out investments and take advantage of other cost-saving technology.

Other agencies have recognized the benefit in obtaining small business input early in the regulatory development process. The Health Care Financing Administration (HCFA) of the Department of Health and Human Services (HHS) instituted new procedures to seek small business advice on controversial or burdensome regulations during the earliest stages of rulemaking. HCFA conducted two day-long training sessions for its employees on SBREFA and the Regulatory Flexibility Act. HCFA has now submitted draft rules to the Chief Counsel for Advocacy on a number of occasions for early small business impact review, including the HIPAA Privacy Rule.

Another concern voiced by small businesses both at the 1994 Forum and the 1995 White House Conference was the need for judicial review of the Regulatory Flexibility Act (RFA). Enacted in 1980, the RFA requires Federal regulatory agencies to analyze the impact of their regulations on small businesses and to consider alternatives that would be equally effective in achieving public policy goals without unduly burdening small businesses. For many years, there was no judicial review to ensure agency compliance with the law. Small business leaders lobbied for judicial review without success. Early in the Administration, both President Clinton and Vice President Gore endorsed the concept of allowing a right of judicial review for any failures to comply with the RFA. With their support, Congress included a right of Reg Flex judicial review in SBREFA, adding a reaffirmation of the Chief Counsel for Advocacy's authority to file amicus curiae briefs in any small business appeals regarding agency actions. This right of judicial review and the enhanced role of the Chief Counsel for Advocacy has accelerated a cultural change already underway at regulatory agencies. There is now much more sensitivity to the importance of regulatory flexibility analysis. According to agency records and data received from SBA's Office of Advocacy, changes made to regulations as a result of SBREFA panels and compliance with the RFA reduced regulatory costs by almost $5.3 billion during fiscal year 1999.

Regulatory Enforcement

Regulatory enforcement was a significant concern at both the 1994 Forum and the 1995 White House Conference. Many small business owners expressed concern that a Federal agency would fine them heavily for inadvertent paperwork or regulatory violations. In response to this concern, the President and Vice President set out to change the culture of regulatory enforcement from an adversarial approach to one that emphasizes working closely with the regulated community. They emphasized the benefits of partnership, encouraging agencies to reward well-intended efforts to reach outcome-based goals, such as safer workplaces or cleaner air, while reserving traditional enforcement for the worst actors. On April 21, 1995, President Clinton directed Federal agencies, where appropriate, to waive fines for first violations of regulations by

small businesses, if the violation was inadvertent and the violation could be corrected within a reasonable period of time. SBREFA later codified the President's directive. EPA, OSHA and other Federal agencies have now implemented various waiver policies and are operating under them today. For example, each year since 1996, a greater number of businesses have used EPA's self-audit procedures to find, disclose, and fix environmental problems on their own. For those that self-disclose, EPA has announced that it will waive or reduce potential enforcement penalties, as long as the company was not involved in criminal behavior. EPA reports that, in 1999, 990 self-disclosures were conducted by 260 companies, including 700 disclosures under a new program that offers proactive compliance assistance to industry sectors that have special needs. EPA also has a small business consultation program aimed specifically at small businesses. EPA commits that, if a small business requests an environmental consultation, EPA will not impose penalties for any violations found during the inspection. EPA recently expanded the circumstances under which small businesses can report and correct disclosures under this policy. It recognizes that compliance assistance can help improve environmental performance, and encourages such requests as a practical step towards reaching an important goal.

SBREFA also established a new small business Ombudsman at SBA, with Regulatory Fairness Boards in ten regions across the country. Small business owners now have a new place to turn if they feel an agency has acted unfairly during an enforcement action. Each year, the Ombudsman and the Boards hold hearings around the country so small business owners may present their stories in person. The Ombudsman then files an annual report with Congress. A review of these Ombudsman reports suggests that a fundamental change has taken place in the way most agencies relate to small businesses. According to the latest report, the Ombudsman in FY 1999 received only five complaints each against OSHA and EPA. We note also that many regulatory agencies, including EPA, OSHA, and the IRS, have now established their own small business ombudsman or liaison. Small business owners thus have the option of contacting someone in each of these agencies whose job it is to help resolve small business problems and concerns. This is a major improvement in an area of tremendous importance to small business owners.

Compliance Assistance and Partnerships

The President asked agencies to focus on results, not red tape, and to partner with the regulated community. These principles are interrelated. We have learned that agencies achieve better results when they work in partnership with regulated businesses, particularly small businesses.

OSHA has seen the value of increasing compliance assistance to fulfill its mission, rather than relying exclusively on enforcement. In its May 1995 Reinvention Report, OSHA committed that it would rely on creative partnerships with employers, common sense rulemaking, and expanded outreach, rather than a "gotcha" approach to enforcement. By partnering with management and labor, OSHA has since improved workplace safety for the vast majority of

employers who want to do the right thing. This has freed the agency to target enforcement resources where they are most needed.

OSHA's local partnerships emphasizing compliance assistance involve more than 4,500 worksites with nearly 110,000 workers. Firms in these partnerships have dramatically improved their safety performance. For example, the Steel Erectors Safety Association of Colorado and OSHA entered into a cooperative agreement involving 38 steel erector contractors. Working together, they designed a "100% fall protection" program. In Colorado, Project HOMESAFE, a partnership between OSHA and the National Association of Homebuilders, delivers safety training to residential construction firms in the greater Denver area. A partnership between the Kansas Independent Oil and Gas Association and OSHA's Wichita office reduced fatalities from as many as five per year to zero. Working with OSHA and the New Jersey State Police, the State of New Jersey identified and fixed 2,559 hazards that posed risks to highway construction workers at more than 185 construction sites.

The agency's premier partnership, its Voluntary Protection Program (VPP), now includes more than 600 worksites, including small businesses for the first time. VPP sites serve as models, and some have volunteered to mentor other small businesses that want to develop effective safety and health programs. VPP worksites experience injury and lost workday case rates on average 50% below industry rates for their respective injuries. Indeed, a New Jersey small business that recently received its Star designation in the program reports injury and illness rates 80% and 86% below industry averages.

OSHA has found that forming partnerships with the regulated community often allows it to address priority issues without resorting to new regulations. After working with stakeholders to consider how best to address 18 priority workplace hazards, it concluded that at least 10 of them could be addressed without resorting to regulatory action. For example, OSHA worked with the National Institute for Occupational Safety and Health and the Asphalt Paving Manufacturer's Association to redesign asphalt paving machines so that the machine operator would no longer be exposed to asphalt fumes.

OSHA's consultation program, which operates totally separate from enforcement, is available to small businesses in most parts of the country. An OSHA consultant will inspect a business site at an owner's request and provide a confidential safety and health assessment. With additional funds in 1999 and this year, OSHA has added 44 new compliance assistance officers in its area offices. These specialists serve as the point of contact for employers and employees looking for information on workplace safety and health or seeking specific training. The President's budget for 2001 includes funding to place one of these specialists in every OSHA area office to give every business a local OSHA official to call for help.

OSHA's emphasis on compliance assistance appears to be working. According to the Bureau of Labor Statistics, injuries and illnesses in the workplace have declined from 8.4 for every 100 workers to 7.1 per 100 workers between 1994 and 1997, a decline of 15%.

EPA also is using voluntary partnership approaches as part of its efforts to encourage compliance and prevention to address environmental problems. Working together with business and industry, EPA is finding that strong economic performance and strong environmental performance often go hand in hand. In all, EPA has more than 20 national, voluntary partnerships, and many EPA regions have their own programs. Some programs focus on making changes that can improve environmental performance across an entire business sector. The printed wiring board industry, for example, joined EPA's Design for the Environment Program to find ways their members could operate in a more efficient, environmentally sound manner. The industry has cut its annual use of formaldehyde by 240,000 pounds, its water use by 400 million gallons, and its energy use by 15 billion BTUs. More than 7,000 organizations now participate in EPA's voluntary partnership programs. In 1998, according to EPA, participants conserved 1.8 billion gallons of clean water, eliminated 7.8 million tons of solid waste, prevented air pollution equivalent to taking 13 million cars off the road, and saved an estimated $3.3 billion.

EPA is reaching out to provide compliance assistance to those small businesses that need it most. In 1996, its regional office in Atlanta reached out to electroplating businesses and dry cleaners to help them meet new national emissions standards for hazardous air pollutants. The environmental performance of the businesses improved dramatically. Georgia recently reported an 81 percent compliance rate for chrome electroplaters. In 1997, Virginia, Maryland, the District of Columbia, and the Korean Dry Cleaners Association of Greater Washington formed a partnership to reduce emissions of perchloroethylene from area dry cleaners. The partners set up a mentoring program in which experienced dry cleaners, trained by EPA and state environmental offices, helped less knowledgeable dry cleaners better understand and comply with environmental requirements. Because they understand what they have to do and how to do it, environmental performance is estimated to be 20 percent better than that of other dry cleaners in the area. EPA is now working with states, tribes, industry and environmental interest groups to develop a performance track partnership program that, like OSHA's VPP Program, will use incentives to encourage and reward strong environmental performance.

The IRS has organized a Small Business/Self Employed Operating Division dedicated to providing end-to-end service to small businesses and the self-employed. It should be operational in October and will help small businesses better understand taxes and reduce their compliance burden.

Electronic Assistance

Agencies are also taking advantage of the Internet and information technology to bring compliance assistance to small businesses.

- OSHA's Expert Advisor is an interactive "intelligent" tool that helps a business owner or manager identify if and how OSHA rules apply to the business.

- In partnership with industry organizations, environmental groups, universities, and other government agencies, EPA has opened ten compliance assistance centers on the Internet serving specific audiences. Eight serve business sectors that include many small businesses such as auto and service repair, printing, metal finishing, paints and coatings, and the transportation sector. The others serve local governments and federal agencies. The centers are tailored to serve small businesses, providing users with round-the-clock access to compliance assistance.

- The Department of Labor has developed eLaws Advisors to provide regulatory compliance information individually tailored to specific audiences. This interactive program mirrors the interaction an individual might have with a human expert when asking questions about a particular regulation.

- Agencies have created separate home pages, like DOL's Regulatory Compliance Assistance Home Page, to help small businesses comply with rules, regulations, and laws enforced by the agency.

- The IRS also is trying to make filing returns and paying taxes easier for small businesses. For example, monthly tax deposits are one of the most frequent transactions required of small businesses. The IRS is encouraging the use of its electronic tax deposit system, called EFTPS, to make the process faster, easier and paperless. It is now the preferred choice for over two and one-half million businesses.

Streamlining

Small business owners have asked us to eliminate obsolete, duplicative, and unintelligible regulations. As part of the Administration's regulatory reinvention effort, the President directed agencies in 1995 to conduct a page-by-page, line-by-line review of their existing regulations to find those that were redundant, unduly burdensome, obsolete, or in need of revision. The agencies have made and are continuing to make significant progress toward that goal.

During my time at SBA, I personally led an effort to eliminate or streamline 100 percent of its regulations. With the support of a talented and dedicated group of career personnel, the vast majority of whom were located in SBA offices outside of Washington, we reduced the number of pages of SBA's regulations by 55 percent, converting all of the remainder to plain language. This was an unprecedented result. We deleted redundant or obsolete provisions and streamlined the rest, emphasizing clarity and ease of use. We retained regulations needed to distribute financial and technical assistance to small businesses, making them easier to read and understand so that small businesses and SBA's lending partners could more easily understand and comply with SBA requirements. Nor did we stop at regulations. We proceeded to review, update and streamline nearly all of SBA's standard operating procedures, eliminating seventeen thousand pages (more than two-thirds) and converting the rest to plain language. We developed

a standard authorization form for SBA's lenders, replacing 69 different versions, and then created new plain-language closing forms. In all of these efforts, career employees were the key to our success. They demonstrated enormous energy and creativity and showed that dramatic progress was possible when everyone works together.

Similar streamlining efforts continue at other agencies.

- DOT's Federal Motor Carrier Safety Administration (FMCSA) plans to complete a zero-based review of its motor carrier regulations later this year that would eliminate or combine many regulatory requirements and information collections while streamlining the rest. According to FMCSA's estimates, this initiative could achieve up to a 90 percent paperwork burden reduction when it is completed.

- The Office of Solid Waste at EPA has reviewed all of its reporting and record keeping requirements under the Resource Conservation and Recovery Act (RCRA). It intends to propose a rulemaking this year that will lengthen periods between facility self-inspections, defer to OSHA standards for personnel training, streamline land disposal restrictions paperwork, and reduce the data collected by RCRA's biennial report. As proposed, the burden reduction could be 3,300,000 hours, which when added to previous reductions, would be a 40% reduction from the program's FY 1995 baseline.

- In its March 1995 Regulatory Reinvention Report, EPA committed to work with key industries, beginning with the chemical industry, to streamline federal air compliance requirements. After years of enormous effort on the part of EPA and industry, and a steep learning curve, EPA is about to publish a final rule consolidating and simplifying 16 different air-emission rules for the synthetic organic chemical industry into one consolidated federal air rule. The lessons learned in the process were the subject of a roundtable in OMB's current information initiative.

Pensions were an important issue among small business representatives at the White House Conference. Delegates felt strongly that it was too complicated and expensive for many of them to start a pension plan. They wanted a simple, tax-advantaged way to help their employees save for retirement. They also felt that ERISA Form 5500, the annual report filed by pension plans, was overly burdensome. The President responded immediately, announcing his support for such changes at the White House Conference itself. In its June 1995 Reinvention Report, the Pension Benefit Guarantee Corporation (PBGC) committed to offer simplified pension plans for small businesses, and to streamline and provide for electronic filing of Form 5500. After hearings by this Committee and with the support of the Administration, Congress then passed the Small Business Job Protection Act which created simple small business pension plans as well as other pension plan improvements recommended by the White House Conference

such as 401K plan improvements (like non-discrimination safe harbors) and repeal of Family Aggregation Rules.

Form 5500 used to be filed on paper with the IRS which processed it like a tax return even though it was only an information report. Beginning with 1999 plan year filings next month, Form 5500 now will be filed with the Department of Labor's Pension Welfare Benefit Administration (PWBA). Reporting employers will have the option to file electronically using EFAST, an interactive "intelligent" filing program. This software reduces the time needed to complete the report and improves accuracy. PWBA estimates plan administrators will save 560,000 burden hours and $16,351,000 annually when the system is fully implemented. In addition, PWBA, the IRS, and PBGC have conducted an extensive review of Form 5500 and have agreed to eliminate unnecessary data elements and simplify many that remain. PWBA estimates the streamlining alone will save pension plans an additional $40,540,000 annually.

EPA, OSHA, and the IRS have been the focus of much of this testimony because the changes underway in these agencies affect so many small businesses. But other agencies also have followed through on commitments to address regulatory and paperwork burdens made known to them by small businesses through the Administration's regulatory reinvention initiative. One such agency is the Food and Drug Administration (FDA). FDA has completed all 14 of the commitments in its April 1995 Drug and Medical Device Reinvention Report. The reforms expedited product review and eliminated unnecessary requirements that may once have been appropriate but are not now necessary to public health. FDA estimates that these reforms have saved the drug and device industry hundreds of millions of dollars each year.

Plain English

The use of plain English, particularly in guidance materials to help small businesses understand their regulatory obligations, was a recommendation of both the 1994 Forum and the 1995 White House Conference on Small Business. At the direction of the President and with strong support from the Vice President, agencies increasingly have been using plain language in their drafting of new regulations and supporting guidance. On June 1, 1998, the President sent a memorandum to Federal agencies on "Plain Language in Government Writing." He stated that the goal of this initiative was to "to make the Government more responsive, accessible, and understandable in its communications with the public." The memorandum called on agencies to use plain language in documents that explain how to obtain benefits and services or how to comply with Federal requirements, as well as in proposed and final regulations. The memorandum recommended further that agencies consider rewriting existing regulations in plain language.

We have found that plain language writing leads to substantively better rules. To write clearly, one must think clearly, identifying and answering all relevant questions. When proposed rules are clear, the public can more readily understand them and suggest ways in which they might be improved further. We have seen excellent examples of clear writing from agencies like

EPA and OSHA. For example, OSHA has renamed its Means of Egress standard "Exit Routes" The Vice President has commended several agencies for their plain language regulations. One of the most recent examples involved the Office of Drug and Alcohol Policy and Compliance at the Department of Transportation, which has done excellent work in its proposed revision of DOT's department-wide alcohol and drug testing procedures.

Some agencies report that when they carefully draft regulations and required regulatory guidance using plain language, regulated businesses understand what they have to do and there is little or no need for any additional guidance. The Bureau of Land Management believes that it needs to provide less guidance when it uses plain language. For example, it has not seen a need to issue any additional guidance for two recent plain language regulations, on Geothermal Resources and Solid Leasable Minerals.

Interagency Initiative on "Collecting Information in the Information Age"

The Federal Government collects and uses information so that it can better serve the public. Agencies can only deliver services to individuals and businesses if they know who they are, what they need, and what they want. Better information can help agencies make better decisions about how well the government is working, whether new services are needed, and whether existing programs are still necessary.

Indeed, the government's provision of information to its citizens can be an important service in its own right. In the Information Age, the public needs timely, accurate information. Investors need quick and easy access to public filings at the SEC. Residents want to know if they have exposure to pollutants in their community. Taxpayers expect quick responses from the IRS and fast income tax refunds.

Although agencies are working hard to minimize collection burdens, success in burden reduction is often overcome by new information collections that are required by new statutory and program responsibilities. Most of the information needs of the Federal Government arise from statutes passed by Congress. Some requirements reflect agency decisions on what information they need to implement programs. The Taxpayer Relief Act of 1997 (TRA) and the Tax and Trade Relief Extension Act of 1998, for example, made numerous changes to the Internal Revenue Code. These and other legislation required the IRS to add and revise reporting requirements that increased paperwork burden for taxpayers by approximately 150 million hours in FY 1999. These changes included the new Form 8863, Education Credits, which is used by taxpayers to calculate the education, HOPE, and Lifetime Learning Credits created by the TRA. Similarly, the Balanced Budget Act of 1997 created the Medicare+Choice (M+C) Program. This required the Department of Health and Human Services to develop M+C Program requirements, which added a new reporting burden of almost 1.3 million hours in FY 1997.

While we have achieved a number of successes, we understand that more must be done to alleviate small business burden. As part of our continuing efforts, OMB has joined with other

agencies this spring in launching a new initiative designed to look at how we might improve the quality and usefulness of the information the Federal Government collects while reducing the burden involved in supplying that information. Together we are working with small business representatives and other interested parties to identify problems and develop workable and constructive solutions. We are genuinely hopeful that this information initiative will lead to tangible improvements. We are examining best practices and listening carefully to the ideas and suggestions of our private sector participants. We have already held 11 roundtables and have scheduled others. These roundtables have enabled us to hear from a wide variety of sources, including, in some sessions, Congressional staffers, on how best to incorporate information technology and process changes to improve agency information collections.

As an example, the IRS has had three full-day roundtables, two of which addressed issues of particular concern to small businesses. One examined tax burdens on the self-employed. This discussion identified different elements of burden and addressed what IRS might do to address each element, including the potential use of electronic technology to decrease the time and costs incurred by the self-employed in preparing and filing their Federal income tax returns. Another session discussed the burden faced by small businesses and the self-employed in preparing and filing their Federal employment tax returns. This roundtable covered efforts to streamline the process and the use of information technology to make it easier and faster to submit returns.

OSHA held a roundtable to discuss the certification records it requires from employers and whether eliminating those records would reduce unnecessary paperwork without diminishing employee protection. Surprisingly for some, the dialogue focused more on suggestions from participants to eliminate obsolete underlying provisions than on the certifications themselves.

The Department of Agriculture also hosted a roundtable to discuss its Service Center Initiative. This is an effort by USDA's county-based agencies (Farm Service Agency, Natural Resources Conservation Service, and Rural Development) to provide one-stop service for farm programs and farm credit, conservation programs, and rural loans and grants. Participants discussed the myriad challenges and difficulties encountered by USDA in its initiative.

The problems faced by many agencies trying to integrate information systems and share information across programs and agencies, and with the states, will be the subject of an information technology roundtable on July 7. This will give senior Federal officials the opportunity to discuss with private sector professionals some of the key issues which agencies must address in bringing regulatory programs and information collection into the Information Age. We know that agencies must change business processes, streamline legacy systems, develop technical standards, protect privacy and security, and adopt new ways of interacting with customers. We welcome constructive ideas from others outside government on how we might best accomplish these goals. We will then present the results of the roundtable discussions and our recommendations at a future forum and in a final report on this information initiative.

Closing

In closing, we strongly support the goal of easing regulatory compliance costs and the paperwork burden on small business owners. The key to doing so is to find a way to reduce burden while still meeting the needs of the American people. We are open to considering new approaches for addressing the concerns of small business owners. We look forward to working with the Committee and others in the Congress in a cooperative effort to achieve meaningful progress in this area.

Thank you.

NATIONAL AIR
TRANSPORTATION
ASSOCIATION

4226 King Street
Alexandria, Virginia 22302
(703) 845-9000 FAX (703) 845-8176

Statement of

James K. Coyne, President
National Air Transportation Association
4226 King Street
Alexandria, Virginia 22302
(703) 845-9000

Regulatory Reform Initiatives And Their Impact on Small Business

Before the U.S. House of Representatives
Committee on Small Business

June 7, 2000

Washington, DC

On behalf of the nearly 2,000 aviation businesses represented by the National Air Transportation Association (NATA), we thank you for the opportunity to testify before the Committee on Small Business.

EXPLANATION OF THE NATA MEMBERSHIP

NATA represents aviation businesses that own, operate and service aircraft. These companies serve the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, aircraft parts sales, airline servicing, aircraft storage, flight training, Part 135 non-scheduled air charter, aircraft rental, and scheduled commuter operations in smaller aircraft. NATA members are the vital link in the aviation industry that provides services to the airlines, general aviation, and the military.

While most think of the airlines and the airline industry as representative of aviation, this is not the case. There are fewer than 100 air carriers while there are more than 10,000 aviation businesses in general aviation, maintenance, or airline support. The majority of these businesses are small businesses having fewer than 500 employees.

Aviation businesses are regulated by multiple agencies — primarily by the Federal Aviation Administration (FAA), secondarily by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration, and the Internal Revenue Service. While many of these agencies, such as the EPA, have created and fostered small business ombudsman offices, the FAA has given little consideration to the size of the businesses it regulates. On the contrary, the FAA has been advocating a "one-size-fits-all" approach to issuing its regulations. This has resulted in proposed rules dramatically underestimating the true impact of their proposals on the small businesses. The FAA has traditionally had difficulty in accurately analyzing cost benefits.

To address this problem, the FAA reauthorization legislation (the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century) included provisions requiring the FAA to study the size and scope of several aspects of the industry it regulates, made up primarily of small businesses. We are optimistic that this action, in conjunction with the oversight initiative by this Committee, will encourage the FAA to more adequately evaluate the effect of its regulations on small business.

OVERSEEING AVIATION SAFETY

Congress created the Federal Aviation Administration in 1958 as the authority to regulate aviation safety. Through its Federal Aviation Regulations, the FAA implements these requirements which are subsequently enforced by regional and local offices. Ultimately, an FAA inspector is assigned to each business certificated by the FAA. The certificate is in essence an aviation company's license to conduct business.

REGULATORY BURDENS

The FAA, in its role of overseeing safety, regularly uses the public rulemaking process. Although President Clinton has requested federal agencies to perform a review of each Agency's regulations, there have been no rule changes affecting NATA's member companies as a result of this analysis. In fact, the cumulative regulatory burden has increased, not decreased. Likewise, there are several significant rulemaking actions underway that potentially will have tremendous impacts on aviation businesses.

While safety is the top priority of NATA members, FAA regulations must consider the cost for any actions. For example, the FAA failed to evaluate the impact of the changes it proposed to flight crewmember flight and duty regulation issued in December 1995 for Part 135 on-demand air charter operators. The FAA notice in the Federal Register simply said, "cost unknown." NATA estimated the cost of the proposal as $6.75 billion! The Agency continues its work in evaluating the over 900 comments from the air charter industry and numerous letters from Congress about the impacts of this proposal.

Our industry is extremely concerned by an ongoing effort within the FAA to regulate at "one level of safety." Although safety is the highest concern of aviation businesses, the design of regulations must be tailored to fit the various operating environments to achieve this goal.

As an example, last year, the FAA proposed changes to the regulation of repair stations that would have effectively placed all maintenance facilities under the same regulatory framework. This means that a two-person small aircraft shop would have to meet the same organizational management requirements as the maintenance facility repairing large jet airliners. This is clearly unwarranted and impractical; yet, that is what the FAA proposed.

In a well-known rule acted upon this year, the FAA issued a rule placing severe caps on air tour flights over the Grand Canyon. This was an extreme example of the impact an FAA rule would have on small business.

INFORMAL REGULATORY BURDENS

One of the common concerns of NATA member aviation businesses is the FAA's increasing use of the informal rulemaking requirements. These are generally initiated either by the local FAA inspector or policy issued by FAA headquarters.

FAA Inspector

As previously explained, the FAA certificate is in essence a license to conduct business. Because the certificate is issued at the sole discretion of the local FAA inspector and the manager of the local FAA office, they have a great deal of control over the aviation business with limited oversight from headquarters.

It has been the experience of many NATA members that FAA inspectors have little understanding of or consideration for the difficulties in operating small businesses. Generally, the smaller the business, the more aggressively the FAA inspectors conduct

themselves. The FAA's organizational structure empowers each level of management with absolute authority without implementing oversight or a mediation process that would allow small businesses regulatory relief/recourse. Addressing some extreme instances of the FAA's misuse of its authority, Congress approved a process for certificate holders to appeal to the National Transportation Safety Board in certain certificate revocation actions by the FAA. Although this is helpful, small businesses continue to be without an affordable mediation process.

NATA believes the FAA must be accountable when individual FAA inspectors, as representatives of the Administrator, regularly "recommend" costly and administratively burdensome requirements not supported by regulation. The small business holding an FAA certificate faces the fear of retaliation or delays in processing its critical documents if it does not comply with the wishes of the FAA inspector.

Aviation businesses are required by regulation to develop and operate based on an approved manual customized to the particular operation. An individual FAA inspector manages each manual. When routine FAA employee transfers take place or the business requests a change to its manual, these are eligible for review by the FAA inspector. It is not uncommon for these reviews to result in extensive re-writes of the manual. In some cases, this has led to 24 months of negotiations before approval. Often the approval of these manuals outlasts multiple FAA inspector assignments and with each new inspector, the review process starts over.

The FAA inspectors routinely mandate requirements that are not supported by regulations, adding to the administrative burden of the businesses. As an example, many inspectors in all regions of the country are mandating what is termed Approved Aircraft Inspection Programs (AAIP). The AAIP were originally created to allow air carriers who have extensive data management programs to develop an aircraft inspection program unique to their aircraft and their operation. However, in the past five years, inspectors have mandated the use of AAIP and "permitted" operators to photocopy the original equipment manufacturers inspection program on company letterhead and submit it as their personally-developed AAIP. The implementation of an AAIP causes the operator to submit every change originated by the aircraft manufacturer to their individual FAA inspector for approval, delaying safety critical maintenance procedures and generating hundreds of hours of administrative burden.

FAA Approval Process

The FAA must take a serious look at its management and how the Agency regulates the aviation industry.

While the majority of attention on FAA management issues has concentrated on the air traffic control system, the harsh reality of tightened budget resources has silently crept up on the way the Agency conducts its regulatory oversight. An alarmingly regular call from NATA members is the need to get some type of equipment installation, paperwork or flightcheck approval that is delayed due to the lack of FAA inspection personnel or the insufficient knowledge of available inspectors.

Increasingly, improvements in aviation safety are being held back by the very agency charged with overseeing safety. While aviation businesses and aircraft owners are continually implementing new technology and finding better, more efficient ways to operate a business, the FAA is stuck in the mindset of centralizing decisions that used to be made in the field. Policy directives from the Agency are eliminating the ability of maintenance personnel, certified by the FAA, to do the work they were trained to perform without inspections by the FAA.

FAA Policy

Like most federal agencies, the FAA has guidance information it provides to its workforce; this is referred to as the FAA Inspector's Handbook. This document has grown from one volume in 1985 to a five-volume set with seven appendices. About 1995, FAA inspectors began increasingly to refer to the Handbook and update bulletins as advisory material, making it a de-facto non-public regulatory process.

To illustrate how this has worked, last month, the FAA issued Flight Standards Handbook Bulletin 00-09 defining the term "Directly in Charge" for operators of certificated aircraft maintenance repair stations regulated under 14 CFR Part 145. By doing so, the FAA circumvented its own rulemaking process because this definition was included in a notice of proposed rulemaking the FAA issued last year. The Agency received over 1,000 replies on this proposal and has yet to resolve the comments. This specific issue was addressed in numerous comments the FAA received to the rulemaking docket. Under what authority does the Agency simply ignore that effort and begin enforcing this new definition without using a public process?

RECOMMENDATIONS FOR CHANGE

NATA recommends the following modifications/revisions to the FAA's regulatory, guidance policy development and the enforcement processes:

Regulatory Process

The FAA must have accurate data on the industry it regulates that will enable the Agency to better evaluate the impacts of its proposals. All too often, the bias and, in many cases, the limits of professional experience of those individuals involved in developing proposed and final rules disproportionately influence the outcome. NATA contends that more precise information will provide the important tools for developing new approaches that achieve the FAA's essential goals of aviation safety, but in a framework that effectively uses the capability of the industry to meet regulatory requirements.

In addition, during the rulemaking process, the FAA must recognize that the industry is diverse and regulations must be structured for the variety in scope of operations. The notion that all segments of the industry are the same is not correct. We have seen improvement from the FAA in this area, but the Small Business Committee should encourage the Agency to continue developing regulations appropriate for each segment of the industry.

Guidance Policy Development

NATA strongly recommends that the FAA make draft Inspector Handbook guidance available and solicit public comment prior to adopting the proposed policy. This would address the FAA's use of handbook guidance to expand regulatory standards by which aviation businesses must operate. It is critical that the aviation industry has an opportunity to review the guidance document that will regulate their activities and, where necessary, provide constructive feedback to the FAA. The Agency can then evaluate these responses and make any necessary revisions prior to issuing the guidance. Ultimately, this will also improve the quality of the FAA policy.

FAA Inspector

The FAA must undertake a more extensive training program that will appropriately equip its inspectors to oversee the industry it regulates. NATA contends that this will go a long way towards improving the difficulties of administrative changes mandated by the FAA which plague small aviation companies.

In addition, the Agency must institute a system that provides for appealing the arbitrary decisions made by the FAA inspector. Likewise, focusing on performance-based criteria that can be tailored to each company's unique operating abilities is vital.

FAA Approvals

While the workload at the FAA field offices is increasing because of modernization and expansion of the aviation industry, the number of qualified, trained inspectors is shrinking. One example is the difficulty charter operators have had in getting single-engine instrument flight rules certification for their aircraft. On the other end of the spectrum are the horror stories of repair stations attempting to get approvals for new technology avionics installations.

The Agency must provide for the certificate holders that it regulates and oversees to use the authority granted by this approval to manage its actions. The FAA must allow more delegation to qualified certificate holders in the form of "delegation authority." While this term has a specific meaning for aircraft certification, the FAA must expand this principle for maintenance facilities and on-demand air charter operators. Conditions can be put in place to ensure safety when using this authority, including issues of oversight within the company, the proper independence for individuals given delegated authority to ensure safety and a process that provides the FAA with the confidence that safety is the foremost concern.

NATA appreciates the opportunity to testify. We would be pleased to respond to any questions.

BEFORE THE
SMALL BUSINESS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

TESTIMONY
OF
DUNCAN THOMAS
Q-MARKETS, INC.
RICHMOND, VIRGINIA

ON
BEHALF OF
THE
NATIONAL ASSOCIATION OF CONVENIENCE STORES

ON
REAUTHORIZATION OF THE PAPERWORK REDUCTION ACT

June 7, 2000
Washington, D.C.

Thank you, Mr. Chairman. My name is Duncan Thomas. I am the President and CEO of Q-Markets, Inc., headquartered in Richmond, Virginia. My small business, which I own, operates 10 convenience stores in the Richmond area. It is my privilege to appear on behalf of the National Association of Convenience Stores. Seventy-one percent of NACS' members are small businesses – that is, like me, they own and operate 10 stores or less.

As representatives of small business, both the Association and I appreciate this opportunity to present our views on the regulatory burdens imposed on our industry by the Federal government and on attempts by the Clinton Administration to reduce some of these burdens. While not directly "on point" with the Committee's reauthorization of the Paperwork Reduction Act, NACS would like to offer related comments on the Small Business Regulatory Enhancement and Fairness Act.

At the outset, let me offer my general conclusion that my cumulative regulatory burdens, as well as those on all convenience store operators, have increased since President Clinton ordered Federal agencies to reduce paperwork burdens by 25 percent over five years ago. Further, neither NACS nor I see the situation improving in the near future. Simply put, while some of the paperwork requirements may have eased, there is more and more that convenience store marketers, such as myself, need to know in order to remain in compliance with the complex array of Federal as well as State and local, regulations.

For example, over the past five years, convenience store operators have had to deal with new and complex regulations involving cleaner motor fuels. The Environmental Protection Agency (EPA) took one line from the Clean Air Act and turned it into 400-pages of regulations dealing with gasoline detergents. In addition to detailed, reformulated gasoline rules, EPA has reduced the allowable sulfur content in gasoline and has just proposed significant sulfur reductions for highway diesel fuel. These rules affect me as a motor fuels retailer. At the same time, we have to deal with the Occupational Safety and Health Administration's (OSHA) guidelines on late night retailing. OSHA also is in the midst of its ergonomics rulemaking, which will have a tremendous economic impact on the convenience store industry, especially small operators like me, if adopted as proposed.

EPA and OSHA are just two of the Federal agencies which affect convenience store operators on a daily basis. While I'm sure that others at this hearing will testify about the burdens imposed by the Internal Revenue Service, NACS and I echo those views. Convenience store operators also have had to deal with new rules over the past few years from the Food & Drug Administration, such as restrictions on the sale of certain goods, such as "No-Doz," that could be used in the manufacture of drugs, as well as the Department of Transportation's hazardous materials registration program.

These are just a handful of examples how the regulatory burdens affecting Q-Markets and other similar, small convenience store operators have increased over the past five years. It is important for the Committee to remember that these additional mandates

do not occur in a vacuum. NACS members and others are dealing with a range of other regulatory programs, such as compliance with EPA's underground storage tank regulations. All of these regulatory requirements have costs that often place me, as well as other small business marketers, at a competitive disadvantage when trying to assure and maintain compliance.

As Members of the Committee know, most compliance is demonstrated through keeping and producing records. There have been earnest attempts by Federal agencies to reduce some of the paperwork burdens associated with compliance. For example, EPA recognized that there was little value in requiring gasoline retailers to keep "product transfer documents" for five years to demonstrate compliance with the Agency's new fuels regulations. The Agency correctly eliminated this requirement. DOT is allowing small businesses required to register under the hazardous materials program to pay the annual fee for several years at a time, reducing the time needed to comply and giving a small discount.

However, I such efforts at paperwork reductions have not had a significant effect on reducing Q-Markets' regulatory compliance costs. For example, when I began my company in 1994, I filled out all of the necessary paperwork myself or in-house. Since that time, my store managers spend an additional two hours per week filling out paper work. I also have been forced to hire an outside firm to assist Q-Markets with its record keeping at an annual cost of $3,000 per store. For my 10 stores, that's at least 1,000 additional hours and $33,000 that I didn't have to incur six years ago. These totals do not

include my personal time reviewing and signing the forms. My per-store average is typical for other NACS members like me.

To assist petroleum marketers, NACS compiled its "Petroleum Marketers' Book of Federal Compliance Forms". This book includes all forms which petroleum marketers need to fill out in order to assure compliance with Federal rules and regulations. This book alone has nearly 300 pages, and includes 46 forms. However, to fully understand and properly fill out these forms, one must read hundreds of pages of supporting material.

There is one area where NACS is especially frustrated. When President Clinton ordered the Federal agencies to reduce paperwork burdens by 25 percent, the Association suggested to EPA that it could eliminate the need for convenience stores to submit annual inventory reports under Section 312 of the Community Right-to-Know program. NACS argued that the information was duplicative. The public knows what is stored in and dispensed from the gas tanks at convenience stores. EPA took several years to respond to and act upon this suggestion. However, the Agency took a simple fix and made matters potentially worse. In granting an exemption from the Section 312 annual filing – also known and "Tier I" or "Tier II" reports – the Agency conditioned the paperwork relief on a requirement that the underground storage tanks be in full, year-round compliance with the tank regulations. Besides not knowing who makes that actual compliance determination, it is possible that one piece of paper could be mislaid, resulting in non-compliance with the tank regulations. This would then trigger the requirement to go back

and file the inventory report. In addition, some States use the Tier I and Tier II reports as a revenue raiser, and they have refused to follow EPA's lead.

"Informal" regulatory burdens also have increased for convenience store operators like myself. This really is a double-edged sword. On the one side, EPA, OSHA and other Federal agencies are making good faith efforts to assist small businesses in understanding and complying with regulations. These agencies are publishing more "plain English" guidance and other documents to simplify what I need to know about compliance. EPA often asks NACS to review and comment on drafts. The Internet has made access to these materials faster and cheaper. NACS would give most Federal agencies high marks for these easier-to-read materials. However, despite such compliance assistance, it still remains necessary to read the rules in their entirety.

On the other side, there are concerns that guidance documents and similar materials are being substituted for traditional notice-and-comment rulemaking or are establishing "standards of care" that can be used against the small business in lawsuits. For example, OSHA's guideline on late night retailing is not a regulation. However, OSHA can use the guideline for an enforcement action under the Agency's "General Duty Clause." Moreover, the guideline can be used as evidence of industry practice if I were to be sued in a tort or wrongful death action, even though the document has been widely criticized by the convenience store industry.

It is difficult to answer the Committee's question on whether facility inspections have increased. Many of the Federal regulations affecting convenience stores are enforced by State or local governmental officials. The levels of enforcement vary widely among the States. Small businesses like mine, who have spent considerable sums to comply with the law, support even-handed and consistent enforcement. Unfortunately, this is not the case in some regulatory programs.

EPA's underground storage tank program is a case in point. The Agency relies primarily on the States to enforce the law. It was recently reported that the State of New Jersey had some 170 tanks that were not in compliance with the December 22, 1998 requirement to upgrade, close or replace substandard tanks. Yet, at the same time, the State imposed huge penalties on small petroleum marketers who missed the deadline. When questioned, the State said that it did not need to penalize itself because there was no deterrence value. What happened to protection of the environment? There is no difference when the State's tank leaks compared to one from a convenience store operator's tanks.

I don't want to drag out the enforcement issue, but many NACS members complain that they are subject to paperwork "witch hunts" in order to find violations. It's almost like a monthly traffic ticket quota. It appears to the Association's members that Federal agencies fail to distinguish often between actual and paperwork violations.

In terms of improving the regulatory process, NACS has two suggestions to make. First, the Association has been a longstanding advocate of the Small Business Regulatory Enhancement and Fairness Act. NACS has been involved with numerous panels convened by EPA. While this Act has led to greater sensitivity to small business regulatory impacts, the process is far from perfect. These panels and reviews should be required at the outset of any rulemaking.

It is NACS' opinion that, by the time most of these panels are convened, EPA staff working on the rulemaking are already well entrenched with their opinions on regulatory options. Sadly, much of the this process simply becomes "throwing a bone" to small business.

Further, many of these panels only address what I would call "Tier I" impacts. For example, under EPA's diesel fuel desulfurization rule, the Agency focused on regulatory impacts on "small refineries," who would be required to make substantial equipment upgrades. There should also have been a substantive review for "Tier II" impacts, such as supply and storage issues for small businesses, like mine, that retail the fuel.

Second, as part of the Paperwork Reduction Act, Federal agencies should be required to identify complementary or conflicting reporting forms and justify why the forms cannot be consolidated when seeking renewal of control numbers from the Office of Management and Budget. A similar process should be imposed on permit

applications. Given the increasing and widespread use of the Internet, there is no reason why many of these forms and applications cannot be combined and streamlined, and then the data can be used the relevant agency program.

From Q-Markets paperwork experience I mentioned earlier, the annual burden on the convenience store industry is significant and expensive. While computer software and the Internet have made many routine tasks simpler and easier to track, the convenience store industry has not seen an improvement since 1995. If anything, some of the efforts by the Federal agencies may have merely slowed the rate of increase in overall regulatory burdens.

In conclusion, NACS and I believe a "mixed bag" exists on the questions posed by the Committee for this hearing. While there have been good faith and actual efforts to reduce paperwork burdens generated by Federally-mandated regulations, they have not made a dent. The larger problem remains that the flow of new regulations has not let up for the convenience store industry. There simply is more to know about, and this leads often to confusion, inadvertent non-compliance, and considerable expense. The Association recommends changes to the Small Business Regulatory Enhancement and Fairness Act and the Paperwork Reduction Act to keep the process of burden reduction moving in the right direction.

It has been a privilege to share NACS' and my views with the Committee. I will be happy to answer any questions the Association's testimony may have raised.

TESTIMONY OF

KENNETH O. SELZER

ON BEHALF OF

THE NATIONAL ASSOCIATION OF HOME BUILDERS

BEFORE THE

COMMITTEE ON SMALL BUSINESS

U. S. HOUSE OF REPRESENTATIVES

JUNE 7, 2000

Good morning, Mr. Chairman and members of the Committee, my name is Kenneth O. Selzer. I am owner of Kenneth O. Selzer Construction and four related real estate companies and have been in the home building business since 1954. I have served as President of the Greater Cedar Rapids Area Home Builders Association and the Home Builders Association of Iowa. I have also served as an Area 10 National Vice President of the National Association of Home Builders (NAHB), of which I have been a member since 1976, and am currently an NAHB Life Director and member of the Federal Government Affairs Committee. Thank you for giving me the opportunity to testify on an issue of great importance to the home building industry – regulatory barriers and their impact on housing affordability.

NAHB and its 200,000 members believe that homeownership is the cornerstone of family security, stability and prosperity. It strengthens the nation by encouraging civic participation and involvement in schools and communities. It provides a solid foundation from which Americans can work to provide for their families, enhance their communities and achieve their personal goals, and it continues to be thwarted by a torrent of government regulations.

The common notion of a home builder tends to be that of a "high-volume" constructor – someone who can spread production and regulatory costs across many projects – this is simply not true. Over half of NAHB's members build fewer than ten homes per year and close to seventy-five percent build twenty-five or fewer homes. A typical NAHB member firm is truly a small business, employing less than ten workers.

So while low interest rates and a booming economy have contributed to the recent growth in homeownership, many families are still denied the opportunity to buy a home because, despite reform efforts, no growth policies and regulatory costs of home building are expanding and pushing housing further out of the reach of thousands of Americans.

Most Americans do not fully realize the extent to which overregulation drives up new home prices; the issue is complex and difficult to quantify and the impact of regulation can vary significantly even within the same state or region. Yet, government at all levels continues to blanket every aspect of the housing industry with layers of regulation. That is not to say, of course, that housing or any industry should be left completely unregulated. What we need are sensible, appropriate, balanced guidelines at all levels of government. We need to identify unnecessary and repetitive regulations, eliminate them and make sure that new regulations are absolutely necessary before they are proposed. It is clear that without a serious effort to make sweeping changes in the way that the construction of new homes is regulated, costs will continue to rise, stifling the ability of builders to provide affordable housing and expand homeownership opportunities for families throughout the country.

NAHB appreciates your interest in addressing this issue, Mr. Chairman, and we are pleased to present testimony before you and your committee today.

Regulatory Reform

Efforts to reform the regulatory process in the U.S. are not new. Unfortunately, in many instances, past attempts have only led to increased layers of regulation and more bureaucracy.

While the building industry recognizes the need for certain regulations, we believe that even the most necessary regulations should be administered in a fair and efficient manner. Over the last several years, as increased federal regulations have been layered upon existing state and local requirements, the cost of regulation has been increasingly felt by the new home buyer.

An NAHB survey, conducted in the summer of 1998, found that about ten percent of the cost of building a typical new home can be attributed to unnecessary regulation and regulatory delays, fees associated with building, plumbing, electrical, and tree removal permits, disposal of

construction wastes, higher impact analysis fees and more. In fact, there are some sixty categories of fees and regulations altogether. In some highly regulated markets, the costs can total 20 percent or more of the sales price of a typical home.

In addition to increasing fees, builders also face obstacles such as increasingly stringent design codes, more expensive bonds and sureties, and lengthier procedures for obtaining permits. As an example, 52 percent of single family subdivision developers responding to the survey indicated that it now takes more than a year to process a rezoning application and obtain a final building permit.

Some of the fees developers and builders now pay, such as those charged by municipalities for tapping into water and sewer systems, have been in existence for years, but have risen in cost disproportionately over the last two or three decades. Other fees, such as for environmental impact statements, erosion control, and off-site improvements, are new and have come about through the expanded environmental protection legislation that has characterized the last several years.

As part of this same study, NAHB followed up with individual interviews with builders to track their experiences in dealing with regulatory authorities from the time they purchase land and submit subdivision plans until the sale of the home. According to these builders, the complexities, number of approvals, time delays and costs of meeting regulatory requirements are increasing rapidly with no relief in sight.

Environmental regulations, in particular, often have had the unintended consequence of making housing less affordable for many American families due to the web of regulations that accompany federal environmental laws. The Clean Water Act, the Clean Air Act, the Endangered Species Act, and the Magnuson-Stevens Act, to name a few, all govern residential construction. Inflexible rules and overlapping jurisdictions of federal agencies often prevent common-sense solutions that could better protect the environment. Environmental regulations, especially those

related to endangered species and wetlands, have increased the cost of housing directly by limiting the amount of land available for residential construction or even prohibiting construction in some areas. More importantly, they have increased housing costs through extensive review and permitting delays and by requiring fees, land dedications and other expensive actions.

Wetlands Regulation

A striking example of burdensome regulations is the wetlands permitting process, which has become increasingly onerous over the years. In fact, NAHB feels so strongly that the Corps' new restrictions are unfounded (and will result in a bloated bureaucracy rather than a streamlined permitting process) that we have had to resort to legal action against the Corps. This action comes as a last resort after many attempts to find a reasonable resolution to the conflict between a workable permitting process and the reach of federal regulators.

Here is some background on the issue. Section 404 of the Clean Water Act requires permits for the discharge of dredged or fill material into "waters of the United States," a definition regulators have steadily expanded to include "wetlands." "Wetlands" are defined broadly to include countless isolated pockets of land that oftentimes are too dry to meet the common-sense definition of the word.

The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) jointly administer the program. The Corps issues the permit, while EPA maintains an oversight role with power to veto any permit.

There are two kinds of permits available under the Section 404 program: individual and general. Individual permits are issued for a specific activity in a specific location. Individual permits require extensive scrutiny, the preparation of reports and the completion of an alternatives analysis. Individual permits typically take over a year to obtain. General permits, on the other

hand, are meant to provide an expedited permitting process. These permits allow developers around the country to perform similar activities without the delay that usually accompanies the issuance of individual Section 404 permits.

In 1977, the Nationwide Permitting Program (NWP) became part of the Clean Water Act under the 1977 Clean Water Act Amendments, showing that Congress endorsed the program as a way to provide administrative efficiency in activities that have minimal environmental impact.

The most common nationwide permits used by the development industry are NWP 12 (utility lines), NWP 14 (minor road crossings), and NWP 26 (filling of isolated or headwaters wetlands unconnected to rivers, streams and waterways). The earliest version of NWP 26 allowed discharges in up to 10 acres of wetlands.

In 1978, the Corps removed the acreage limitation on NWP 26 as a result of President Carter's Executive Order to make regulations less burdensome. Almost immediately, the National Wildlife Federation filed suit against the Corps, arguing that removing the acreage limitation would harm the environment.

In 1982, as a result of that lawsuit, the Corps issued new regulations: the maximum acreage limitation of 10 acres was reinstated; agencies such as the U.S. Fish and Wildlife Service, the Environmental Protection Agency and the National Marine Fisheries Service were required to be part of the decision-making process; and builders and developers using NWP 26 were told to file a pre-discharge notification with the Corps 20 days prior to filling for fills between one and 10 acres.

In 1996, the use of NWP 26 was modified again: acreage limits were reduced to between one-third of an acre and 3 acres; pre-discharge notification was increased to 45 days; wetlands mitigation was made mandatory; and NWP 26 could not be used in tandem with other NWPs. The Corps also announced that NWPs would be phased out and replaced with a set of so-called "successor permits" in 1998.

In 1998, the Corps announced a series of activity-based wetlands development permits, or successor permits to NWP 26. One of the more notable permits allowed some limited flexibility on wetlands fills in master-planned communities, which utilize considerable environmental and land use planning. Soon after its introduction, however, the Corps revoked the master-planned permit. The Corps also placed restrictions on the use of NWPs in floodplains and certain waters of the U.S.

On July 21, 1999, the Corps published in the *Federal Register* a notice of intent to issue 5 new and 6 modified NWPs to replace the existing NWP 26 when it expires.

In the Fiscal Year 2000 Energy and Water Development Appropriations bill, Congress required the Corps to complete a study of the change in permitting workload and regulatory costs that would result if the replacement package, as proposed, were implemented.

According to the report, "The proposed replacement permits each would apply to a specific category of activities, and would establish more restrictive terms for authorized activities, including lower impact limits and lower impact thresholds for determining when reporting to the Corps is required."

The Corps also proposed to issue 3 new and 9 modified NWP general conditions that apply to broad sets of NWPs. The modified general conditions would establish certain new requirements for authorized activities.

The Corps' report acknowledges that "taken together, the proposed changes (or 'replacement package') would affect permitting and associated regulatory costs for a large set of activities previously authorized under NWP 26 as well as other NWPs."

This same report concedes that "the estimated permitting changes would increase direct (cash) compliance costs by an estimated $48 million annually," which NAHB believes is a gross underestimation. The report continues, "These direct costs reflect out-of-pocket expenses incurred by the regulated community to complete permit applications and comply with permit conditions....

The replacement package would also impose indirect (opportunity) costs on the regulated community that are not reflected in out-of-pocket expenses."

In addition, the Corps analysis indicates that "the average time it takes the Corps to process a SP [standard permit] application, and the number of end-of-year pending (backlog) applications awaiting Corps processing, would rise steadily each year under the replacement package."

Nevertheless, on March 9, 2000, the Corps announced new and modified NWPs to replace NWP 26, as well as some notable new restrictions, including a one-half acre limit on the use of most new and modified Nationwide Permits and a pre-construction notification requirement for any activity affecting more than one-tenth of an acre. All of this despite a lack of evidence to substantiate the need for the new acreage limits to protect wetlands.

NAHB believes that these costly, complex and unnecessary wetlands regulations will affect small towns, suburbs and large cities alike with a new wave of regulation that will lengthen the time frame and add costs for vital projects ranging from highway safety programs to stormwater management maintenance work and housing developments.

Congress intended for the NWP program to be efficient and streamlined, but under the new final rule, unnecessary conditions and restrictions will make the wetlands permitting process more cumbersome than ever.

Housing Impact Analysis

In order to help curb such excessive regulation, NAHB advocates legislation that requires all federal agencies to include a housing impact analysis when a new rule has a significant impact on the cost of housing. This provision is currently included as Title I of H.R. 1776, the "American Homeownership and Economic Opportunity Act of 1999," which the House approved by a vote of 417 to 8 earlier this year.

The housing impact statement is intended to focus the attention of federal agencies on how a proposed policy would affect home prices every time it tries to solve a problem by instituting a new rule or regulation.

Each housing impact analysis would include: 1) a description of the reasons why action by the agency is being considered; 2) a succinct statement of the objectives of, and legal basis for, the rule or regulation; 3) a description of, and where feasible, an estimate of the extent to which the rule or regulation would impact the cost or supply of housing or land; and 4) an identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule or regulation.

This provision raises the awareness of proposed actions by the federal government by demonstrating that oftentimes well-intentioned regulations have unintended, yet negative consequences for consumers, private industry and housing. This is a procedure whereby the federal government must disclose any possible impact on housing affordability and may consider less costly alternatives.

H.R. 1776 would reauthorize grants, origmally included in the Housing and Community Development Act of 1992, which were developed to serve as incentives for states and localities to plan for and develop strategies to remove barriers to affordable housing. Reauthorization is important as it serves as a means for the federal government to encourage states and localities to identify ways to eliminate barriers to home ownership at the local level.

The bill also requires communities to demonstrate a "good faith effort" in removing barriers when they submit their Consolidated Plan to the U.S. Department of Housing and Urban Development (HUD) for HOME and Community Development Block Grant funding. This will allow states and localities to examine more comprehensive efforts to remove barriers to affordable housing. The purpose of the barrier removal grants, coupled with the requirement that states and

localities demonstrate a "good faith effort" in removing barriers when they submit their Consolidated Plan to HUD, are intended to bring together all the parties involved in the production of housing, and those who regulate them, to discuss the barriers and how to remove them. The demonstration of a "good faith effort" at barrier removal in the Consolidated Plan can be bolstered by the assistance provided in the grant and can be part of a long-term strategy to cut unnecessary regulations and make housing more affordable.

The bill would also establish a clearinghouse within HUD to collect and disseminate information on regulatory barriers and their impacts on the availability of affordable housing. This is important as it provides an additional tool for states and localities to use to evaluate successful barrier removal strategies from all parts of the country and in communities of similar population and economy for their own planning and development.

Conducting such an analysis is, in our view, a good start and a move that should be followed by every state, county and municipality in the country. NAHB believes that it is important to strongly support legislation designed to help eliminate many of the regulatory barriers currently preventing individuals of all income levels from becoming homeowners by recognizing the implementation of sound housing policy.

By acknowledging the existence of these barriers and developing a specific legislative plan of action to alleviate them, more families will be able to achieve the American dream of homeownership.

Again, thank you for inviting me to testify before you today. Mr. Chairman, NAHB thanks you and your committee for your interest in bringing these issues to light, and we look forward to working with you to create a more balanced approach to the federal regulatory and enforcement processes. I am happy to answer any questions that you may have.

###