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**Regulatory Reform-legal & other
analyses [2]**

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

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LRM NO: 3637
FILE NO: 1916

3/4/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below:
FROM: James JUKES (for)
Assistant Director for Legislative Reference
OMB CONTACT: M. Jill GIBBONS 395-7593
Legislative Assistant's line (for simple responses): 395-3454
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gibbons_m@a1.eop.gov
SUBJECT: Small Business Administration Proposed Report RE: S942, Small Business
Regulatory Fairness Act of 1995

DEADLINE: *5:00 Monday*, *4* *Firm*
~~March 06, 1996~~, March 06, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The attached report is in response to a proposed substitute amendment to S. 942. The substitute amendment and a section-by-section analysis are attached. A markup of S. 942 may take place the week of March 4th. We understand that the attached letter is to be signed by the Administrator of the SBA.

LEGISLATIVE REFERRAL MEMORANDUM
Distribution List

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Regulatory Fairness Act of 1995

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**RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM**

LRM NO: 3637

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If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: M. Jill GIBBONS 395-7593
Office of Management and Budget
Fax Number: 395-3109
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)

_____ (Telephone)

**SUBJECT: Small Business Administration Proposed Report RE: S942, Small Business
Regulatory Fairness Act of 1995**

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

SBA Draft

Draft: For Discussion Only
3/1/96

Comments on S.942 - Small Business Regulatory Fairness Act of 1995

The Administration commends the Committee for its work in seeking to fashion legislation designed to implement recommendations of the 1995 White House Conference on Small Business. It shares the Committee's strong interest in reforming small business regulation and paperwork requirements. Indeed, members of the Administration are working diligently to implement the recommendations in an appropriate manner. We look forward to working with the Committee in a constructive way to further this objective throughout the federal government.

In 1994, SBA and OTRA cosponsored an unprecedented interagency Small Business Forum on Regulatory Reform involving 150 small business representatives and 80 federal government employees. The Forum produced a detailed list of findings and recommendations, many of which have already been implemented by the participating agencies. As part of a more recent, government-wide review of regulations, SBA has streamlined all of its regulations, reducing them in length by 50 percent and writing them in a more understandable, "plain English" format.

+ S.942

The draft substitute seeks to build on this effort and the work of the Conference. For example, section 202 would codify recent initiatives of EPA and OSHA to allow the waiver of penalties for first-time violators. Title IV would establish judicial review of Regulatory Flexibility Act analyses, a change that, if properly drafted, the administration has already indicated it would strongly support.

Detailed below, section by section, are more specific comments regarding the draft substitute. Some agencies may have other concerns not expressed here.

Sec. 102. Compliance. Government agencies need to provide understandable guides to assist small businesses in complying with rules which have been the subject of a regulatory flexibility analysis. Many agencies already provide such materials, including DOT, the IRS, and EPA. SBA has been working with agencies to make such materials easier to understand and easier for small business owners to access. The IRS has recently published a new small business guide. EPA has committed to publish plain English fact sheets and guides simultaneously with every new regulation.

However, it is not clear that this is a proper subject for codification because there is no practicable way to enforce it that would not be counterproductive. The Administration strongly opposes the limitation of penalties and judicial review provisions of subsection (b) ("limitation on penalties"). The

nonexistence or content of a guide should not be a barrier to the imposition of a penalty if otherwise warranted or a defense to an enforcement action. The requirement that such guides be subject to judicial review could unnecessarily hamper legitimate compliance assistance actions. This is particularly true in light of the difficulty in defining the standard that courts should use in evaluating the adequacy of a particular guide. Creating a rush of potential litigation over the adequacy of a guide would be counterproductive to the goal of increasing the cooperative nature of compliance assistance.

Sec. 103. Small Entity Rulings. Through electronic technology such as SBA On-Line and the U.S. Business Advisor, there are a number of mechanisms for efficiently providing appropriate information to small businesses. Clearly, agencies should strive to provide a "cooperative/consulting regulatory environment". At the direction of the President, SBA is working with EPA, OSHA, and other agencies that regulate small businesses to provide more compliance assistance and a consultative regulatory environment. By replacing common sense and cooperation with even more regulating, this section could be counterproductive to that effort.

Small business owners need better access to information about rules affecting them and how to comply with them. By appearing to mandate that the standards governing IRS issuance of private letter rulings apply to all inquiries, this section would create a formal atmosphere in which the small business owner might need a lawyer and the agency might need enforcement staff and attorneys to participate in the process. The effect on both agency and small business resources could be significant.

Other problems also exist. The section appears to require a ruling for all inquiries. The IRS issues rulings only in limited cases. Indeed, there are often legitimate reasons why it is not in the best interests of the government or the small business community for a private ruling to be given on a particular set of facts. A series of individual rulings may not be the best way to determine consistent policy. Also, the terms "status for tax purposes" and "tax effects of their acts or transactions", as used by the IRS, are more narrowly defined than the broader term "status with respect to such statutes and as to the effects of their actions" stated in the draft section. See 26 C.F.R. 601.201. Proper definition is particularly important here, since the rulings could potentially be raised as a defense in an enforcement action.

Sec. 104. Services of Small Business Development Centers. Although we are proud of the services provided by SBDCs, it is important that their responsibilities not be expanded without a corresponding effort to expand their resources at a time of budget constraint. We note that the 1996 conference report to

the Commerce, Justice, State and Related Agencies Appropriations bill provides to SBDCs \$4.5 million less than they received in fiscal year 1995.

Sec. 201. Small Business and Agriculture Enforcement Ombudsman. It is understandable that the Committee would like the federal government to provide a regulatory watchdog for small business. But, the Administration believes that creating additional bureaucratic overhead would be the wrong way to resolve such concerns. An outside monitor of agency efforts also might undermine agency responsibilities to protect the public and interfere with the many delicate negotiations and compromises that take place in the regulatory and administrative process. We also note that the bill contemplates a broader role for SBA, but again does not address the question of additional resources.

It should be kept in mind that SBA has worked with other agencies to establish agency-specific ombudsman offices with substantive expertise in that agency's regulatory and enforcement practices. In fact, the IRS has created such an office in response to recommendations arising out of the interagency forum on small business issues, and EPA has had an ombudsman office for some time. This agency-by-agency approach is working increasingly well, with much less of a strain on scarce budget resources.

Sec. 202. Rights of Small Entities in Enforcement Actions. We understand the Committee's desire to codify recent administrative actions that waive civil penalties when first-time violations of rules are discovered through participation in a compliance assistance or audit program. SBA has worked closely with other agencies to develop administrative practices that encourage compliance through forgiveness of good faith violations of rules.

EPA and OSHA have taken administrative action similar to the draft section, and on March 16 of last year the President issued a Memorandum to all agencies requiring that penalties be waived under certain circumstances. That Presidential Memorandum grants greater discretion to the agencies than the draft section, and it provides an exception to waiver when a "significant threat" to health, safety or the environment is present. (The draft section requires that the threat also be "imminent".)

Title III. Equal Access to Justice Act. This section would make several changes in the Equal Access to Justice Act provisions relating to the recovery from the government of costs and fees in civil actions. Some preliminary concerns come to mind.

In the proposed new subparagraph (I) to the Equal Justice Act (p. 8, line 11-15), the draft section limits an agency's

"substantially justified" defense to the payment of attorneys' fees. The government would be required to demonstrate that the "cost to the small entity of complying with such position [of the United States] is not excessive when compared to the cost of any final settlement or award and such position is consistent with United States policy." The section appears to allow small entities to receive attorney's fees if final settlement is less than any previous demand for penalties. It creates a disincentive for settlement and for agencies to negotiate the amount of penalties. In addition, the section appears to also apply if the final settlement or award is less than the cost of the actions required to be taken by the small entity to cure the violation underlying a penalty. In that event, the section appears to focus only on the "cost" of compliance; it would not take into account any benefits, quantifiable or otherwise.

Title IV. Regulatory Flexibility Act. The Clinton Administration strongly supports adding a properly drafted right of judicial review to the Regulatory Flexibility Act. Although we supported the judicial review language in HR926, we have significant concerns about the specific language in Title IV of this draft substitute. The following detailed comments refer to the Regulatory Flexibility Act section that would be amended by Title IV. Because of the length of the analysis, the page and line of the draft bill is given for ease of reference.

Regulatory Flexibility Analyses

Sec. 603(a) (p. 9, lines 15-17). This amendment seeks to bring under the coverage of the Regulatory Flexibility Act IRS rules and interpretive rulemakings. The Administration strongly opposes this provision as unwise and unnecessary. In addition, the term "notice of interpretive rulemakings of general applicability" could inadvertently (and inappropriately) encompass an agency's interpretive guidances.

Sec. 604(a) (p. 10, lines 11-14). The Administration strongly opposes this new provision under section 604. This language would require an agency to select the one regulatory alternative that "minimizes the significant economic impact on small entities", notwithstanding competing policy and other considerations. Minimizing economic impacts may have nothing to do with achieving a cost-effective rule, maximizing net benefits to society, or developing a rule where benefits justify the costs. This supermandate requires only that costs be considered by the agency, with no consideration of the benefits of a rule.

Moreover, it is not clear how this supermandate would be reconciled with the decisional criteria applicable to major rules likely to be included in other regulatory reform bills. Questions as to which provision controls will only lead to confusion and the potential for burdensome litigation.

Sec. 604(b) (p. 10, lines 15-16). In general, there is no reason to amend this section. More specifically, the Administration opposes this amendment. Summaries of final regulatory flexibility analysis need not be provided in the Federal Register. The proposed section also would create uncertainty by deleting the description in the present section of when the analysis must be published. At the very least, the term "at the time of publication of the final rule" should be retained.

Sec. 605(b) (p. 12, lines 10-18). The proposed amendment would require an agency to give the "factual and legal reasons" for its certification that a rule does not have a significant economic impact on a substantial number of small entities. It may be very difficult to state "legal reasons" for such a certification. The present section's language, which simply states "reasons", should be retained.

Also, at line 17, the term "or at the time of publication of the final rule" should be inserted after "for the rule." This language is in present section 605(b), and it is crucial. For example, without it an agency making a certification for a final rule would not be required to publish it (and a statement of its reasons) in the Federal Register. Finally, the requirement that the agency provides its certification and statement to the Chief Counsel for Advocacy is unnecessary. The Chief Counsel already reviews the Federal Register, where the certification and statement are published.

Judicial Review

Sec. 611(a)(1) (p. 10, lines 20-23). The draft bill allows entities that are "adversely affected or aggrieved" to bring an action for review. The Administration strongly recommends that the word "aggrieved" should be stricken as overly broad, imprecise, and an invitation to unproductive litigation.

As drafted, this section would allow judicial review of Reg Flex provisions for which judicial review is inappropriate. Judicial review should not extend to:

- an agency determination that quantification of the effects of a rule is not practicable or reliable under section 607;
- an agency head's finding under section 608(a) that the rule is being promulgated in response to an emergency;
- an agency's determination to use the techniques in section 609 (1)-(5) to enable small entities to participate in the rulemaking process.

- an agency's certification under section 605(b) that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

- an agency's periodic review of agency rules under section 610.

In order to ensure that these sections are not subject to review, the last part of the section beginning with "this chapter" should be stricken and replaced with "section 604, and section 605(b) to the extent such section applies to a final rule." This change would properly limit judicial review to an agency's compliance with the requirements applicable to final regulatory flexibility analyses or a certification that a final analysis is not required. It is consistent generally with the regulatory flexibility act provision in "The Small Business Growth and Administrative Accountability Act of 1996" under consideration in the House.

Sec. 611(a)(4)(B) (p.11, lines 18-20). The Administration strongly opposes this provision. Failure of an agency to conduct a regulatory flexibility analysis should not prohibit enforcement of health, safety, and environmental laws. The court should be given discretion to stay the rule until corrective action is taken.

Other

Sec. 609 (pp. 12-14). This proposed revision of section 609 would require agencies to convene panels to review "materials" relating to initial and final regulatory flexibility analyses. These panels would include representatives from the SBA Office of Advocacy, OMB, and small entities. The agency would consult with these panels before issuing proposed and final rules. For proposed rules, panels are consulted only on issues relating to the procedures stated in section 603 (b) (3), (4) and (5). The draft contains a drafting error in the provisions relating to final rules. It refers on p. 14, lines 5 and 8-9, to subsection 604(a), paragraphs (3), (4) and (5); subsection 604(a) contains only subparagraphs (1), (2) and (3). In addition, the draft itself has two paragraphs (2) on p. 14.

This provision raises several concerns. In giving one group of stakeholders special rights to review NPRMs prior to publication, it conflicts with the letter and spirit of FACA. It also is inconsistent with the Administration's desire that agencies engage all stakeholders in properly balanced regulatory negotiations. The statutory regulatory review process should provide the views from all pertinent perspectives and stakeholders. Small business interests should be included in the regulatory development process from the beginning, without compromising these principles. In addition, permitting judicial

review of the adequacy and, potentially, the substance of such reviews would invite needless litigation and undue formality in the review process.

There are less serious issues. The provisions in section 603(b)(3), (4) and (5) only identify the nature of the affected entities and the related regulatory burdens. They do not relate to the more important issues that make up the heart of good regulatory flexibility analyses: (1) the significant regulatory alternatives that achieve the same regulatory goals, and (2) the costs and benefits of these alternative approaches. Without this information, these panels would be ill-equipped to influence the regulatory process.

In light of the drafting error noted above, it is unclear what portions of the final regulatory flexibility analysis would be subject to review. We note that subparagraph (3) of section 604(a) deals with significant regulatory alternatives.

Finally, the panels would not be provided with copies of the draft proposed or final rules. Significant input cannot be obtained without access to those documents (including rule preambles). Of course, the Congress will need to address the budgetary consequences of adding this resource burden on the Office of Advocacy and OMB.

Amendment in the Nature of a Substitute to S. 942
Offered by Mr. Bond

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement Fairness
4 Act of 1996".

5 **SEC. 2. PURPOSES.**

6 The purposes of this act are--

7 (1) to implement the recommendations of the 1995 White House Conference
8 on Small Business regarding the development and enforcement of Federal
9 regulations;

10 (2) to provide for judicial review of the Regulatory Flexibility Act;

11 (3) to encourage the effective participation of small business in the Federal
12 regulatory process;

13 (4) to simplify the language of Federal regulations affecting small business;

14 (5) to develop comprehensive sources of information on regulatory and
15 reporting requirements for small business;

16 (6) to create a more cooperative regulatory environment among agencies and
17 small business that is less punitive and more solution-oriented; and

18 (7) to make Federal regulators more accountable for their enforcement
19 actions by providing small entities with a meaningful opportunity for redress of
20 excessive enforcement activities.

21 **TITLE I--REGULATORY COMPLIANCE**

22 **SIMPLIFICATION**

23 **SEC. 101. DEFINITIONS.**

24 For purposes of this Act--

1 (1) the terms "rule" and "small entity" have same meaning as in section 601
2 of title 5, United States Code; and

3 (2) the term "agency" has the same meaning as in section 551 of title 5,
4 United States Code.

5 **SEC. 102. COMPLIANCE GUIDES.**

6 (a) **COMPLIANCE GUIDE.--** Beginning 60 days after the enactment of this section,
7 each agency shall publish one or more guides or instructions for compliance with rules
8 or groups of related rules, for which the agency has prepared a regulatory flexibility
9 analysis under section 604 of title 5, United States Code, describing the requirements
10 of the rule, and explaining the actions that an affected small entity is required to take
11 to comply with the rule. Such guides instructions shall be written in a manner likely
12 to be understood by affected small entities. Agencies may prepare separate guides or
13 instructions for groups or classes of similarly affected small entities for distribution
14 through means demonstrated to reach small entities, such as the Small Business
15 Ombudsman at the Environmental Protection Agency or small business development
16 centers established under the Small Business Act.

17 (b) **LIMITATION ON PENALTIES.--**

18 (1) Subject to paragraph (2), in any civil or administrative action against a
19 small entity for violation of a rule subject to this section, agencies shall waive
20 civil penalties in excess of the economic benefit to the small entity of non-
21 compliance with the rule for any violations occurring prior to the publication of a
22 guide or instructions for the rule covering such small entity that reasonably meets
23 the requirements of subsection (a).

24 (2) This subsection shall take effect 60 days after enactment for final rules
25 published after that date and 3 years after the date of enactment with respect to
26 any final rules in effect as of the date of enactment; and any final rules published
27 prior to the date 60 days after the date of the enactment.

28 (3) Any petition for judicial review of whether a published guide or

1 instruction meets the requirements of subsection (a) shall commence within one
2 year of publication. No defense to an agency enforcement action based on a claim
3 that a published guide or instruction does not meet the requirements of subsection
4 (a) may be raised after the date one year after publication.

5 **SEC. 103. SMALL ENTITY RULINGS.**

6 (a) **GENERAL.**--Whenever appropriate in the interest of administering statutes and
7 regulations within the jurisdiction of an agency, it shall be the practice of the agency
8 to answer inquiries of small entities as to their status with respect to such statutes and
9 regulations and as to the effects of their actions. Such rulings shall interpret and apply
10 the statutes and regulations within the jurisdiction of the agency to a specific set of
11 facts as supplied by the small entity.

12 (b) **PROGRAM.**--Each agency shall establish a program for issuing rulings in
13 response to such inquiries no later than 1 year after enactment of this section, utilizing
14 existing functions of the agency to the extent practicable, such as the practice described
15 at 26 C.F.R., section 601.201.

16 (c) **GUIDELINES.**-- Each agency shall publish guidelines establishing threshold
17 requirements to obtain a ruling under this section.

18 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.**

19 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

20 (1) in subparagraph (O), by striking "and" at the end;

21 (2) in subparagraph (P), by striking the period at the end and inserting a
22 semicolon; and

23 (3) by inserting after subparagraph (P) the following new subparagraphs:

24 "(Q) providing assistance to small business concerns regarding regulatory
25 requirements, including providing training with respect to cost-effective regulatory
26 compliance;

27 "(R) developing informational publications, establishing resource centers of
28 reference materials, and distributing compliance guides published under section 102(a)

1 of the Small Business Regulatory Fairness Act of 1996 to small business concerns:

2 "(S) developing a program to provide confidential onsite assessments and
3 recommendations regarding regulatory compliance to small business concerns and
4 assisting small business concerns in analyzing the business development issues
5 associated with regulatory implementation and compliance measures; and

6 "(T) developing a program to function as a comprehensive source for online
7 computer access to information government financial and contracting programs,
8 regulations, reporting requirements and compliance assistance for small business."

9 TITLE II--REGULATORY ENFORCEMENT REFORMS

10 SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT

11 OMBUDSMAN.

12 The Small Business Act (15 U.S.C. 631 et seq.) is amended--

13 (1) by redesignating section 30 as section 31; and

14 (2) by inserting after section 29 the following new section:

15 "SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

16 "(a) DEFINITIONS.--For purposes of this section, the term--

17 "(1) "Board" means a Regional Small Business Regulatory Fairness Board
18 established under subsection (c); and

19 "(2) "Ombudsman" means the Small Business and Agriculture Enforcement
20 Ombudsman designated under subsection (b).

21 "(b) SBA ENFORCEMENT OMBUDSMAN.--

22 "(1) Not later than 180 days after the date of enactment of this section, the
23 Administration shall designate a Small Business and Agriculture Enforcement
24 Ombudsman utilizing existing personnel to the extent practicable. Other agencies
25 shall assist the Ombudsman and take actions as necessary to ensure compliance
26 with the requirements of this section.

27 "(2) The Ombudsman shall--

1 (A) work with each agency with regulatory authority over small
 2 business to ensure that small business concerns subject to an audit, on-site
 3 inspection, compliance assistance effort, or other enforcement activity by
 4 agency personnel are provided with a confidential means to comment on and
 5 rate the performance of such personnel;

6 (B) establish means to solicit and receive comments from small
 7 business concerns regarding the enforcement activities of agency personnel
 8 and maintain such comments on a confidential basis, including via toll-free
 9 telephone number and computer access; and

10 (C) based on comments received from small business concerns and the
 11 Boards, annually report to Congress and affected agencies concerning the
 12 enforcement activities of agency personnel including a rating of the
 13 responsiveness to small business of the various regional and program offices
 14 of each agency and the degree to which regulated small business concerns
 15 are treated as customers of the agency; and

16 (D) coordinate and annually report on the activities, findings and
 17 recommendations of the Boards to the Administration and to the heads of
 18 affected agencies.

19 (c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

20 (1) Not later than 180 days after the date of enactment of this section, the
 21 Administration shall establish a Small Business Regulatory Fairness Board in each
 22 regional office of the Small Business Administration.

23 (2) Each Board established under paragraph (1) shall--

24 (A) meet at least annually to advise the Ombudsman on matters of
 25 concern to small businesses relating to the enforcement activities of agencies;

26 (B) report to the Ombudsman on instances of excessive enforcement
 27 actions of agencies against small business concerns including any findings or
 28 recommendations of the Board as to agency enforcement policy or practice;

1 and

2 "(C) prior to publication, provide comment on the annual report of the
3 Ombudsman prepared under subsection (b).

4 "(3) Each Board shall consist of five members appointed by the
5 Administration, after consulting with the chair and ranking minority member of
6 the Small Business Committees of the House and Senate.

7 "(4) Members of the Board shall serve for terms of three years or less.

8 "(5) The Administration shall select a chair from among the members of the
9 Board who shall serve for not more than 2 years as chair.

10 "(6) A majority of the members of the Board shall constitute a quorum for
11 the conduct of business, but a lesser number may hold hearings.

12 "(d) POWERS OF THE BOARDS.

13 "(1) The Board may, for the purpose of carrying out the provisions of this
14 section, hold such hearings, sit and act at such times and places, take such
15 testimony, and receive such evidence as the Board determines to be appropriate.

16 "(2) Section 1821 of title 28, United States Code, shall apply to witnesses
17 requested to appear at any hearing of the Board.

18 "(3) Upon the request of the Chairperson, the Board may secure directly
19 from the head of any Federal department or agency such information as the Board
20 considers necessary to carry out this section, other than any material described in
21 section 552(b) of title 5, United States Code.

22 "(4) The Board may use the United States mails in the same manner and
23 under the same conditions as other departments and agencies of the Federal
24 Government.

25 "(5) The Board may accept of donations of services necessary to conduct its
26 business.

27 "(6) Members of the Board shall serve without compensation, provided that,
28 members of the Board shall be allowed travel expenses, including per diem in lieu

1 of subsistence. at rates authorized for employees of agencies under subchapter 1 of
2 chapter 57 of title 5, United States Code, while away from their homes or regular
3 places of business in the performance of services for the Board.”.

4 **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.**

5 (a) Subject to subsection (b). In any civil or administrative action against a small
6 entity for violations of a rule subject to this section, covered agencies shall waive civil
7 penalties for the first violation of a statutory or regulatory requirement by a small
8 entity, provided that the violation is corrected within a reasonable correction period,
9 and the violation is discovered by the small entity through participation in a
10 compliance assistance or audit program supported by a state, or a compliance audit
11 resulting in disclosure of the violation to the covered agency or a state agency with
12 enforcement authority over the violation.

13 (b) This section shall not apply where--

14 (1) the small entity has been subject to multiple enforcement action by the
15 agency in the past five years;

16 (2) the violation involves criminal conduct; or

17 (3) the violation poses an imminent and substantial endangerment, or causes
18 serious actual harm, to public health, safety or the environment.

19 (c) For purposes of this section, the term “covered agency” means the
20 Environmental Protection Agency and the Occupational Safety and Health
21 Administration.

22 **TITLE III--EQUAL ACCESS TO JUSTICE ACT**
23 **AMENDMENTS**

24 **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

25 Section 504(b)(1) of title 5, United States Code, is amended --

26 (1) by striking “\$75” in subparagraph (A) and inserting “\$125”;

27 (2) by striking “, or (ii)” in subparagraph (B) and inserting “, (ii)”;

1 (3) at the end of subparagraph (B), by striking ":" and inserting the
2 following: ", or (iii) a small entity as defined in section 601:";

3 (4) by striking "; and" in subparagraph (D) and inserting ":";

4 (5) by adding at the end the following new subparagraphs:

5 "(F) "prevailing party" includes a small entity that has raised a successful
6 defense to a claim in an adversary adjudication brought by an agency, and a small
7 entity that is a party to an adversary adjudication brought by an agency in which
8 the cost to the small entity of a final settlement or award is less than the cost to
9 the small entity of complying with a position of the agency, including any
10 demand for settlement sought by the agency, and

11 "(G) in an adversary adjudication brought by an agency against a small
12 entity a position of the agency shall not be "substantially justified" unless the
13 agency demonstrates that the cost to the small entity of complying with such
14 position is not excessive when compared to the cost of any final settlement or
15 award and such position is consistent with agency policy."

16 SEC. 302. JUDICIAL PROCEEDINGS.

17 Section 2412 of title 28, United States Code, is amended in paragraph (d)(2)--

18 (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

19 (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

20 (3) at the end of subparagraph (B), by striking ":" and inserting the
21 following: ", or (iii) a small entity as defined in section 601:";

22 (4) by striking "; and" in subparagraph (G) and inserting ":";

23 (5) in subparagraph (H)--

24 (i) after "'prevailing party'." by inserting "includes a small entity that
25 has raised a successful defense to a claim in a civil action brought by the
26 United States, a small entity that is a party to a civil action brought by the
27 United States in which the cost to the small entity of a final settlement or
28 award is less than the cost to the small entity of complying with a position

1 of the United States, including any demand for settlement sought by the
2 United States, and": and

3 (ii) at the end of the subparagraph, by striking "." and inserting ": and":
4 and

5 (6) by adding at the end the following new subparagraph:

6 "(1) in a civil action brought by the United States against a small
7 entity, a position of the United States shall not be "substantially justified"
8 unless the United States demonstrates that the cost to the small entity of
9 complying with such position is not excessive when compared to the cost of
10 any final settlement or award and such position is consistent with United
11 States policy."

12 **TITLE IV--REGULATORY FLEXIBILITY ACT**

13 **AMENDMENTS**

14 **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

15 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,
16 United States Code, is amended by inserting after "proposed rule.", "or publishes a
17 notice of interpretive rulemaking of general applicability,".

18 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5, United
19 States Code, is amended --

20 (1) in subsection (a) to read as follows:

21 "(a) When an agency promulgates a final rule under section 553 of this title, after
22 being required by that section or any other law to publish a general notice of proposed
23 rulemaking, or otherwise publishing an initial regulatory flexibility analysis, the agency
24 shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility
25 analysis shall contain--

26 "(1) a succinct statement of the need for, and objectives of, the rule;

27 "(2) a summary of the issues raised by the public comments in response to the

1 initial regulatory flexibility analysis, a summary of the assessment of the agency of
2 such issues, and a statement of any changes made in the proposed rule as a result of
3 such comments;

4 "(3) a description of, and an estimate of the number of, small entities to which
5 the rule will apply or a brief description of why no such estimate is available;

6 "(4) a description of the projected reporting, record keeping and other compliance
7 requirements of the rule, including an estimate of the classes of small entities which
8 will be subject to the requirement and the type of professional skills necessary for
9 preparation of the report or record; and

10 "(5) a description of how the final rule has minimized the significant economic
11 impact on small entities consistent with the stated objectives of applicable statutes,
12 including a statement of the factual and legal reasons for selecting the alternative
13 adopted in the final rule and why each one of the other significant alternatives to the
14 rule considered by the agency was rejected."; and

15 (2) in subsection (b), by striking "at the time" and all that follows and
16 inserting "such analysis or a summary thereof".

17 **SEC. 402. JUDICIAL REVIEW.**

18 Section 611 of title 5, United States Code, is amended to read as follows:

19 **"§611. Judicial Review**

20 "(a)(1) For any rule subject to this chapter, a small entity, as defined in section
21 601, that is adversely affected or aggrieved by agency action is entitled to judicial
22 review of agency compliance with the requirements of this chapter, except the
23 requirements of sections 602, 603 and 612.

24 "(2) Each court having jurisdiction to review such rule for compliance with
25 section 553 of this title or under any other provision of law shall have jurisdiction to
26 review any claims of noncompliance with this chapter, except the requirements of
27 sections 602, 603 and 612.

28 "(3)(A) A small entity may seek such review during the period beginning on the

1 date of publication of the final rule and ending one year later, except that where a
2 provision of law requires that an action challenging a final agency regulation be
3 commenced before the expiration of such one year period, such lesser period shall
4 apply to a petition for judicial review under this section.

5 "(B) In the case where an agency delays the issuance of a final regulatory
6 flexibility analysis pursuant to section 608(b) of this chapter, a petition for
7 judicial review under this section shall be filed not later than --

8 (i) one year after the date the analysis is made available to the public.

9 or

10 (ii) where a provision of law requires that an action challenging a final
11 agency regulation be commenced before the expiration of the one year
12 period, the number of days specified in such provision of law that is after
13 the date the analysis is made available to the public.

14 "(4)(A) If the court determines, on the basis of the rulemaking record, that the
15 agency action was arbitrary, capricious, an abuse of discretion or otherwise not in
16 accordance with the law, the court shall order the agency to take corrective action
17 consistent with this chapter.

18 "(B) Small entities shall be exempt from compliance with rules subject to a
19 court order under subparagraph (A) until the court determines that such corrective
20 action has been undertaken in accordance with this subchapter.

21 "(5) Nothing in this subsection shall be construed to limit the authority of any
22 court to stay the effective date of any rule or provision thereof under any other
23 provision of law or to grant any other relief in addition to the requirements of this
24 section.

25 "(b) In an action for the judicial review of a rule, any regulatory flexibility
26 analysis for such rule (including an analysis prepared or corrected pursuant to
27 subparagraph (a)(4)(A)) shall constitute part of the whole record of agency action in
28 connection with such review.

1 “(c) Except as otherwise required by this chapter, the court shall apply the same
2 standards of judicial review that govern the review of agency findings under the statute
3 granting the agency authority to conduct the rulemaking.

4 “(d) Compliance or noncompliance by an agency with the provisions of this
5 chapter shall be subject to judicial review only in accordance with this section.

6 “(e) Nothing in this section bars judicial review of any other impact statement or
7 similar analysis required by any other law if judicial review of such statement or
8 analysis is otherwise provided by law.”

9 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) Section 605(b) of title 5, United States Code, is amended to read as follows:

11 “(b) Sections 603 and 604 of this title shall not apply to any rule if the head of
12 the agency certifies that the rule will not, if promulgated, have a significant economic
13 impact on a substantial number of small entities. If the head of the agency makes a
14 certification under the preceding sentence, the agency shall publish such certification,
15 along with a succinct statement providing the factual and legal reasons for such
16 certification, in the Federal Register along with the general notice of proposed
17 rulemaking for the rule. The agency shall provide such certification and statement to
18 the Chief Counsel for Advocacy of the Small Business Administration.”

19 (b) Section 612 of title 5, United States Code is amended --

20 (1) in subsection (a), by striking “the committees on the Judiciary of the
21 Senate and the House of Representatives, the Select Committee on Small Business
22 of the Senate, and the Committee on Small Business of the House of
23 Representatives” and inserting “the Committees on the Judiciary and Small
24 Business of the Senate and House of Representatives”.

25 (2) in subsection (b), by striking “his views with respect to the” and
26 inserting in lieu thereof, “his or her views with respect to the”.

27 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

28 (a) **SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.**-- Section 609

1 of title 5, United States Code is amended --

2 (1) before "techniques," by inserting "the reasonable use of";

3 (2) in paragraph (4), after "entities", by inserting "including soliciting and
4 receiving comments over computer networks";

5 (3) by designating the current text as subsection (a); and

6 (4) by adding the following new subsection:

7 "(b) Prior to publication of an initial regulatory flexibility analysis--

8 "(1) an agency shall notify the Chief Counsel for Advocacy of the Small
9 Business Administration and provide the Chief Counsel with information on the
10 potential impacts of the proposed rule on small entities and the type of small
11 entities that might be affected;

12 "(2) the Chief Counsel shall identify representatives of affected small entities
13 to assist in the assessing the potential impacts of the proposed rule;

14 "(3) the agency shall convene a review panel for such rule consisting of
15 representatives of the office within the agency responsible for carrying out the
16 proposed rule, the Office of Information and Regulatory Affairs within the Office
17 of Management and Budget, and the Chief Counsel;

18 "(4) the panel shall review any material the agency has prepared in
19 connection with this chapter and consult with the small entity representatives
20 identified by the Chief Counsel and other appropriate resources on issues related
21 to subsection 603(b), paragraphs (3), (4) and (5);

22 "(5) the review panel shall report on the comments of the small entity
23 representatives and its findings as to issues related to subsection 603(b),
24 paragraphs (3), (4) and (5), provided that such report shall be made public as part
25 of the rulemaking record; and

26 "(6) where appropriate, the agency shall modify the proposed rule or the
27 decision on whether an initial regulatory flexibility analysis is required.

28 "(c) Prior to publication of a final regulatory flexibility analysis--

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“(1) an agency shall reconvene the review panel established under paragraph (b)(3):

“(2) the panel shall review any material the agency has prepared in connection with this chapter and consult with small entity representatives identified by the Chief Counsel and other appropriate resources on issues related to subsection 604(a), paragraphs (3), (4) and (5):

“(2) the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsection 604(a), paragraphs (3), (4) and (5), provided that such report shall be made public as part of the rulemaking record; and

“(3) where appropriate, the agency shall modify the final rule or the decision on whether a final regulatory flexibility analysis is required.

“(d) An agency may in its discretion apply subsections (b) and (c) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.”

(b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.—Not later than 30 days after the date of enactment of this Act, the head of each agency that has conducted a final regulatory flexibility analysis shall designate an employee that has a small business advocacy or liaison role who is a member of the Senior Executive Service (as that term is defined in subsection 2101(a)) and whose immediate supervisor is appointed by the President, to be responsible for implementing this section and to act as permanent chair of the agency’s review panels established pursuant to this section.

Section-By-Section Summary
Bond Substitute to S. 942
(with Recommendations of the White House Conference on Small Business)

Sec. 1. Short Title - "Small Business Regulatory Enforcement Fairness Act of 1996"

Sec. 2. Purposes

- To implement the recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of the Regulatory Flexibility Act (RFA).
- To encourage the effective and early participation of small business in the Federal regulatory process by incorporating amended provisions of S. 917 (Domenici).
- To create a more cooperative, less punitive regulatory environment among agencies and small business.
- To make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of arbitrary enforcement actions.

Sec. 101. Definitions - Applies to all Federal agency rules that trigger a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA), i.e. they have a significant impact on a substantial number of small businesses or small towns.

Sec. 102. Compliance Guides - *WHCSB: Require all agencies to simplify language and forms required for use by small business.* Requires agencies to publish a guide or set instructions that is written in a manner likely to be understood by affected small businesses describing actions a small entity is required to take to comply with the rule. Starting 60 days after enactment, if a compliance guide or instructions that reasonably meets the criteria is not published for new rules, agencies would have to waive punitive civil penalties (but not economic benefit penalties) on small entities until the guide is published. For existing rules that triggered the RFA, the enforcement hammer would start in 3 years.

Sec. 103. Small Entity Rulings - *WHCSB: Require that all agencies provide a cooperative/consulting regulatory environment.* Directs agencies to establish a program to answer inquiries of small entities as to their status with respect to statutes and regulations that is similar to the current practice of the IRS in issuing private letter rulings.

Sec. 104. Services of Small Business Development Centers - *WHCSB: Require agencies to assemble information through a single source on all small-business related government programs, regulations, reporting requirements, and key federal contacts'*

names and phone numbers, with as much as is feasibly available by online computer access. Expands the list of permissible activities of small business development centers to include providing regulatory compliance assistance with confidential onsite compliance assessments to small business and to function as a comprehensive source for computer access to small business information.

Sec. 201. Small Business and Agriculture Ombudsman - *WHCSB: Require that all agencies provide a cooperative/consulting regulatory environment that follows due process procedures and that the agencies be less punitive and more solution-oriented in dealing with unintentional regulatory violations. Creates a Small Business and Agriculture Enforcement Ombudsman at SBA to give small business a confidential means to comment on and rate the performance of agency enforcement personnel. The Ombudsman will also compile the comments to provide an annual "customer satisfaction" rating of different agency offices - to see whether agencies are in fact treating small business more like customers than potential criminals. The Ombudsman would also coordinate with Small Business Regulatory Fairness Boards to be established in each SBA region. These boards will provide volunteer representatives from small business a greater opportunity to track and comment on agency enforcement policy and practice.*

Sec. 203. Rights of Small Entities in Enforcement Actions - *WHCSB: Prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention for a first-time specific violation. Codifies recent small business enforcement initiatives at EPA and OSHA to waive civil penalties for first violations by small businesses that are discovered through participation in a compliance assistance or audit programs supported by a state and corrected within a reasonable time. These waivers would not apply where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct, or the violation poses an imminent and substantial endangerment, or causes serious actual harm, to public health, safety or the environment.*

Sec. 301. and 302. Equal Access To Justice Act Amendments - *WHCSB: Require enforcement actions to comply with American due process concepts; adequate notice and opportunity to be heard, a presumption of innocence until proven guilty, and the issuance of an impartial judgement. Increases the maximum hourly rate for attorneys fees under the Equal Access to Justice Act from \$75 to \$125. Assists small businesses in recovering their attorney's fees if they have been subject to abusive or excessive enforcement actions and choose to fight an agency's excessive demands. Limits an agency's "substantially justified" defense to paying attorney's fees where the agency's demands in an enforcement action against a small business are excessive when compared to the size of the final settlement or award, or are against agency policy.*

Sec. 401. Regulatory Flexibility Analyses - WHCSB: *Congress should amend the Regulatory Flexibility Act, making it applicable to all federal agencies including the Internal Revenue Service. Clarifies the requirements of the RFA to apply to IRS rules and interpretive rulemakings. When a rule is likely to have a significant impact on a substantial number of small businesses, agencies must specify how they have minimized the impact on small business in final rulemakings consistent with the requirements of the underlying statute.*

Sec. 402. Judicial Review - WHCSB: *Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them. Waives the current bar on judicial review of the RFA and entitles a small entity that is adversely affected or aggrieved by agency action to judicial review of agency action, beginning on the date of publication of the final rule and ending one year later, except that where a provision of law requires a shorter period for challenging a final agency action. If the court determines that the agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court can set aside the rule or order the agency to take corrective action consistent with this chapter. The applicability of the rule to small entities is tolled pending completion of the court ordered corrective action.*

Sec. 403. Technical and Conforming Amendments - *Requires agencies to publish the factual and legal reasons for determining that the RFA does not apply to a rule.*

Sec. 404. Small Business Advocacy Review Panels - WHCSB: *Input from small business representatives should be required in any future legislation, policy development, and regulation making affecting small businesses. Amends the existing requirements of RFA section 609 for small business participation in the rulemaking process by incorporating a modified version of S. 917 (Domenici) to provide early input from small business. For proposed and final rules with a significant impact on a substantial number of small entities, agencies would have to establish panels to assist the agency in determining the potential impacts of proposed and final rules on small business, and to ask representatives from potentially affected small business for their views on the information required by the RFA. Agencies would designate a senior level official to be responsible for implementing this section and chairing the review panel for each rule. The agency promulgating a rule subject to the RFA would coordinate with the Chief Counsel for Advocacy to identify representatives from small business. The findings of the panel and the comments of small business representatives would be made public as part of the rulemaking record.*

THE WHITE HOUSE
WASHINGTON

Kathy -

These are old talking points, dealing with a prior version of HR 994, but almost everything in them is still true.

(They concern the 1/3 of the bill - the look back provision - that we object to.)

Elena

Talking Points for H.R. 994

- We understand that H.R. 994 is a sunset bill and agree that the underlying notion of the bill makes a certain amount of sense. Having issued a regulation, an agency should at some point have to look to see if the rule worked as intended and whether there were any unexpected consequences.
- This is a notion the President has supported. It is embodied in section 5 of the executive order that establishes the Administration's centralized review process (E.O. 12866).
- The problem is translating this commendable notion into legislation, particularly with regard to scope. Does one require that every rule be reviewed, or only those that have raised questions or objections? There are more than 23,000 regs out there, so the question of scope is not insignificant.
- It is not a cost-free exercise to review, or even to repeal, these regs. Aside from the obvious costs associated with undertaking the wide-ranging and complex review required by the bill, often there will be costs associated with *repealing* a rule.
- Many rules have required companies to change their production lines (by making capital expenditures for new equipment). A rule requiring car companies to install seat belts in new models is one example. Such costs, once incurred, are sunk costs. Repealing rules like the seat belt rule will not necessarily recover these costs; in fact, repeal may lead to additional costs as companies once again reconfigure their assembly lines.
- The question then is whether you really want agencies to use their increasingly scarce resources to look at every single reg whether or not there has been a complaint.
- H.R. 994 would permit this. Every rule in the CFR is covered, as well as many more that are not even in it:
 - all existing or new "significant" rules must go on a schedule for review (3-7 years). But the bill's definition of "rule" is so expansive ("each set of rules designated in the CFR as a part shall be treated as *one* rule") that almost every rule would reach the \$100 million threshold;
 - in addition, the bill's petition process for all "non-significant" rules would require agencies to do the same amount of work to

review non-significant rules as significant rules and in less time (3 years vs. 3-7 years).

- This warped process would allow agencies' agendas and review priorities to be set by private party petitioners, not by presidentially appointed political officers.
- Again, if the review process was cost-free, it would be one thing. Agencies could just put off reviews until they were feasible. But H.R. 994 would automatically terminate rules under review as soon as the deadline is passed. The reg is gone. It might not be the seat belt reg -- it could be a reg protecting the blood supply, or drinking water, or meat.
- One could delete the sunset provision, make the definition of "rule" rational, and give the agencies enough time to do the reviews properly. But this would effectively gut the bill of everything its principal supporters want.
- And even if you were to make these three changes, the bill would still be problematic because every agency is getting their budget cut and would still have to carry out the complex, time-consuming, and costly review process mandated by the bill.
- If you have a choice between IRS going after tax evaders or reviewing all its tax regs, which do you want? There simply aren't enough resources to do both.
- It is no comfort that this bill vests extraordinary new powers and responsibilities with OIRA. This kind of power and discretion shouldn't be vested in any single entity, and OIRA doesn't want it. We currently couldn't come close to doing all that the bill would required of us -- we simply don't have the time, the expertise, the FTEs, or the money.
- Finally, for those who say the bill's cost effects will be minimal, CBO's cost estimate of \$4 million annually is just not accurate. 50 regs reviewed a year at only \$75,000 a reg is just not what's going to happen.

ASSESSMENT OF H.R. 994 AS REPORTED BY THE HOUSE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

August 29, 1995

On July 18, 1995, H.R. 994, the Regulatory Sunset and Review Act of 1995, was reported out of the House Government Reform and Oversight Committee. What follows is an assessment of the bill, focusing particularly on provisions about which the Administration continues to have serious concerns.

H.R. 994, as reported, contains three amendments which improve the legislation: (1) an amendment (Slaughter, D-NY) increasing the threshold for the definition of "significant rule" from \$50 million to \$100 million; (2) an amendment (Kanjorski, D-PA) sunsetting the Act itself after 10 years; and (3) an amendment (Shays, R-CT) requiring that requests for comments on existing rules include comments on health, safety, and environmental *benefits* derived from the rule. Despite these improvements, a number of serious problems remain.

- Overly Broad Scope. H.R. 994 defines as "significant" (sec. 4(b)) all rules with a cumulative impact on the economy of \$100 million or more, as well as all rules designated as "major" pursuant to E.O. 12291 or "significant" pursuant to E.O. 12866. Some agencies believe that this definition is overly broad and would capture too many rules. Even more troubling, however, is the bill's definition of "rule" (sec. 13), which includes guidance documents and policy statements and which establishes that "each set of rules designated in the CFR as a part shall be treated as one rule." The effect of this extraordinarily broad definition of rule is to almost completely vitiate whatever limits are imposed by the threshold and to make reviewable almost every agency rule, no matter how insignificant.
- Enormous Drain on Agency Resources -- the Petition Process. H.R. 994 creates a petition process (sec. 4(c)) through which private parties can request that agencies review "non-significant" rules to ensure that they meet the applicable requirements under executive orders and statutes. The petition process is problematic for several reasons:
 - First, the threshold for review is too low -- the OIRA Administrator (who screens all petitions) must grant the petition and designate the rule for sunset review unless it would be "unreasonable" to do so.
 - Second, the bill provides for extremely tight deadlines for OMB's response (90 days for petitions, 30 days for congressional requests). Failure to respond by the deadline could lead to the automatic approval

of petitions. This could pose substantial problems if OMB is inundated with petitions and unable to respond by the deadlines.

-- Finally, the requirement that a petition's non-significant rule must be reviewed within 3 years will force agencies to arbitrarily give it review priority over significant rules agencies believe are more worthy of review but whose deadlines are 4, 5, 6, or 7 years.

The burdensome effect of the petition process is exacerbated by the bill's extraordinarily broad definition of "rule," which would make it possible to petition for review of almost any rule.

- Arbitrary, Burdensome, and Unreasonably Harsh Sunset Procedure. H.R. 994 requires that all existing significant rules must be reviewed within 4-7 years. New significant rules promulgated after enactment must be reviewed within 3 years of their effective date. Rules subject to review as a result of petitions or congressional requests must also be reviewed within 3 years (sec. 7). These deadlines are arbitrary and extremely short, much shorter in fact than the deadlines in S. 343. It will be both exceedingly difficult and expensive for agencies to conduct the many complex and detailed assessments that will be required in such a short period of time. Agencies certainly will not be able to carry out the careful examinations that many rules deserve. Moreover, agencies will be required to review new significant rules, and non-significant rules that were the subject of petitions, before existing significant rules in the 4, 5, 6 and 7 year groups even if the latter rules are more worthy of agency review. Finally, requiring that rules terminate automatically if the agency fails to complete review by the deadline is both unreasonably harsh and dangerous -- important health and safety rules may be erased from the Code for no other reason than a deadline was missed. This is contrary to reasoned rulemaking and the public interest, and may be the most pernicious provision in the bill.
- Overly Burdensome and Prescriptive Requirements for Sunset Review. H.R. 994 establishes an overly broad, rigid, and complex set of procedural steps that agencies and OMB must follow in conducting sunset reviews (sec. 6). In addition, the bill requires that agencies follow detailed and specific formats in issuing notices and reports as part of the review (sec. 8). Included among these requirements is cost-benefit and takings language mandating that agencies solicit comments on, and consider, the direct and indirect costs of a rule (including net reduction in the value of private property), whether benefits "exceed" costs (both generally and as to each specific industry sector the rule covers), and whether the rule constitutes the "least-cost" method of achieving the desired results.

- **Supermandate.** H.R. 994 requires that sunset reviews apply any decisional criteria set forth in existing law (sec. 5). Accordingly, the decisional criteria contained in any regulatory reform legislation passed by the Congress would be applied to existing rules. There is currently great concern among the agencies that the application of decisional criteria contained in pending reform bills, such as "least-cost alternatives," will lead to unsound regulatory review decisions.
- **Loss of Agency Discretion to OIRA.** H.R. 994 creates numerous new responsibilities and powers for the Administrator of OIRA that could pose special problems during a Republican administration. Of particular concern to agencies are provisions granting OIRA authority to determine whether particular existing rules should be reviewed in 4, 5, 6, or 7 years (sec. 6(a)) and giving OIRA veto-power over agency decisions whether rules should be continued unchanged, modified, or consolidated with other rules (sec. 6(c)).
- **Excessive Litigation.** H.R. 994 creates numerous new opportunities for judicial review of agency decisions to continue, modify, or consolidate rules as well as OIRA's decisions to grant or deny petitions for review (sec. 12). This provision will subject agencies and the Administration to an endless stream of costly court cases, further burdening our already overstretched court system and delaying the implementation of real regulatory reform.

THE WHITE HOUSE
WASHINGTON

Kathy -

There are being given
to Leon prior to his
meeting with Levin.
Though no one expects
him to get into the
"Agency Council"

Steve

BACKGROUND ON REGULATORY REFORM FOR LEVIN MEETING

OVERVIEW -- The opposition to regulatory reform legislation is playing very well for Democrats. Republicans and the business community are in retreat on the issue and may retreat further. Accordingly, the House is planning on passing a bill next week that is much less ambitious than the version in the Contract with America.

THEREFORE, THE ADMINISTRATION PREFERS A "LITTLE BILL" STRATEGY WHICH COMBINES PARTS OF THE NEW HOUSE BILL (LAYOVER and REG-FLEX) WITH PART OF THE LEVIN PROPOSAL (LOOKBACK). IF LEVIN DOES NOT AGREE, THEN WE SHOULD ASK HIM TO ENGAGE US IN DEALING WITH OUR SUBSTANTIVE CONCERNS WHILE UNDERSTANDING THAT WE HAVE A VERY "HIGH BAR."

Democrats are well positioned on the issue -- Polls indicate Americans want to reduce the size of government, but they do not feel overregulated on public health, safety and the environment. In fact, a majority support maintaining or increasing the current level of protections. At the same time the public is suspicious of the Republican approach where usiness lobbyists wrote their own bills to give special deals for special interests.

Regulatory Reform can be a major issue in November -- Regulatory reform is one of the best examples of the Republican's attempt to rollback public health and safety protections. Labor and the environmentalists intend to use this issue to target key races to help Democrats to regain control of Congress. The Senate bill is by far the best example of Dole supporting an extreme, anti-environmental position.

The Republicans are in retreat. -- Leading House Republicans believe a strong regulatory reform bill is no longer possible and have assembled a much less ambitious bill to pass next week (H.R. 994). Senate Republicans want to beat the rap that they can't pass any bill.

The current House bill presents an opportunity to redirect the debate -- This bill has three parts: (1) Congressional layover (which passed the Senate overwhelmingly); (2) Reg-Flex for small business (which previously passed the House overwhelmingly); and (3) "Lookback" on existing regulations. The Administration could live with the first two parts, and could declare them as a significant victory for the industry (especially small business), The Administration strongly objects to the lookback provision in the House bill, but the lookback approach in the Levin bill would be acceptable. Furthermore, big business gets very little out of the current House bill, so Levin has his greatest leverage right now.

There are still problems with the Levin proposal -- Although Levin has really moved this bill very far in our direction, it still does not yet meet the Administration's "high bar." Labor and the environmentalist strongly oppose the Levin approach on the main issue of judicially reviewable decisional criteria. They do not believe that a one-size-fits-all decisional criteria will not end up overturning important regulations or can avoid leading to protracted litigation for years to come. Certain agencies agree with this view.

Meanwhile the Administration will continue to support good regulatory reform -- We will continue our administrative reforms of the regulatory process and will support reasonable revisions to law, e.g., Superfund, RCRA, Safe Drinking Water Act, and Delaney.

AGENCY CONCERNS WITH CURRENT DRAFT

Decisional Criteria/Supermandate

- Remove limiting language from uncertainties escape clause (e.g., “infeasible”).
- Apply uncertainties escape clause to cost-effective decisional criterion.
- ??? Decisional criteria merely to inform, not as a requirement.

Judicial Review

- Simple statement that cost/benefit analysis and determination under decisional criteria is part of whole rulemaking record and that agency decision is considered on basis of whole rulemaking record under current APA 706 (both substantive and procedural review). [This is in effect a rewrite of words, not a disagreement with the concept.]
- ??? Eliminate any judicial review of decisional criteria.

Risk Assessment

- Remove section in its entirety.
- Fallback is to have a group of risk experts from the agencies scrub this section.

Effective Date

- ??? Notice of proposed rulemaking not covered if published in 6 months -- extend to also include a rulemaking that has begun by time of enactment.

Affirmative Defenses (Hutchinson Amendment)

- Remove this section in its entirety [passed Senate 80-0].
- Fallback -- court should consider reliance on interpretation in deciding whether to impose penalties; no absolute bar on such penalties.

THE WHITE HOUSE
WASHINGTON

Kathy -

There are the materials
we have issued that
Sully Katzen believes
set our "high bar" (with
respect to a comprehensive
Levin-type bill).

Ben



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

July 10, 1995
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 343 - Comprehensive Regulatory Reform Act of 1995

(Dole (R) KS and 29 cosponsors)

The Administration strongly supports the enactment of cost-benefit analysis and risk assessment legislation that would improve the regulatory system. S. 343, however, is not such a bill. Because the cumulative effect of its provisions would burden the regulatory system with additional paperwork, unnecessary costs, significant delay, and excessive litigation, the Secretaries of Labor, Agriculture, Health and Human Services, Housing and Urban Development, Transportation, the Treasury, and the Interior, the Administrator of the Environmental Protection Agency, and the Director of the Office of Management and Budget would recommend that the President veto S. 343 in its present form.

The Administration is particularly concerned that S. 343 could lead to:

- Unsound Regulatory Decisions. A regulatory reform bill should promote the development of more sensible regulations. S. 343, however, could require agencies to issue unsound regulations. It would force agencies to choose the least costly regulatory alternative available to them, even if spending a few more dollars would yield substantially greater benefits. It would also prevent agencies responsible for protecting public health, safety, or the environment from issuing regulations unless they can demonstrate a "significant" reduction in risk -- even if the benefits from a small reduction in risk exceed the costs. Both of these features would hinder, rather than promote, the development of cost-beneficial, cost-effective regulations. In addition, S. 343 could be construed to constitute a supermandate that would override existing statutory requirements indiscriminately.
- Excessive Litigation. While it is appropriate for courts to review final agency action to determine whether, taken as a whole, the action meets the requisite standards, S. 343 would increase opportunities for lawsuits and allow challenges to

agency action that is not yet final. Further, by needlessly altering numerous features of the Administrative Procedure Act, S. 343 could engender a substantial number of lawsuits concerning the meaning of changes to well-established law.

- A Backdoor Regulatory Moratorium. S. 343 would take effect immediately upon enactment, consequently leading to an unnecessary and time-consuming disruption of the rulemaking process. It would require proposed regulations that have already been through notice and comment, and are based on cost-benefit analysis, to begin the process all over again because of an agency's unknowing failure to follow one of the many new procedures in the bill.
- The Unproductive Use of Analytic Resources in Issuing New Rules. Since the mid-1970s, Presidents of both parties have selected \$100 million as the line of demarcation between that which warrants full-blown regulatory analysis and that which does not. Because cost-benefit and risk analyses can be costly and time-consuming, the Administration believes that \$100 million continues to be the appropriate threshold. S. 343, however, has as its threshold \$50 million -- a decision that would require agencies to use their resources unproductively and that therefore cannot itself withstand cost-benefit scrutiny.
- Agencies Overwhelmed with Petitions and the Lapsing of Effective Regulations. S. 343 creates numerous, often highly-convoluted petition processes that, taken together, could create opportunities for special interests to tie up an agency in additional paperwork and, in the process, waste valuable resources. Several of these processes allow agencies inadequate time to conduct the required analyses and prepare the required responses to petitions; contain inadequate standards against which the adequacy of petitions can be judged; contain inadequate limitations on who may properly file petitions; and contain inadequate safeguards against an agency becoming overwhelmed by large numbers of petitions. These problems are exacerbated by provisions providing for the sunseting of regulations according to arbitrary deadlines, which could cause effective regulations to lapse without going through the notice and comment process.
- Inappropriate Use of Risk Assessment and Peer Review. S. 343's risk assessment and peer review provisions are overly broad in scope and would introduce unnecessary

delays into the regulatory process. They would inappropriately subject all health, safety, and environmental regulations to risk assessment and peer review, regardless of whether such regulations are designed to reduce risk or whether a risk assessment and a peer review would, from a scientific perspective, be useful or appropriate.

- Slowed Environmental Cleanups. S. 343 could needlessly slow ongoing and planned environmental cleanup activities, including those at military installations necessary to make the installations being made available for productive non-military use. It would also invite attempts to renegotiate cleanup agreements, thereby hampering enforcement efforts and increasing public and private transaction costs.
- A Less Accountable and Less Transparent Regulatory Process. Any regulatory reform bill should bring "sunshine" to the regulatory review process. Executive Order No. 12866, "Regulatory Planning and Review," provides both for centralized Executive branch review of proposed regulations and for the disclosure of communications concerning pending rulemakings between persons outside the Executive branch and centralized reviewers. S. 343, however, contains no such sunshine provision and could consequently remove accountability and transparency from the regulatory process.
- An Unduly Lengthy Congressional Layover. S. 343 includes a provision for a congressional layover of 60 days that goes beyond the provisions of S. 219, which provided for a 45-day layover. S. 219 passed the Senate by a vote of 100-0, with Administration support.
- Unrealistic, Unmanageable Studies. S. 343 would require a comprehensive study of and report on all risks to health, safety, and the environment addressed by all federal agencies. It would also require the President to produce annually a highly detailed estimate of and report on the costs, benefits, and effects of virtually all existing regulatory programs. Such studies would not only be unmanageable to conduct and costly to produce, but would require scientific and economic analytical techniques that go beyond the state of the art.
- Unnecessarily Hindered Enforcement of Regulations and Out of Court Settlements. S. 343 could create disincentives for regulated entities to bring potentially conflicting regulations to the appropriate agencies' attention. It could also make it

unnecessarily difficult for agencies to settle litigation out of court.

- Significant Changes in Substantive Law Without Proper Consideration. S. 343 goes beyond attempting to reform the regulatory process by making changes in substantive law -- altering, for example, the Delaney Clause and the Community Right-to-Know Act. Whether such changes are appropriate should be decided only after full hearings in the committees of jurisdiction and full debate on the merits.

The Administration is as concerned with the cumulative effect of S. 343 as with its particular features. The Administration remains committed, however, to improving the regulatory process, both administratively and through legislation.

* * *



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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

JUN 23 1995

The Honorable Robert Dole
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

We wish to provide the Administration's views on the June 21st discussion draft of S. 343, the "Comprehensive Regulatory Reform Act of 1995." The Administration is committed to seeing enacted into law a regulatory reform bill that will help produce more sensible regulations when they are needed. We recognize that improvements have been made to the draft bill since it was reported by the Judiciary Committee. Nonetheless, we continue to have serious concerns with S. 343, and I would recommend that the President veto it if it were presented to him in its current form. Some of our more important concerns include:

- Threshold. Because cost-benefit and risk analyses can be costly and time-consuming, the Administration believes that \$100 million is the appropriate threshold. S. 343, however, has as its threshold \$50 million -- a requirement that would cause agencies to use their resources unproductively and that therefore cannot itself withstand cost-benefit scrutiny.
- Risk Assessment/Peer Review. The Administration has concerns about the extent to which S. 343's risk assessment and peer review provisions are overly broad in scope and attempt to micromanage the process of assessing risks.
- Supermandate. We believe that Section 624, "Decisional Criteria," could be construed both to constitute a supermandate that would override existing statutory requirements indiscriminately and to require agencies to make unsound regulatory decisions.
- Judicial Review. We believe that the bill could invite substantial amounts of litigation that would neither improve the agency decisionmaking process nor lead to the production of more sensible regulations.
- Petition/Lookback Process. We remain concerned that these provisions could provide an opportunity for

special interests to tie up an agency in additional paperwork and drain valuable resources in the process. We are also concerned that they contain an arbitrary deadline as a trigger for sunseting regulations.

- Effective Date. S. 343 contains provisions that provide little, if any, time for transition. The Administration is concerned that an immediate effective date could result in unnecessary and time-consuming disruption of the rulemaking process, requiring regulations that have already been through notice and comment and subject to Executive Order No. 12866 review to begin the process all over again because of an unknowing failure to follow a particular procedure in the bill.
- Environmental Cleanups. The Administration is concerned that Section 628 of the bill could halt in their tracks hazardous waste cleanups now underway and postpone for substantial periods of time those about to begin.
- Regulatory Flexibility. S. 343 as originally introduced contained provisions for judicial review of Regulatory Flexibility Act certifications that the Administration could support. The provisions of the June 21st draft, however, do not include the appropriate safeguards. These provisions could consequently generate substantial amounts of new and unproductive litigation.

This list of concerns is not exhaustive, and our evaluation of regulatory reform legislation will depend as much on its cumulative effect as on its individual features. We remain committed to working with the Congress in order to produce a regulatory reform bill that the President can sign. We remain opposed, however, to any regulatory reform legislation that will impair rather than improve the regulatory process and, specifically, to any bill that would generate additional costs, additional paperwork, additional litigation, and additional delay instead of producing common sense, cost-effective regulations that will continue to protect our health, our safety, and our environment.

Sincerely,

Sally Katzen
Sally Katzen
Administrator

An Identical Letter Has Been Sent to the Hon. Thomas Daschle

ISSUES OF CONCERN

- Decisional Criteria/Supermandate -- ensure no supermandate and sufficient flexibility where scientific or other uncertainties exist.
- Judicial Review -- possibility that minor procedural misstep with cost or risk analysis could be ground for remand; any review should be restricted to final agency action based on the whole rulemaking record under existing standards.
- Petitions/Look-Back Review -- burdensome and overlapping processes would tie agencies in knots and waste increasingly scarce resources.
- Effective Date -- backdoor regulatory moratorium if applicable retroactively or Congressional review period extended.

* * * * *

- Nunn-Coverdell Amendment's Definition of "Major Rule" -- expands rules subject to the bill's requirements to include up to 150 rules that affect small businesses.
- Risk Assessments -- applies to all agencies rather than just those that routinely regulate risk; micromanages peer review; requires extensive consideration of substitute risk; and pushes agencies toward single-point estimates rather than ranges.
- Repeal of Delaney/TRI Restrictions -- significant substantive issues should not be resolved in what is a "process" bill.
- Consent Decrees -- prohibits court enforcement of settlement agreements that restrict agency discretion; but *any* settlement agreement restricts the signers' discretion.
- Affirmative Defenses -- bars penalties where a party "reasonably" relies on rule inconsistent with rule being enforced or party's "good faith" interpretation of rule.
- Changes to APA -- changes 50-year old law in lots of minor ways that will engender much uncertainty and/or litigation.
- Regulatory Accounting -- burdensome and costly "make-work" requirement to calculate annually the costs and benefits of *all* major rules for 5-year period.

EXECUTIVE OFFICE OF THE PRESIDENT

February 21, 1996

TO: (See below)

FROM: Michael Fitzpatrick, OIRA/ Wesley Warren, CEQ

SUBJECT: Regulatory Reform

REMINDER

THERE WILL BE A REGULATORY REFORM CONFERENCE CALL THURSDAY, FEBRUARY 22, 1996, AT 5:00 P.M. The purpose of the conference call is to discuss new developments on the Hill regarding regulatory reform legislation. To access the conference call, dial (202) 757-2104, code # 1111.

As mentioned on Tuesday's call, you will find attached for your review a copy of the Bond Substitute to S.942 (14 pages) and a summary of that language (4 pages). You will also find attached a single page of the so-called "Levin Uncertainties" language. If you have any questions, please call Mike at (202) 395-1247 or Wesley at (202) 456-6224.

Name	Phone	Fax	Office
Kevin Burke	690-7627	690-7380	HHS
Diane Thompson	301-443-3793	301-443-2567	FDA/HHS
John Dwyer	514-4969	514-0238	DOJ
Mark Haag	514-5391	514-4231	DOJ
Richard Carro	622-0650	622-1188	Treas
Floyd Williams	622-0725	622-0534	Treas
Gary Guzy	260-7960	260-3684	EPA
Julie Anderson	260-5414	260-0516	EPA
Bob Wager	301-504-0515	301-504-0016	CPSC
Nell Eisner	366-4723	366-9313	DOT
Cresence Massei	366-9714	366-3675	DOT
Melanie Bellar	208-7693	208-5533	DOI
Larry Finfer	208-1786	208-4867	DOI
Mary Ann Richardson	219-6141	219-5120	DOL
Ronald Matzner	205-6642	205-6846	SBA
Bob Nordhaus	586-5966	586-1499	DOE
Tom Gessel	565-7625	565-7873	VA
Eric Olsen	720-3808	720-5437	USDA
Mike Levitt	482-3151	482-0512	DOC
Nelson Diaz	708-2244	708-3389	HUD
Jamie Studley	401-6000	401-5391	Ed
Maryanne Kane	326-2450	326-2477	FTC
Kaye Williams	942-0014	942-9650	SEC
Ed Jurith	395-6709	395-6708	ONDCP
Kitty Higgins	456-2572	456-6704	WHOCA
Kris Balderston	456-7071	456-6704	WHOCA
Tracey Thornton	456-6493	456-2604	WHLA
Janet Murguia	456-6620	456-2604	WHLA
Martha Foley	456-6799	456-2271	WHO
Linda Lance	456-6222	456-6231	OVP
Jennifer Miller	456-9056	456-6212	OVP
Michael Waldman	456-2272	456-7431	DPC
Ron Melnick	456-6087	456-6025	OSTP
Maroia Seidner	456-6202	456-6025	OSTP
Ellen Seidman	456-2802	456-2223	NEC
Mike Toman	395-3997	395-6853	CEA
Ray Prince	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC
Lisa Kountoupes	395-4790	395-3729	OMB/LA

MEMORANDUM

February 14, 1996

TO: All interested parties
FROM: Keith Cole, Regulatory Affairs Counsel, Senate Small Business Committee
RE: Hearing on S. 942

The Committee has scheduled a hearing on February 28, 1996 on the enclosed draft substitute to S. 942, the Small Business Regulatory Enforcement Fairness Act of 1996. This bill will be the Committee's primary legislative effort to respond to the recommendations of the White House Conference on Small Business regarding paperwork and regulation. The section-by-section summary of the draft indicates which WHCSB recommendations are intended to be addressed by each provision of the bill.

The draft includes language subjecting the Regulatory Flexibility Act to judicial review. This language has been modified from earlier versions in S.343 to better reflect the WHCSB recommendations. Section 404 of the draft also includes a modified version of S.917 (Domenici) which has also been referred to the Committee. The Chairman intends to combine S. 942 and S. 917 at markup and report out a single bill.

No markup has been scheduled at this time, but we intend to move expeditiously to report out this legislation. We welcome any comments you may have on this draft as we prepare for markup.

Section-By-Section Summary
Bond Substitute to S. 942
(with Recommendations of the White House Conference on Small Business)

Sec. 1. Short Title - "Small Business Regulatory Enforcement Fairness Act of 1996"

Sec. 2. Purposes

- To implement the recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations, including judicial review of the Regulatory Flexibility Act (RFA).
- To encourage the effective and early participation of small business in the Federal regulatory process by incorporating amended provisions of S. 917 (Domenici).
- To create a more cooperative, less punitive regulatory environment among agencies and small business.
- To make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of arbitrary enforcement actions.

Sec. 101. Definitions - Applies to all Federal agency rules that trigger a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA), i.e. they have a significant impact on a substantial number of small businesses or small towns.

Sec. 102. Compliance Guides - *WHCSB: Require all agencies to simplify language and forms required for use by small business.* Requires agencies to publish a guide or set instructions that is written in a manner likely to be understood by affected small businesses describing actions a small entity is required to take to comply with the rule. Starting 60 days after enactment, if a compliance guide or instructions that reasonably meets the criteria is not published for new rules, agencies would have to waive punitive civil penalties (but not economic benefit penalties) on small entities until the guide is published. For existing rules that triggered the RFA, the enforcement hammer would start in 3 years.

Sec. 103. Small Entity Rulings - *WHCSB: Require that all agencies provide a cooperative/consulting regulatory environment.* Directs agencies to establish a program to answer inquiries of small entities as to their status with respect to statutes and regulations that is similar to the current practice of the IRS in issuing private letter rulings.

Sec. 104. Services of Small Business Development Centers - *WHCSB: Require agencies to assemble information through a single source on all small-business related government programs, regulations, reporting requirements, and key federal contacts'*

names and phone numbers, with as much as is feasibly available by online computer access. Expands the list of permissible activities of small business development centers to include providing regulatory compliance assistance with confidential onsite compliance assessments to small business and to function as a comprehensive source for computer access to small business information.

Sec. 201. Small Business and Agriculture Ombudsman - *WHCSB: Require that all agencies provide a cooperative/consulting regulatory environment that follows due process procedures and that the agencies be less punitive and more solution-oriented in dealing with unintentional regulatory violations.* Creates a Small Business and Agriculture Enforcement Ombudsman at SBA to give small business a confidential means to comment on and rate the performance of agency enforcement personnel. The Ombudsman will also compile the comments to provide an annual "customer satisfaction" rating of different agency offices - to see whether agencies are in fact treating small business more like customers than potential criminals. The Ombudsman would also coordinate with Small Business Regulatory Fairness Boards to be established in each SBA region. These boards will provide volunteer representatives from small business a greater opportunity to track and comment on agency enforcement policy and practice.

Sec. 203. Rights of Small Entities in Enforcement Actions - *WHCSB: Prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention for a first-time specific violation.* Codifies recent small business enforcement initiatives at EPA and OSHA to waive civil penalties for first violations by small businesses that are discovered through participation in a compliance assistance or audit programs supported by a state and corrected within a reasonable time. These waivers would not apply where the small entity has been subject to multiple enforcement actions, the violation involves criminal conduct; or the violation poses an imminent and substantial endangerment, or causes serious actual harm, to public health, safety or the environment.

Sec. 301. and 302. Equal Access To Justice Act Amendments - *WHCSB: Require enforcement actions to comply with American due process concepts; adequate notice and opportunity to be heard, a presumption of innocence until proven guilty, and the issuance of an impartial judgement.* Increases the maximum hourly rate for attorneys fees under the Equal Access to Justice Act from \$75 to \$125. Assists small businesses in recovering their attorney's fees if they have been subject to abusive or excessive enforcement actions and choose to fight an agency's excessive demands. Limits an agency's "substantially justified" defense to paying attorney's fees where the agency's demands in an enforcement action against a small business are excessive when compared to the size of the final settlement or award, or are against agency policy.

Sec. 401. Regulatory Flexibility Analyses - WHCSB: *Congress should amend the Regulatory Flexibility Act, making it applicable to all federal agencies including the Internal Revenue Service.* Clarifies the requirements of the RFA to apply to IRS rules and interpretive rulemakings. When a rule is likely to have a significant impact on a substantial number of small businesses, agencies must specify how they have minimized the impact on small business in final rulemakings consistent with the requirements of the underlying statute.

Sec. 402. Judicial Review - WHCSB: *Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them.* Waives the current bar on judicial review of the RFA and entitles a small entity that is adversely affected or aggrieved by agency action to judicial review of agency action, beginning on the date of publication of the final rule and ending one year later, except that where a provision of law requires a shorter period for challenging a final agency action. If the court determines that the agency action was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law, the court can set aside the rule or order the agency to take corrective action consistent with this chapter. The applicability of the rule to small entities is tolled pending completion of the court ordered corrective action.

Sec. 403. Technical and Conforming Amendments - Requires agencies to publish the factual and legal reasons for determining that the RFA does not apply to a rule.

Sec. 404. Small Business Advocacy Review Panels - WHCSB: *Input from small business representatives should be required in any future legislation, policy development, and regulation making affecting small businesses.* Amends the existing requirements of RFA section 609 for small business participation in the rulemaking process by incorporating a modified version of S. 917 (Domenici) to provide early input from small business. For proposed and final rules with a significant impact on a substantial number of small entities, agencies would have to establish panels to assist the agency in determining the potential impacts of proposed and final rules on small business, and to ask representatives from potentially affected small businesses for their views on the information required by the RFA. Agencies would designate a senior level official to be responsible for implementing this section and chairing the review panel for each rule. The agency promulgating a rule subject to the RFA would coordinate with the Chief Counsel for Advocacy to identify representatives from small business. The findings of the panel and the comments of small business representatives would be made public as part of the rulemaking record.

Amendment in the Nature of a Substitute to S. 942
Offered by Mr. Bond

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement Fairness
4 Act of 1996".

5 **SEC. 2. PURPOSES.**

6 The purposes of this act are--

7 (1) to implement the recommendations of the 1995 White House Conference
8 on Small Business regarding the development and enforcement of Federal
9 regulations;

10 (2) to provide for judicial review of the Regulatory Flexibility Act;

11 (3) to encourage the effective participation of small business in the Federal
12 regulatory process;

13 (4) to simplify the language of Federal regulations affecting small business;

14 (5) to develop comprehensive sources of information on regulatory and
15 reporting requirements for small business;

16 (6) to create a more cooperative regulatory environment among agencies and
17 small business that is less punitive and more solution-oriented; and

18 (7) to make Federal regulators more accountable for their enforcement
19 actions by providing small entities with a meaningful opportunity for redress of
20 excessive enforcement activities.

21 **TITLE I--REGULATORY COMPLIANCE**

22 **SIMPLIFICATION**

23 **SEC. 101. DEFINITIONS.**

24 For purposes of this Act--

1 (1) the terms "rule" and "small entity" have same meaning as in section 601
2 of title 5, United States Code; and

3 (2) the term "agency" has the same meaning as in section 551 of title 5,
4 United States Code.

5 **SEC. 102. COMPLIANCE GUIDES.**

6 (a) **COMPLIANCE GUIDE.**-- Beginning 60 days after the enactment of this section,
7 each agency shall publish one or more guides or instructions for compliance with rules
8 or groups of related rules, for which the agency has prepared a regulatory flexibility
9 analysis under section 604 of title 5, United States Code, describing the requirements
10 of the rule, and explaining the actions that an affected small entity is required to take
11 to comply with the rule. Such guides instructions shall be written in a manner likely
12 to be understood by affected small entities. Agencies may prepare separate guides or
13 instructions for groups or classes of similarly affected small entities for distribution
14 through means demonstrated to reach small entities, such as the Small Business
15 Ombudsman at the Environmental Protection Agency or small business development
16 centers established under the Small Business Act..

17 (b) **LIMITATION ON PENALTIES.**--

18 (1) Subject to paragraph (2), in any civil or administrative action against a
19 small entity for violation of a rule subject to this section, agencies shall waive
20 civil penalties in excess of the economic benefit to the small entity of non-
21 compliance with the rule for any violations occurring prior to the publication of a
22 guide or instructions for the rule covering such small entity that reasonably meets
23 the requirements of subsection (a).

24 (2) This subsection shall take effect 60 days after enactment for final rules
25 published after that date and 3 years after the date of enactment with respect to
26 any final rules in effect as of the date of enactment; and any final rules published
27 prior to the date 60 days after the date of the enactment.

28 (3) Any petition for judicial review of whether a published guide or

1 instruction meets the requirements of subsection (a) shall commence within one
2 year of publication. No defense to an agency enforcement action based on a claim
3 that a published guide or instruction does not meet the requirements of subsection
4 (a) may be raised after the date one year after publication.

5 **SEC. 103. SMALL ENTITY RULINGS.**

6 (a) **GENERAL.**--Whenever appropriate in the interest of administering statutes and
7 regulations within the jurisdiction of an agency, it shall be the practice of the agency
8 to answer inquiries of small entities as to their status with respect to such statutes and
9 regulations and as to the effects of their actions. Such rulings shall interpret and apply
10 the statutes and regulations within the jurisdiction of the agency to a specific set of
11 facts as supplied by the small entity.

12 (b) **PROGRAM.**--Each agency shall establish a program for issuing rulings in
13 response to such inquiries no later than 1 year after enactment of this section, utilizing
14 existing functions of the agency to the extent practicable, such as the practice described
15 at 26 C.F.R., section 601.201.

16 (c) **GUIDELINES.**-- Each agency shall publish guidelines establishing threshold
17 requirements to obtain a ruling under this section.

18 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.**

19 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

20 (1) in subparagraph (O), by striking "and" at the end;

21 (2) in subparagraph (P), by striking the period at the end and inserting a
22 semicolon; and

23 (3) by inserting after subparagraph (P) the following new subparagraphs:

24 "(Q) providing assistance to small business concerns regarding regulatory
25 requirements, including providing training with respect to cost-effective regulatory
26 compliance;

27 "(R) developing informational publications, establishing resource centers of
28 reference materials, and distributing compliance guides published under section 102(a)

1 of the Small Business Regulatory Fairness Act of 1996 to small business concerns;

2 "(S) developing a program to provide confidential onsite assessments and
3 recommendations regarding regulatory compliance to small business concerns and
4 assisting small business concerns in analyzing the business development issues
5 associated with regulatory implementation and compliance measures; and

6 "(T) developing a program to function as a comprehensive source for online
7 computer access to information government financial and contracting programs.
8 regulations, reporting requirements and compliance assistance for small business."

9 **TITLE II--REGULATORY ENFORCEMENT REFORMS**

10 **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT**

11 **OMBUDSMAN.**

12 The Small Business Act (15 U.S.C. 631 et seq.) is amended--

13 (1) by redesignating section 30 as section 31; and

14 (2) by inserting after section 29 the following new section:

15 **"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

16 "(a) **DEFINITIONS.**--For purposes of this section, the term--

17 "(1) "Board" means a Regional Small Business Regulatory Fairness Board
18 established under subsection (c); and

19 "(2) "Ombudsman" means the Small Business and Agriculture Enforcement
20 Ombudsman designated under subsection (b).

21 "(b) **SBA ENFORCEMENT OMBUDSMAN.**--

22 "(1) Not later than 180 days after the date of enactment of this section, the
23 Administration shall designate a Small Business and Agriculture Enforcement
24 Ombudsman utilizing existing personnel to the extent practicable. Other agencies
25 shall assist the Ombudsman and take actions as necessary to ensure compliance
26 with the requirements of this section.

27 "(2) The Ombudsman shall--

1 (A) work with each agency with regulatory authority over small
2 business to ensure that small business concerns subject to an audit, on-site
3 inspection, compliance assistance effort, or other enforcement activity by
4 agency personnel are provided with a confidential means to comment on and
5 rate the performance of such personnel;

6 "(B) establish means to solicit and receive comments from small
7 business concerns regarding the enforcement activities of agency personnel
8 and maintain such comments on a confidential basis, including via toll-free
9 telephone number and computer access; and

10 "(C) based on comments received from small business concerns and the
11 Boards, annually report to Congress and affected agencies concerning the
12 enforcement activities of agency personnel including a rating of the
13 responsiveness to small business of the various regional and program offices
14 of each agency and the degree to which regulated small business concerns
15 are treated as customers of the agency; and

16 "(D) coordinate and annually report on the activities, findings and
17 recommendations of the Boards to the Administration and to the heads of
18 affected agencies.

19 **"(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--**

20 "(1) Not later than 180 days after the date of enactment of this section, the
21 Administration shall establish a Small Business Regulatory Fairness Board in each
22 regional office of the Small Business Administration.

23 "(2) Each Board established under paragraph (1) shall--

24 "(A) meet at least annually to advise the Ombudsman on matters of
25 concern to small businesses relating to the enforcement activities of agencies;

26 "(B) report to the Ombudsman on instances of excessive enforcement
27 actions of agencies against small business concerns including any findings or
28 recommendations of the Board as to agency enforcement policy or practice;

1 and

2 "(C) prior to publication, provide comment on the annual report of the
3 Ombudsman prepared under subsection (b).

4 "(3) Each Board shall consist of five members appointed by the
5 Administration, after consulting with the chair and ranking minority member of
6 the Small Business Committees of the House and Senate.

7 "(4) Members of the Board shall serve for terms of three years or less.

8 "(5) The Administration shall select a chair from among the members of the
9 Board who shall serve for not more than 2 years as chair.

10 "(6) A majority of the members of the Board shall constitute a quorum for
11 the conduct of business, but a lesser number may hold hearings.

12 "(d) POWERS OF THE BOARDS.

13 "(1) The Board may, for the purpose of carrying out the provisions of this
14 section, hold such hearings, sit and act at such times and places, take such
15 testimony, and receive such evidence as the Board determines to be appropriate.

16 "(2) Section 1821 of title 28, United States Code, shall apply to witnesses
17 requested to appear at any hearing of the Board.

18 "(3) Upon the request of the Chairperson, the Board may secure directly
19 from the head of any Federal department or agency such information as the Board
20 considers necessary to carry out this section, other than any material described in
21 section 552(b) of title 5, United States Code.

22 "(4) The Board may use the United States mails in the same manner and
23 under the same conditions as other departments and agencies of the Federal
24 Government.

25 "(5) The Board may accept of donations of services necessary to conduct its
26 business.

27 "(6) Members of the Board shall serve without compensation, provided that,
28 members of the Board shall be allowed travel expenses, including per diem in lieu

1 of subsistence, at rates authorized for employees of agencies under subchapter I of
2 chapter 57 of title 5, United States Code, while away from their homes or regular
3 places of business in the performance of services for the Board."

4 **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.**

5 (a) Subject to subsection (b), in any civil or administrative action against a small
6 entity for violations of a rule subject to this section, covered agencies shall waive civil
7 penalties for the first violation of a statutory or regulatory requirement by a small
8 entity, provided that the violation is corrected within a reasonable correction period,
9 and the violation is discovered by the small entity through participation in a
10 compliance assistance or audit program supported by a state, or a compliance audit
11 resulting in disclosure of the violation to the covered agency or a state agency with
12 enforcement authority over the violation.

13 (b) This section shall not apply where--

14 (1) the small entity has been subject to multiple enforcement action by the
15 agency in the past five years;

16 (2) the violation involves criminal conduct; or

17 (3) the violation poses an imminent and substantial endangerment, or causes
18 serious actual harm, to public health, safety or the environment.

19 (c) For purposes of this section, the term "covered agency" means the
20 Environmental Protection Agency and the Occupational Safety and Health
21 Administration.

22 **TITLE III--EQUAL ACCESS TO JUSTICE ACT**

23 **AMENDMENTS**

24 **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

25 Section 504(b)(1) of title 5, United States Code, is amended --

26 (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

27 (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

1 (3) at the end of subparagraph (B), by striking “;” and inserting the
2 following: “, or (iii) a small entity as defined in section 601;”;

3 (4) by striking “; and” in subparagraph (D) and inserting “;”

4 (5) by adding at the end the following new subparagraphs:

5 “(F) “prevailing party” includes a small entity that has raised a successful
6 defense to a claim in an adversary adjudication brought by an agency, and a small
7 entity that is a party to an adversary adjudication brought by an agency in which
8 the cost to the small entity of a final settlement or award is less than the cost to
9 the small entity of complying with a position of the agency, including any
10 demand for settlement sought by the agency, and

11 “(G) in an adversary adjudication brought by an agency against a small
12 entity a position of the agency shall not be “substantially justified” unless the
13 agency demonstrates that the cost to the small entity of complying with such
14 position is not excessive when compared to the cost of any final settlement or
15 award and such position is consistent with agency policy.”.

16 **SEC. 302. JUDICIAL PROCEEDINGS.**

17 Section 2412 of title 28, United States Code, is amended in paragraph (d)(2)--

18 (1) by striking “\$75” in subparagraph (A) and inserting “\$125”;

19 (2) by striking “, or (ii)” in subparagraph (B) and inserting “, (ii)”;

20 (3) at the end of subparagraph (B), by striking “;”, and inserting the
21 following: “, or (iii) a small entity as defined in section 601;”;

22 (4) by striking “; and” in subparagraph (G) and inserting “;”

23 (5) in subparagraph (H)--

24 (i) after ““prevailing party”,” by inserting “includes a small entity that
25 has raised a successful defense to a claim in a civil action brought by the
26 United States, a small entity that is a party to a civil action brought by the
27 United States in which the cost to the small entity of a final settlement or
28 award is less than the cost to the small entity of complying with a position

1 of the United States, including any demand for settlement sought by the
2 United States, and"; and

3 (ii) at the end of the subparagraph, by striking "." and inserting "; and";
4 and

5 (6) by adding at the end the following new subparagraph:

6 "(1) in a civil action brought by the United States against a small
7 entity, a position of the United States shall not be "substantially justified"
8 unless the United States demonstrates that the cost to the small entity of
9 complying with such position is not excessive when compared to the cost of
10 any final settlement or award and such position is consistent with United
11 States policy."

12 **TITLE IV--REGULATORY FLEXIBILITY ACT**

13 **AMENDMENTS**

14 **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

15 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,
16 United States Code, is amended by inserting after "proposed rule.", "or publishes a
17 notice of interpretive rulemaking of general applicability,".

18 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5, United
19 States Code, is amended --

20 (1) in subsection (a) to read as follows:

21 "(a) When an agency promulgates a final rule under section 553 of this title, after
22 being required by that section or any other law to publish a general notice of proposed
23 rulemaking, or otherwise publishing an initial regulatory flexibility analysis, the agency
24 shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility
25 analysis shall contain--

26 "(1) a succinct statement of the need for, and objectives of, the rule;

27 "(2) a summary of the issues raised by the public comments in response to the

1 initial regulatory flexibility analysis, a summary of the assessment of the agency of
2 such issues, and a statement of any changes made in the proposed rule as a result of
3 such comments;

4 "(3) a description of, and an estimate of the number of, small entities to which
5 the rule will apply or a brief description of why no such estimate is available;

6 "(4) a description of the projected reporting, record keeping and other compliance
7 requirements of the rule, including an estimate of the classes of small entities which
8 will be subject to the requirement and the type of professional skills necessary for
9 preparation of the report or record; and

10 "(5) a description of how the final rule has minimized the significant economic
11 impact on small entities consistent with the stated objectives of applicable statutes,
12 including a statement of the factual and legal reasons for selecting the alternative
13 adopted in the final rule and why each one of the other significant alternatives to the
14 rule considered by the agency was rejected."; and

15 (2) in subsection (b), by striking "at the time" and all that follows and
16 inserting "such analysis or a summary thereof."

17 **SEC. 402. JUDICIAL REVIEW.**

18 Section 611 of title 5, United States Code, is amended to read as follows:

19 **"§611. Judicial Review**

20 "(a)(1) For any rule subject to this chapter, a small entity, as defined in section
21 601, that is adversely affected or aggrieved by agency action is entitled to judicial
22 review of agency compliance with the requirements of this chapter, except the
23 requirements of sections 602, 603 and 612.

24 "(2) Each court having jurisdiction to review such rule for compliance with
25 section 553 of this title or under any other provision of law shall have jurisdiction to
26 review any claims of noncompliance with this chapter, except the requirements of
27 sections 602, 603 and 612.

28 "(3)(A) A small entity may seek such review during the period beginning on the

1 date of publication of the final rule and ending one year later, except that where a
2 provision of law requires that an action challenging a final agency regulation be
3 commenced before the expiration of such one year period, such lesser period shall
4 apply to a petition for judicial review under this section.

5 "(B) In the case where an agency delays the issuance of a final regulatory
6 flexibility analysis pursuant to section 608(b) of this chapter, a petition for
7 judicial review under this section shall be filed not later than --

8 (i) one year after the date the analysis is made available to the public.

9 or

10 (ii) where a provision of law requires that an action challenging a final
11 agency regulation be commenced before the expiration of the one year
12 period, the number of days specified in such provision of law that is after
13 the date the analysis is made available to the public.

14 "(4)(A) If the court determines, on the basis of the rulemaking record, that the
15 agency action was arbitrary, capricious, an abuse of discretion or otherwise not in
16 accordance with the law, the court shall order the agency to take corrective action
17 consistent with this chapter.

18 "(B) Small entities shall be exempt from compliance with rules subject to a
19 court order under subparagraph (A) until the court determines that such corrective
20 action has been undertaken in accordance with this subchapter.

21 "(5) Nothing in this subsection shall be construed to limit the authority of any
22 court to stay the effective date of any rule or provision thereof under any other
23 provision of law or to grant any other relief in addition to the requirements of this
24 section.

25 "(b) In an action for the judicial review of a rule, any regulatory flexibility
26 analysis for such rule (including an analysis prepared or corrected pursuant to
27 subparagraph (a)(4)(A)) shall constitute part of the whole record of agency action in
28 connection with such review.

1 “(c) Except as otherwise required by this chapter, the court shall apply the same
2 standards of judicial review that govern the review of agency findings under the statute
3 granting the agency authority to conduct the rulemaking.

4 “(d) Compliance or noncompliance by an agency with the provisions of this
5 chapter shall be subject to judicial review only in accordance with this section.

6 “(e) Nothing in this section bars judicial review of any other impact statement or
7 similar analysis required by any other law if judicial review of such statement or
8 analysis is otherwise provided by law.”

9 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

10 (a) Section 605(b) of title 5, United States Code, is amended to read as follows:

11 “(b) Sections 603 and 604 of this title shall not apply to any rule if the head of
12 the agency certifies that the rule will not, if promulgated, have a significant economic
13 impact on a substantial number of small entities. If the head of the agency makes a
14 certification under the preceding sentence, the agency shall publish such certification,
15 along with a succinct statement providing the factual and legal reasons for such
16 certification, in the Federal Register along with the general notice of proposed
17 rulemaking for the rule. The agency shall provide such certification and statement to
18 the Chief Counsel for Advocacy of the Small Business Administration.”

19 (b) Section 612 of title 5, United States Code is amended --

20 (1) in subsection (a), by striking “the committees on the Judiciary of the
21 Senate and the House of Representatives, the Select Committee on Small Business
22 of the Senate, and the Committee on Small Business of the House of
23 Representatives” and inserting “the Committees on the Judiciary and Small
24 Business of the Senate and House of Representatives”.

25 (2) in subsection (b), by striking “his views with respect to the” and
26 inserting in lieu thereof, “his or her views with respect to the”.

27 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

28 (a) **SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.--** Section 609

1 of title 5. United States Code is amended --

2 (1) before "techniques." by inserting "the reasonable use of";

3 (2) in paragraph (4), after "entities", by inserting "including soliciting and
4 receiving comments over computer networks";

5 (3) by designating the current text as subsection (a); and

6 (4) by adding the following new subsection:

7 "(b) Prior to publication of an initial regulatory flexibility analysis--

8 "(1) an agency shall notify the Chief Counsel for Advocacy of the Small
9 Business Administration and provide the Chief Counsel with information on the
10 potential impacts of the proposed rule on small entities and the type of small
11 entities that might be affected;

12 "(2) the Chief Counsel shall identify representatives of affected small entities
13 to assist in the assessing the potential impacts of the proposed rule;

14 "(3) the agency shall convene a review panel for such rule consisting of
15 representatives of the office within the agency responsible for carrying out the
16 proposed rule, the Office of Information and Regulatory Affairs within the Office
17 of Management and Budget, and the Chief Counsel;

18 "(4) the panel shall review any material the agency has prepared in
19 connection with this chapter and consult with the small entity representatives
20 identified by the Chief Counsel and other appropriate resources on issues related
21 to subsection 603(b), paragraphs (3), (4) and (5);

22 "(5) the review panel shall report on the comments of the small entity
23 representatives and its findings as to issues related to subsection 603(b),
24 paragraphs (3), (4) and (5), provided that such report shall be made public as part
25 of the rulemaking record; and

26 "(6) where appropriate, the agency shall modify the proposed rule or the
27 decision on whether an initial regulatory flexibility analysis is required.

28 "(c) Prior to publication of a final regulatory flexibility analysis--

1 “(1) an agency shall reconvene the review panel established under paragraph
2 (b)(3):

3 “(2) the panel shall review any material the agency has prepared in
4 connection with this chapter and consult with small entity representatives
5 identified by the Chief Counsel and other appropriate resources on issues related
6 to subsection 604(a), paragraphs (3), (4) and (5):

7 “(2) the review panel shall report on the comments of the small entity
8 representatives and its findings as to issues related to subsection 604(a),
9 paragraphs (3), (4) and (5), provided that such report shall be made public as part
10 of the rulemaking record; and

11 “(3) where appropriate, the agency shall modify the final rule or the decision
12 on whether a final regulatory flexibility analysis is required.

13 “(d) An agency may in its discretion apply subsections (b) and (c) to rules that the
14 agency intends to certify under subsection 605(b), but the agency believes may have a
15 greater than de minimis impact on a substantial number of small entities.”

16 (b) **SMALL BUSINESS ADVOCACY CHAIRPERSONS.**--Not later than 30 days after the
17 date of enactment of this Act, the head of each agency that has conducted a final
18 regulatory flexibility analysis shall designate an employee that has a small business
19 advocacy or liaison role who is a member of the Senior Executive Service (as that
20 term is defined in subsection 2101(a)) and whose immediate supervisor is appointed by
21 the President, to be responsible for implementing this section and to act as permanent
22 chair of the agency's review panels established pursuant to this section.
23

The business proposal would eliminate the uncertainties escape patch entirely and replace it with consideration of uncertainties in the risk assessment which would then be incorporated into regulatory analysis (cost/benefit analysis). The language below reflects the change.

4

Uncertainties

1. Add to the definitions of "benefits" :

--the term benefit means the reasonably identifiable significant favorable effects, quantifiable and nonquantifiable, including reduction in risk and social, health, environmental, and economic effects....

2. Add to the definitions of "costs":

--the term cost means the reasonably identifiable significant adverse effects, quantifiable and nonquantifiable, including substitution risks and social, health, environmental, and economic effects....

3. In 1/17/96 draft (just for reference purposes) add at end of line 12..

"Where a risk assessment has been prepared pursuant to Subchapter III, the analysis of costs and benefits shall rely on the results of that risk assessment."

4. In decisional criteria make a new (a)(1)(D):

"(D) Any determination under subsections (a)(1)(B) or (a)(1)(C) of this section shall be based on the regulatory analysis required by Section 622 including the uncertainties therein."

How Reg Rel Bill

THE SMALL BUSINESS RELIEF AND REGULATORY ACCOUNTABILITY ACT OF 1996

Legislative History

Title I: Strengthening Regulatory Flexibility

- House ♦ Passed the Judiciary Committee by voice vote on February 16, 1995 as Title I of HR 926; Passed the House by a vote of 415-15 on March 1, 1995.
- ♦ Also passed the House again 257-165 on Nov. 9, 1995 as part of the "Walker Amendment" to the Debt Limit Bill (Sec. 3004, Title III of HR 2586).
- Senate ♦ Passed the Senate as part of the Debt Limit Bill, 49-47 on November 9, 1995.

Title II: Regulatory Impact Analysis

- House ♦ Passed the Judiciary Committee by voice vote on February 16, 1995 as Title II, HR 926; Passed the House by a vote of 415-15 on March 1, 1995.
- ♦ Also passed the House again 257-165 on Nov. 9, 1995 as part of the "Walker Amendment" to the Debt Limit Bill (Sec. 3002, Title III of HR 2586).
- Senate ♦ Passed the Senate as part of the Debt Limit Bill, 49-47 on November 9, 1995.

Title III: Government management Prioritization

- Senate ♦ Passed the Senate as a Roth/Biden/Glenn amendment to S. 343 by voice vote on July 13, 1995 (broader version).
- ♦ Passed the Senate again as part of the Debt Limit Bill, 49-47 on November 9, 1995.
- House ♦ Passed the House 257-165 on November 9, 1995 as part of the "Walker Amendment" to the Debt Limit Bill (part of Section 3003 of Title III).

Title IV: Administrative Review

- House ♦ Passed Government Reform and Oversight Committee 39-7 on July 18, 1995, HR 994 (with automatic sunset of rules); Passed Judiciary Committee by voice vote Oct. 31, 1995 (without automatic sunset of rules).
- Senate ♦ Passed Senate Governmental Affairs in S. 291, 12-0 on March 23, 1995 (with automatic sunset of rules); Passed Senate Judiciary in S. 343 (with automatic sunset of rules).
- ♦ Senate passed Abraham strengthening amendment 96-0 during debate on S. 343.

Title V: Congressional Review

- Senate ♦ Passed the Senate 100-0 on March 29, 1995 (as S. 219).
- House ♦ Passed the House 257-165 on November 9, 1995 as part of the "Walker Amendment" to the Debt Limit Bill (Sec. 3006, Title III of HR 2586).

THE SMALL BUSINESS RELIEF AND REGULATORY ACCOUNTABILITY ACT OF 1996

Summary of Provisions

Title I: Strengthening Regulatory Flexibility

- ◆ Currently, the Regulatory Flexibility Act (RFA) requires federal agencies issuing new rules to consider the impact the rule would have on small entities, including small businesses and local governments. An agency is supposed to prepare a regulatory flexibility analysis unless it certifies that the rule would not have a significant economic impact on a substantial number of small entities.
- ◆ However, the RFA does not allow small businesses or other small entities to challenge such an agency certification or to challenge an agency's failure to otherwise follow the procedures set forth in the Act.
- ◆ Title I of this bill will strengthen the RFA by allowing affected small entities to challenge certain agency action and inaction under the RFA in court.

Title II: Regulatory Impact Analysis

- ◆ Title II amends current law by defining a "major rule" and requiring federal agencies to consider the impact of proposed major rules before they are published. Agencies proposing a new major rule will have to conduct and publish a regulatory impact analysis describing the rule's potential benefits, potential costs, the alternative approaches considered, any conflicts with or duplication of other rules, whether on-site inspections or maintenance of records will be required and an estimate of the implementation and enforcement costs to the agency.
- ◆ Title II also will require agencies proposing major rules to hold a hearing or extend the comment period if more than 100 interested persons submit requests for a hearing or such an extension.

Title III: Government Management Prioritization

- ◆ Title III will promote the establishment of government budget and strategic planning priorities in order to achieve greater health, safety and environmental protection at less cost.
- ◆ Each federal agency with authority to protect human health, safety, or the environment is directed to establish priorities in budget and strategic planning which will achieve the greatest overall net reduction in risks.
- ◆ The President is directed to incorporate each agency's budget and strategic planning priorities in his annual budget request to Congress. The title also requests the President to recommend legislation to reform, eliminate, or enhance programs relating to human health, safety, or the environment that would assist agencies in achieving the budget and strategic planning priorities.
- ◆ Because the bill provides that "[n]othing in this title shall be construed to supersede any statutory standard requirement, or deadline designed to protect human health, safety, or the environment" there can be no backsliding on important health, safety or environmental goals, and the bill will only help in achieving these important goals more effectively and efficiently.

Title IV: Administrative Review

- ◆ In a speech on February 21, 1995, President Clinton acknowledged that the regulatory culture was in need of fundamental change. As a consequence, he ordered all regulatory agencies "to go over every single regulation

and cut those regulations which are obsolete *** and make a report to me by June 1st, along with any... recommendations [needed] to ...reduce the regulatory burden on the American people." The agencies' response to President Clinton's directive, however, has been disappointing and underscores the need for congressional action that will affect a permanent change in the regulatory culture.

- ◆ Title IV will require federal agencies to periodically review their major rules to determine whether they should be continued without change, modified, consolidated with other rules, or allowed to terminate. There also is a petition process that will permit the public and appropriate Committees of Congress to request that agencies review a non-major rule in the same manner.
- ◆ Agencies will review their existing major rules over a staggered nine-year period. Agencies will review their new major rules seven years after they are issued. The President may extend these periods if necessary. This title will help ensure that obsolete, unnecessary, duplicative, or conflicting rules are reviewed and either modified or terminated.
- ◆ Title IV contains the following provisions from HR 994 reported by both the House Government Reform and Oversight Committee and the House Judiciary Committee:
 - Agencies must first conduct an "administrative review" of their rules and consider public comments on twelve factors relating to the rule's past implementation.
 - Agencies must then conduct an APA rulemaking procedure to continue the rule, modify or consolidate the rule, or terminate the rule.
 - Rules that are continued, modified, or consolidated with other rules must meet the same statutory requirements that would apply as if they were issued as new rules.
 - There is no "sunset" of regulations, but agencies are directed to follow a reasonable timetable in order to complete each review and rulemaking in an orderly manner.

Title V: Congressional Review

- ◆ Title V will allow Congress to review major rules to determine whether they should be "vetoed" prior to taking effect. Title V creates expedited procedures in Congress to consider joint resolutions of disapproval which would overrule the new rule prior to its implementation.
- ◆ A joint resolution of disapproval would be presented to the President like any other bill. However, Congress can use the expedited procedures at the proposed rule stage to indicate that an agency should reconsider a proposed rule that Congress believes is seriously flawed.

**EFFECT OF H.R. 1022 ON
REGULATIONS THAT
ENSURE THE HEALTH,
SAFETY, AND
ENVIRONMENT FOR ALL
PEOPLE**

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THOUSANDS OF CHILDREN THREATENED WITH LEAD POISONING BY H.R. 1022

ISSUE: Lead poisoning is the number one health hazard for America's children under the age of six. Approximately 1.7 million children have been exposed to dangerous levels of lead in their blood, primarily from lead-based paint. Lead poisoning can cause learning disabilities, behavioral problems, and brain damage. Low-income, inner-city, African-American and Hispanic-American children are at especially high risk for exposure to lead-based paint because of the older housing and neighborhoods in which they live. Federal lead-based paint regulations can help protect these children from poisoning.

AGENCY RESPONSIBILITY AND ACTION: The Department of Housing and Urban Development (HUD) is responsible for preparing lead-based paint regulations that require evaluation and reduction of lead-based paint hazards in government-owned and government-assisted housing. Under the law HUD must also require sellers and landlords to provide purchasers and tenants of homes built prior to 1978 with information on lead-based paint hazards.

IMPACT OF H.R. 1022: H.R. 1022 would cause a two to three year delay in HUD's completing its draft lead-based paint rules and turning them into legally-binding regulations. This long and unnecessary delay in issuing lead-based paint regulations would seriously jeopardize the health of thousands of young children who are currently at risk of lead poisoning. Under H.R. 1022, HUD would be required to develop a risk assessment for each lead-based paint rule, conduct a peer review of the risk assessment and regulatory impact analysis, and submit an advanced notice of proposed rulemaking to the Federal Register. Additional time would also be necessary for a public hearing if more than 100 individual comments were received on the proposed rules, which would be likely. The lead-based paint rules could easily be delayed by two to three years, based on HUD's recent experience with a peer review panel for the development of new "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," and on the time needed to develop and publish an advanced notice of proposed rulemaking. H.R. 1022 would delay HUD's efforts to reduce the lead poisoning of millions of America's children.

Draft document for discussion purposes only.

H.R. 1022 COULD THREATEN THE SAFETY OF TOYS

ISSUE: Parents want to be sure that the toys they get for their children are safe toys. A source of amusement that helps our children develop should not bring tragedy into a family. We need to ensure that toys are free of harmful features like small parts or sharp edges that can turn play into disaster. For example, we all know that young children put almost everything into their mouths. Small pieces can break off of a toy while a child is playing with it, and when these pieces find their way to the child's mouth, the child can choke and become severely injured or die.

AGENCY RESPONSIBILITY AND ACTION: The Consumer Product Safety Commission oversees the safety of toys and children's products. Under its existing rules, toys for children under 3 years old are prohibited from having small parts. Toy regulations like this one help to keep dangerous products away from young children. Toys are safer because the restriction against small parts is in place. Keeping toys safe demands continuing action. Just last year, Congress passed the Child Safety Protection Act that required warning labels to tell parents that certain toys present a choking hazard. The law was supported by the toy industry which wanted a uniform federal standard and by consumer advocates. The law directed CPSC to issue rules to carry out the law. The Commission is about to issue these rules.

IMPACT OF H.R. 1022: The inflexible requirements of H.R. 1022 would make it more difficult to issue safety rules, like the small parts restriction, that are necessary to protect against current and future toy hazards. The bill would require a lengthy process of analysis and peer review. These procedures would impede the Commission's ability to issue safety rules promptly. That could mean the Commission would be spending time doing paperwork while dangerous children's products remain on the market. The bill would hold up rules like the toy labeling rules that both industry and parents want. Because the bill explicitly states -- in section 202(b) -- that the bill's rigid cost benefit criteria override previous Congressional direction, it would require CPSC to conduct a cost benefit analysis even though Congress specifically told CPSC not to take the time to do such an analysis for these toy labeling rules. The additional steps required by H.R. 1022 could mean that the toy industry would have to wait for the Commission's guidance on what it must do to comply with the law. This could delay the clear and uniform choking warnings that Congress wanted parents to have.

H.R. 1022 COULD DIMINISH PROTECTIONS FOR CHILDREN AGAINST ACCIDENTAL POISONING

ISSUE: Every year approximately 50 young children die from accidentally swallowing harmful products that are found around the house. Many more are seriously injured. Many of these accidents can be avoided if the product is in child-resistant packaging. These are the safety caps and packages found on products like prescription drugs, aspirin or turpentine. These caps can save a child's life.

AGENCY RESPONSIBILITY AND ACTION: The Consumer Product Safety Commission has the responsibility to require child-resistant packaging for hazardous household substances. CPSC just recently issued a rule requiring child-resistant packaging for mouthwash that contains more than 3 grams of ethanol (alcohol). Children find the bright color and sweetness of mouthwash appealing. However, young children have been seriously injured or died from accidentally ingesting mouthwash that contains ethanol. Most recently, a 3 year-old girl died when she ingested an unknown quantity of mouthwash that was 18% ethanol. The American Association of Poison Control Centers had 10,193 reports of mouthwash ingestions by children under 6 years of age in a 5 year period (1987-1991). The mouthwash rule is just one example of the kinds of potentially life saving measures CPSC issues to reduce accidental poisonings.

IMPACT OF H.R. 1022: However, H.R. 1022 would make it far more difficult for CPSC to require child-resistant packaging for dangerous products in a timely way, and could end up costing children's lives. More time and agency resources would be needed to conduct the required risk assessment and cost benefit analyses and to provide for peer review of the materials upon which these rules are based. CPSC would no longer be able to issue these rules promptly. For the mouthwash rule, it took CPSC less than 2 years to go from a petition to a final rule. Such quick action would be a thing of the past if H.R. 1022 is enacted. At best, the bill would cause delay and additional paperwork. But, in addition, to satisfy the risk assessment principles and cost benefit requirements in H.R. 1022, it might be necessary for CPSC to develop an entire new data base to track poisoning injuries. This would place a significant burden on CPSC's staff and funds. There may be products dangerous enough to need child-resistant packaging to save children's lives, but CPSC might not have the funds and personnel to get to them.

H.R. 1022 COULD EXPOSE CHILDREN TO HARMFUL ADULT PRODUCTS

ISSUE: Some adult products can pose unreasonable risks to children. For example, when young children start fires while playing with cigarette lighters the result can be a terrible toll of death, injuries, and property damage. Fires started by children under age 5 have caused an estimated annual average of 150 deaths, approximately 1,100 injuries and nearly \$70 million in property damage.

AGENCY RESPONSIBILITY AND ACTION: To reduce these risks, the Consumer Product Safety Commission issued a safety standard in 1993 that established requirements to make disposable cigarette lighters child-resistant. This rule, like many that CPSC issues, was supported by industry which wanted the uniformity a mandatory federal standard would provide. But, more importantly, this rule saves lives. The Commission found that the cigarette lighter rule could save between 80 and 105 children's lives per year. Through the cost benefit analysis that CPSC's existing statute requires it to conduct, the agency estimated that the rule would bring potential net benefits of \$115 million annually.

IMPACT OF H.R. 1022: The cigarette lighter standard is an example of the kind of life-saving regulations CPSC has issued in the past. But H.R. 1022 would greatly restrict CPSC's ability to develop such measures in the future. The bill could "cost" lives without benefit to the regulatory process. And it would hold up even those regulations that industry wants. The risk assessment and cost benefit requirements of the bill would likely have added time-consuming paperwork to the cigarette lighter standard even while making no real substantive changes. With the detailed technical issues involved in the rule, peer review would certainly have added more delay. Moreover, all of these requirements would have provided an opportunity for judicial challenge to the rule since section 401 of the bill would allow a court to review all the documents the bill demands. In the case of the cigarette lighter rule, that challenge could have come from consumer activists desiring a more stringent standard. The protracted delay for litigation would have cost lives, wasted valuable resources, and delayed the national uniformity that industry wanted to limit its compliance costs.

One of the more troubling aspects of H.R. 1022 is the floodgate it would open to reconsideration of rules previously issued. Under section 501, CPSC would have to re-examine the risk assessments it did to support rules it issued long in the past. This review could place an onerous burden on the agency. This provision means that even rules we know are protecting children and saving lives could be re-opened. This approach threatens the safety successes already achieved and detracts resources needed to address future risks.

H.R. 1022 COULD IMPAIR THE SAFETY OF CHILDREN'S PRODUCTS

ISSUE: Some products, even though they are designed for children, can do them harm. For example, the Consumer Product Safety Commission has had at least 11 reports of deaths involving baby walkers since 1989. In 1993 alone, there were approximately 25,000 baby walker-related injuries treated in hospital emergency rooms in the U.S. And the injuries appear to be increasing. There has been a 12 percent increase in baby walker-related injuries treated in hospital emergency rooms for January through April 1994, compared to the same period in 1993.

AGENCY RESPONSIBILITY AND ACTION: In response to this hazard, on August 2, 1994, CPSC began the process of developing a design or performance standard for baby walkers. The Commission is considering measures that would reduce the risk of injury to children but would still allow the product to serve its purpose.

IMPACT OF H.R. 1022: The bill would slow down the Commission's rulemaking process by adding often duplicative work. The Commission is already required to conduct a cost benefit analysis for safety rules like the the potential baby walker standard. But section 201 would require additional analysis including assessments of comparative risks and the cumulative burden of other regulations (even apparently those of other agencies) that the product might be subject to. Data for such analyses would likely be difficult to acquire or may not even exist. The added procedures would lengthen the time it takes CPSC to issue a safety standard that could prevent serious injuries and save children's lives.

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H.R.1022 WOULD COMPROMISE AMERICAN FOOD SAFETY

ISSUE: Foodborne pathogens in meat and poultry products, such as E.coli, salmonella, and listeria, are believed to cost the Nation untold billions of dollars from lost work, medical costs, reduced productivity, and untimely deaths. In 1994 alone, the virulent E.coli bacteria led to an estimated 7,000 illnesses, and 4 deaths. Young children and the elderly are particularly vulnerable to foodborne illnesses and, therefore, at greatest risk.

AGENCY RESPONSIBILITY & ACTION: On February 3, 1995, USDA proposed sweeping reforms of its meat and poultry inspection system, reforms that would bring inspection into the 21st century. Using scientific testing and systematic prevention of contamination, USDA's inspection system would directly target and reduce harmful bacteria. *Prevention of foodborne illness would explicitly be built into meat and poultry production and inspection.*

Under the proposal, the nation's 9,000 inspected slaughter and processing plants would be required to adopt science-based (Hazard Analysis of Critical Control Point, or HACCP) control systems. For the first time, under USDA's pathogen reduction program, targets would be set for reducing the incidence of contamination of raw meat and poultry with harmful bacteria. Meat and poultry plants would be required to test raw products for pathogens, and to take corrective action if needed to meet the targets set by USDA.

USDA's goal is simple: to improve food safety and to reduce the risk of foodborne illness from meat and poultry products. The HACCP approach would take USDA inspection 180 degrees from a command-and-control system to a more flexible, performance-based system that will improve food safety.

IMPACT OF HR 1022: *HR 1022 would halt this sweeping reform in its tracks until USDA completed a complicated and cumbersome benefit and risk assessment and peer reviews...* USDA would have no ability to implement the preventive HACCP system to be used by meat and poultry plants...no ability to achieve targeted reductions in pathogens by requiring the use of sound scientific practices...no foundation for convincing the American public that USDA is taking steps to improve meat and poultry inspection as expeditiously as possible.

Critics say an emergency can provide a way out of the risk assessment maze. The trouble with waiting for an emergency in food safety is that illness and death could have already occurred. H.R.1022 would set up roadblocks in the path of a more effective, preventive approach already begun by USDA.

U.S. SEAFOOD QUALITY WILL BE AT RISK IF H.R. 1022 IS ENACTED

ISSUE: Seafood safety is a serious concern to all Americans. It is important to ensure the safety of seafood that will be consumed by the public. In 1993, Americans consumed 15 lbs of seafood per capita, a 20% percent increase from 1983. In that same year, the U.S. exported close to 2 billion lbs. of seafood. The effect of harmful seafood has consequences far beyond our border. People are consuming more seafood than ever before. It is vital not only to the health of citizens from around the world, but also vital to the many fishermen and other industries dependent on the seafood industry to ensure that our seafood is safe. If our seafood is determined to be full of toxins and other harmful chemicals, our citizens and other citizens from around the world will be at risk of substantial harm.

AGENCY RESPONSIBILITY AND ACTION: The National Marine Fisheries Service (NMFS), Department of Commerce, is responsible for a wide range of activities, from ensuring an adequate supply of fish to seafood safety. Also, the Food and Drug Administration (FDA) is responsible for ensuring the safety of our nations seafood. Currently, the NMFS and the FDA engage in risk assessment exercises to evaluate whether levels of toxic contaminants such as petroleum by-products and certain bacteria pose a risk to human health and safety. In large doses, these toxins may be harmful to people who eat seafood.

EFFECTS OF H.R. 1022: The NMFS's ability to enact timely regulations to ensure the health and safety of seafood will be completely derailed as a result of redundant and time consuming risk assessment and cost benefit analyses required under H.R. 1022. The agency currently conducts appropriate risk assessment and cost benefit analyses as part of its normal practice. If implemented, H.R. 1022 would delay the implementation of regulations until its lengthy and redundant requirements were met. This delay would severely curtail the NMFS's ability to ensure the safe and timely implement of regulations that ensure the safety of our seafood supply. American seafood will be turned away from other countries that require that a premium be placed on seafood safety. The impact of this legislation on the American fishing industry would be disastrous. Billions of pounds of seafood will go to waste, costing industry millions of dollars in lost profits.

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FORKLIFT SAFETY

ISSUE: Over 1.6 million workers operate powered industrial trucks, also known as forklifts, as a part of their job responsibilities, in occupations ranging from the construction industry to maritime activities. As with all forms of industrial machinery, training is a crucial part of safety for both the operators and the employees working within range of the equipment. Unfortunately, the old standard for forklift safety training is too vague to effectively address the various types of training required for different occupations. *In fact, both the House of Representatives and the Senate passed Resolutions last year calling for more effective and specific guidelines.*

AGENCY RESPONSIBILITY AND ACTION: In order to help forklift operators and their employers comply with safety standards, the Occupational Health and Safety Administration has proposed a safety rule which provides guidance as to what forklift training should be given to workers and how the training should be performed in order to maximize the effectiveness of the training. The standard will include quantifiable and measurable criteria to determine the types and amounts of training for powered industrial truck operators, and *should save up to \$42 million in annual property damages, prevent over twenty three thousand annual injuries, and prevent two dozen annual fatalities.* These new safety training requirements will now be identical in the general industry, construction, and maritime standards, enhancing consistency across sectors. This proposed regulation will solicit more comments and information from interested and affected parties, all of which will be used in forming a final rule.

IMPACT OF H.R. 1022: Although both houses of Congress, forklift operators, and many industry people have called for improvements to the old forklift safety standards in order to prevent worker deaths and injury, H.R. 1022 would delay this standard for over one year, possibly longer. OSHA has used risk assessment for over 25 years in determining the most effective and least burdensome methods of protecting worker safety; however, under this bill, unnecessarily lengthy Title I statistical data evaluations and Title II cost benefit analysis would have to be performed in order to issue these common sense improvements to forklift safety training standards. These delays will cost companies millions of dollars in property damages, and will result in worker injuries and deaths due to insufficient training instruction.

USE OF MATERIALS AND PROCESSES IN THE PRODUCTION OF WINE

ISSUE: ATF approves and publishes lists of materials and processes that may be used to produce wine in the United States through the rulemaking process. These approvals are based on the statutory requirement that wine be produced in accordance with "good commercial practices." One criterion used in applying the statutory standard is whether the material poses a threat to health.

AGENCY RESPONSIBILITY AND ACTION: In response to petitions by domestic wine producers, ATF has recently undertaken rulemaking to add many new materials and processes to the approved lists. Also, ATF has undertaken rulemaking to remove materials and processes for various reasons. These rulemaking actions may be based on public health concerns or based on the needs of domestic industry to use a new material or process.

IMPACT OF H.R. 1022: The passage of H.R. 1022 would cause delays in the implementation of health considerations in the approved lists of materials and processes for winemaking. Since these determinations involve health considerations, Title II of H.R. 1022 would force ATF to undertake an analysis of risk reduction benefits and costs before adding or deleting a material or process from the approved list. The requirement under Title II for comparisons of regulatory alternatives makes no sense in this area. For example, in deciding whether or not reverse osmosis should be permitted to reduce the alcohol content of wine, it is not relevant that other alternative methods are available. Further, the delays resulting from such types of analyses could result in economic harm to wine producers who are awaiting approval of new materials or processes in order to utilize the material or process in the introduction of new or improved wines or wine products.

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PREVENTING DEATH, PERSONAL INJURY, AND PROPERTY DAMAGE FROM FIREWORKS ASSEMBLY

ISSUE: ATF had become increasingly concerned about the number and severity of explosions which occurred on the premises of special firearms plants. Serious explosions cause multiple deaths, serious injuries, damage to surrounding property, and the partial or complete destruction of special fireworks (class B explosives) factories. Most explosions occur while explosives materials are held in a building or other area during the assembly process. The then existing explosives regulations did not address the quantity and type of special fireworks explosives materials allowed to be held outside of a storage magazine and in a building or other area used for the assembly operations.

AGENCY RESPONSIBILITY AND ACTION: In response to the public safety concern, ATF undertook rulemaking to amend the explosives regulations to limit the quantity of explosives materials that could be kept outside of a storage magazine at any one time for use in an assembly process. The rulemaking also established tables of distances for separating firearms processing plants from non-processing buildings and separation distances for these processing plants from public highways and passenger railways. These regulations were issued under the authority of the Federal explosives statute and took into consideration the standards of safety and security recognized by the explosives industry.

IMPACT OF H.R. 1022: The passage of H.R. 1022 could cause delays in reducing the risk of serious explosions at special fireworks (class B explosives) factories. Compliance with the risk reduction benefits and costs of H.R. 1022 would have caused significant delay due to the need to develop the required hypothetical regulatory alternatives and then create data to compare the costs and risk reduction potential of each alternative. Additionally, the required calculations of "incremental costs and the incremental risk reductions and benefits" of each alternative would have required the expenditure of significant resources to come up with speculative results.

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H.R.1022 COULD JEOPARDIZE THE INTEGRITY OF AMERICAN AGRICULTURAL PRODUCTION & TRADE

ISSUE: Every day of the year, the United States imports and exports millions of dollars of raw agricultural products--food, fiber, timber, and animals and animal products. The United States has a reputation for exporting safe, wholesome, quality products--free of diseases or pests. The United States is just as cautious about protecting American agriculture from imported plant and animal pests and diseases.

AGENCY RESPONSIBILITY & ACTION: This integrity in trade is possible because USDA, working in partnership with foreign governments, U.S. business, states, and producers, can move quickly to contain or eliminate a potential pest or disease before an emergency arises. Inspections at airports, major ports of arrival, and the boundaries of the U.S., guard against inadvertent import of a pest or disease that could cause significant damage to U.S. farmers and ranchers, and result in millions of dollars lost--not just from damage on the farm, but from infested commodities that then cannot be exported safely from the U.S.

USDA's regulations to protect the health of the agricultural environment work to the benefit of ranchers, farmers, exporters, and ultimately, the American consumer. But those regulations work primarily because USDA can act quickly, using its best judgment, scientific expertise, and existing authorities.

Look at the U.S. timber industry--there's a shortage of logs in the Northwest. And there's an opportunity to import logs, from Russia, Chile, and New Zealand. Importing the logs would help relieve pressure on the domestic shortage, while improving production and employment possibilities.

IMPACT OF HR 1022: This win-win for the Northwest timber industry could become a lose-lose if HR 1022 prevents USDA from implementing a comprehensive system that would help prevent pests and diseases from inadvertently entering the U.S. In the case of the imported logs, for example, no natural "inhibitors," like predators, exist in U.S. forests to counteract these imported pests, and their rapid spread could have devastating consequences for North American timber.

It is fairly straightforward to identify such "exotic" pests, and the method of control is also straightforward. Yet if HR 1022 is enacted, USDA will be spending more time on paperwork, litigation, and peer review--instead of serving agriculture, agribusiness, and consumers.

LISTING OF DANGEROUS DRUGS AS CONTROLLED SUBSTANCES

ISSUE: The use and abuse of dangerous drugs is a serious problem for law enforcement, for the economy, for the medical community and for the country in general. One way in which the use and abuse of dangerous drugs is limited is by outlawing them.

AGENCY RESPONSIBILITY AND ACTION: The Drug Enforcement Administration outlaws the use of dangerous drugs by listing them as controlled substances. Drugs that are included on the controlled substances list are those that are illegal to manufacture, distribute or possess. It is critically important to protecting the health and safety of the public that all such illegal drugs are listed as controlled substances and are outlawed as soon as possible after they are developed. This is especially important at a time when so-called designer drugs can be so easily developed. The DEA has a crucial role in preventing the importation of controlled substances and in protecting the public against interstate trafficking, which cannot be filled by state action alone.

IMPACT OF H.R. 1022: H.R. 1022 could require DEA to conduct a formal risk assessment or cost benefit analysis before listing a drug as a controlled substance under the Controlled Substances Act. DEA does not now perform formal risk assessments or cost benefit analyses for its listings of controlled substances, and such an assessment would be a waste of time and resources. Instead, DEA, in consultation with HHS, determines whether there is a legitimate medical use for a drug, and if there is none, it is outlawed. Clearly outlawing addictive and other drugs subject to abuse protects the public. A team of risk assessment experts need not evaluate this conclusion. During the delay caused by a formal risk assessment or cost benefit analysis additional people will have the opportunity to use and perhaps become addicted to these new drugs that the DEA has otherwise determined should be considered controlled substances.

H.R. 1022 DELAYS NEEDED ENHANCEMENTS TO COMMUTER AIRLINE SAFETY

ISSUE: Commuter airlines -- those that provide service on aircraft with fewer than 30 seats, operate under a set of standards that are not as rigorous as those for the major airlines. These carriers represent one of the fastest growing segments of the airline industry. The number of passenger flying on commuter carriers has more than doubled in 10 years, growing from 24 million in 1984 to 54 million in 1994, and this set of consumers has expressed increasing concern about the safety of these small aircraft.

AGENCY RESPONSIBILITY AND ACTION: The FAA is charged with promoting airline safety for the general public, and has identified a number of ways in which commuter carrier safety can be enhanced. The FAA has, for the last year, been working on an initiative to ensure that commuter airlines have the same safety standards as the major carriers. This initiative includes improving training for commuter pilots and ensuring that commuter airline crews have the rest they need to fly safely. In December, 1994, following a fatal commuter accident in North Carolina, the Secretary of Transportation announced that this commuter safety program would be fast tracked, with a proposed rule in place by March, 1995, and with the goal of a final rule by December, 1995.

IMPACT OF H.R. 1022: If enacted, H.R. 1022 would cause months and months of delay in enacting the important new safety standards for commuter airlines. These standards need to be implemented as soon as possible in order to help avoid commuter aircraft accidents and ensure the safest possible airline system. FAA currently performs thorough and effective cost benefit analyses when proposing new rules. These cost benefit analyses are based on broad studies of past or potential accidents and their causes, not on the type of analysis on which a health agency might assess the risk of exposure to a certain substance. This new bill would cause a needless delay in this important enhancement to commuter airline safety.

H.R. 1022 DELAYS LIFE-SAVING HEAD IMPACT PROTECTION

ISSUE: Head impacts are one of the leading causes of death and serious injury in automobile accidents in the United States. Each year, over two thousand drivers and passengers die in accidents in which their heads hit the pillar or roof components of cars and light trucks. The National Highway Traffic Safety Administration (NHTSA) has identified a set of standards of protection from head impact which could dramatically reduce the number of fatalities and serious injuries associated with this type of accident.

AGENCY RESPONSIBILITY AND ACTION: NHTSA has proposed an amendment to its Federal Motor Vehicle Safety Standards to improve protection against head impacts in the upper interior of cars, light trucks, and light multipurpose passenger vehicles. The agency has performed a cost-benefit analysis which estimates that this change will result in over 1000 lives saved and over 600 serious injuries avoided per year once the vehicles manufactured under these standards completely replace the existing fleet of vehicles.

IMPACT OF H.R. 1022: For every year in which the implementation of this rule is delayed, it is estimated that over 1000 lives will be lost and over 600 injures will occur over time. The safety of our drivers, our passengers, and our children cannot afford the delay that H.R. 1022 would cause. The effect of this bill would make the cost benefit analysis for this rule much more complicated without adding value to the results. This bill would a great number of processes, but not necessarily accuracy, to rulemakings. The added requirements could add at least a year or more to the rulemaking process and would require the agency to hire additional staff to do analysis. It could bog down the analysis in years of lawsuits about whether the right measurement techniques were used. The bill would call for the creation of a peer review panel, which could cost the government tens of thousands of dollars without necessarily providing any improvement in the results. These delays would result in lost lives.

DUCK HUNTING SEASON THREATENED BY H.R. 1022

ISSUE: Duck hunting is a multi-billion dollar business, with hunters nationwide looking forward each year to October 1, the first day of the hunting season. Thousands of jobs and millions of dollars in revenue to states for licensing fees every year are dependent on the U.S. Fish and Wildlife Service setting of the hunting season and bag limits.

AGENCY RESPONSIBILITY AND ACTION: Hunters are generally prohibited by the Migratory Bird Treaty Act from hunting ducks, geese, and other birds. However, the treaty allows the Secretary of the Interior to issue regulations based on being able to maintain adequate bird populations for future hunting. These rules are issued after coordination of States' interests, wildlife organizations' concerns, and public involvement. The processes used to accomplish this task each year are well established and executed smoothly.

IMPACT OF H.R. 1022: H.R. 1022 could shorten duck hunting season and otherwise ruin this important industry. Bird hunters, businesses and communities rely on the fact that duck hunting season will occur every year. H.R. 1022 would restrict the Fish and Wildlife Service's ability to gather the data it needs to meet the deadline for the beginning of the 1995 bird hunting season. Generally, the data needed to set the season and bag limits is not available until late July of each year. From that point to the traditional October 1 season start, it would be impossible for the Fish and Wildlife Service to conduct risk analysis and peer review processes set out in H.R. 1022. Cost-benefit and risk analyses as well as peer review processes could take anywhere from six to twelve months, putting the season's start well past the traditional October 1 date. Tying the Fish and Wildlife Service's hands in risk analysis and peer reviews benefits no one, rather it harms hunters, business owners and communities around the country who look upon duck hunting season not only as a recreational outlet, but also as a business opportunity.

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SAFE AIR FOR MINERS

ISSUE: One of the most important life-and-death concerns for American miners is having clean breathable air at their worksite. And the danger goes far beyond the traditional vision of black coal dust hanging in the air -- it's from chemicals and gases that oftentimes you can't see or smell, and they're found at every different kind of mine. Substances like carbon monoxide, lead, asbestos, hydrogen cyanide, nitrogen dioxide and sulfur dioxide come from mining equipment, from hazardous wastes that are burned as fuel, and from mining processes like blasting and milling. And the effects of these chemicals and gases result in cancer, reproductive problems, breakdown of the central nervous system, anemia, chronic thyroid disease, lead poisoning, and various deadly lung diseases. For the miners afflicted with these conditions, the consequences are devastating -- most are permanently disabled, many die. Sadly, some miners assume that lung disease and ill health are just "part of the job" and they never even report their conditions.

AGENCY RESPONSIBILITY AND ACTION: As we have learned more through the years about the effects of these chemicals and gases on miners' health, the Mine Safety and Health Administration has worked hard to prevent further deaths and to protect miners from exposure to these life-threatening chemicals. This year, MSHA plans to improve the allowable exposure levels on 80 of the most dangerous chemicals and carcinogens found in mining, using their current, effective methods of risk analysis. Exposure limits would be lowered for all the chemicals mentioned above.

IMPACT OF H.R. 1022: The comprehensive risk assessment statistics required under Title I would cost between \$150,00 and \$250,000 for each of the 80 chemicals. MSHA currently does not have nearly enough resources to fulfill such requirements -- and even with an increased budget, it's likely that MSHA could only complete 10 of these chemical risk assessments per year, slowing protections for at-risk workers and permitting limited safeguards for a tiny fraction of miners. Delays in issuing these rules will result in more miners developing cancer, lung diseases, cyanide poisonings, lead poisoning because MSHA will not have the resources necessary to expend on complicated risk assessments and cost benefit analyses for each hazardous chemical.

PROTECTION FROM HARMFUL AIRBORNE CONTAMINANTS

ISSUE: Airborne contaminants are a serious concern to the 3.6 million workers who face that threat in the workplace every day. For these workers, it is crucial that the face and lung protection they wear effectively prevent transmission of cancer causing contaminants like asbestos, and hundreds of other harmful fumes and chemicals which can cause serious lung diseases and chronic ailments. In professions ranging from health care workers and painters to fiberglass and aircraft workers, the workplace presents a special risk and respirators are used to ensure clean breathable air for employees; however, the wide ranging use of respirators to combat a diverse range of contaminants has led to some confusion as to which respirators best address a worker's needs on the job.

AGENCY RESPONSIBILITY AND ACTION: In order to assist employers in selecting respirators most appropriate to the work being performed and in providing the medical surveillance necessary when using respirators, the Occupational Safety and Health Administration developed guidelines linking the type of work to the type of respirator needed. In this way, the various types and levels of respirator filtering would be in direct relation to the type of contaminant being encountered, providing employers and employees with sensible and efficient requirements. This safety rule alone will prevent up to 550 cancer cases every year, and prevent up to 200 chronic illnesses every year.

IMPACT OF H.R. 1022: The comprehensive risk statistical data and cost benefit assessment requirements under Titles I and II would compel OSHA to compile stacks of paperwork for each individual use of respirators in each individual occupation for each of the various contaminants encountered by the 3.6 million workers affected. The added time and manpower required to fulfill these Title I requirements would cost OSHA a great deal more money than their current budget allows. And even with additional budgetary increases, implementation of this safety rule would be pushed back for years while the cumbersome paperwork was completed. These delays would seriously undermine OSHA's responsibility to protect the health and safety of these workers.

SAFE OPERATION OF HEAVY MACHINERY

ISSUE: A large concern for many workers, especially in manufacturing, used to be the danger posed by the sudden activation of machinery. Unsuspecting employees would be servicing or performing maintenance on heavy machinery that appeared to be effectively turned off, and assume that it was safe to be near the equipment. Then, usually without any warning, the machinery would begin operating while the workers were in harm's way. Every year over 120 workers would die in this way and over 25,000 workers would suffer serious injuries, sometimes losing arms or legs, oftentimes becoming permanently disabled.

AGENCY RESPONSIBILITY AND ACTION: In order to prevent thousands more injuries from occurring as a result of sudden machinery activation, in 1989 the Occupational Safety and Health Administration issued a simple "Lockout-Tagout" standard. Basically, this rule protects over 35 million workers by ensuring that all energy sources to a piece of machinery are cut-off and that the equipment is completely disabled while it is being serviced. In the 5 years since it has been in effect, this rule has saved an estimated 600 lives and prevented over 140,000 injuries in the workplace. For nearly 25 years, OSHA has used risk assessment as a flexible analytical tool to link sound science with sound policy decisions, by ensuring that each protective standard substantially reduces a significant risk posed by a particular workplace hazard, and that employer compliance is both economically and technologically feasible. Common sense tells you that some hazards present a clear danger and can be acted upon quickly, while others require more complicated risk assessment procedures. In this case, the sudden activation of machinery was an obvious danger and OSHA acted quickly and efficiently to prevent further workplace tragedies.

IMPACT OF H.R. 1022: If the cumbersome Title I requirements had been in place in 1989, the Lockout/Tagout standard would have been pushed back another 3 years, just to allow for the completion of all the risk assessment procedures -- from calculating the numerous risk estimates and statistical comparisons required under Title I, to quantifying the costs and benefits of saving these workers' lives as required under Title II. In that time, another 366 workers would have died and 85,248 more would have been seriously injured or disabled, all because OSHA would have to assemble piles of documents and scientific studies proving that sudden activation of machinery does in fact injure workers. In situations where a simple, cost-effective standard could effectively address a workplace hazard, Title I's "one size fits all" approach requires an unnecessarily lengthy research process which will cost workers their lives.

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HR 1022 WOULD POSTPONE NUCLEAR WASTE DISPOSAL

ISSUE: Safe disposal of nuclear waste is an issue that affects all Americans. The risk of harm from nuclear waste material is substantial if the material is not disposed of in a safe manner. Nuclear waste comes in many shapes and forms. Some type of material includes lab coats, gloves, metal tools, scrap equipment, and other material that was contaminated with plutonium during laboratory and facility operations. At present, this nuclear material is being stored at facilities around the country where it continues to pose risks of harm to all who live around nuclear waste repositories. This type of nuclear waste remains deadly for 24,000 years.

AGENCY RESPONSIBILITY AND ACTION: The WIPP program, passed by Congress in 1992, established the country's first national nuclear waste disposal facility. It has taken 22 years for all the parties to come together to reach agreement on where to locate the facility and determine who would operate the facility. The Department of Energy

EFFECT OF H.R.1022: If enacted, H.R.1022 would prohibit the Environmental Protection Agency from issuing regulations that would ensure the safe disposal of nuclear waste at what would be the nation's first nuclear waste repository and compliance by the Department of Energy with the EPA regulations. Nuclear waste is an issue that affects us all, primarily because nuclear waste remains deadly for 24,000 years. Parents need to know that their children will be safe from nuclear waste when those children are playing in their backyard. Any delay in the implementation of the nuclear waste disposal facility at the New Mexico facility will put children around the country at increased risk of harm because the nuclear waste will continue to be stored at sites around the country instead of being disposed of at the New Mexico facility. Without regulations from the Environmental Protection Agency, the WIPP program cannot go forward in a timely fashion. Each year of delay will cost an estimated \$175 million a year. The delay in opening the New Mexico facility will be caused by implementation of H.R. 1022 because it requires needless, overly burdensome risk analysis and judicial review: a smorgasbord for lawyers and special interests. Moreover, the agency will be required to hire additional employees and spend additional resources on meeting paperwork requirements instead of disposing of nuclear waste.

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U.S. FISHERIES WILL BE DECIMATED AS A RESULT OF HR 1022

ISSUE: The United States fishing industry relies on timely issuance and timely adjustment of regulations designed to ensure a dependable supply of fish. In the absence of a regulation or a serious delay in enacting a regulation, fish supplies will be severely depleted to a dangerously low level. Moreover, businesses that rely on the fishing industry will also be substantially harmed as a result of HR 1022.

AGENCY RESPONSIBILITY AND ACTION: The National Oceanographic and Atmospheric Administration (NOAA) through the National Marine Fisheries Service (NMFS's) manages the nation's fisheries through regulations designed to ensure that the country has an adequate supply fish, both for consumption and export. These fisheries contain supplies of fish necessary to meet those demands. The bulk of these regulations are proposed by Regional Fishery Management Councils which represent industry.

EFFECTS OF H.R. 1022: If enacted, H.R. 1022 would delay adoption and implementation of the regional council recommendations by adding mountains of unneeded paperwork, cost benefit analysis, and peer review, just to name a few requirements under H.R. 1022, to the regulatory process. One example where H.R. 1022 would have a devastating effect is on the inshore/offshore allocation for the Alaska pollock fishery, a system that was set up to ensure proper allocation of Alaskan pollack between those vessels that process their catch at shore and those vessels that process their catch at sea. In 1993, 3.3 billion lbs. of pollack worth \$358 million was harvested in Alaskan waters. This allocation plan would expire and could not be renewed without irreversible delay.

Another example of H.R. 1022's effect would be to were put into effect would essentially shut down New England fisheries that stock cod, haddock and yellowtail. In 1993, landings of these fish were estimated at close to \$60 million. The fact of the matter is H.R. 1022 would delay fishing regulations and make them less responsive to the needs of the fishing industry. Moreover, the regulations would be easily subject to court challenge, tying up much needed rules in lengthy and costly litigation. But perhaps most importantly, H.R. 1022 would devastate the local economies of the New England region that are dependent on the fishing industry for their livelihood. This would happen as a result of the depleted fishing stocks and, therefore, lack of fish to be caught by the fishermen.

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H.R. 1022 COULD IMPAIR THE IRS IMPLEMENTATION OF CONGRESSIONAL TAX POLICY

ISSUE: Congress mandated that various federal agencies promote the use of clean burning fuel through mechanisms including alternatively fueled motor vehicles. The Internal Revenue Code provides either a tax credit for or a tax deduction for the amount invested in certain clean-fuel vehicle property and clean-fuel vehicle refueling property placed in service by taxpayers. Congress added these provisions to the Code as part of the Energy Policy Act of 1992 to provide tax benefits for taxpayers investing in property related to clean-burning fuel vehicles.

AGENCY RESPONSIBILITY AND ACTION: For both the credit and the deduction electric vehicles must meet certain qualifications that demonstrate that they are either powered by an electric motor that draws its power from rechargeable batteries or designed to be propelled by a clean-burning fuel.

IMPACT OF H.R. 1022: H.R. 1022 would impair the IRS's ability to promote the use of clean burning fuel and thus carry out Congress's purpose in enacting these provisions. The IRS issues regulatory guidance in order to provide rules for purposes of interpreting and administering the statutory provisions. H.R. 1022, however, would require that the IRS perform a risk reduction cost benefit analysis with respect to each of these regulations in order to evaluate the costs and benefits of the regulation relative to toxicity or other health or other environmental risk to the general population. If the IRS were required to measure the decrease in toxicity or other health risks associated with regulations issued under the statutory provisions, new staff and/or training would be necessary to address subjects with which the IRS currently has no expertise. The analysis would impair the ability of the IRS to prescribe rules for the administration and implementation of the statutory provisions enacted by Congress in a timely and cost effective manner.

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BANNING THE PESTICIDE DDT

ISSUE: DDT is a deadly pesticide because of the serious risks it poses to birds and other wildlife.

AGENCY RESPONSIBILITY AND ACTION: EPA banned the use of DDT in 1972. In 1963, when Rachel Carson first alerted us to the problems associated with DDT, only 400 nesting pairs of Bald Eagles could be found. By 1992, 3800 pair (or an 800 % increase) had been saved from extinction. If a similarly dangerous pesticide were coming up for regulation today, EPA would be required to estimate the cost of banning the pesticide and the benefits of the ban. This is a process that could take years of bureaucratic paper pushing and lawsuits under HR 1022's convoluted methodology.

IMPACT OF H.R. 1022: Even though EPA originally banned DDT under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which provides mechanisms for balancing costs and risks, the strict cost benefit test required by HR 1022 would hinder agency actions in cases where benefits are hard to quantify--such as trying to put a dollar value on the benefit of preserving our national symbol of freedom-- the American Bald Eagle. Most likely H.R. 1022 would have tied up the decision to ban DDT while the birds were pressured to extinction as opposing experts battle over their cost benefit estimates.

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H.R. 1022 WOULD JEOPARDIZE PROTECTION OF THE NATIONS' WATER SUPPLY

ISSUE: The current dangers to public health from contaminated drinking water were exemplified by the recent outbreak of *Cryptosporidiosis* parasites in the Milwaukee, Wisconsin water supply that resulted in an estimated 100 deaths and over 400,000 illnesses. Other major cities such as Washington, D.C. have recently had boiled water notices alerting their customers to potential health problems in their tap water.

AGENCY RESPONSIBILITY AND ACTION: EPA sets drinking water standards under the Safe Drinking Water Act to protect against adverse health effects and establish a level that is technologically and economically feasible. Current EPA standards are inadequate to guard against water-borne diseases such as Crypto, Hepatitis A, Norwalk disease syndrome and other bacteria that grow in water systems.

IMPACT OF H.R. 1022: H.R. 1022 would jeopardize the development of more protective drinking water regulations. It changes the safety standard for setting water standards so that EPA must demonstrate based on "substantial evidence" that the incremental costs of treatment "justify the incremental benefits." Even if EPA could justify some additional treatment under the H.R. 1022 cost-benefit tests, EPA's analysis under HR 1022 would be subject to endless bureaucratic hurdles so that better protection of the public from water borne disease would take years. In addition, EPA has been using negotiated rulemaking to address other drinking water problems, producing rules that have industry and public support. Common sense approaches like this would be heavily encumbered by H.R. 1022.

Draft document for discussion purposes only.

H.R. 1022 COULD SLOW EFFORTS TO PROTECT PEOPLE'S PROPERTY FROM SUBSIDENCE DUE TO DEEP MINING

ISSUE: Thousands of citizens from coalfields throughout the country fought to include protection for their homes and water supplies in the National Energy Policy Act which Congress passed in 1992. This law is the only protection citizens have from subsidence caused by deep mining which can crack the foundations of homes, pollute drinking water from wells, ruin crops, and displace entire families.

AGENCY AUTHORITY AND ACTION: These citizens depend upon the Office of Surface Mining to issue a subsidence rule, expected to be approved very shortly, which will protect their families and homes.

IMPACT OF H.R. 1022: If the terms of H.R. 1022 were applied to this rulemaking, the process for issuance of the rule could be stretched out by nine months or more. This does not account for any additional delays that are likely to be caused by litigation and by additional opportunities for judicial review to test conformity with the standards of this legislation. This would considerably delay implementing protection for these people. Until the subsidence rule is issued, coal operators will continue to be uncertain about their obligations to replace water and repair homes. The Office of Surface Mining took great care to ensure that this rule was designed so as not to place additional regulatory burdens on the coal industry.

Draft document for discussion purposes only.

WHO WANTS TO BREATHE TOXIC AIR POLLUTION?

ISSUE: Reducing emissions of toxic air pollution under the 1990 Clean Air Act.

AGENCY RESPONSIBILITY AND ACTION: For twenty years (1970-1990), the Clean Air Act directed EPA to use risk assessment in setting limits on toxic air pollutant emissions--chemicals that can cause cancer, birth defects, neurological problems and respiratory disease. By 1990, industry, environmentalists, the States and EPA were united in agreement that using risk assessment alone was a FAILURE--EPA had set standards for only seven toxins and a handful of sources. More than 2.5-billion tons of toxic air pollution were still being released into America's air every year, according to industry's own "Right-to-Know" records.

In 1990, under the leadership of the Bush administration, Congress replaced the risk-based approach to setting air toxics standards with a technology-based approach that many industries agree is proving to be practical, effective, and affordable. Since 1990, EPA has taken steps that will eliminate more than one billion pounds annually from a dozen types of sources, including chemical plants and steel industry coke ovens.

IMPACT OF H.R. 1022: The cost-benefit tests required for major rules under H.R. 1022 would supersede the Clean Air Act's technology-based approach. H.R. 1022 would reverse the recent progress in setting effective standards. Now is not the time to return to the paralysis of setting standards with risk assessments and cost-benefit analyses.

Draft document for discussion purposes only.

H.R. 1022 WOULD DELAY PREVENTION OF LEAD POISONING

ISSUE: Certification of lead-based paint abatement workers

AGENCY RESPONSIBILITY AND ACTION: In October 1991, President Bush's Secretary of Health and Human Services, Louis Sullivan called lead the "number one environmental threat to the health of children in the United States." Increased blood-lead levels, caused by exposure to lead in paint, dust, drinking water or food can lead to learning disabilities, kidney failures, nervous and reproductive systems disorders, comas, and other health problems. Lead exposure is of particular concern in children since their neurological development and learning abilities can be severely affected. Approximately 1.7 million children age five and under now have blood-lead levels above the threshold of concern, and it is believed that 100,000 or more new poisonings occur each year. Curing these problems is painful, difficult, expensive and in some cases impossible. Clearly then, preventing lead poisoning is more beneficial to Americans than trying to cure victims of lead poisoning. Furthermore, lead poisoning crosses economic lines--rich families, middle class families, and poor families alike can all be exposed to lead, particularly if they occupy one of the more than 57-million houses containing lead-based paint.

Under the "Residential Lead-Based Paint Hazard Reduction Act", EPA is directed to set standards for abating lead-based paint hazards and ensuring that abatement workers are properly trained and certified.

IMPACT OF H.R. 1022: The proposed bill would delay taking lead hazard control actions and setting standards that are ready to be promulgated. It would require extensive, new, and redundant analyses of the cost-effectiveness of all regulatory and non-regulatory options that have already been considered. Extensive cost-benefit analyses required by Executive Order have already been performed, reviewed by OMB, and are already in the public record. These delays would postpone the prevention of lead poisoning in thousands of children nationwide.

Draft document for discussion purposes only.

H.R. 1022 WOULD JEOPARDIZE PROTECTION OF THE NATIONS' WATER SUPPLY

ISSUE: The current dangers to public health from contaminated drinking water were exemplified by the recent outbreak of *Cryptosporidiosis* parasites in the Milwaukee, Wisconsin water supply that resulted in an estimated 100 deaths and over 400,000 illnesses. Other major cities such as Washington, D.C. have recently had boiled water notices alerting their customers to potential health problems in their tap water.

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Draft document for discussion purposes only.

TOXIN FREE PEANUTS

ISSUE: The 1990 peanut crop from the Southeastern United States was found to contain aflatoxin, a highly carcinogenic mold product, at levels unacceptable for human food.

AGENCY RESPONSIBILITY AND ACTION: FDA completed a risk assessment within a few weeks of this discovery. The assessment indicated that, when fed to cattle and sheep, aflatoxin in peanuts was no more risky than aflatoxin in corn and cottonseed meal. FDA was thereby able to recommend application of the higher corn/cottonseed-aflatoxin levels to aflatoxin in peanuts--provided that the peanuts were only used for cattle and sheep feed.

FDA's recommendation avoided the destruction of the crop, with no increase in risk to animals or humans.

IMPACT OF H.R. 1022: FDA estimates that as much as 25% of a crop worth \$1.3 billion was affected by this problem. It would appear that because the impact of this action could have had a cost of more than \$25 million, the agency would have been required to comply with the risk assessment and cost benefit requirements of the bill before it could take any action. The risk assessment and cost benefit analyses could not have been completed and possibly, peer reviewed, in less than six months.

If H.R. 1022 had been in effect the agency might have been required to initiate a seizure action to prevent the contaminated peanuts from entering the food supply. Alternatively, the agency would have been required to delay making a decision until a risk assessment was completed. Since there was no immediate threat to health or safety, no emergency existed to fall within the bill's exception. This delay would have resulted in significant economic costs to producers, processors and purchasers of feed. Furthermore, the longer the contaminated peanuts were held, the more they would have deteriorated.

Draft document for discussion purposes only.

HOW GOVERNMENT REGULATIONS ARE GOOD FOR BUSINESS

July 14, 1995

Congress is currently considering S. 343, legislation that would change the regulatory reform process. Although much of the discussion has concentrated on issues related to public health and safety, the unworkable provisions of the bill could also lead to unintended consequences that would be bad for the business community.

The proper regulation of American industry and business serves many public objectives, one of which is prosperity. Often, in fact, it is industry or business itself that requests or supports promulgation of a rule. There are many reasons why regulation benefits business, including providing stability and certainty to the economy, establishing uniform national standards for markets, increasing consumer confidence in products and services, and creating new industries and jobs.

Stability and Planning

In many cases industry and business actually benefit from regulations because of the certainty and stability that they provide to markets. Additionally, the certainty which regulation provides business is helpful for long-range planning and development. In fact, many of the regulations have been put into place specifically to aid business and industry.

- U.S. Fisheries. The United States fishing industry relies on timely issuance and adjustment of regulations designed to maximize allowable harvest levels and to manage the nation's fisheries to ensure an adequate supply of fish, both for consumption and for export. These regulations are developed by regional councils, a partnership between fishing industry participants and local and federal government officials.

For example, in regulating the lucrative Alaskan pollock fisheries industry, an inshore/offshore allocation system was set up to ensure proper allocation of Alaskan pollock between those vessels that process their catch at shore and those that do so at sea. In 1993, 3.3 billion pounds of pollock, worth \$358 million, were harvested in Alaskan waters.

- San Francisco Bay water standards. These standards establish a foundation for agricultural and municipal groups to conduct long range water use planning. Benefits of such planning will accrue to agricultural land values, loans and financing opportunities for crop production. Municipalities will know what their water capacity will be and can move forward with development of reservoirs and other aspects of urban planning.
- Antitrust Advice and Guidance. It is the responsibility of the Antitrust Division and the Federal Trade Commission to oversee and enforce the antitrust laws of the United States. The policies and principles established by these two entities are intended to provide clarification for the regulated community of issues that might otherwise deter business

growth. For example, last year the Antitrust Division of the Department of Justice and the FTC issued enforcement policies and analytical principles relating to international antitrust matters. Although these documents are not formal regulations, the breadth of S. 343 may result in such informal guidance being prohibitively difficult to issue.

- Protecting Intellectual Property. The Patent and Trademark Office of the Department of Commerce issues regulations that govern patents which protect a private party's rights in intellectual property. These regulations ensure that the individual who creates such intellectual property will be the beneficiary of any commercial value that may ensue from the marketing of said property.
- ERISA. Employers, financial institutions and the pension community have relied upon the advisory opinions and interpretations of Title I of the Employee Retirement Income Security Act of 1974 for more than twenty years. These opinions and interpretations are the sources of guidance which enables compliance with ERISA's statutory obligations. This guidance is used to establish, operate and invest pension plan assets and is critical to maintaining the certainty of the pension industry. The establishment and maintenance of pension plans involves an enormous number of transactions affecting 80 million plan participants and beneficiaries. Aggregate pension plan assets total about \$3 trillion.

Uniform National Standards

Industry has long recognized the benefits of national standards as an aid to the development of a single national market and means of lowering production costs. For example, state laws often result in multiple and inconsistent safety standards, making it more difficult and costly for manufacturers to produce and distribute products for a national market. National uniform product safety standards bring uniformity to the market by preempting such conflicting state laws.

- Toy Labeling. Last year, at the insistence of industry, Congress passed The Child Safety Protection Act requiring choking labeling for certain toys. Among the many supporters of this legislation was the Toy Manufacturers of America which wanted a rule that would preempt differing state laws, such as those which had been adopted by Connecticut and were being considered by other states.
- Cigarette lighter standards. In 1993, the Consumer Products Safety Commission issued a safety standard requiring that disposable cigarette lighters be child-resistant. Estimates of the annual net benefits of the rule were approximately \$115 million and between 80 and 105 lives saved. Advocates of the rule, which included the cigarette lighter industry, preferred a uniform mandatory standard rather than a voluntary standard or a patchwork of varying state laws.
- Appliance Efficiency Standards and Test Procedures. The Department of Energy promulgates rules under the Energy Policy Act of 1992 regarding appliance efficiency standards that preempt state regulations. Prior to the enactment of EPACT, several different states had adopted, or were considering adopting, energy efficiency standards for

appliances. Under one proposed rule-- which incorporates the recommendations of appliance manufacturers, electric utilities, certain State officials and energy efficiency experts-- standards will be set for the next generation of refrigerators and freezers. The new standards could reduce energy consumption by seven Quadrillion BTUs and save consumers \$13 billion by the year 2010.

Consumer Confidence in Products and Services

Regulation helps to raise consumer confidence in the products and services provided by American businesses and industries. A lack of consumer confidence can often lead consumers to avoid certain products even when their concerns could easily be addressed. The adverse affects of consumer avoidance can be felt domestically and internationally.

- Air safety. The number of passengers flying on commuter aircraft has more than doubled in ten years, growing to 54 million passengers in 1994. Increasingly, this constituency has expressed concern about the safety of these small aircraft. Timely responses following aircraft accidents are often essential in preserving confidence. For example, in response to concerns following a fatal commuter accident in North Carolina, the Secretary of Transportation announced, in December, 1994, that an FAA initiative that will ensure the same safety standards as the major airlines would be fast-tracked, with a proposed rule in place by March 1995, and with the goal of a final rule by December 1995.
- Food safety. On February 3, 1995, USDA proposed reforms of its meat and poultry inspection system that would bring inspection into the 21st century. Preliminary analysis of the Hazard Analysis of Critical Control Point (HACCP) proposed rule estimated that it will produce \$1 billion to \$3.7 billion in annual public health benefits and substantially restore public confidence in the meat and poultry processing industry. By reducing the incidence of foodborne pathogens in meat and poultry products, such as E. coli, salmonella and listeria, the new HACCP system will help eliminate the devastating effect on industry of negative publicity.
- Seafood safety. In 1993, Americans consumed 15 lbs. of seafood per capita, a 20% increase from 1983. In that same year, the U.S. exported close to 2 billion pounds of seafood. Consumer confidence in the quality and safety of U.S. seafood is vital to the health of our U. S. fishing industry and to the many industries dependent on that industry. To these ends, the National Marine Fisheries Service and the Food and Drug Administration perform a wide range of activities to ensure the safety of U. S. seafood, including the promulgation of regulations.

Create New Industries

Sometimes, regulation even creates a whole new industry.

- Environmental technology industry. Over the last decades, the United States has become the world leader in safeguarding the environment. The resulting environmental technology

industry employs two million Americans, has revenues between \$102 to \$172 billion per year and exports \$1.7 billion in environmental technology annually. Without the federal support for protection of our environment, this valuable industry would never have developed.

- Alternative fuels. Often, regulations provide for federal assistance to states or private industry in the development of new technologies. Under the authority of EPACT Section 409, the Department of Energy is issuing regulations to support a pilot program with 19 states, local governments and private industry to accelerate the use of alternative fuels, such as ethanol, and alternative fueled vehicles. The program will allow participants to tailor projects to meet their individual needs such as vehicle acquisition incentives, infrastructure development, market research, and public education.

Department of Agriculture

USDA/CCC 1995 Wheat, Wheat, Feed GRAins, and Rice, This rule provides the annual crop program terms such as acreage set asides. Farmers made planting decisions this past spring based upon this rule.

USDA/AMS Standards for Grades of Slaughter Cattle, This provides voluntary grade standards for cattle which helps market cattle.

USDA/Grain Inspection and Packers and Stockyards Administration, Review of Existing Regulations, This rule seeks public comment on agency rules as a part of the Presidents regulatory reform initiatives.

USDA/APHIS Importation of Fruit Trees from France. This rule provides the basis for the importation of fruit trees while protecting the US from foreign pests.

USDA/FS. National Forest Planning Regulations. This rule streamlines the process for creating national forest plans, and allows for up-front consultation with the public. It should result in less complicated plans that take less time to finalize.

USDA/FSIS. Transporting Undenatured Poultry Feet. The rule allows poultry processors to achieve economies of scale by aggregating chicken feet in one place (i.e. a warehouse) to prepare them for export, rather than being required to export directly from the plant.

USDA/FOOD AND CONSUMER SERVICES. Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds. (NPRM, published 6/28/95)

This proposed rule would allow States to participate in the Federal Tax Refund Offset Program in order to collect certain types of food stamp overissuances. (Previous authority to participate was offered on a pilot basis -- this rule would provide regulatory authority for all States to participate). FCS plans to publish a final rule within the next month to meet an IRS deadline. Failure to publish the proposed and final rules before this deadline will prohibit States from participating in the Tax Refund Offset Program this year and will delay the use of a highly effective collection mechanism to recoup Federal dollars.

Environmental Protection Agency

OPP/EPA. Tolerance exemptions and granting of tolerances or food additive regulation. (dozens of actions) For a farmer to legally use a pesticide to combat weeds or insects damaging a crop (and a manufacturer to have a pesticide registered), EPA must either set a maximum residue level ("tolerance") for the pesticide on the specific crop or determine that no tolerance is needed. If tolerance actions are delayed, farmers will not have access to new products for their crops' protection and could cause significant economic harm.

OW/EPA. Deferral of Phase II Storm Water Permitting Requirements. (NPRM: 4/7/95, final expected late summer) Under the current Clean Water Act, six million industrial sources of storm water runoff, as well as, several hundred smaller cities are required to apply for water discharge permits by October 1, 1994 (so called "Phase II"). Larger cities and larger industrial sources of storm water runoff have already applied under "Phase I" and begun implementing controls. This proposal gives these unpermitted entities an additional six years before an application is needed. Without this regulation, up to six million industrial and municipal sources could be liable for failing to apply for a permit.

OW/OAR/OPPTS/EPA. Various revisions to Testing Methods. (five rules proposed). EPA regularly amends or adds testing methods referenced in its regulation to keep up with scientific and technical advances. Obsolete testing methods may lead to inaccurate or imprecise data upon which regulatory and enforcement actions are based.

Department of Health and Human Services

SSA. "Extension of Time Period for Not Counting as Resources." Insignificant. (NPRM 5-17-95).

Positive, administrative rule to provide SSA with flexibility to deal with the effects of natural disasters on Supplemental Security Income (SSI) recipients.

SSA. "Determining Disability and Blindness, Substantial Gainful Activity Guides." Significant. (NPRM 3-6-95).

Administrative rule to clarify SSA policy on Substantial Gainful Activity and implement several related legislative provisions.

SSA. "Statement of Earnings and Benefit Estimates." Significant. (NPRM 1-19-95).

Implements a legislative requirement to distribute PEBES statements to the working public within specified timeframes. This rule outlines the three phase distribution plan, and provides detailed information on the content of the statements.

HHS/FOOD AND DRUG ADMINISTRATION. Canned Fruit Nectars; Proposal to Revoke the Stayed Standard of Identity (Published 04/21/95)

FDA is proposing to revoke the standard of identity for canned fruit nectars. This standard has never gone into effect, having been stayed by the filing of objections.

HHS/FOOD AND DRUG ADMINISTRATION. Current Good Manufacturing Practice for Finished Pharmaceuticals; Positron Emission Tomography (Published 02/27/95)

FDA is proposing to amend its regulations to permit manufacturers of PET radiopharmaceuticals to apply to the agency for an exception or alternative to the CGMP requirements. This action is intended to relieve PET manufacturers -- nearly all of whom are small entities -- from regulations that might result in unsafe handling of PET radiopharmaceuticals, are inapplicable or inappropriate, or otherwise do not enhance safety or quality in the manufacture of PET radiopharmaceuticals.

HHS/FOOD AND DRUG ADMINISTRATION. Public Information; Communications With State and Foreign Government Officials (Published 01/27/95)

FDA is proposing to amend its regulations governing communications with officials of State and foreign governments. This proposal will permit FDA disclose to, and receive from, these officials certain nonpublic information without being compelled to disclose the information to the public generally. This action is necessary to enhance cooperation in regulatory activities, eliminate unfounded contradictory regulatory requirements, and minimize redundant application of similar requirements.

Department of Housing and Urban Development

Refunding of Tax-Exempt Obligations Issued to Finance Section 8 Housing-4/20/85

This proposed rule would amend HUD's existing regulations to provide policy and procedural guidelines for bond refunding under which local agency issuers of tax-exempt bonds are encouraged to refinance projects at lower interest rates.

Performance Funding System; Definition of Unit Months Available-
5/9/95

This proposed rule would revise the existing "Performance Funding System" to permit payment of operating subsidies for scattered-site units as they become occupied. It is only applicable to the development activities of a limited number of new projects and will permit a more effective use of development funding.

Mortgage Insurance on Condominium Units in Non-FHA Approved
Projects-6/23/95

This rule would add provisions to the regulations governing Federal Housing Administration (FHA) mortgage insurance on condominium units to permit insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance under existing regulatory requirements. These "spot loans" would be approved under less stringent requirements than the existing requirements for mortgage insurance for condominiums but would require satisfaction of standards that would assure FHA adequate protection of the reduced risk involved of mortgage insurance on only a few loans in any particular project.

Supplemental Standards of Ethical Conduct for Employees of HUD-
6/30/95

This rule supplements a government-wide rule issued by the Office of Government Ethics governing ethical conduct by officers and employees of the Executive Branch. It removes HUD's standards of conduct and keeps only those provisions that are particularly applicable to HUD. These include prohibitions on the ownership of certain financial interests and restrictions on outside employment and business activities related to and HUD assistance.

Department of Interior

DOI/FWS. Migratory Bird Hunting Regulations. These rules open and close hunting seasons, set limits on how many birds can be bagged depending on the health of the population, and specify how hunting permits may be obtained.

DOI/BLM. Reduction of Federal Royalty on Heavy Oil. This rule encourages the production of heavy oil by reducing the Federal royalty on heavy oil sales.

Department of Transportation

DOT/Coast Guard, Designation of Lightering Zones, Economically Significant NPRM 1/13/95.

The Coast Guard is proposing to designate several lightering zones in the Gulf of Mexico, each more than 60 miles from

the baseline from which U. S. territorial waters are currently measured. Within these lightering zones, single hull oil tankers phased out by the Oil Pollution Act of 1990 will be able to offload oil within the U. S. territorial waters.

DOT/Coast Guard. Safety/Security Zone Regulations. Routine and frequent.

These regulations are issued routinely and frequently as an established body of technical "zoning" standards to protect navigation and are localized in scope. There are about 600 such actions annually.

DOT/Coast Guard. Drawbridge Regulations. Routine and frequent.

Coast Guard frequently issues localized regulations affecting the operation of drawbridges. In most cases, the regulations are nonsignificant.

DOT/FAA. Airspace Actions. Routine and frequent

FAA periodically issues concerning the classification of airspace. These rules are routine and frequent, numbering about 600 rules annually.

DOT/FAA. Airworthiness Directives. Routine and frequent

FAA periodically issues routine and frequent actions, about 800 of which are classified as nonsignificant each year, in order to correct known or expected safety problems on type certificated airplanes or products.

Office of Management and Budget

OMB The Paperwork Reduction Act of 1995 The proposed rule for implementing the new act.

10 EXAMPLES OF ENVIRONMENTAL PROGRESS

1. Safe Drinking Water:

- Existing drinking water regulations implemented under the Safe Drinking Water Act (SDWA) (as amended in 1986) provide enormous health benefits. The EPA estimates that full implementation of the SDWA Lead and Copper Rule will reduce the exposure of 156 million people to lead. Another 600,000 children will be protected from unsafe levels of lead in their blood. Compliance with the Surface Water Treatment Rule is expected to prevent at least 80,000 to 90,000 cases of gastro-intestinal illness.

2. Superfund:

- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) created the Superfund program to respond to a release or threatened release of hazardous substances, pollutants, and contaminants stemming from accidents or uncontrolled hazardous waste sites. As of 1992, at 3,000 sites, the Superfund program has treated, isolated, neutralized, or removed from the environment 13 million cubic yards of contaminated soil and solid wastes; 1 billion gallons of liquid waste; 6 billion gallons of contaminated ground water, and 316 million gallons of polluted surface water.

3. Hazardous Wastes:

- The EPA Land Disposal Restriction Program has resulted in 42.5 million tons of hazardous wastes being treated each year prior to final disposal. Of this total, provisions of the Safe Drinking Water Act regulate 34 million tons of treated wastes pumped into the ground in underground injection wells.

4. Clean Air Act - Criteria Pollutants:

- Under the 1970 Clean Air Act (as amended in 1970), the EPA has established a National Ambient Air Quality Standard (NAAQS) for six pollutants considered harmful to public health. Concentrations of each of the criteria pollutants has decreased between 1983 and 1992. For example, ambient levels of Particulate Matter (PM-10) have decreased by 17% between 1988 and 1992, and by 9% between 1991 and 1992. Ambient concentrations of carbon monoxide have decreased by 34% between 1983 and 1992. Annual total emissions of Volatile Organic Compounds (VOCs), which contribute to ground level ozone formation, are estimated to have declined by 11% between 1983 and 1992.

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5. Clean Air Act - Lead Ban:

- **Phased reduction of lead in gasoline and industrial controls resulting from the Clean Air Act have reduced lead emissions by 98 percent since 1970.**

6. Reduced Toxic Threats to Clean Air:

- **Under the Clean Air Act, EPA has issued control requirements for chemical manufacturers and others that will reduce toxic air emissions by almost two billion pounds each year, focused in industrial communities and urban areas where millions of people live.**

7. Toxic Releases:

- **Under the Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990, manufacturing facilities are required to provide information to the public about releases of toxic chemicals from manufacturing facilities into the environment. The information is collected in the EPA's Toxics Release Inventory (TRI) database. Reported toxic chemical releases decreased by 12.6% between 1992 and 1993, more than double the rate of decline between 1991 and 1992. Since 1988, EPA's baseline year for TRI comparisons, toxic chemical releases have declined by 42.7%. Twenty-two states and the District of Columbia have reduced their total toxic releases (including underground injection) by more than 50% since 1988.**

8. Clean Water Act:

- **The principal aim of the Clean Water Act (CWA) of 1972 is to improve and maintain the quality of our nation's waters. The CWA emphasizes the achievement of "beneficial uses" of water such as drinking, swimming, and fishing. The CWA (relative to no treatment) has raised about 19,000 river and stream miles to "swimmable" quality from below "swimmable" quality, in the vicinity of more than 15 million households, based on model results. The CWA (relative to no treatment) has improved almost 22,000 river and stream miles from below "fishable" to above "fishable" quality water, affecting over 24 million persons living near those waters, based on model results. Further, the CWA (relative to no treatment) has raised about 18,000 river and stream miles from below "boatable" to above "boatable" quality water, based on model results.**

9. Waste Wise Program:

- **From EPA's voluntary Waste Wise Program, the Agency has attracted nearly 400 partner companies in 38 business sectors and 25 endorser organizations (membership based). These companies reported more than 315,000 tons of waste prevented in the first year. In addition, 124,000 tons of recycling have resulted in the first year due directly to the program's goals.**

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10. Green Lights:

- Consistent with the Pollution Prevention Act of 1990, EPA sponsors the Green lights voluntary program to encourage corporations and state and local governments to install energy efficient lighting in their facilities. Participants reduce energy consumption by replacing existing lighting with technology that delivers the same or better quality lighting while saving electricity, preventing pollution, and saving money on electricity bills. By 1992, a total of 651 facilities had committed 2.9 billion square feet of office space to the program. In 1992, Green Lights resulted in an average reduction in lighting electricity of 53%, total energy savings of 100.5 million kilowatt hours, and a \$6.8 million reduction in energy bills. These upgrades achieved annual emission reductions of 133.5 million pounds of carbon dioxide, 1.2 million pounds of sulfur dioxide, and 482,000 pounds of nitrogen oxides.

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Department of Energy
10 Good Regulations

Nuclear Safety Management

Existing and proposed regulations provide for the safe operation of the Department's nuclear facilities. The new regulations are being developed through a process that identifies the basic requirements important for safety and then states these requirements in terms of performance standards. The regulations provide for a partnership between the Department and its contractors to ensure the safe management of the Department's nuclear facilities through an efficient use of resources and greater accountability of the contractor for achieving safety objectives.

Contract Reform Implementing Regulations: Elimination of Federal Norm

DOE is proposing to place greater reliance on commercial practices by DOE contractor purchasing systems, which have become increasingly bureaucratic over the years. This has resulted in complex and costly systems applicable to both contractors and subcontractors. In lieu of the detailed tenets in the Department's acquisition regulation, which has resulted in the inefficient layering of non-commercial systems and practices, the Department has identified purchasing system objectives and standards that it believes are common to superior commercial purchasing activities.

Energy Efficiency Standards for Refrigerators, Refrigerator-Freezers and Freezers.

The Department issued on July 12, 1995, a proposed notice of proposed rulemaking to establish energy efficiency standards for these products. The proposed standards, which have been developed through an informal consensual rulemaking effort, could save over 7 Quads (Quadrillion Btu's) of primary energy, saving consumers over \$8 billion and have positive effects on the environment by reducing the emissions of SO₂ by approximately 1000 tons and of CO₂ by approximately 540 million tons by the year 2030. The proposal reflects the joint recommendations of an independent group of refrigerator manufacturers, electric utilities, and energy efficiency advocates, who have been supported and assisted by the Department in the development of their negotiated conclusions.

Voluntary Residential Energy Efficiency Rating Guidelines.

The Department issued on July 11, 1995, proposed, statutorily required, voluntary guidelines designed to encourage uniformity for rating the annual energy efficiency of new and existing residential buildings. The voluntary guidelines are intended for use by State and local governments, utilities, builders, real estate agents, lenders, and agencies in mortgage markets to enable and encourage the assignment of energy efficiency ratings to residential buildings and the development of criteria for attractive financial instruments for energy efficient homes.

Radiation Protection of the Public and the Environment

DOE is proposing regulations that would protect the public and environment from radiation in connection with DOE nuclear activities. These new rules are part of DOE's ongoing effort to strengthen the protection of health, safety, and the environment from nuclear, radiological, and chemical hazards posed by DOE activities. The proposed rules include requirements governing liquid discharges and residual radioactive material, as well as a dose limitation system for protection of the public.

Occupational Radiation Protection

Existing and proposed regulations protect workers at DOE facilities from radiation in connection with DOE contractor and subcontractor activities. Proposed regulations include requirements governing sealed radioactive sources and surface contamination by tritium.

Energy Efficiency Standards for Dishwashers

Building on the success of the negotiations for refrigerator standards, manufacturers and energy efficiency advocates have begun informal negotiations to work out a similar consensus proposal for dishwashers. With the help of this group the Department plans to issue proposed revised standards for dishwashers within the next year. While the energy savings from this effort are expected to be less than those for refrigerators, this rule is important because it continues the process of industry and energy efficiency advocates working together with the Department to develop appropriate appliance standards, which will have long range benefits to the Nation in terms of fuel savings, creation of

new jobs and reduction in pollution.

Energy Efficiency Standards for Central Air Conditioners and Heat Pumps

To ensure that new energy efficiency standards are based on a realistic performance values, representatives from the air conditioning industry have been assisting the Department in an engineering analysis needed to develop proposed revised standards for central air conditioners and heat pumps. A draft engineering analysis has been completed and provided to the Air-Conditioning and Refrigeration Institute (ARI) for review and comment. A notice of proposed rulemaking is expected to be issued in December 1995. It is estimated that these standards will reduce energy consumption by 9 Quads, saving consumers \$8 billion by 2030, and reducing carbon emissions by 7 million metric tons.

Enforcement of Employee Safety Standards at Nuclear Weapons Facilities

DOE is proposing regulations for assessing civil penalties against contractors at DOE nuclear weapons facilities who fail to train employees in responding to hazardous substances and other emergencies. Congress has directed DOE to assess these civil penalties. Public Law 102-190, section 3131.

Strategic Petroleum Reserve

The DOE regulation to authorize the competitive sale of U.S.-owned oil in the Strategic Petroleum Reserve was used for the first time in an actual emergency drawdown in response to the 1990-91 Gulf Crisis. On January 16, 1991, in conjunction with Operation Desert Storm, President Bush ordered an drawdown and distribution of the SPR as part of a coordinated international contingency plan. Early on January 17, the Department issued a Notice of Sale for 33.75 million barrels of oil. In response to 13 successful bidders, the U.S. Government delivered over 17 million barrels via pipeline, tanker and barge, validating the market-based price and distribution approach of the SPR regulation.

STAFF DRAFT**CPSC Regulations That Have Saved Lives**

1. Toy Safety. Under CPSC's small parts regulation, toys and other products intended for children under 3 years old are prohibited from having small pieces that a child could choke on. Before the regulation, approximately 12 choking deaths related to such small parts were reported annually; now there are virtually none. This is one of CPSC's most important rules and is fundamental to ensuring that children's play does not turn into disaster.

2. Child-Resistant Cigarette Lighters. The Commission issued a safety standard in 1993 that established requirements to make disposable cigarette lighters child-resistant. Fires started by children under age 5 have caused an estimated annual average of 150 deaths, approximately 1,100 injuries and nearly \$70 million in property damage. This rule, which was supported by industry, saves lives. The Commission found that the rule could save between 80 and 105 children's lives per year and would bring potential net benefits of \$115 million annually.

3. Poison Prevention Safety Closures. CPSC's requirements for child-resistant packaging for products like aspirin or turpentine have saved over 700 lives. Such safety packages protect children from accidental poisonings. CPSC just recently approved revisions to the adult test under which child-resistant packaging is evaluated. These changes will increase the use of child-resistant packaging by making it easier for adults to use properly. Many adults find child-resistant packaging difficult to open, and they leave the caps off, fail to properly close them, or transfer the bottle's contents to a non-child-resistant container. By making these packages easier for adults to use, accidental and tragic poisonings will be further reduced.

4. Ban of Infant Bean Bag Cushions. On June 23, 1992, the Commission issued a rule banning infant cushions filled with foam plastic beads. These cushions (commonly called "bean bag cushions or pillows") were intended for children under one year of age. When the Commission issued its rule, it had reports of 35 infant deaths involving this product. The deaths apparently occurred when a pocket was created in the cushion that would trap the infant's exhaled carbon dioxide which the infant would then rebreathe. With CPSC's rule, these infant cushions are no longer on the market to claim young lives.

5. Child-Resistant Packaging for Mouthwash. Just this year, CPSC issued a rule requiring child-resistant packaging for mouthwash that contains more than 3 grams of ethanol (alcohol). Young children, who find the color and sweetness of mouthwash appealing, have been seriously injured or died from accidentally ingesting mouthwash containing ethanol. Three deaths of children under age 5 have been reported. The American Association of

Poison Control Centers had 10,193 reports of mouthwash ingestions by children under 6 years of age between 1987 and 1991. The mouthwash regulation is but one example of the life-saving poison prevention rules CPSC has issued.

6. Fireworks Requirements. The Commission has several regulations concerning the safety of Class C fireworks, the type normally purchased by consumers for non-professional use. These fireworks regulations help to keep families' Fourth of July celebrations from becoming tragedies. The Commission has banned some particularly dangerous devices like cherry bombs and M-80s. Fireworks devices that are allowed must meet certain performance requirements, such as the amount of time a fuse must burn before the device ignites. Additional regulations specify warning labels that fireworks must display to apprise consumers of potential hazards and include instructions for use.

7. Safe Cribs. CPSC's crib requirements ensure that a baby's crib provides a safe sleeping environment, not nightmares. This is crucial since parents and caregivers must be able to leave a child unattended in a crib. These regulations require, for example, that crib components like slats are separated by a safe distance so that an infant could not become trapped between the slats and strangle. In addition, the crib's hardware must not be accessible to the child or present the possibility of injuring the child.

8. Flammable Children's Sleepwear. Under CPSC's regulations, children's sleepwear must meet flammability standards to reduce the tragic incidence of deaths and injuries when a child's sleepwear catches on fire. Over the 20 years that these regulations have been in place, the number of burn deaths and injuries to children associated with ignition of clothing have substantially declined.

9. Power Mowers. In 1979 CPSC published a performance standard for walk-behind power lawn mowers, which were implicated in 77,000 injuries that were occurring each year from contact with the moving blades. The standard, which went into effect in 1982, requires that the blade on rotary powered lawn mowers stop within three seconds of the release of the lawn mower handle. A 1994 CPSC study found that walk-behind lawn mower injuries declined by about 40% between 1983, the year after the standard went into effect, and 1993. This reduction saves society about \$200 million (1993 dollars) annually.

10. Automatic Residential Garage Door Opening Equipment.

In accordance with the provisions of the Consumer Product Safety Improvement Act of 1990, in December 1992, the CPSC established a safety standard for the opening equipment of automatic residential garage doors. Since 1982, the CPSC had received

reports of 54 children between the ages of 2 and 14 who had died after becoming entrapped under such garage doors. The rule requires that equipment manufactured after January 1, 1993, contain features to minimize the likelihood that a child would be trapped and killed by a garage door.

Regulations: Preventing Injury, Illness, and Saving Lives

Lead Poisoning: In 1978, OSHA issued a standard to protect workers from exposure to lead, a chemical that is absorbed into the body by breathing or ingesting it. The lead accumulates in the blood, organs and bones, and is slowly released over time, causing anemia, brain and nerve disorders, high blood pressure and reproductive problems. Just five years after OSHA's lead standard was issued, the number of workers in lead smelting and battery manufacturing with high levels of lead in their blood dropped by 66%, from 19,000 to 6,500.

"Brown Lung" Disease: In 1978, OSHA issued a standard to protect the nation's textile workers from "brown lung"—a crippling and sometimes fatal disease that reduces a person's pulmonary function and obstructs their ability to breathe. In 1978, there were an estimated 40,000 cases of "brown lung" (also called "byssinosis") but in 1985 the prevalence of the disease had declined to about 900 cases, or less than 1% of cotton textile workers. Moreover, there is evidence that complying with OSHA's cotton dust standard actually increased productivity in the textile industry. A 1980 article in *The Economist* reported that the tighter dust control measures required by OSHA's rule prompted firms to replace outdated machinery with newer, more-efficient systems.

Collapsed Trenches: In 1989, OSHA issued a revised standard to protect workers from accidents and injuries caused by collapsed trenches and cave-ins at excavation sites. During the four-year period beginning in 1987, an average of 46 workers were killed each year in such accidents, many of which were preventable. Although the number of workers killed in trenching and excavation accidents remains intolerably high, the number has declined by 35% since OSHA revised its trenching and excavation standard.

Exposure to HIV and Hepatitis B: In December 1991, OSHA issued a rule to protect those workers who are routinely exposed to blood or other infectious material from HIV, Hepatitis B and other bloodborne diseases. In 1990, there were at least 65 reported cases of HIV infection in healthcare workers related to on-the-job exposure. Based on data provided by the Centers for Disease Control (CDC), the number of actual cases of Hepatitis B in health care workers dropped by 77%, from 3100 cases in 1987 to 725 in 1993. (1993 was the first full year that employers were complying with, and OSHA was enforcing its bloodborne pathogens rule.)

Confined Spaces: In 1993, OSHA issued a rule to protect workers from the hazards created by working in confined spaces. From 1986 through 1990, an estimated 63 workers lost their lives and an additional 5,931 workers were seriously injured in confined space environments (which pose special dangers because their size or dimension create toxic, asphyxiating, or other life-threatening hazards.) Although the actual numbers are not yet in, OSHA estimated that 54 fatalities and 5,041 serious injuries would be prevented annually when employers comply with the confined space rule.

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Mine Explosions and Fires: MSHA's ventilation standards for underground coal mines prevent the accumulation of methane and coal dust--fuel for explosions and fires. In the 25 years before passage of the Coal Mine Health and Safety Act of 1969, 901 miners were killed in explosions. In the 25 years after the Act was passed, explosions claimed 133 miners.

Mine Roof-Falls: In 1988, MSHA issued a rule requiring the use of automated temporary roof support in underground coal mines. This equipment virtually eliminates the need for miners to install temporary roof support, such as timbers--a high-risk practice. From 1979 through 1988, 64 miners were killed installing temporary support. One miner has been killed since.

Black Lung Disease: MSHA's exposure limit for respirable coal mine dust protects miners from black lung, silicosis, and other disabling respiratory diseases. Since adoption of the dust standard in 1969, the prevalence of black lung has dropped by two-thirds.

Mine Cave-Ins: A 1972 rule requires cabs and canopies for underground coal mine equipment. The rule protects miners who are operating the equipment from cave-ins. Since the rule went into effect, there have been 282 documented cases in which miners were saved from being crushed.

Silicosis: In 1994, MSHA issued a standard requiring dust-control devices on drills used in surface coal mining. The controls protect miners from over-exposure to silica dust, which causes a disabling (and sometime fatal) lung disease: silicosis. A recent MSHA-NIOSH study identified eight cases of silicosis among 150 surface coal miners studied in Pennsylvania--and illustrated why a new standard was vital.

*Regulatory Success Stories:
OSHA's Workplace Standards*

Lead Poisoning:

In 1978, OSHA issued a standard to protect workers from exposure to lead, a chemical that is absorbed into the body by breathing or ingesting it. The lead accumulates in the blood, organs and bones, and is slowly released over time, causing anemia, brain and nerve disorders, high blood pressure and reproductive problems.

Impact on Working Men and Women: Just five years after OSHA's lead standard was issued, the number of workers in lead smelting and battery manufacturing with high levels of lead in their blood dropped by 66%, from 19,000 to 6,500. That's thousands of workers saved from the disabling and deadly effects of lead poisoning.

If S. 343 had been in effect, OSHA's lead standard would have been delayed substantially by the numerous opportunities and invitations for judicial review.

"Brown Lung" Disease:

In 1978, OSHA issued a standard to protect the nation's textile workers from "brown lung" -- a crippling and sometimes fatal disease that reduces a person's pulmonary function and obstructs their ability to breathe.

Impact on Working Men and Women: In 1978, there were an estimated 40,000 cases of "brown lung" (also called "byssinosis") but in 1985 the prevalence of the disease had declined to about 900 cases, or less than 1% of cotton textile workers. Moreover, there is evidence that complying with OSHA's cotton dust standard actually increased productivity in the textile industry. A 1980 article in The Economist reported that the tighter dust control measures required by OSHA's rule prompted firms to replace outdated machinery with newer, more-efficient systems.

If S. 343 had been in effect, OSHA's cotton dust standard would have been delayed substantially by the requirement that OSHA calculate the cumulative burden of existing regulations on persons complying with the rule.

Grain Elevator Explosions:

In 1988, OSHA issued a final rule to prevent and control fires and explosions at grain handling facilities. National attention was focused on this workplace hazard after a series of devastating accidents in the 1970's. During December 1977 alone, 59 people lost their lives and another 49 were seriously injured in grain dust explosions. The victims included grain handling employees, fire fighters, grain inspectors, farmers and bystanders.

Impact on Working Men and Women: Since OSHA's grain handling rule was issued, grain dust explosions have declined by 58%. Lives have been protected, injuries prevented, and dollars saved for grain elevator operators and others in the industry.

If S. 343 had been in effect, OSHA's grain handling standard would have been delayed especially by the requirement that a cost-effectiveness test supplement OSHA's existing decision criteria of economic and technological feasibility.

Collapsed Trenches:

In 1989, OSHA issued a revised standard to protect workers from accidents and injuries caused by collapsed trenches and cave-ins at excavation sites. During the four-year period beginning in 1987, an average of 46 workers were killed each year in such accidents, and unfortunately, many of these incidents were preventable.

Impact on Working Men and Women: Although the number of workers killed in trenching and excavation accidents remains intolerably high, the number has declined by 35% since OSHA revised its trenching and excavation standard.

If S. 343 had been in effect, OSHA's trenching and excavation standard would have been delayed substantially by the requirement that OSHA conduct pre-proposal activities such as publishing an advanced notice of rulemaking and holding informal public hearings.

Exposure to HIV and Hepatitis B:

In December 1991, OSHA issued a rule to protect those workers who are routinely exposed to blood or other infectious material from HIV, Hepatitis B and other bloodborne diseases. In 1990, there were at least 65 reported cases of HIV infection in healthcare workers related to on-the-job exposure.

Impact on Working Men and Women: Based on data provided by the Centers for Disease Control (CDC), the number of actual cases of Hepatitis B in health care workers dropped by 77%, from 3100 cases in 1987 to 725 in 1993. (1993 was the first full year that employers were complying with, and OSHA was enforcing its bloodborne pathogens rule.)

If S. 343 had been in effect, the bloodborne pathogens standard would have been delayed substantially by the requirement that OSHA prepare risk assessments on actual exposure for individuals or populations, for specific hazardous activities.

Confined Spaces:

In 1993, OSHA issued a rule to protect workers from the hazards created by working in confined spaces. From 1986 through 1990, an estimated 63 workers lost their lives and an additional 5,931 workers were seriously injured in confined space environments (which pose special dangers because their size or dimension create toxic, asphyxiating, or other life-threatening hazards.)

Impact on Working Men and Women: Although the actual numbers are not yet in, OSHA estimated that 54 fatalities and 5,041 serious injuries would be prevented annually when employers comply with the confined space rule.

Explosions at Chemical Processing Plants:

In early 1992, OSHA issued a standard to prevent and control explosions and fires at chemical processing plants. During the late 1980's, a series of tragic explosions at petrochemical facilities rocked the nation, leaving hundreds of workers and residents injured or killed. A massive chemical explosion in Pasadena, Texas in 1989 left 23 workers dead. Only nine months later, 17 workers were killed after an explosion at a facility in Channelview, Texas. A flash fire at a fertilizer manufacturer in May 1991 shook Sterlington, Louisiana

leaving 8 workers dead, and 15 workers and more than 100 residents seriously injured. These are only some of the deadly, chemical releases and fires that left hundreds of innocent people victims of this devastating workplace hazard.

Impact on Working Men and Women: OSHA, working with the Chemical Manufacturers Association and other industry and labor groups, was able to promulgate in record time a final rule to control and prevent releases and explosions of highly hazardous chemicals. The solid cooperation between government, business and labor allowed OSHA to issue and implement a protective rule that has saved lives and millions of dollars.

If S. 343 had been in effect, OSHA's process safety management standard would have been delayed substantially by the requirement to determine the cumulative impact of all existing regulations on the affected industries, and the net effect on employment in small businesses even when there was no question about feasibility.

PROPOSED RULES THAT ARE INDUSTRY/TAXPAYER FAVORABLE

1. Temporary and proposed regulations facilitating use of electronic filings for Form W-4 (31.3402(f)(5)-2).

Under the Internal Revenue Code, all employees are required to furnish their employers with a signed withholding exemption certificate on or before commencing employment. The withholding exemption certificate is used in calculating the amount of tax that is to be withheld from the employee's pay. Form W-4 is the form prescribed for this purpose. The Form W-4 is also used to make changes to the number of withholding allowances claimed.

Until recently, Form W-4 existed only as a paper certificate. In December 1994, the Service published temporary regulations (and cross-referencing proposed regulations) that permit employers to establish systems for employees to file certain Forms W-4 electronically. Under those regulations, employees may use electronic systems to make most changes to their initial withholding certificate. The use of a manually signed paper Form W-4 is still required for the initial certificate and for certificates where the employee claims more than 10 withholding allowances, or claims to be exempt from withholding and is expected to earn more than \$200 per week.

Electronic systems for filing Forms W-4 lighten the regulatory burden on employers through a reduction of errors (and a reduction in resources devoted to correcting those errors) and the elimination of duplicate entry of data. The position of the regulations is an important first step in moving to a system that reduces the use of paper to the extent possible while facilitating the proper withholding of income taxes at the source, a system that will provide employers significant savings over the paper system of the recent past.

2. Deduction by Employer (1.83-6).

These regulations eliminate the requirement that employers must deduct and withhold income tax as a condition for claiming a deduction under section 83(h) for certain property transferred to an employee as compensation for services. The new rule requires instead that the employer furnish a Form W-2 or Form 1099 as a condition to claiming the deduction. This rule is less burdensome on employers and better matches deductions with income inclusions.

3. Conversion Transactions (1.1258-1).

Section 1258 requires taxpayers to treat the gains from certain transactions as ordinary income to the extent that the taxpayer's return is primarily attributable to the time value of money. The statute recharacterizes the full amount of a taxpayer's gain, notwithstanding that another "leg" of the same

transaction may give rise to a capital loss which cannot be fully used to offset ordinary income. Recently proposed regulations grant taxpayers the election to "net" their gains and losses from a single transaction for purposes of applying section 1258, thereby avoiding inappropriate results.

4. Section 338: Post-Acquisition Transactions (1.338-2).

These regulations address taxpayers' concerns regarding the continuing applicability of the Yoc Heating case following the enactment of section 338 of the Internal Revenue Code. In Yoc Heating v. Commissioner, 61 T.C. 168 (1973), the Tax Court treated the purchase of target corporation's stock by another corporation, followed by the merger of the target into the purchasing corporation's subsidiary, as a taxable asset acquisition. The regulations, issued under authority granted by section 338, provide rules that permit such a transaction, under certain circumstances, to qualify as a tax-free reorganization. Taxpayers have requested this guidance for many years to ensure that corporate restructurings following certain stock acquisitions will qualify for tax-free treatment. The regulations are taxpayer favorable and generally have been well-received.

5. Taxable Mortgage Pools (301.7701(i)-1 through -3).

These proposed regulations under section 7701(i) narrow the potential scope of taxable mortgage pools, which are not treated favorably for federal income tax purposes. Both written and oral comments have urged that taxpayers be permitted to rely on the proposed regulations to ensure certainty in planning large financial transactions. Delay would deny them the prompt relief that they seek.

6. FIRREA: Federal Financial Assistance (1.597-1 through -7).

These FIRREA regulations proposed under section 597 provide more liberal rules and smaller tax liabilities than the prior rules. The legislative history of FIRREA permits taxpayers to rely on the proposed regulations. Withdrawing and repropounding these regulations will cause a great deal of confusion with respect to federal and state tax liabilities of failed financial institutions, etc.

7. Grantor Trust Reporting (1.671-4).

Under section 671 of the Internal Revenue Code, the income of a grantor trust is taxed to the grantor, who reports the items on the grantor's tax return. Because the trust itself is not a

taxpayer, the requirement under the current regulation that the trustee file a Form 1041 (U.S. Fiduciary Income Tax Return) and report the income taxable to the grantor on a schedule attached to that return is, in some cases, unduly burdensome to both the trustee and the Internal Revenue Service. The proposed regulation provides the trustee of a grantor trust with the option of having the income taxable to the grantor being reported on Form 1099 (U.S. Information Return), rather than Form 1041. Because Form 1099 is less expensive to prepare and process than Form 1041, the regulations will reduce the filing burden of trustees of grantor trusts.

		Act Amendments of 1993
	January 1995	Large Position Reporting - Advance Notice of Proposed Rulemaking
Auction Violations by Salomon from late 1990 to early 1991	January 1993	Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds

B. REGULATIONS THAT BUSINESS LIKES

1. Existing regulations

- a. Establishment of EZ-CLEAR for savings bond agents to submit redeemed savings bonds-- Regulations were issued on September 26, 1988 (53 FR 37510), to amend 31 CFR part 321 to permit financial institutions serving as savings bond paying agents to submit redeemed bonds and receive settlement for them via EZ-CLEAR, i.e., the commercial check collection system. EZ-CLEAR replaced a batching process applicable only to savings bonds. Financial institutions welcomed this change because it made processing paid bonds easier and because they could receive settlement more quickly.
- b. Redemption of bonds for surviving beneficiaries of deceased owner-- Regulations were issued on September 26, 1988 (53 FR 37510), to amend 31 CFR Part 321 to permit financial institutions serving as savings bond paying agents to redeem savings bonds presented by surviving beneficiaries of deceased owners with appropriate documentation. The change permits financial institutions to provide greater service to their customers who own savings bonds.
- c. Redemption of bonds for representatives--Regulations were issued on August 29, 1990 (55 FR 35394), to amend 31 CFR Part 321 to permit financial institutions serving as savings bond paying agents to redeem savings bonds for fiduciaries designated both by name as well as fiduciary title in the bonds' registrations and for court-appointed representatives of deceased owners' estates when the bonds are the property of those estates.

d. Recognition of Medallion Stamp program--Regulations were issued on November 15, 1994 (59 FR 59036) to amend 31 CFR Parts 306 and 357 to recognize the officers and employees of securities brokers, dealers and related institutions, as certifying officers for marketable securities transactions. Recognition was granted to members of the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange Incorporated Medallion Signature Program (MSP). The change expands the ability of brokers and dealers to serve their customers. The Medallion programs were endorsed by the Securities Transfer Association.

2. Proposed (or to be proposed) regulations

None

C. DECISIONAL CRITERIA

Following are the statutes, under which we may issue major regulations*, to which Section 624 would apply:

15 U.S.C. 78o-5 - Government Securities Act of 1986

15 U.S.C. 78o-5 (b)(2) - Market Reform Act of 1990

Pub. L. 103-202, 107 Stat. 2344 - Government Securities Act
Amendments of 1993

31 U.S.C. 3102 - Bonds

31 U.S.C. 3103 - Notes

31 U.S.C. 3104 - Certificates of indebtedness and Treasury bills

31 U.S.C. 3121 - Procedure

Please contact Jacqueline Jackson in the Office of the Chief Counsel for Public Debt; She can be reached at 219-3320.

* Please note that regulations issued under these statutes do not qualify as "major" or "significant" under current authorities.

OTS

June 12, 1995

A. Thrift Crisis - Calendar of Regulatory Events

The early 1980's marked the beginning of the thrift crisis. Short term interest rates reached historic proportions - as high as 19 % - and by 1981 85% of all thrifts were losing money. During the remainder of the 1980's and into the 1990's, there were large numbers of thrift failures. Several legislative and regulatory initiatives were undertaken during that time to address the situation.

Legislative Event: In 1982 the Garn-St. Germain Depository Institution Act was passed by Congress deregulating thrift powers and raising the limits on insurance of accounts.

Regulatory Response:

- Increased thrift powers by allowing thrifts to make commercial real estate loans, consumer loans, and unsecured commercial loans.
- Introduced a new insured money market deposit account

Legislative Event: In 1987 the Competitive Equality Banking Act was passed.

Regulatory Response:

- Increased deposit insurance assessments.
- Introduced several provisions for forbearance and leniency.
- Introduced the qualified thrift lender (QTL) test.

Legislative Event: In 1989 the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) was passed by Congress re-regulating thrift activities and restructuring the regulatory scheme.

Regulatory Response:

- Recodified regulations to reflect creation of OTS under the Department of Treasury.
- Transferred deposit insurance for thrifts from FSLIC to the FDIC and created the Savings Association Insurance Fund (SAIF).
- Increased thrift capital requirements.

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- Commercial banks were allowed to buy healthy thrifts.
- Direct equity investments were phased out or capitalized in a separate uninsured entity.
- Increased the QTL test from 60% to 70% of assets.
- Placed limitations on commercial loans, consumer loans and commercial real estate.

Legislative Event: In 1991 the Federal Deposit Insurance Corporation Improvement Act (FDICIA) was passed by Congress.

Regulatory Response:

- Established Prompt Corrective Action categories.
- Limited use of brokered deposits to adequately capitalized financial institutions.
- Lowered the QTL test from 70% to 65% of assets.
- Mandated the use of Generally Accepted Accounting Principles.
- Encouraged inter-industry consolidation (banks and thrifts).

B. Regulations That Business Likes

OTS anticipates that savings associations will welcome the proposal on liquidity. The liquidity requirement is obsolete, but OTS cannot eliminate it absent a statutory change. OTS does plan, however, to propose changes to the liquidity regulation to reduce burden as much as possible.

OTS also anticipates that savings associations will welcome the proposed regulatory initiative related to pre-emption. OTS anticipates that this initiative will clarify the areas where OTS has pre-empted state laws and provide guidance as to the reasoning OTS uses to make pre-emption decisions.

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C. Decisional Criteria - S. 343

Our preliminary review of S. 343 discloses that OTS has issued no major regulations to which section 624 of S. 343 would apply. OTS does not anticipate issuance of any major regulations to which section 624 of S. 343 would apply since rules relating to the safety or soundness of Federally insured depository institutions are exempt from the term "rule" as used in the proposed legislation. In addition, non-safety and soundness rules have historically not had a significant enough effect to be classified as major rules.

Attached is OTS' estimate of our costs in implementing the remaining provisions of S. 343.