

**NLWJC - Kagan**

**Counsel - Box 028 - Folder 004**

**Regulatory Reform-Legislative  
Materials [3]**

## EXECUTIVE OFFICE OF THE PRESIDENT

December 13, 1995

TO: (See below)

FROM: Wesley Warren, CEQ / Michael Fitzpatrick, OIRA

SUBJECT: Regulatory Reform

**THERE WILL BE AN INTERAGENCY CONFERENCE CALL ON REGULATORY REFORM TOMORROW, DECEMBER 14, 1995 AT 5:00 P.M.** The purpose of the conference call is to discuss Congressional activities on regulatory reform. To access the conference call, dial (202) 757 - 2104, code # 9000.

We need to request that the agencies not place more than one call into the conference line. However, agencies can choose to have more than one person on the line used to call in. Please let us know if there should be a different contact for your agency for this call than is listed below.

For your information, you will find attached to this memo a copy of the colloquy to the Morella amendment. The colloquy was read verbatim on the floor yesterday.

If you have any questions, feel free to call Wesley Warren 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	514-1724	DOJ
Richard Carro	622-0650	622-1188	Treas
Floyd Williams	622-0725	622-0534	Treas
Bob Hickmott	260-5200	260-4046	EPA
Gary Guzy	260-7960	260-3684	EPA
Kate Perry	564- 4059	564- 0022	EPA
Bob Wager	(301)-504-0515	(301)504-0016	CPSC
Neil Eisner	366- 4723	366-9313	DOT
Crescence Massei	366-9714	366-3675	DOT
Melanie Bellar	208-7693	208-5533	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	326-2050	FTC
Kate Fulton	942-0014	942-9650	SEC
Ed Jurith	395-6709	395-6708	ONDCP
Kitty Higgins	456-2572	456-6704	WHOCA
Tracy Thornton	456-6493	456-2604	WHILA
Martha Foley	456-6799	456-2271	WHO
Linda Lance	456-6605	456-6212	OVP
Michael Waldman	456-2272	456-7431	DPC
Marcia Seidner	456-6202	456-6025	OSTP
Ellen Seidman	456-2802	456-2223	NEC
Mike Toman	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC

Mik  
Fitzpatrick

Draft #2

Mr. Brown.

I would like to engage in a colloquy with the Congresswoman from Maryland. There has been concern expressed in parts of the Executive Branch regarding Section 12(d) of this bill which is our Committee's codification of OMB Circular A-119. I would like to be reassured that the Congresswoman's understanding is consistent with my understanding of the scope of Section 12(d).

First, the term "voluntary, private sector, consensus standards bodies" is used throughout the section but is not defined. I assume that the voluntary consensus standards bodies referred to in this section are our nation's standards development organizations such as the American Society for Testing and Materials, the American Society of Mechanical Engineers, the American Petroleum Institute, and the Society of Automotive Engineers and their umbrella organization, the American National Standards Institute.

Mrs. Morella.

If the gentleman would yield, you are correct. We used voluntary consensus standards in the same manner that it would be used in the engineering and standards communities when they talk about technical, mechanical, or engineering standards. The private sector consensus standards bodies covered by this section are engineering societies and trade associations as well as organizations whose primary purpose is development or promotion of standards. The standards they develop are the common language of measurement, used to promote interoperability and ease of communications in commerce. We meant to cover only those standards which are developed through an open process in which all parties and experts have ample opportunity to participate in developing the consensus embodied in that standard. Our use of the term "private sector" is meant to indicate that these standards are developed by umbrella organizations located in the private sector rather than to preclude government involvement in standards development. In fact, it is my hope that this section will help convince the Federal government to participate more fully in these organizations' standards developing activities to increase the likelihood that the standards can meet public sector as well as private sector needs.

Mr. Brown.

I would assume from your comments that you would expect a rule of reason to prevail in the implementation of this section and that new bureaucratic procedures would be inconsistent with the intent of this section.

Mrs. Morella.

If the gentleman would yield further, that was our intent in beginning the section with the words "to the extent practicable". For instance, we would expect government procurements of off-the-

or  
developing regulations ~~not done~~

shelf commercial products or commodities to be exempted by regulation from any review under this section. We also do not intend through this section to limit the right of the government to write specifications for what it needs to purchase. Our focus instead is on making sure the Federal government does not reinvent the wheel. We are merely asking Federal agencies to make all reasonable efforts to use voluntary, private sector, consensus standards unless there is a significant reason not to do so when describing systems, equipment, components, commodities, and other items for procurement. We expect government specifications to use the private sector's standards language rather than unique government standards whenever practicable to do so. However, as under OMB Circular A-119, agencies would still have broad discretion to decline to use a voluntary standard if the agency formally determined that the standard was inadequate for government, did not meet statutory criteria, or was otherwise inappropriate.

Mr. Brown.

I agree with the gentlewoman and thank her for her explanations.

**EXECUTIVE OFFICE OF THE PRESIDENT**

December 12, 1995

**TO:** (See below)

**FROM:** Wesley Warren, CEQ / Michael Fitzpatrick, OIRA

**SUBJECT:** Regulatory Reform

**THERE WILL BE AN INTERAGENCY CONFERENCE CALL ON REGULATORY REFORM TODAY, DECEMBER 12, 1995 AT 5:00 P.M.** The purpose of the conference call is to discuss Congressional activities on regulatory reform. To access the conference call, dial (202) 757 - 2104, code # 2468.

We need to request that the agencies not place more than one call into the conference line. However, agencies can choose to have more than one person on the line used to call in. Please let us know if there should be a different contact for your agency for this call than is listed below.

For your information, you will find attached to this memo a copy of an amendment to HR 2564 offered by Mr. Clinger.

If you have any questions, feel free to call Wesley Warren 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	514-1724	DOJ
Richard Carro	622-0650	622-1188	Treas
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Ellen Seidman	456-2802	456-2223	NEC
Mike Toman	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC

AMENDMENT TO H. R. 2364  
OFFERED BY MR. CLINGER

Beginning on page 24, redesignate sections 8 through 24 as sections 9 through 25, respectively, and insert after line 5 the following:

1 SEC. 8. PROHIBITION ON USE OF APPROPRIATIONS FOR  
2 LOBBYING.

3 (a) IN GENERAL.—Subchapter III of chapter 13 of  
4 title 81, United States Code, is amended by adding at the  
5 end the following new section:

6 "§ 1354. Prohibition on lobbying by Federal agencies  
7 "(a) PROHIBITION.—Except as provided in sub-  
8 section (b), until or unless such activity has been specifi-  
9 cally authorized by an Act of Congress and notwithstand-  
10 ing any other provision of law, no funds made available  
11 to any Federal agency, by appropriation or otherwise, shall  
12 be used by such agency for any activity (including the  
13 preparation, publication, distribution, or use of any kit,  
14 pamphlet, booklet, public presentation, news release,  
15 radio, television, or film presentation, video, or other writ-  
16 ten or oral statement) that is intended to promote public  
17 support or opposition to any legislative proposal (including  
18 the confirmation of the nomination of a public official or

1 the ratification of a treaty) on which congressional action  
2 is not complete.

3 "(b) CONSTRUCTION.—

4 (1) COMMUNICATIONS.—Subsection (a) shall  
5 not be construed to prevent officers or employees of  
6 Federal agencies from communicating directly to  
7 Members of Congress, through the proper official  
8 channels, their requests for legislation or appropria-  
9 tions that they deem necessary for the efficient con-  
10 duct of the public business or from responding to re-  
11 quests for information made by Members of Con-  
12 gress.

13 "(2) OFFICIALS.—Subsection (a) shall not be  
14 construed to prevent the President, Vice President,  
15 any Federal agency official whose appointment is  
16 confirmed by the Senate, any official in the Execu-  
17 tive Office of the President directly appointed by the  
18 President or Vice President, or the head of any Fed-  
19 eral agency described in paragraph (3) or (3) of sub-  
20 section (d), from communicating with the American  
21 public, through radio, television, or other public com-  
22 munication media, on the views of the President for  
23 or against any pending legislative proposal. The pre-  
24 ceding sentence shall not permit any such official to  
25 delegate to another person the authority to make

3

1 communications subject to the exemption provided  
2 by such sentence.

3 "(c) COMPTROLLER GENERAL.—

4 "(1) ASSISTANCE OF INSPECTOR GENERAL.—

5 In exercising the authority provided in section 712,  
6 as applied to this section, the Comptroller General  
7 may obtain, without reimbursement from the Comp-  
8 troller General, the assistance of the Inspector Gen-  
9 eral within whose Federal agency activity prohibited  
10 by subsection (a) of this section is under review.

11 "(2) EVALUATION.—One year after the date of  
12 the enactment of this section, the Comptroller Gen-  
13 eral shall report to the Committee on Government  
14 Reform and Oversight of the House of Representa-  
15 tives and the Committee on Governmental Affairs of  
16 the Senate on the implementation of this section.

17 "(3) ANNUAL REPORT.—The Comptroller Gen-  
18 eral shall, in the annual report under section 719(a),  
19 include summaries of investigations undertaken by  
20 the Comptroller General with respect to subsection  
21 (a).

22 "(d) DEFINITION.—For purpose of this section, the  
23 term 'Federal agency' means—

24 "(1) any executive agency, within the meaning  
25 of section 105 of title 5:

4

1           "(2) any government-sponsored enterprise.  
2           within the meaning of section 8(8) of the Congres-  
3           sional Budget Act of 1974; and

4           "(3) any private corporation created by a law of  
5           the United States for which the Congress appro-  
6           priates funds."

7           (b) CONFORMING AMENDMENT.—The table of sec-  
8           tions for chapter 13 of title 31, United States Code, is  
9           amended by inserting after the item relating to section  
10          1353 the following new item:

    "1354. Prohibition on lobbying by Federal agencies."

11          (c) APPLICABILITY.—The amendments made by this  
12          section shall apply to the use of funds after the date of  
13          the enactment of this Act, including funds appropriated  
14          or received on or before such date.

        Strike "this Act" each place it occurs and insert  
        "this Act (other than section 8)".



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

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

DEC - 1 1995

Elena

MEMORANDUM FOR DISTRIBUTION

FROM: Sally Katzen *Skaton*

SUBJECT: Revised Corrections Day Chart

Attached is a revised version of the Corrections Day chart we circulated two weeks ago. Updated versions will continue to follow every two weeks. If you have any questions or comments, please call me at 5-4852.

Distribution:

Pat Griffin  
Alexis Herman  
Mike McCurry  
✓ Jack Quinn  
Carol Rasco  
Laura Tyson  
John Angell  
Martha Foley  
Barry Toiv  
Kitty Higgins  
Elaine Kamarck  
Katie McGinty  
Ron Klain  
Greg Simon

## HOUSE CORRECTIONS DAY

Revised 11/30/95

DATE	BILL NUMBER	PURPOSE	HOUSE VOTE	SENATE ACTION	ADMINISTRATION POSITION
July 25, 1995	H.R. 1943 San Diego Coastal Corrections Act of 1995	H.R. 1943 grants San Diego permanent exemption from secondary treatment requirements for wastewater (Clean Water Act)	Passed 269-156	None	SAP <b>opposing</b> H.R. 1943 because bill was unnecessary, scientifically unsound, and contrary to good public policy -- San Diego had already been granted preliminary approval of waiver from Clean Water Act
Oct. 10, 1995	H.R. 436 Edible Oil Regulatory Reform Act	H.R. 436 requires agencies to differentiate between petroleum and animal and vegetable oils when issuing rules or enforcing any regulation (FDA and FSIS exempted)	Passed by voice vote	Passed by voice vote (11/2/95)	SAP stating that the Administration has <b>no objection</b> passage of H.R. 436  [Signed by POTUS (11/20/95)]
Oct. 24, 1995	H.R. 782 Federal Employee Representation Improvement Act	H.R. 782 allows federal employees to represent the views of employee organizations (e.g., credit unions, child care centers) before governmental agencies	Passed by voice vote	Referred to Senate Judiciary Comm. (10/25/95); will be transferred to Gov't Affairs Comm.	SAP <b>supporting</b> H.R. 782

Oct. 24, 1995	H.R. 1114 Fair Labor Standards Act Exemption	H.R. 1114 permits minors covered by the Fair Labor Standards Act to load materials into balers and compactors that meet certain design standards	Passed by voice vote	Referred to Senate Labor & Human Resources Comm. (10/25/95)	The Administration did not issue a SAP on H.R. 1114
Oct. 24, 1995	H.R. 117 Senior Citizens' Housing Safety and Economic Relief Act of 1995	H.R. 117 provides public housing authorities with greater discretion to prevent persons with drug or alcohol problems from living in public housing projects designated for occupancy by the elderly	Passed 415-0	Referred to Senate Banking Comm. (10/25/95)	SAP <b>generally supporting</b> the goals of H.R. 117 but setting forth several concerns
Nov. 14, 1995	H.R. 2366 Repeal of Unnecessary Medical Device Reporting Requirement	H.R. 2366 repeals the Cardiac Pacemaker Registry established under the Social Security Act because it overlaps with a more comprehensive reporting system mandated by the Food, Drug, and Cosmetic Act	Passed by voice vote	Referred to Senate Finance Comm. (11/15/95)	SAP <b>supporting</b> H.R. 2366
Nov. 14, 1995	S. 790 Federal Reports Elimination and Sunset Act of 1995	S. 790 eliminates over 150 reporting requirements for executive agencies and modifies or streamlines over 60 more (the 1978 Inspectors General Act and the 1990 Chief Financial Officers Act, which address waste, fraud, abuse, and other management issues, are exempted)	Passed by voice vote	Passed by unanimous consent (7/17/95)	The Administration supports S. 790, but issued no SAP before the House vote because the bill had already passed the Senate  [Because the House and Senate language differ slightly, the Senate must vote again -- there will likely be no conference]

Nov. 28, 1995	H.R. 2519 Philanthropy Protection Act of 1995	H.R. 2519 is intended to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws (related to H.R. 2525 below)	Passed 421-0	Passed by voice vote (11/29/95)	The Administration did not issue a SAP on H.R. 2519  [Enrolled bill]
Nov. 28, 1995	H.R. 2525 Charitable Gift Annuity Antitrust Relief Act of 1995	H.R. 2525 modifies the operation of antitrust laws, and similar state laws, with respect to charitable gift annuities to allow several charities to agree to use the same discount rate in making payments under charitable gift annuities	Passed 427-0	Passed by voice vote (11/29/95)	The Administration did not issue a SAP on H.R. 2525  [Enrolled bill]
Dec. 12, 1995  (?)	H.R. 1787 Amendment to the Federal Food, Drug, and Cosmetic Act	H.R. 1787 amends the Food, Drug, and Cosmetic Act by repealing the saccharin notice requirement	N/A	N/A	The Administration will issue a <b>support or no objection</b> SAP

## EXECUTIVE OFFICE OF THE PRESIDENT

December 8, 1995

TO: (See below)

FROM: Barbara A. Matzner

SUBJECT: Regulatory Reform

For your information, you will find attached to this memo copies of additional materials regarding changes to the Morella Amendment that Michael Fitzpatrick wanted distributed. ( Total # pgs. - 8 )

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	514-1724	DOJ
Richard Carro	622-0650	622-1188	Treas
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Marcia Seidner	456-6202	456-6025	OSTP
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Mike Toman	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC

12-07-1995 11:54

202 350 4342

LEGISLATION DIV

P.03

MORELL\MORELL.048

H.L.C.

SECTION 12  
UNAMENDED  
BY  
MORELL

1 (j) SECTION 14 REPEAL.—Section 14 of the Fastener  
2 Quality Act (15 U.S.C. 5419) is repealed.

3 SEC. 12. STANDARDS CONFORMITY.

4 (a) USE OF STANDARDS.—Section 2(b) of the Na-  
5 tional Institute of Standards and Technology Act (15  
6 U.S.C. 272(b)) is amended—

7 (1) by striking “, including comparing stand-  
8 ards” and all that follows through “Federal Govern-  
9 ment”;

10 (2) by redesignating paragraphs (3) through  
11 (11) as paragraphs (4) through (12), respectively;  
12 and

13 (3) by inserting after paragraph (2) the follow-  
14 ing new paragraph:

15 “(3) to compare standards used in scientific in-  
16 vestigations, engineering, manufacturing, commerce,  
17 industry, and educational institutions with the  
18 standards adopted or recognized by the Federal Gov-  
19 ernment and to coordinate the use by Federal agen-  
20 cies of private sector standards, emphasizing where  
21 possible the use of standards developed by private,  
22 consensus organizations;”

23 (b) CONFORMITY ASSESSMENT ACTIVITIES.—Section  
24 2(b) of the National Institute of Standards and Tech-  
25 nology Act (15 U.S.C. 272(b)) is amended—

12-07-1995 11:55

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LEGISLATION DIV

P.04

MOORELL\MORELL.045

H.L.C.

1 (1) by striking "and" at the end of paragraph  
2 (11), as so redesignated by subsection (a)(2) of this  
3 section;

4 (2) by striking the period at the end of para-  
5 graph (12), as so redesignated by subsection (a)(2)  
6 of this section, and inserting in lieu thereof "; and";  
7 and

8 (B) by adding at the end the following new  
9 paragraph:

10 "(18) to coordinate Federal, State, local, and  
11 private sector standards conformity assessment ac-  
12 tivities, with the goal of eliminating unnecessary du-  
13 plication and complexity in the development and pro-  
14 mulgation of conformity assessment requirements  
15 and measures."

16 (c) TRANSMITTAL OF PLAN TO CONGRESS.—The Na-  
17 tional Institute of Standards and Technology shall, by  
18 January 1, 1996, transmit to the Congress a plan for im-  
19 plementing the amendments made by this section.

*Jeff Weinberg*  
5-3457

F:\Ms\MORELL\MORELL.047

H.L.C.

*Don'tky Adygn*  
6-5365

**AMENDMENT TO H.R. 2186  
OFFERED BY MRS. MORELLA**

2

OLD LANGUAGE

Page 21, after line 19, insert the following new subsection:

MORELLA  
AMEND. TO  
SECTION 12

1 (d) UTILIZATION OF CONSENSUS STANDARDS BY  
2 FEDERAL AGENCIES; REPORTS.—(1) To the extent prac-  
3 ticable, all Federal agencies and departments shall use,  
4 for procurement and regulatory applications, standards  
5 that are developed or adopted by voluntary consensus  
6 standards bodies.

7 (2) Federal agencies and departments shall consult  
8 with voluntary, private sector, consensus standards bodies,  
9 and shall participate with such bodies in the development  
10 of standards, as appropriate in carrying out paragraph  
11 (1).

12 (3) If a Federal agency or department elects to use,  
13 for procurement or regulatory applications, standards that  
14 are not developed or adopted by voluntary consensus  
15 standards bodies, the head of such agency or department  
16 shall transmit to the Office of Management and Budget  
17 an explanation of the reasons for adopting such standards.  
18 The Office of Management and Budget shall annually  
19 transmit to the Congress all explanations received by it  
20 under this subsection.

(\*)

CHANGES  
TO MORELLA  
AMEND.

The new language  
is in italics.

456-2223  
Dorothy Robyn

- Page 13, Lines 1-3; change to:

(3) in section 19 ---

(A) by inserting *,"subject to the availability of appropriations,"* after *"post-doctoral fellowship program";* and

(B) by striking "nor more than forty" and inserting in lieu thereof "nor more than "60".

- Page 14, Lines 9-12; change to:

(1) in paragraph (1)(B) by striking "having a minimum tensile strength of 150,000 pounds per square inch" and inserting in lieu thereof "having a minimum Rockwell C hardness of 40 or above";

- Page 22, Lines 3- 7; change to:

(d) UTILIZATION OF CONSENSUS STANDARDS BY FEDERAL AGENCIES; REPORTS.--- (1) To the extent practicable, all Federal agencies and departments shall use, for procurement and regulatory applications, standards that are developed or adopted by voluntary, *private sector*, consensus standards bodies.

- Page 22, Lines 12-20; change to:

(3) If a Federal agency or department elects to ~~use~~ *develop*, for procurement or regulatory applications, standards that are not developed or adopted by voluntary, *private sector*, consensus standards bodies, the head of such agency or department shall transmit to the Office of Management and Budget, *via the National Institute of Standards and Technology*, an explanation of the reasons for ~~adopting~~ *developing* such standards. The Office of Management and Budget, *with the assistance of the National Institute of Standards and Technology*, shall annually transmit to the Congress all explanations ~~received by it~~ *concerning exceptions made* under this subsection.

COMM. REPORT  
6N  
SECTION 12  
AS AMENDED

1992. More than 300 letters were received from the public. Over 70% of the letters supported the recommendations of the Fastener Advisory Committee for amending the Act.

The Committee has listened to the Fastener Advisory Committee, its Fastener Public Law Task Force, and other representatives from the manufacturing, importing, and distribution sectors of the United States fastener industry. The task force represents 85 percent of all United States companies and their suppliers involved in the manufacture, distribution, and importation of fasteners and over 100,000 employees in all 50 states. The Committee, along with NIST, has worked to improve the law, while preserving safety and quality.

The section focuses mainly on heat treat certification, mixing of like-certified fasteners, and sale of fasteners, in most cases, with minor non-conformances. The Committee believes that this section maintains safety, reduces the unnecessary burdens on industry, and ensures proper enforcement of the Fastener Quality Act.

In addition, the Committee understands concerns voiced by the fastener industry regarding the methods in which fasteners may be altered under the Fastener Quality Act. As originally passed, the Fastener Quality Act states that fasteners may be altered in three ways: by hardening; by electroplating fasteners having tensile strengths of 150,000 psi or higher; or by machining. Further in the Fastener Quality Act, it is stated that if such an alteration changes the performance of the fastener so it no longer conforms to the original standards and manufacturer's certification. It is considered a significant alteration, and the person who sells such fasteners shall be treated as the manufacturer, causing the altered fastener to be inspected and tested. The Committee expects these concerns can be adequately addressed by removing the specific statutory threshold value of altered fasteners from this Act. This will permit NIST to establish a threshold value in its implementing regulations, based on extensive technical review, and following NIST's consideration of public comment by members of the fastener industry and other interested parties.

SECTION 12. STANDARDS CONFORMITY.

The Committee understands the crucial role standards play in all facets of daily life and in the ability of the nation to compete in the global marketplace. The United States, unlike the federalized standards system of most other countries, relies heavily on a decentralized, private sector-based, voluntary consensus standards system. Federal government efforts have been concentrated in metrology research, maintenance of national measurement standards, including calibration services and standard reference materials, participation in voluntary standards activities, government-to-government negotiations, and development of standards for governmental purposes. This unique consensus-based voluntary system has served us well for over a century and has contributed significantly to United States competitiveness, health, public welfare, and safety.

Playing an important role in maintaining a future competitiveness edge is the ability to develop standards which match the speed of the rapidly changing technology of the marketplace. While

24

the Committee is aware that the standards role of the federal government is different from that of our trading partners, federal agencies are, nevertheless, major participants in the United States standards system.

The key challenge is to update domestic standards activities, in light of increased internationalization of commerce, and to reduce duplication and waste by effectively integrating the federal government and private sector resources in the voluntary consensus standards system, while protecting its industry-driven nature and the public good. Better coordination of federal standards activities is clearly crucial to this effort.

These issues were raised by the National Research Council (NRC) in its March, 1995 report entitled, "Standards, Conformity Assessment, and Trade in the 21st Century." The NRC report recommended that Congress amend NIST's organic act (15 U.S.C. 271, et seq.) to clarify NIST's lead role in the implementation of a government-wide policy of phasing out the use of federally-developed standards wherever possible, in favor of standards developed by private sector, consensus standards organizations, with input from affected agencies. This policy is already eliminating duplication of effort and conflict between government standards and specifications, and widely-accepted industry practices in the same technical areas. The Committee, after conducting a June 29, 1995 hearing on the issue, adopted the NRC recommendation in this section, making it clear NIST has lead agency responsibility for standards and conformity assessment activities that are interagency in nature.

The section requires NIST to develop a strategic plan to evaluate state and local criteria for accrediting testing laboratories and product certifiers, and to take the lead in efforts to build a network of mutual recognition agreements regarding conformity assessment among federal, state, and local authorities, in the interest of eliminating unnecessary duplication and burden on industry. The collective impact of these changes is to grant NIST a clear statutory mandate to act as the lead agency for ensuring federal use of standards developed by private consensus standards organizations to meet regulatory and procurement needs, and to guide the states toward a national, rationalized system of conformity assessment and certification.

NIST is required to report to Congress on its progress and the feasibility of such actions by January 1, 1996.

In addition, the section codifies the present requirements of Office of Management and Budget (OMB) Circular A-119 and requires agencies, through OMB, to report annually to Congress on the reasons for deviating from voluntary consensus standards when the head of the agency deems that prospective consensus standards are not appropriate to the agency needs. OMB Circular A-119 was originally promulgated in 1982 and revised in 1993. It requires federal agencies to adopt and use standards, developed by voluntary consensus standards bodies, and to work closely with these organizations to ensure that developed standards are consistent with agency needs. Adherence to OMB Circular A-119 is a matter of great concern to industry and the Committee since the federal record with regard to the use of voluntary consensus standards is mixed, at best.

25

It is not the Committee's intent to create a bureaucratic reporting requirement, or to slow down standards procurement activities within agencies. It is, however, the intent of the Committee to make private sector-developed consensus standards the rule, rather than the exception. In the exceptional situation where federally-developed standards are deemed necessary, the Committee requires the agencies to report any standards development activities to OMB, via NIST.

The Committee does recognize the hard work and extensive conversion now actively underway in certain agencies, such as the Department of Defense, to implement OMB Circular A-119 and understands that this codification of the Circular complements rather than supplants these activities. The Committee understands that these agencies have already implemented procedures for high-level internal review of decisions to write federal standards. The Committee believes codifying OMB Circular A-119, however, should not result in significant changes, if any, in these standards development procedures.

An agency report to OMB required under this section is to be clear and informative, but may be summary in nature. The Committee is not requiring agencies to fully catalog every standards exception in their reporting, but does require that those records be accessible to Congress.

The section will have the effect of assisting agencies in focusing their attention on the need to work with these voluntary consensus standards bodies, whenever and wherever appropriate. It will also assist Congress in monitoring federal agency efforts to implement the OMB Circular A-119. Additionally, the section is consistent with recommendations made to the Committee as part of the NRC testimony regarding its March, 1995 report.

#### SECTION 13. SENSE OF CONGRESS.

The Committee supports the goals of the Malcolm Baldrige National Quality Award program. With the United States facing increased competition in the global marketplace, the development of effective quality methods have helped the nation's industries to maintain their market share. These quality methods have led to greater process control, more efficient quality cost measurements and controls, better quality management, and fewer manufacturing defects.

One such method of generating awareness and interest in total quality principles and encouraging United States businesses to produce globally competitive quality products and services is the Malcolm Baldrige National Quality Award. The Award was established under the Malcolm Baldrige National Quality Improvement Act of 1987 (P.L. 100-107) and was named after the late Secretary of Commerce.

As a result of adherence to the Baldrige Award principles, participating companies have created frameworks by which to measure their business success, set clear directions, and share accountability. Past award recipients have used the Award's major tenets and selection criteria to develop a commitment to quality and increased competitiveness. The Baldrige Award is managed by the National Institute of Standards and Technology (NIST).



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

*Blanca*

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIRS

MEMORANDUM FOR DISTRIBUTION

FROM: Sally Katzen *[Signature]*

SUBJECT: Assessment of Reg Reform Rider

DATE: November 17, 1995

Attached is a revised assessment of the reg reform rider attached to the debt limit bill vetoed by the President. If you have any questions or comments, please call me at 5-4852.

Distribution:

- Alice Rivlin
- Jack Lew
- Pat Griffin
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*E. you should get  
summary to get  
circulate to get  
Reg. list  
Issues -*

## ASSESSMENT OF THE REG REFORM RIDER (WALKER AMENDMENT) ON THE DEBT CEILING BILL

November 17, 1995

Earlier this week we distributed an assessment of the reg reform rider that had been attached to the debt limit bill. We learned subsequently that the House Rules Committee had incorrectly informed us that the copy we were working from was the version that passed. In fact, the rider that passed was *substantially* different in a number of important ways.

Judged against S. 343 and H.R. 9 (the Senate and House reg reform bills), the final version of the rider takes a significant step to the left, eliminating many of the provisions that we have repeatedly said were unacceptable. Among others, it does not include the special interest provisions such as repeal of the Delaney Clause and TRI; an elaborate petition process and automatic sunset review of existing rules; an explicit supermandate; and the Nunn-Coverdell Amendment's expanded definition of "major rule" to include up to 150 additional rules that affect small business. There remain, however, a number of serious concerns which would have very *real* adverse consequences for the agencies.

While our discussion reflects significant agency input, we have asked them to go back and conduct a careful line-by-line review, which should be available next week.

- **Threshold - Definition of "Major Rule"**

- Includes our \$100,000,000 threshold for "major rule."
- But also includes *non-numerical* definitions of "major rule," which contain undefined and potentially expansive terms (e.g., "major increase in costs"; "significant adverse effects on competition," etc.) which come from the Executive Order but which, embodied in law, would lead to increased litigation and would generally expand the scope.

- **Decisional Criteria**

-- An agency must certify that:

- 1) the benefits justify the costs; and
- 2) the rule employs to the extent practicable flexible alternatives and adopts the reasonable alternative that has the *greater* [sic] net benefits and achieves the objectives of the statute.

If the first criterion cannot be met, the agency may still promulgate the rule if it finds that:

- 1) the rule employs to the extent practicable flexible alternatives; and
- 2) the rule adopts that alternative with the *least* net cost of the reasonable alternatives that achieve the objectives of the statute.

By its terms, this provision will drive agencies toward a single result which may not always be the most sensible, and at least one agency continues to object to any decisional criteria that highlight quantifiable measures of costs and benefits.

- **Supermandate**

-- The rider does *not* include an explicit supermandate provision but neither does it include an explicit statement that these decisional criteria do not modify any existing standards. Because the rider does contain a savings provision which makes clear that the *risk assessment* provisions do not modify any existing statutory standards, some agencies are concerned that courts might interpret the absence of such a provision for the *cost-benefit* criteria as congressional intent that the criteria override existing statutory standards.

- **Petition Process**

-- Although the rider does not contain S. 343's overlapping and extremely burdensome petition processes (including review of existing rules, an expanded Section 553 petition process, and petitions for alternative means of compliance), it does authorize a petition process for reviewing major free-standing risk assessments which includes a "reasonable likelihood" standard, a 180-day deadline to grant or deny petitions, and judicial review of denials. Essentially, this provision provides a backdoor process for reviewing existing, non-major health, safety, and environmental regs; at least one agency could get swamped.

- **Judicial Review**

-- The rider contains no separate judicial review provision -- but recall that judicial review exists unless explicitly prohibited. This invites endless litigation over the rider's many new requirements and ambiguous terms (e.g., whether a proposed "rule is written in a reasonably simple and understandable manner").

-- On the other hand, it does not provide for interlocutory appeals, which was of great concern.

- **Effective Date**

-- The rider has essentially eliminated the backdoor moratorium problem. The cost-benefit requirements apply only to rulemakings begun after enactment and for risk assessments the effective date is 18 months after date of enactment (a few rulemakings begun prior to enactment and not concluded within 18 months could get caught by the latter effective date and have the rider's risk provisions applied to them).

- **APA Changes**

- The rider does not include S. 343's wholesale rewrite of Section 553 of the APA. However, it does add several troubling provisions to Section 553 to require publication of a notice of a notice of proposed rulemaking (extra paperwork), require an agency hearing on a proposed rule any time 100 people want one (same with an extension of time to comment on a proposed rule), codify the Executive Order with some changes (including expanded contents for agencies' regulatory impact analyses, OMB power to delay indefinitely final rules, and extending OIRA review of regs to independent agencies).

- **Risk Assessment**

- Includes covered agency concept which narrows applicability, but not that much (see, e.g., all of USDA, all of DOT).

- *Very* broad scope for most covered agencies that reaches *any* report to Congress and *any* agency policy guidance, and that essentially lowers the threshold to \$75,000,000.

- *Very, very* broad scope for EPA, picking-up *any* clean-up plan under Superfund, *any* permit condition, and *any* listing of a hazardous or toxic substance (as well as DOE, DOD, or DOI environmental clean-up plans).

- Does not include an exception for emergencies (Does FAA have to comply with all of the requirements before issuing an airworthiness directive?) or for enforcement actions.

- Includes principles for risk assessment and risk characterization and communication which, while basically sensible, are quite extensive. Agencies will object that they should not be embodied in a statute. Note the interrelation between this section's broad scope and its requirement for extensive risk analyses.

- Includes multiple reporting requirements, studies, and guidelines with respect to risk assessment, peer review, comparative risk analysis, and risk-based priorities, without authorizing the funds necessary to carry out the work.

- Some agencies will object to the requirement that they provide a "best estimate" of risk.

- The peer review provision does not provide a balance between government employees and those in the private sector. The former are barred from serving if they are from the agency whose program is under review, while the latter are not barred (even if they stand to benefit directly) as long as they disclose their interest.

- **Section 707 - Consent Decrees**

- Includes a provision which would prohibit court enforcement of settlement agreements that restrict agency discretion; but *any* settlement agreement restricts the signer's discretion.

- **Sections 708 - Affirmative Defenses/Estoppel**

- Would provide a complete defense to any enforcement action if a party can show they "reasonably relied" on a rule inconsistent with the rule being enforced without requiring a showing of good faith.

- **Section 709 - Affirmative Defense/Estoppel (Hutcheson Amendment)**

- This bar of civil and criminal penalties where a party reasonably and in good faith relies on its own interpretation of a rule has been substantially cleaned-up to reduce the amount of manipulation possible.

- **Regulatory Accounting**

- Includes S. 343's burdensome and costly "make-work" requirement to calculate annually the costs and benefits of *all* major rules for 5 years.

- **Reg Flex**

- Only very minor issues remain (e.g., one year statute of limitations).

- **Congressional Review**

- Includes a provision comparable to the Senate-passed 45-day layover, but now with 60 days for congressional review.

- **Snakes**

- Defines "cost" but not "benefit." Why not?

- Includes "make-work" -- while there's an exception to cost-benefit analysis for health and safety emergencies, agencies still have to eventually do the work even if the order has taken effect and solved the situation or otherwise lapsed.

- Generally includes *lots* of reports, lists, notices, etc.



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NOV 17 1995

*Sally*

MEMORANDUM FOR DISTRIBUTION

FROM: Sally Katzen *Katzen*

SUBJECT: Revised Corrections Day Chart

Attached is a revised version of the Corrections Day chart we circulated two weeks ago. Updated versions will continue to follow every two weeks. If you have any questions or comments, please call me at 5-4852.

Distribution:

Pat Griffin  
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Greg Simon

## HOUSE CORRECTIONS DAY

Revised 11/17/95

DATE	BILL NUMBER	PURPOSE	HOUSE VOTE	SENATE ACTION	ADMINISTRATION POSITION
July 25, 1995	H.R. 1943 San Diego Coastal Corrections Act of 1995	H.R. 1943 grants San Diego permanent exemption from secondary treatment requirements for wastewater (Clean Water Act)	Passed 269-156	None	SAP <b>opposing</b> H.R. 1943 because bill was unnecessary, scientifically unsound, and contrary to good public policy -- San Diego had already been granted preliminary approval of waiver from Clean Water Act
Oct. 10, 1995	H.R. 436 Edible Oil Regulatory Reform Act	H.R. 436 would require agencies to differentiate between petroleum and animal and vegetable oils when issuing rules or enforcing any regulation (FDA and FSIS exempted)	Passed by voice vote	Passed by voice vote (11/2/95)	SAP stating that the Administration "has <b>no objection</b> to House passage of H.R. 436"  [Enrolled bill presented to POTUS]
Oct. 24, 1995	H.R. 782 Federal Employee Representation Improvement Act	H.R. 782 would allow federal employees to represent the views of employee organizations (e.g., credit unions, child care centers) before governmental agencies	Passed by voice vote	Referred to Senate Judiciary Comm. on Oct. 25, 1995	SAP <b>supporting</b> H.R. 782
Oct. 24, 1995	H.R. 1114 Fair Labor Standards Act Exemption	H.R. 1114 would permit minors covered by the Fair Labor Standards Act to load materials into balers and compactors that meet certain design standards	Passed by voice vote	None	The Administration did not issue a SAP on H.R. 1114

Oct. 24, 1995	H.R. 117 Senior Citizens' Housing Safety and Economic Relief Act of 1995	H.R. 117 would provide public housing authorities with greater discretion to prevent persons with drug or alcohol problems from living in public housing projects designated for occupancy by the elderly	Passed 415-0	None	SAP <b>generally supporting</b> the goals of H.R. 117 but setting forth several concerns
Nov. 14, 1995	H.R. 2366 Repeal of Unnecessary Medical Device Reporting Requirement	H.R. 2366 repeals the Cardiac Pacemaker Registry established under the Social Security Act because it overlaps with a more comprehensive reporting system mandated by the Food, Drug, and Cosmetic Act	Passed by voice vote	None	SAP <b>supporting</b> H.R. 2366
Nov. 14, 1995	S. 790 Federal Reports Elimination and Sunset Act of 1995	S. 790 eliminates over 150 reporting requirements for executive agencies and modifies or streamlines over 60 more (the 1978 Inspectors General Act and the 1990 Chief Financial Officers Act, which address waste, fraud, abuse, and other management issues, are exempted)	Passed by voice vote	Passed by voice vote 3/7/95 as amend. to the PRA, but later dropped from bill	The Administration supports S. 790, but issued no SAP because the bill had already passed the Senate
Nov. 28, 1995  (?)	H.R. 2519 Philanthropy Protection Act of 1995	H.R. 2519 is intended to facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws (related to H.R. 2525 below)	N/A	N/A	The Administration is currently developing its position

Nov. 28, 1995 (?)	H.R. 2525 Charitable Gift Annuity Antitrust Relief Act of 1995	H.R. 2525 modifies the operation of antitrust laws, and similar state laws, with respect to charitable gift annuities to allow several charities to agree to use the same discount rate in making payments under charitable gift annuities	N/A	N/A	The Administration is currently developing its position
Nov. 28, 1995 (?)	H.R. 1787 Amendment to the Federal Food, Drug, and Cosmetic Act	H.R. 1787 amends the Food, Drug, and Cosmetic Act by repealing the saccharin notice requirement	N/A	N/A	The Administration will issue a <b>support</b> or <b>no objection</b> SAP

# **NAM** National Association of Manufacturers

October 19, 1995

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

We urge your support for regulatory reform legislation in the Senate. Until now, S. 343 has not received the support of your Administration for reasons that several senior Executive Branch officials have expressed.

During the past several weeks, as the bill was discussed and debated in the Senate, substantial compromises were made to address concerns expressed by those Administration officials. The current version of the bill, as modified by numerous adopted and pending amendments and by the continuing efforts of Senators Robb, Rockefeller and others, addresses all substantive issues your Administration has raised during public debate. The result is an unquestionably reasonable bill, even a moderate one. Its passage would be a major step forward in the effort to reform, modernize and streamline the process by which the federal government regulates against threats to health, safety and the environment.

The NAM's overriding objective continues to be increasing the pace of economic growth. Economic expansion -- in the range of 3 to 3.5 percent annual GDP growth -- will be the key to future job creation, wage growth, a healthy environment and improved living standards for all Americans.

Meaningful regulatory reform is a principal means to achieving and sustaining such future growth. While the private sector has cut cost and improved quality, the federal regulatory system remains frozen in time and is today a significant obstacle to growth. Our antiquated command-and-control oriented regulatory regime in the environmental area alone, according to Dale Jorgenson of Harvard University, will reduce economic growth by \$224 billion by the year 2004. A firmer reliance on flexibility, accountability and sound scientific and economic analysis will increase productivity and growth. S. 343 would move us solidly in this direction.

Mr. President, we all know that strong emotions surround today's debates about environmental policy. In this charged atmosphere, it is especially important to remember that S. 343 seeks only to improve the process by which federal regulations are developed. Its provisions require greater reliance on sound scientific and cost-benefit analysis -- objectives your Administration has embraced, as have many Democrats in the Senate. The bill eliminates none of the environmental protections currently in force; it repeals not a single

***Manufacturing Makes America Strong***

Page Two  
October 19, 1995

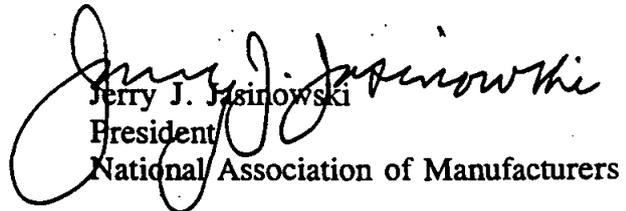
law or regulation, and it does not impose extraordinary burdens on the EPA and the bureaucracy. It is simply a bill that will encourage government to regulate smarter.

Regulatory reform remains a top priority for a nationally united business community. Enactment of S. 343 would be a critical step toward achieving sustained, vigorous economic growth. We urge you to support bipartisan efforts to pass a regulatory reform bill in the Senate that is reasonable in scope, backed by the entire business community and reflects your commitment to making government work better.

Sincerely,



Dana G. Mead  
Chairman and Chief Executive Officer  
Tenneco Inc.  
Chairman  
National Association of Manufacturers



Jerry J. Jasinski  
President  
National Association of Manufacturers

STATEMENT OF ERIC A. RUBEL, GENERAL COUNSEL  
THE U.S. CONSUMER PRODUCT SAFETY COMMISSION  
TO THE STAFF OF THE  
U.S. HOUSE COMMITTEE ON COMMERCE  
CONCERNING REGULATORY SUNSET AND REVIEW<sup>1</sup>

This briefing paper addresses the implications of H.R. 994, the Regulatory Sunset and Review Act of 1995. While my specific comments refer to provisions of the Clinger substitute, most of the points in this paper also apply to the previous version of H.R. 994 and to other lookback and sunset legislation generally. An addendum to this briefing paper elaborates on the specific provisions of the Clinger substitute that we find most objectionable.

CPSC's mission is to protect Americans and their families from unreasonable risks of death and injury from the 15,000 different types of consumer products within its jurisdiction. The Commission does this with a streamlined staff of 487 employees, roughly half the size it was during the 1970s, and with a budget that is about half of what it was in 1979, when adjusted for inflation. Our small size makes efficient operation essential. Therefore, we must be particularly wary of rigid requirements that yield few benefits, while wasting vital resources and distracting the Commission from its important safety mission. Unfortunately, H.R. 994 is such a measure.

When Richard J. Pierce recently accepted an award from the ABA's Administrative Law and Regulatory Practice Section, he made

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<sup>1</sup> The views expressed in this paper do not necessarily reflect those of Commissioner Mary Gall.

several remarks about the current regulatory reform debate that I believe aptly describe H.R. 994. Noting that "the current debate is taking place in a manner that is so completely divorced from reality that it is likely to produce terrible results," Professor Pierce stated:

"In particular, the problem cannot be addressed by demonizing agencies, imposing on agencies absurdly expensive procedural mandates that would never pass a cost-benefit test, and demanding that courts perform tasks for which they are totally unsuited."

CPSC strongly supports the essential goals underlying regulatory reform -- providing efficient, cost-effective and scientifically sound government action. Indeed, these principles already control CPSC's regulatory safety efforts. CPSC is statutorily required to perform cost-benefit analyses for almost all of its safety rules; all of its actions must have a sound factual and scientific basis; and the Commission regularly relies on risk-based decision making in setting its priorities.

However, this lookback and sunset legislation actually contradicts the basic goals of regulatory reform. Both the underlying concept of the bill and the specific approach taken in the Clinger substitute guarantee less efficient and more costly government that would likely reduce health and safety. The bill is grossly overbroad, sets out unworkable procedures and impossible deadlines, and elevates unproductive paperwork to a high art. The result could well be automatic termination of many

successful rules that save lives and reduce injuries. Fundamentally, the bill is built on a foundation of false assumptions.

A. FALSE ASSUMPTION 1: Once a Problem is Fixed, Repeal the Regulation.

Underlying this and other lookback and sunset legislation is the false premise that once a safety hazard is reduced, the regulation is no longer needed. However, the very reason for the improvements in safety is likely the regulation. And, once the regulation is eliminated, the hazard may be resurrected, requiring another regulation. This approach commits agencies to an endless pattern of regulating, relaxing, and re-regulating. Moving one step forward and two steps back could prove costly in both resources and lives.

Example: Refrigerator Safety Act

The Commission's regulations under the Refrigerator Safety Act provide one potential example of this senseless dance. This law was enacted in the 1950s to correct the tragic problem of children being trapped and killed while playing inside discarded refrigerators. At that time, 30 to 40 children a year died this way. The Act directed agency adoption of requirements to enable refrigerator doors to open easily from the inside.

As a result, there is currently little, if any, risk of children becoming trapped and killed inside refrigerators. However, this lack of casualties hardly indicates that there is no ongoing need for, or benefit from, the regulation. In fact,

the opposite is likely true: the hazard is virtually non-existent because the rule continues to be effective. Yet, as discussed below, determining the regulation's costs and benefits would be a highly theoretical and complex exercise, seeking to measure deaths and injuries that would have occurred but for the rule.

Ongoing enforcement of the rule costs CPSC nothing, because industry uniformly complies with the rule. And we have yet to hear a complaint from industry about the rule. Indeed, Whirlpool recently cited development of the technology to open refrigerators from the inside as one of the corporation's proudest achievements. But, would it be possible or worth the expenditure of resources to estimate how many children would die if the rule were lifted?

CPSC's refrigerator regulation is a simple, non-controversial rule. But because the scope of this bill under section 4 is enormous, it opens every rule to potential review. Even rules with minor economic impact and generally recognized (though not necessarily quantified) safety benefits could terminate. The \$100 million monetary threshold is just one factor for determining which rules are covered. The two executive orders referred to in section 4(b) provide a whole host of additional and often vague criteria. Most importantly, the petition procedure in section 4(c) provides virtually unlimited opportunity to re-open rules. The low threshold for petitions -- they must be granted unless it would be "unreasonable" to conduct

a review -- and the paltry \$20 processing fee ensure a flood of petitions (see § 4(c)(1) and (2)(C)). A petition might be filed by a single fringe manufacturer who, for example, wants to produce a refrigerator without the safety feature to lower production costs.

Moreover, the bill is even flawed in how it would apply the \$100 million monetary threshold. The bill looks not only at the ongoing costs of a rule, but at whether in the past it "has resulted" in a \$100 million annual effect on the economy (§ 4(b)(1), as amended). Why should a rule be subject to review because years ago it had high compliance costs, when today those costs may be marginal?

Example: Poison Prevention Packaging Act

Other life-saving rules could be threatened as well. For example, under the Poison Prevention Packaging Act, the Commission issues rules requiring child-resistant packaging for hazardous household products like over-the-counter drugs, drain cleaners, and turpentine. These safety caps and packages have prevented hundreds of deaths of children who could otherwise accidentally ingest potentially poisonous substances around the home. For aspirin and oral prescription drugs alone, there were up to 700 fewer such accidental child deaths from the early 1970s (when child-resistant packaging was first required for these items) through 1991. Yet, the bill would open such poison prevention rules to review and possible termination.

The combination of the number of rules open to review

(potentially every one) and the short deadlines for review virtually guarantees that some rules will terminate simply because we run out of time. It is then -- when, for example, we see more children suffocate in refrigerators or poison themselves with a jar of aspirin left unattended -- that we may rediscover the need for our rules.

**B. FALSE ASSUMPTION 2: Two Cost-Benefit Analyses are Better than One.**

This bill relies on another assumption that several other regulatory proposals accept: more analysis is always better. Even if an agency conducted a cost-benefit analysis when it issued a rule, it must conduct another analysis under this bill (see § 5(a)).

Yet the passage of time creates several analytical dilemmas. A rule may have had significant initial costs but now have only slight costs. Which time period is used to calculate costs and benefits? Industry has likely changed in the years following the regulation. Are some changes (and associated costs) due to the regulation or are they only incidental? Or do we turn back the clock and assess the regulation as if it had never been issued? How is an agency to determine whether particular fringe players in an industry are likely to disregard a safety measure once a regulation is revoked, thereby decreasing costs, but also decreasing the benefits of reduced deaths and injuries. And, in any event, why are we rewarding this kind of behavior?

Example: Child-Resistant Disposable Cigarette Lighters

CPSC's 1993 safety standard making disposable cigarette lighters child-resistant illustrates the fallacy of the assumption that cost-benefit analysis should be piled on top of cost-benefit analysis. To satisfy existing statutory requirements, the Commission conducted a cost-benefit analysis for the child-resistant lighter rule which showed potential net benefits (taking into account the costs) of approximately \$115 million per year, and between 80 and 105 lives saved annually. The analysis was based largely on data up through 1992.

Under the bill, CPSC would have to re-analyze the costs and benefits of the rule. And to what end? If industry or others believed that the cost-benefit data used to support the rule were incorrect, they could have commented on the proposed rule or challenged the final rule in court when CPSC issued it in 1993. It would be pointless now to revisit the earlier data.

A review of ongoing costs and benefits, rather than those in the past, would pose other problems. If a rule reduced the hazards it was intended to address, the original risk may no longer exist and the rule might be considered to have no ongoing benefits. Assume that several years from now CPSC's review shows that the lighter rule has greatly reduced the number of people injured and killed in fires started by children playing with lighters. How could the agency definitively show that the injuries and deaths would return if the rule was revoked?

Similarly, all refrigerators now manufactured allow children

to escape from inside. Since the risk has been virtually eliminated, arguably only costs and no ongoing benefits remain. Considered this way, successful rules -- those that achieve their goals -- are the prime candidates for termination. Or at best, they would require very expensive regression analysis to demonstrate their effectiveness.

Moreover, the bill makes the odd assumption that more recent regulations are in greater need of review. It generally provides an accelerated three year period for review of rules that take effect after the bill's enactment (see § 7(a)(2)(A)). The agency will have just finished issuing the rule when the time arrives to review it. What is the point of beginning the sunset process for rules whose sun has just risen? This could also have the perverse result of placing on the fast track for review the very regulations that comply with the cost benefit requirements of other regulatory reform legislation. Such a waste of scarce resources defies logic.

C. FALSE ASSUMPTION 3: Agencies are Incapable of Revising Rules to Adapt to Technological, Economic or Other Changes.

The bill assumes that in the absence of a statutory requirement, agencies will never review or amend existing rules. The truth is that agencies can, and we do, make common sense changes to rules to respond to changing circumstances. Where agencies fail to do so, sharper Congressional oversight or focused legislative changes -- not a blanket approach to reform

that puts all rules at risk -- is the appropriate solution.

For example, earlier this year, after assessing the need for regulatory change, CPSC revised the adult test under which child-resistant packaging is evaluated. These changes, supported by industry, make it easier for adults to use the protective packaging properly without sacrificing its child resistance. Adults who found child-resistant packaging difficult to use -- and therefore left the caps off or did not close them properly -- will be more likely to use them. The increased use of such improved packaging will save additional lives. The revisions respond to an aging population and technological advances that make the new caps possible.

The Commission also issues exemptions, frequently in response to petitions, when a rule is no longer necessary for a particular product. A regulation the Commission issued last year exempting video games from regulations covering fire and shock hazards for electrical toys is just one example. At industry's request, the Commission examined the regulation and found that video games present only a small risk of electrical injury to children. The exemption relieves manufacturers of testing, recordkeeping, and labeling costs.

D. FALSE ASSUMPTION 4: Terminating Rules is Good for Business.

The bill creates considerable momentum to terminate rules. In fact, the thrust seems to be more toward eliminating the maximum number of rules in the minimum amount of time, rather

than establishing a careful review of the most significant rules. This "cut and run" approach ignores the fact that rules not only provide safety for consumers, but also certainty for industry. What will be the effect when rules clarifying industry's obligations are eliminated, but the underlying statutes demanding industry's compliance remain?

The breadth of the bill exacerbates this problem. The bill's sweep includes agency guidance documents and interpretations, and even documents describing agency procedures and practices (see § 13(4)(A)). These "rules" are often intended to inform the regulated community of the agency's interpretation of statutory requirements. Getting rid of such "rules" will not change the agency's interpretation; it will only leave industry in the dark on the agency's thinking.

Example: Toy Labeling Under the Child Safety Protection Act

Earlier this year, CPSC issued regulations implementing the Child Safety Protection Act, which requires labeling of certain toys to warn of potential choking hazards. The law was enacted last year at the urging of industry to preempt different state labeling requirements. Congress specifically directed CPSC to adopt implementing regulations without complying with the cost-benefit requirements applicable to other CPSC rulemaking. The toy safety regulations explain CPSC's interpretation of the Act's requirements. Absent the rule, industry would still have to label toys according to the statute -- without the practical guidance the rules provide. It is difficult to see how providing

less information benefits anyone.

Nor is industry necessarily served by eliminating substantive rules. For example, the lighter industry was among the many advocates for CPSC's child-resistant cigarette lighter standard. The industry wanted a uniform mandatory standard so that it would not be subjected to varying state laws or a voluntary standard that would pose a competitive disadvantage to reputable manufacturers that chose to comply. The level playing field that such regulations provide offers consumers protection from unsafe products while ensuring fair competition for manufacturers.

The bill requires agencies to solicit comments on a laundry list of issues, including whether revoking the rule would "create an unfair advantage to those who are not in compliance with it" (§ 8(a)(3)(G)). Thus, the bill's drafters recognize that it would be unfair to give a competitive advantage to companies that choose to disregard safety measures. But, agencies would be unable to preserve rules that fail rigid cost-benefit tests even if their repeal would provide an unfair advantage to unscrupulous companies.

Example: Small Parts Regulation

The potential problems that wholesale termination of rules would create is increased for long-standing rules upon which industry has come to rely. One of the Commission's most important rules prohibits toys and other products for children under age 3 from having small parts that pose a choking hazard.

The rule is responsible for a significant reduction in choking when they choked on small parts from these products. Now virtually no such deaths are reported. Although a relatively simple rule, its impact is pervasive since it applies to virtually all items intended for children under three years of age. This means that nearly every manufacturer of every juvenile product for children of this age group relies on CPSC's small parts regulation -- not to mention the parents of these children. Yet, the bill would cast the future of this rule in doubt.

In a very odd provision, the Clinger substitute increases uncertainty even further by allowing a "non-agency party" to pick and choose which terminated rules would apply (§ 11(a)(2)). This creates a "through the looking glass" world where no one knows which rules apply to whom, a nightmare for agencies and regulated industries alike.

E. FALSE ASSUMPTION 5: OIRA Can and Should Control  
Regulatory Review.

The Clinger substitute differs from the previous version of H.R. 994 in the tremendous authority it gives to the Administrator of the Office of Information and Regulatory Affairs ("OIRA") of the Office of Management and Budget ("OMB"). The Administrator is responsible for determining which rules are "covered rules" (§ 4(a) and (b)); which petitions will be accepted (§ 4(c)); and which Congressional requests for review

will be accepted (§ 4(d)). After making these initial decisions, the Administrator must inventory all existing rules and issue a list of those to be reviewed (§ 6(a)(1)(A)); group the significant and related rules to determine their termination dates (§ 6(a)(2) and (3)); provide guidance to agencies conducting the reviews (§ 6(a)(4)); and review and evaluate each preliminary and final report that agencies develop (§ 6(a)(5)). The Administrator also determines whether to accept the agency's recommendation for each rule the agency reviews (§ 6(c)) and whether to extend the termination date for any covered rules (§ 7(b)).

The time periods dictated for the OIRA Administrator's actions are so short that they would require either a colossal staff or superhuman efforts. The Administrator has only 90 days to decide petitions, with a 30 day extension possible (§ 4(c)(4)); 30 days to designate a Congressional request for review (§ 4(d)(1)); and a mere 6 months to inventory all existing rules and decide which are covered (§ 6(a)(1)(A)). Moreover, the Administrator is required to update the list of rules for review annually (§ 6(a)(1)(B)).

The bill assumes that OIRA has the expertise to make decisions that involve the substance of often complex regulations. When the Administrator receives a petition for review of a highly technical regulation, how will he or she be able to determine whether it is reasonable to review the regulation? The likely result is that most petitions will be

accepted. And if the Administrator is overwhelmed, as is likely, the petition could be deemed granted when the Administrator has not acted within 120 days (§ 4(c)(5)). The tremendous paperwork burden would then shift to the agencies which must review the flood of rules brought in by petitioners in addition to other regulations already scheduled.

The bill gives the Administrator significant authority to prioritize the review of rules. It provides a list of criteria for the Administrator to consider, but these really give little guidance (see § 6(a)(2)(B)). Some of the criteria seem to drive the Administrator to questionable priorities. For example, while other regulatory reform bills are encouraging rules that provide greater flexibility for industry compliance, this one demands quicker review for rules issued under statutory provisions that give the agency greater discretion (see § 6(a)(2)(B)(v)). Yet, such statutory provisions are precisely those that allow the agency to issue flexible rules.

As an independent agency, the extensive role the bill gives the Administrator is particularly troubling to CPSC. Through OIRA, the bill would greatly expand OMB's influence on independent agencies. This politicizes the ongoing process of regulatory review, and fundamentally changes the independent status of agencies like CPSC.

### Conclusion

We believe that the premises underlying this and other lookback and sunset legislation are ill-conceived. The presumptions that rules are obsolete when they have achieved results, that more analysis is always better, and that terminating rules necessarily helps industry, are seriously flawed. These faulty assumptions drive a process that elevates paperwork over safety, and quick elimination of rules over thoughtful consideration. Contrary to the legitimate goals of regulatory reform, this approach denies agencies the ability to define appropriate priorities, wastes resources on unnecessary reviews, and virtually ensures that measures responsible for saving consumers' lives will be eliminated. In short, the approach in H.R. 994 and similar bills would sacrifice public safety through added bureaucracy and red tape.

The specific flaws of the Clinger substitute are too numerous to fully identify in this paper. We have discussed only the most important ones. The bill's provisions only exacerbate the general problems we have identified, taking a shaky concept and making it completely unworkable.

H.R. 994 is an excellent example of the regulatory approach which Philip K. Howard denounced in his book, The Death of Common Sense. He said, "[r]ules have replaced thinking. Process has replaced responsibility." As a result, "[g]overnment accomplishes almost nothing." H.R. 994 should be rejected.



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

Testimony of  
Jere W. Glover  
Chief Counsel for Advocacy  
of United States Small Business Administration  
Before the  
Committees on Small Business  
of the United States Senate  
and  
House of Representatives  
October 31, 1995

Good morning, Mr. Chairman and Madam Chairman: This hearing is an auspicious occasion -- the first time the Senate and House Small Business Committees have held a joint hearing at which the Chief Counsel for Advocacy has testified.<sup>1</sup> I would like to thank the Committees for their interest in today's topic -- the impact of regulation on small business. With me today is Barry Pineles, the Assistant Chief Counsel for Market Competition who will be leaving the Office of Advocacy after eight years of dedicated service to the small business community.

The theme of today's hearing goes to the core mission of the Office of Advocacy. Congress, in 1976, recognized that small businesses may unduly suffer at the hands of government regulators and created the Office to ensure that the views of small businesses were heard by federal policymakers.

In 1980, Congress strengthened the hand of the Office of Advocacy by enacting the Regulatory Flexibility Act (RFA) which requires federal agencies to examine the impact of their regulations on small business, and if they are significant, examine alternatives that will minimize the burdens or enhance the benefits of such regulation. Since 1980, both the House and Senate Small Business Committees have been diligent in their oversight of implementation of the RFA. Despite Congressional pressure from both the House and Senate Committees and strong statements from President Clinton, I

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<sup>1</sup> The opinions in this testimony are mine and do not necessarily represent the views of the Administration.

am not satisfied with agency compliance with the RFA. It may be that federal agencies still do not understand the impact that their regulatory efforts have on small businesses.

Congress enacted legislation which it hoped would demonstrate in no uncertain term that small businesses face disproportionate burdens in complying with federal regulations. Congress mandated that the Office of Advocacy examine the impact of tax, paperwork, and other regulatory requirements on small business. I am here today to report on those findings.

Those findings tell only one aspect of the story and tell it in a statistical and somewhat clinical fashion. In reality, the fears of small business go far beyond the somewhat detached discussion we will have today. Everyday, small business men and women fear that some inspector or IRS auditor will walk through the front door, find them in violation of one the 120,000 pages of federal regulations, and bankrupt the business that consumed most their life savings. It is not surprising then that the reform of regulatory and enforcement policies is of paramount importance to the delegates at the recent White House Conference on Small Business. That is also why I am pleased that the Vice President's National Performance Review adopted an SBA idea to direct government agencies, particularly EPA and OSHA, to provide greater assistance to small business rather than simply seek to impose fines, especially on first violations.

Federal agencies are not the only ones that impose burdens on small business. Often federal agencies are implementing statutory directives enacted by Congress. Congress, in debating various legislative proposals, must take into account the burdens that the proposal will have on small business as well as their impact on the overall economy.

It would be my fondest wish to say that the Office of Advocacy has done its job so well that it is no longer needed. Unfortunately, our research, as I will discuss shortly, shows the federal government has a long way to go before the role of the Office of Advocacy becomes obsolete. I do, however, expect that the findings released today will provide the information that Congress and federal regulators can use to develop public policies sensitive to the needs of small business. The study also should be an impetus to federal agencies to conduct further empirical research on the disparate impact of proposed regulations during individual rulemaking proceedings.

#### *I. The Study*

While many economists, legislators, policy analysts, and, most significantly, small business owners, have decried the adverse and disproportionate impact, no comprehensive study existed which confirmed that axiom. My office welcomed the opportunity of the

Congressionally mandated study to perform a study which would beyond cavil demonstrate the veracity of the axiom.

The Office of Advocacy has been the prime sponsor of research which analyzes the differential impact of regulations on small business. One of the first studies undertaken by the Office was a study of compliance costs by the Batelle Human Affairs Research Centers in 1980 which found that small businesses in the State of Washington with fewer than 50 employees bear a disproportionate cost burden from regulation compared with businesses in the 50-500 employee category. Since that seminal Batelle study, the Office of Advocacy has sponsored two other studies, both completed in the mid-1980's which reconfirmed the findings of the Batelle researchers. However, the latter studies did not examine the vast gamut of regulation and the Batelle study did not analyze the regulatory burdens of all small firms, including those with up to 500 employees, in comparison to the regulatory burdens faced by large firms.

The Office of Advocacy compiled this report by following three tracks. First, it exhaustively reviewed the current economic and policy analysis literature to find studies which examined the impact of regulation on business, and particularly small business. Second, it contracted with Dr. Thomas Hopkins of the Rochester Institute of Technology, a leading researcher in the field of quantifying the impacts of regulation on all businesses, and

especially small business. Finally, the Office of Advocacy undertook its own analysis of the literature and the findings by Dr. Hopkins to reach its own conclusions concerning the impact of regulatory burdens on small businesses.

There are a number of studies demonstrating that the imposition of regulations affect the economy and may even retard its growth. However, that statement alone does not imply necessarily that all regulation is bad. Since the cost of most regulation is absorbed in the short or intermediate-run, the economic impact generally is felt immediately. On the other hand, regulations may have long-run or even intangible benefits which are much harder to quantify. Nevertheless, it is important for both Congress and agencies to understand the true costs imposed by regulation.

Dr. Hopkins accumulated data on social and economic regulatory costs (those costs directly arising from, for example, the addition of pollution abatement equipment on a manufacturing facility), and process costs<sup>2</sup> to calculate the total cost of regulatory compliance. Dr. Hopkins found that total costs in 1994 for complying with regulations is about \$649 billion or approximately 10 percent of the Gross Domestic Product.<sup>3</sup>

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<sup>2</sup> Process costs come from paperwork required because of government process, such as tax compliance, recordkeeping mandates, and completion of health care reimbursement forms.

<sup>3</sup> As Everett Dirksen once noted "a billion here, a billion there, and pretty soon you're talking about real money." The late  
(continued...)

Dr. Hopkins then allocated these regulatory costs across business sectors. To perform this calculation, Dr. Hopkins first factored out the costs of regulation borne by states, local governments, and consumers.<sup>4</sup> Businesses incur more than 60% of the \$649 billion costs for regulatory compliance. Since there is no statistically precise method (such as linear programming, multivariate factor analysis or multiple regression) of allocating costs among various sectors, Dr. Hopkins used his best judgment for dividing those costs among manufacturing, trade, services, and other businesses. It is not surprising to find that the majority of costs are borne by manufacturers (since they absorb the overwhelming amount of environmental regulations). Nevertheless, other sectors of the economy face substantial burdens in complying with regulations.

While these data are important, total regulatory costs are not the primary interest of my office or the small business committees -- costs on small businesses are. The Office of Advocacy requested Dr. Hopkins to take his data and parse it for firm size. The exact methodology is discussed in the report and I will not overwhelm the committees with further elaboration. Suffice it to say that Dr.

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<sup>3</sup>(...continued)

Senator would certainly concur that, when it comes to regulatory costs, we're talking about real money. In fact, the United States economy is so large that money spent of regulatory compliance exceeds the gross domestic product of all but four countries in the world -- Japan, Germany, France, and the United Kingdom.

<sup>4</sup> Although it is too early to report, the enactment of unfunded mandates legislation this year should have a palliative effect on the regulatory burdens faced by state and local governments.

Hopkins arrived at a cost of regulation per employee and developed a multiplier to figure the per employee cost based on three firm size divisions: less than 20 employees, 20-499 employees, and 500 or more employees. Hopkins then calculated the per employee cost for manufacturing and service industries.

Dr. Hopkins' results confirm the previous studies commissioned by the Office of Advocacy. Regulatory costs per employee are substantially greater for businesses with fewer than 500 employees than for those that exceed that 500. Dr. Hopkins further discovered, in a not surprising result, that regulatory costs per employee for manufacturing is nearly double the average cost per worker in the rest of the economy. Dr. Hopkins also found that service firms with more than 500 employees experience significantly lower costs per employee than smaller service firms.

Of particular significance was Dr. Hopkins' evaluation of the differential burdens imposed by the process of collecting taxes (as opposed to the actual tax burden) on small firms. The Office of Advocacy has received much anecdotal evidence of the problems facing small business in staying current with changes in tax regulation and the costs associated with tax compliance. Dr. Hopkins confirmed that tax compliance and recordkeeping are the two largest components of regulatory burden facing small business. This burden is even more troubling in that small businesses often do not have the resources to hire accounting, payroll, and other

tax specialists to handle compliance. Senior managers must divert themselves from the actual operations of the business to ensure compliance with tax laws. Can one imagine the Chief Executive Officer of General Motors checking to see whether a payroll tax deposit has been made? The owners of small businesses do it regularly. It amazes me that small business owners actually have time to run their businesses given the various burdens they face.

The Office of Advocacy does not dispute the fundamentals of Dr. Hopkins's study. However, the Office believes that Dr. Hopkins may have overstated the cost difference between the largest and smallest firms because he did not consider the fact that one-third of the firms surveyed indicated no or only minor regulatory burdens. An explication of our disagreement with Dr. Hopkins is contained in the report. Nevertheless, whether one decides to utilize the 80% differential calculated by Dr. Hopkins or the 50% differential estimated by the Office of Advocacy, one conclusion is beyond dispute -- small businesses bear a disproportionate share of this nation's annual regulatory bill.

The information contained in the report is not only grist for the mill of academia. It has real world implications. First, it puts to rest the canard that small businesses do not face disproportionate regulatory costs. Second, if small businesses are the most significant sector of the American economy, both in total number of firms and in job creation and innovation, then the

disproportionate regulatory burdens absorbed by these small businesses acts as a brake on a powerful economic engine. If the economy is going to put the pedal to the metal so to speak, then something must be done to release the brake that regulation is imposing on small business.

## II. *The Current Efforts*

The Clinton Administration came to Washington and within weeks of taking office, the President appointed Vice President Gore to head a task force to reinvent the government. Although the primary goal of that National Performance Review was to streamline the government and make it more efficient, it had a corollary objective -- to reduce regulatory burdens on all businesses, in particular on small businesses. That first effort achieved some real reductions in eliminating some regulatory and paperwork requirements. For example, the Small Business Administration substantially decreased the size of its guaranteed loan application. Was this effort important? Yes. Was this effort sufficient? In my estimation -- NO!

The Administration also recognized that the National Performance Review could not cut the costs without modifying the procedures that agencies use to promulgate regulations. Shortly after the release of the National Performance Review report, the President, as have previous Presidents, issued an Executive Order (12,866)

which required agencies to select the regulatory method that maximizes net benefits to the public (unless prohibited by statute), requires a cost/benefit analysis, and represents the most cost-effective method of achieving its regulatory objectives. In theory the Executive Order is fine but in the real world of regulatory decisionmaking, many rules that may be important to small business are excluded from that review because they do not meet the Order's threshold. In addition, independent regulatory agencies, such as the FCC, are not covered by the Order. Is this effort important? Yes. Is this effort sufficient? In my estimation -- NO!

One idea that had been brought to the attention of both the Administrator of the SBA and myself was that some federal agencies employed overly zealous inspectors more interested in giving fines than ensuring small businesses complied with the regulations. Instead of issuing fines, these businesses suggested that the agencies provide compliance assistance to the small business rather than simply issuing fines. The Administration adopted that proposal and now instead of an OSHA inspector issuing a fine to a small business for a missing safety poster they give the business owner a copy of the poster. The enforcement policy also allows agencies to reduce or eliminate fines on small businesses if the business comes into compliance. Is this effort important? Unquestionably! Is this effort sufficient? In my estimation -- NO!

The Administration also recognized that changing the review process for future regulations would do nothing about the thousands of regulations currently in force and burdening small business. The President, on March 4, 1995, initiated Phase II of the National Performance Review by directing all federal agencies (independent agencies have voluntarily decided to comply), to conduct a page-by-page review of all regulations and to eliminate or modify those that need reform. It cannot be denied that this ongoing effort will eliminate or modify numerous regulations. For example, the Small Business Administration is planning to cut the number of its regulations in half. The Food and Drug Administration plans to eliminate many of its food identity standards including that all important definition of grits. Unfortunately, some agencies may believe that certain regulations are vital that others do not. Is this effort important? Yes. Is this effort sufficient? In my estimation -- NO!

This Congress also has made efforts to reduce the regulatory burdens on business and governments. It passed and the President signed legislation prohibiting the imposition of unfunded mandates on state and local governments. Legislation also was enacted that amended the Paperwork Reduction Act which gave the Office of Management and Budget even more power to eliminate unnecessary and overly burdensome paperwork and information collection requirements. Finally, Congress is considering a raft of legislation to reform the regulatory process. Included in the

bills are requirements for cost-benefit analysis, sunseting of regulations, risk assessments, and other requirements designed to ensure an agency has analyzed the problem and potential solutions. Are these efforts important? Yes. Are these efforts sufficient? In my estimation -- NO!

All of these general solutions have an inherent flaw. They do not directly address the basic finding of this report --- that small businesses are disproportionately burdened by federal regulation in comparison to their large business competitors. Except for the specific regulatory reform efforts of the SBA and the change in enforcement policy at agencies such as OSHA and EPA, the current efforts are aimed at reducing regulatory burdens in general and not specifically on small business. While the expectation that eliminating regulations will benefit all businesses, including small ones, there is no such guarantee. For example, federal regulations which would eliminate airbags or other passive restraints in automobiles would have little impact on small business. On the other hand, raising the dollar threshold from \$25 to \$75 for providing documentary proof for the deduction of business related meals and entertainment expenses will provide a substantial reduction in the burden imposed on small business. Regulatory reform without focus is likely to result in the Office of Advocacy doing another study fifteen years from now and finding the exact same result -- small businesses are disproportionately burdened by government regulation. Until the concerns of small

business become paramount in the mindset of federal policymakers, it will be impossible to eliminate the disparate impact on small businesses.

### III. *The Necessary Solution*

An act currently exists which is designed to inculcate concerns of small business into the regulatory process -- the RFA. Unfortunately as I and previous Chief Counsels have documented in our annual report and in testimony before both committees, compliance with the RFA is inadequate. Agencies, such as the Internal Revenue Service, the Department of Agriculture (with the Forest Service and Agricultural Marketing Service being especially egregious violators), and the Department of Interior, can ignore the RFA with impunity. The only way to ensure that all agencies comply with the RFA, and therefore consider the impact of their regulatory proposals on small business is to modify the RFA so that agency compliance can be tested in court. No longer would an agency be able to certify a proposed rule and avoid consideration of small business impacts entirely. If the agencies fear judicial review, it is because they have been doing an inadequate job in considering the impacts on small business and devising alternatives that will achieve their statutory objectives without imposing the disproportionate impact on small business found by our study. Agencies that comply with the law should have no fears. Until that time, it will remain open season on small business.

I cannot state strongly enough that federal agencies cannot reduce these burdens single-handedly. Congress, itself, needs to be more sensitive to the burdens on small business when it enacts legislation. In 1989, the Senate Small Business Committee held a hearing on the need for reformation of the RFA and John Satagaj, the head of the Small Business Legislative Council, suggested that Congress make the RFA applicable to its legislative actions. That was a good idea then and remains a good idea today.

Thank you for your attention today. I am willing to answer any questions the committees' members may have.

[COMMITTEE PRINT]

(Showing the text of H.R. 994, as reported by the Committee on Government Reform and Oversight, and as amended by the en bloc amendments)

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Regulatory Sunset and  
3 Review Act of 1995".

4 SEC. 2. PURPOSE.

5 The purposes of this Act are—

6 (1) to require agencies to regularly review their  
7 significant rules to determine whether they should be  
8 continued without change, modified, consolidated  
9 with another rule, or allowed to terminate;

10 (2) to require agencies to consider the com-  
11 ments of the public, the regulated community, and  
12 the Congress regarding the actual costs and burdens  
13 of rules being reviewed under this Act, and whether  
14 the rules are obsolete, unnecessary, duplicative, con-  
15 flicting, or otherwise inconsistent;

16 (3) to require that any rules continued in effect  
17 **under this Act** meet all the legal requirements  
18 that would apply to the issuance of a new rule, in-  
19 cluding any applicable Federal cost/benefit and risk  
20 assessment requirements;

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1           ~~(4)~~ to provide for the automatic termination of  
2 significant rules that are not continued in effect as  
3 a result of sunset reviews;

4           (4) to provide for the termination of  
5 significant rules and other rules through  
6 a sunset review process;

7           (5) to provide for a petition process that allows  
8 the public and appropriate committees of the Con-  
9 gress to request that other rules that are not signifi-  
10 cant be reviewed in the same manner as significant  
11 rules; and

12           (6) to require the Administrator to coordinate  
13 and be responsible for sunset reviews conducted by  
14 the agencies.

15 **SEC. 2. REVIEW AND TERMINATION OF REGULATIONS.**

16           ~~The effectiveness of a covered rule shall terminate on~~  
17 ~~the applicable termination date specified in section 7(a)~~  
18 ~~or (b); unless the rule is reviewed in accordance with the~~  
19 ~~procedures in section 6 before that termination date and~~  
20 ~~complies with section 5.~~

21 **SEC. 3. REVIEW OF REGULATIONS.**

22           A covered rule shall be subject to review  
23 in accordance with this Act. Upon completion  
24 of such review, the head of the agency which

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1 promulgated such rule shall conduct a rule-  
2 making in accordance with section 8(d).

3 SEC. 4. RULES COVERED.

4 (a) COVERED RULES.—For purposes of this Act, a  
5 covered rule is a rule that—

6 (1) is determined by the Administrator to be a  
7 significant rule under subsection (b); or

8 (2) is any other rule designated by the Adminis-  
9 trator under this Act subsections (c) and (d)  
10 for sunset review.

11 (b) SIGNIFICANT RULES.—For purposes of this Act,  
12 a significant rule is a rule that the Administrator deter-  
13 mines—

14 (1) has resulted in or is likely to result in an  
15 annual effect on the economy of \$100,000,000 or  
16 more;

17 (2) is a major rule, as that term is defined in  
18 Executive Order 12291 (as in effect on the first date  
19 that Executive order was in effect); or

20 (3) was issued pursuant to a significant regula-  
21 tory action, as that term is defined in Executive  
22 Order 12866 (as in effect on the first date that Ex-  
23 ecutive order was in effect).

1 determines was issued pursuant to a regu-  
2 latory action that is likely to result in a rule  
3 that may—

4 (1) have an annual effect on the econ-  
5 omy of \$100 million or more or adversely  
6 affect in a material way the economy, a  
7 sector of the economy, productivity, com-  
8 petition, jobs, the environment, public  
9 health or safety, or State, local, or tribal  
10 governments or communities;

11 (2) create a serious inconsistency or  
12 otherwise interfere with an action taken  
13 or planned by another agency;

14 (3) materially alter the budgetary im-  
15 pact of entitlements, grants, user fees, or  
16 loan programs oar the rights and obliga-  
17 tions of recipients thereof; or

18 (4) raise novel legal or policy issues  
19 arising out of legal mandates or the  
20 President's priorities.

21 (c) PUBLIC PETITIONS.—

22 (1) IN GENERAL.—Any person adversely af-  
23 fected by a rule that is not a significant rule may  
24 submit a petition to ~~the Administrator~~ the head  
25 of the agency which promulgated the rule

E.O.  
12866  
Definition

Petitions  
to Agency  
not OIRA

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1 requesting that ~~the Administrator~~ **such agency**  
 2 **head** designate the rule for sunset review. ~~The Ad-~~  
 3 ~~ministrator~~ **Such agency head** shall designate  
 4 the rule for sunset review unless ~~the Administrator~~  
 5 **such agency head** determines that it would be  
 6 unreasonable to conduct a sunset review of the rule.

"not in the  
public interest"

7 In making such determination, ~~the Administrator~~  
 8 **such agency head** shall take into account the  
 9 number and nature of other petitions received on the  
 10 same rule, whether or not they have already been de-  
 11 nied.

12 (2) FORM AND CONTENT OF PETITION.—A pe-  
 13 tition under paragraph (1)—

14 (A) shall be in writing, but is not otherwise  
 15 required to be in any particular form;

16 (B) shall identify the rule for which sunset  
 17 review is requested with reasonable specificity  
 18 and state on its face that the petitioner seeks  
 19 sunset review or a similar review of the rule;  
 20 and

21 (C) shall be accompanied by a \$20 process-  
 22 ing fee.

23 (3) RESPONSE REQUIRED FOR NONCOMPLYING  
 24 PETITIONS.—If ~~the Administrator~~ **such agency**  
 25 **head** determines that a petition does not meet the

1 requirements of ~~this subsection~~ **paragraph (2)**,  
2 ~~the Administrator~~ **such agency head** shall pro-  
3 vide a response to the petitioner within 30 days after  
4 receiving the petition, notifying the petitioner of the  
5 problem and providing information on how to formu-  
6 late a petition that meets those requirements.

7 (4) DECISION WITHIN 90 DAYS.—Within the 90-  
8 day period beginning on the date of receiving a peti-  
9 tion that meets the requirements of this subsection,  
10 ~~the Administrator~~ **such agency head** shall  
11 transmit a response to the petitioner stating whether  
12 the petition was granted or denied, except that ~~the~~  
13 ~~Administrator~~ **such agency head** may extend  
14 such period by a total of not more than 30 days.

15 (5) PETITIONS DEEMED GRANTED FOR SUB-  
16 STANTIAL INEXCUSABLE DELAY.—A petition for  
17 sunset review of a rule is deemed to have been  
18 granted by ~~the Administrator~~ **such agency**  
19 **head**, and ~~the Administrator~~ **such agency head**  
20 is deemed to have designated the rule for sunset re-  
21 view, if a court finds there is a substantial and inex-  
22 cusable delay, beyond the period specified in para-  
23 graph (4), in notifying the petitioner of the ~~Adminis-~~  
24 ~~trator's~~ **such agency head's** determination to  
25 grant or deny the petition.

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1 (6) PUBLIC LOG.—The Administrator shall  
2 maintain a public log of petitions submitted under  
3 this subsection, that includes the status or disposi-  
4 tion of each petition.

5 (d) CONGRESSIONAL REQUESTS.—

6 (1) IN GENERAL.—An appropriate committee of  
7 the Congress, or a majority of the majority party  
8 members or a majority of nonmajority party mem-  
9 bers of such a committee, may request in writing  
10 that the Administrator designate any rule that is not  
11 a significant rule for sunset review. The Adminis-  
12 trator shall designate such rule for sunset review  
13 within 90 days after receipt of such a request unless  
14 the Administrator determines that it would be un-  
15 reasonable to conduct a sunset review of such rule.

16 (2) NOTICE OF DENIAL.—If the Administrator  
17 denies a congressional request under this subsection,  
18 the Administrator shall transmit to the congressional  
19 committee making the request a notice stating the  
20 reasons for the denial.

21 (e) PUBLICATION OF NOTICE OF DESIGNATION FOR  
22 SUNSET REVIEW.—After designating a rule under this  
23 Act under subsection (c) or (d) for sunset re-  
24 view, the applicable agency head or the Admin-

1 istrator shall promptly publish a notice of that designation  
2 in the Federal Register.

3 **SEC. 5. CRITERIA FOR SUNSET REVIEW.**

4 ~~(a) COMPLIANCE WITH OTHER LAWS.—In order to~~  
5 ~~continue without change, modify, or consolidate any rule~~  
6 ~~subject to sunset review, the continued, modified, or con-~~  
7 ~~solidated rule must be authorized by law and meet all ap-~~  
8 ~~plicable requirements that would apply under other laws~~  
9 ~~or Executive orders if it were issued as a new rule. For~~  
10 ~~purposes of this section, applicable requirements include~~  
11 ~~any requirements for cost/benefit analysis and any re-~~  
12 ~~quirements for standardized risk analysis and risk assess-~~  
13 ~~ment.~~

14 (a) COMPLIANCE WITH OTHER LAWS.—In order  
15 for any rule subject to sunset review to con-  
16 tinue without change or to be modified or  
17 consolidated in accordance with this Act,  
18 such rule must be authorized by law and meet  
19 all applicable requirements that would apply  
20 if it were issued as a new rule pursuant to sec-  
21 tion 553 of title 5, United States Code. For pur-  
22 poses of this section, the term “applicable re-  
23 quirements” includes publication of a notice  
24 of proposed rulemaking described in section  
25 8(c)(2), any requirements for cost-benefit

1 analysis, and any requirements for standard-  
2 ized risk analysis and risk assessment.

3 (b) GOVERNING LAW.—If there is an irreconcilable  
4 conflict between such applicable requirements and an Act  
5 under which a rule was issued, the conflict shall be re-  
6 solved in the same manner as such conflict would be re-  
7 solved if the agency were issuing a new rule.

8 SEC. 6. SUNSET REVIEW PROCEDURES.

9 (a) FUNCTIONS OF THE ADMINISTRATOR.—

10 (1) NOTICE OF RULES SUBJECT TO REVIEW.—

11 (A) INVENTORY AND FIRST LIST.—Within  
12 6 months after the date of the enactment of  
13 this Act, the Administrator shall conduct an in-  
14 ventory of existing rules and publish a first list  
15 of covered rules. The list shall—

16 (i) specify the particular group to  
17 which each significant rule is assigned  
18 under paragraph (2), and state the ~~termi-~~  
19 ~~nation date~~ **review deadline** for all sig-  
20 nificant rules in each such group; and

21 (ii) include other rules subject to sun-  
22 set review for any other reason, and state  
23 the ~~termination date~~ **review deadline**  
24 for each such rule.

*review  
deadline  
instead of  
termination  
date*

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1 (B) SUBSEQUENT LISTS.—After publica-  
2 tion of the first list under subparagraph (A),  
3 the Administrator shall publish an updated list  
4 of covered rules at least annually, specifying the  
5 termination date for each rule on the list.

6 (2) GROUPING OF SIGNIFICANT RULES IN FIRST  
7 LIST.—

8 (A) STAGGERED REVIEW.—The Adminis-  
9 trator shall assign each significant rule in effect  
10 on the date of enactment of this Act to one of  
11 4 groups established by the Administrator to  
12 permit orderly and prioritized sunset reviews,  
13 and specify for each group a ~~termination date~~  
14 **an initial review deadline** in accordance  
15 with section 7(a)(1).

16 (B) PRIORITIZATIONS.—In determining  
17 which rules shall be given priority in time in  
18 that assignment, the Administrator shall con-  
19 sult with appropriate agencies, and shall  
20 prioritize rules based on—

21 (i) the grouping of related rules in ac-  
22 cordance with paragraph (3);

23 (ii) the extent of the cost of each rule  
24 on the regulated community and the pub-

1 lic, with priority in time given to those  
2 rules that impose the greatest net cost;

3 (iii) consideration of the views of reg-  
4 ulated persons, including State and local  
5 governments;

6 (iv) whether a particular rule has re-  
7 cently been subject to cost/benefit analysis  
8 and risk assessment, with priority in time  
9 given to those rules that have not been  
10 subject to such analysis and assessment;

11 (v) whether a particular rule was is-  
12 sued under a statutory provision that pro-  
13 vides relatively greater discretion to an of-  
14 ficial in issuing the rule, with priority in  
15 time given to those rules that were issued  
16 under provisions that provide relatively  
17 greater discretion;

18 (vi) the burden of reviewing each rule  
19 on the reviewing agency; and

20 (vii) the need for orderly processing  
21 and the timely completion of the sunset re-  
22 views of existing rules.

23 (3) GROUPING OF RELATED RULES.—The Ad-  
24 ministrator shall group related rules under para-  
25 graph (2) (and designate other rules) for simulta-

1 neous sunset review based upon their subject matter  
2 similarity, functional interrelationships, and other  
3 relevant factors to ensure comprehensive and coordi-  
4 nated review of redundant, overlapping, and conflict-  
5 ing rules and requirements. The Administrator shall  
6 ensure simultaneous sunset reviews of covered rules  
7 without regard to whether they were issued by the  
8 same agency, and shall designate any other rule for  
9 sunset review that is necessary for a comprehensive  
10 sunset review whether or not such other rule is oth-  
11 erwise a covered rule under this Act.

12 (4) GUIDANCE.—The Administrator shall pro-  
13 vide timely guidance to agencies on the conduct of  
14 sunset reviews and the preparation of sunset review  
15 notices and reports required by this Act to ensure  
16 uniform, complete, and timely sunset reviews and to  
17 ensure notice and opportunity for public comment  
18 **consistent with section 8.**

19 (5) REVIEW AND EVALUATION OF REPORTS.—  
20 The Administrator shall review and evaluate each  
21 preliminary and final report submitted by the head  
22 of an agency pursuant to this section. Within 90  
23 days after receiving a preliminary report, the Admin-  
24 istrator shall transmit comments to the head of the  
25 agency regarding—

1 (A) the quality of the analysis in the re-  
2 port, including whether the agency has properly  
3 applied section 5;

4 (B) the consistency of the agency's pro-  
5 posed action with actions of other agencies; and

6 (C) whether the rule should be continued  
7 without change, modified, consolidated with an-  
8 other rule, or allowed to terminate.

9 (b) AGENCY SUNSET REVIEW PROCEDURE.—

10 (1) SUNSET REVIEW NOTICE.—At least 2½  
11 years before the ~~termination date~~ **review dead-**  
12 **line** under section 7(a) for a covered rule issued by  
13 an agency, the head of the agency shall—

14 (A) publish a sunset review notice in ac-  
15 cordance with section 8(a) in the Federal Reg-  
16 ister and, to the extent reasonable and prac-  
17 ticable, in other publications or media that are  
18 designed to reach those persons most affected  
19 by the covered rule; and

20 (B) request the views of the Administrator  
21 and the appropriate committees of the Congress  
22 on whether to continue without change, modify,  
23 consolidate, or terminate the covered rule.

24 (2) PRELIMINARY REPORT.—In reviewing a cov-  
25 ered rule, the head of an agency shall—

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1 (A) consider public comments and other  
2 recommendations generated by a sunset review  
3 notice under paragraph (1); and

4 (B) at least 1 year before the ~~termination~~  
5 ~~date~~ **review deadline** under section 7(a) for  
6 the covered rule, publish in the Federal Reg-  
7 ister and transmit to the Administrator and the  
8 appropriate committees of the Congress a pre-  
9 liminary report in accordance with section 8(b).

10 (3) **FINAL REPORT.**—The head of an agency  
11 shall consider the public comments and other rec-  
12 ommendations generated by the preliminary report  
13 under paragraph (2) for a covered rule, and shall  
14 consult with the appropriate committees of the Con-  
15 gress before issuing a final report. At least 90 days  
16 before the ~~termination date~~ **review deadline** of  
17 the covered rule, the head of the agency shall pub-  
18 lish in the Federal Register and transmit to the Ad-  
19 ministrator and the appropriate committees of the  
20 Congress a final report in accordance with section  
21 8(c).

22 (c) **EFFECTIVENESS OF AGENCY RECOMMENDA-**  
23 **TION.**—If a final report under subsection (b)(3) rec-  
24 ommends that a covered rule should be continued without  
25 change, modified, or consolidated with another rule, the

1 rule is may be continued, modified, or consolidated in  
 2 accordance with the recommendation effective 60 days  
 3 after publication of the final report, unless the Adminis-  
 4 trator or another officer designated by the President pub-  
 5 lishes a notice within that 60-day period stating that the  
 6 rule shall not be so continued without change, modified,  
 7 or consolidated. The Administrator or other officer des-  
 8 igned by the President shall state in the notice the rea-  
 9 sons for such action: section 8.

*DIKA  
veto out.*

10 (d) REISSUANCE.—If a covered rule terminates for  
 11 any reason pursuant to this Act, it shall not be reissued  
 12 in substantially the same form unless the rule complies  
 13 with section 5 and the Administrator or other officer des-  
 14 igned by the President approves the rule.

15 (e) (d) PRESERVATION OF INDEPENDENCE OF FED-  
 16 ERAL BANK REGULATORY AGENCIES.—The head of any  
 17 appropriate Federal banking agency (as that term is de-  
 18 fined in section 3(q) of the Federal Deposit Insurance Act  
 19 (12 U.S.C. 1813(q)), the Federal Housing Finance Board,  
 20 the National Credit Union Administration, and the Office  
 21 of Federal Housing Enterprise Oversight shall have the  
 22 authority with respect to that agency that would otherwise  
 23 be granted under subsections (c) and (d) of this section,  
 24 section 7(a)(2)(B), and section 7(c) to the Administrator  
 25 or other officer designated by the President.

1 SEC. 7. ~~TERMINATION DATE~~ REVIEW DEADLINES FOR COV-  
2 ERED RULES.

3 (a) IN GENERAL.—For purposes of section 3, the ~~ter-~~  
4 ~~mination date~~ **review deadline** of a covered rule is as  
5 follows:

*review deadline  
instead of  
term. date*

6 (1) EXISTING SIGNIFICANT RULES.—For a sig-  
7 nificant rule in effect on the date of the enactment  
8 of this Act, the initial ~~termination date~~ **review**  
9 **deadline** is the last day of the 4-year, 5-year, 6-  
10 year, or 7-year period beginning on the date of the  
11 enactment of this Act, as specified by the Adminis-  
12 trator under section 6(a)(2)(A). For any significant  
13 rule that 6 months after the date of enactment is  
14 not assigned to such a group specified under section  
15 6(a)(2)(A), the initial ~~termination date~~ **review**  
16 **deadline** is the last day of the 4-year period be-  
17 ginning on the date of enactment of this Act.

18 (2) NEW SIGNIFICANT RULES.—For a signifi-  
19 cant rule that first takes effect after the date of the  
20 enactment of this Act, the initial ~~termination date~~  
21 **review deadline** is the last day of either—

22 (A) the 3-year period beginning on the  
23 date the rule takes effect, or

24 (B) if the Administrator determines as  
25 part of the rulemaking process that the rule is  
26 issued pursuant to negotiated rulemaking pro-

1 cedures or that compliance with the rule re-  
2 quires substantial capital investment, the 7-year  
3 period beginning on the date the rule takes ef-  
4 fect.

5 (3) RULES COVERED PURSUANT TO PUBLIC PE-  
6 TITION OR CONGRESSIONAL REQUEST.—For any rule  
7 subject to sunset review pursuant to a public peti-  
8 tion under section 4(c) or a congressional request  
9 under section 4(d), the initial ~~termination date re-~~  
10 **view deadline** is the last day of the 3-year period  
11 beginning on—

12 (A) the date the Administrator so des-  
13 ignates the rule for review; or

14 (B) the date of issuance of a final court  
15 order that the Administrator is deemed to have  
16 designated the rule for sunset review.

17 (4) RELATED RULE DESIGNATED FOR RE-  
18 VIEW.—For a rule that the Administrator designates  
19 under section 6(a)(3) for sunset review because it is  
20 related to another covered rule and that is grouped  
21 with that other rule for simultaneous review, the ini-  
22 tial ~~termination date review deadline~~ is the  
23 same as the ~~termination date review deadline~~  
24 for that other rule.

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1           (5) **RULES CONTINUED AFTER SUNSET RE-**  
2 **VIEW.**—For a rule the effectiveness of which has  
3 been extended under section 3, the next termination  
4 date is the last day of the 7-year period beginning  
5 on the date the rule would have terminated under  
6 section 3 if it had not been extended. For a rule  
7 which continues in effect after a sunset  
8 review under this Act, the next termination  
9 date review deadline is the last day of the 7-  
10 year period beginning on the date of the preceding  
11 review deadline date.

12           (b) **TEMPORARY EXTENSION.**—The termination date  
13 review deadline under subsection (a) for a covered  
14 rule may be extended by the Administrator for not more  
15 than 6 months by publishing notice thereof in the Federal  
16 Register that describes— reasons why the tem-  
17 porary extension is necessary to respond to or  
18 prevent an emergency situation.

19           (1) modifications that should be made to the  
20 rule and the reasons why the modifications cannot  
21 be made by the original termination date, or

22           (2) reasons why the temporary extension is nec-  
23 essary to respond to or prevent an emergency situa-  
24 tion.

1       ~~(c) LIMITATION ON INTERIM REVIEWS.—~~An agency  
2 may not undertake a comprehensive review and significant  
3 revision of a covered rule more frequently than required  
4 by this section or another law, unless the head of the agen-  
5 cy determines, and the Administrator concurs, that the  
6 likely benefits from such review and revision outweigh the  
7 reasonable expenditures that have been made in reliance  
8 on the rule. For purposes of this section, a law may be  
9 considered to require a comprehensive review and signifi-  
10 cant revision of a rule if it makes significant changes in  
11 the Act under which the rule was issued.

12       ~~(d)~~ (c) DETERMINATIONS WHERE RULES HAVE  
13 BEEN AMENDED.—For purposes of this Act, if various  
14 provisions of a covered rule were issued at different times,  
15 then the rule as a whole shall be treated as if it were is-  
16 sued on the later of—

17           (1) the date of issuance of the provision of the  
18 rule that was issued first; or

19           ~~(2) the date the most recent comprehensive re-~~  
20 ~~view and significant revision of the rule was com-~~  
21 ~~pleted.~~

22           (2) the date the most recent sunset re-  
23 view of the rule under this Act was com-  
24 pleted.

1 (e) ~~COMPREHENSIVE REVIEW AND SIGNIFICANT RE-~~  
 2 ~~VISION DEFINED.—In this section, the term “comprehen-~~  
 3 ~~sive review and significant revision” means—~~

4 (1) a sunset review, whether or not the rule is  
 5 revised, or

6 (2) a review and revision of a rule consistent  
 7 with subsection (e).

8 SEC. 8. SUNSET REVIEW NOTICES AND AGENCY REPORTS.

9 (a) SUNSET REVIEW NOTICES.—The sunset review  
 10 notice under section 6(b)(1) for a rule shall—

11 (1) request comments regarding whether the  
 12 rule should be continued without change, modified,  
 13 consolidated with another rule, or allowed to termi-  
 14 nate;

15 (2) if applicable, request comments regarding  
 16 whether the rule meets the applicable Federal cost/  
 17 benefit and risk assessment criteria; and

18 (3) solicit comments about the past implemen-  
 19 tation and effects of the rule, including—

20 (A) the direct and indirect costs incurred  
 21 because of the rule, including the net reduction  
 22 in the value of private property (whether real,  
 23 personal, tangible, or intangible), and whether  
 24 the incremental benefits of the rule exceeded  
 25 the incremental costs of the rule, both generally

1 and regarding each of the specific industries  
2 and sectors it covers;

3 (B) whether the rule as a whole, or any  
4 major feature of it, is outdated, obsolete, or un-  
5 necessary, whether by change of technology, the  
6 marketplace, or otherwise;

7 (C) the extent to which the rule or infor-  
8 mation required to comply with the rule dupli-  
9 cated, conflicted, or overlapped with require-  
10 ments under rules of other agencies;

11 (D) in the case of a rule addressing a risk  
12 to health or safety or the environment, what the  
13 perceived risk was at the time of issuance and  
14 to what extent the risk predictions were accu-  
15 rate;

16 (E) whether the rule unnecessarily im-  
17 peded domestic or international competition or  
18 unnecessarily intruded on free market forces,  
19 and whether the rule unnecessarily interfered  
20 with opportunities or efforts to transfer to the  
21 private sector duties carried out by the Govern-  
22 ment;

23 (F) whether, and to what extent, the rule  
24 imposed unfunded mandates on, or otherwise  
25 affected, State and local governments;

1 (G) whether compliance with the rule re-  
 2 quired substantial capital investment and  
 3 whether terminating the rule on the next ~~termi-~~  
 4 ~~nation date~~ **review deadline** would create  
 5 an unfair advantage to those who are not in  
 6 compliance with it;

7 (H) whether the rule constituted the least  
 8 cost method of achieving its objective consistent  
 9 with the criteria of the Act under which the  
 10 rule was issued, and to what extent the rule  
 11 provided flexibility to those who were subject to  
 12 it;

13 (I) whether the rule was worded simply  
 14 and clearly, including clear identification of  
 15 those who were subject to the rule;

16 (J) whether the rule created negative unin-  
 17 tended consequences;

18 (K) the extent to which information re-  
 19 quirements under the rule can be reduced; and

20 (L) the extent to which the rule has con-  
 21 tributed positive benefits, particularly health or  
 22 safety or environmental benefits.

23 (b) PRELIMINARY REPORTS ON SUNSET REVIEWS.—

24 The preliminary report under section 6(b)(2) on the sun-

1 set review of a rule shall request public comments and con-  
2 tain—

3 (1) ~~specific factual findings and legal conclu-~~  
4 ~~sions of the head of the agency conducting the re-~~  
5 ~~view regarding the application of section 5 to the~~  
6 ~~specific requests for factual findings and~~  
7 ~~recommended legal conclusions regard-~~  
8 ~~ing the application of section 5 to the rule,~~  
9 the continued need for the rule, and whether the  
10 rule duplicates functions of another rule;

11 (2) a ~~preliminary determination request for~~  
12 ~~comments~~ on whether the rule should be contin-  
13 ued without change, modified, consolidated with an-  
14 other rule, or allowed to terminate; and

15 (3) if consolidation or modification of the rule  
16 is recommended, the proposed text of the consoli-  
17 dated or modified rule and other relevant informa-  
18 tion required by law in a notice of proposed rule-  
19 making.

20 (c) FINAL REPORTS ON SUNSET REVIEWS.—The re-  
21 port under section 6(b)(3) on the sunset review of a rule  
22 shall contain—

23 (1) the ~~final~~ factual findings and legal conclu-  
24 sions of the head of the agency conducting the re-  
25 view regarding the application of section 5 to the

1 rule and the agency head's proposed rec-  
 2 ommendation as to whether the rule should be  
 3 continued without change, modified, consolidated  
 4 with another rule, or allowed to terminate; and

5 ~~(2) in the case of a rule that is continued with-~~  
 6 ~~out change, modified, or consolidated with another~~  
 7 ~~rule, the text of the rule.~~

8 (2) in the case of a rule that the agen-  
 9 cy head proposed to continue without  
 10 change or to modify or consolidate with  
 11 another rule—

12 (A) a notice of proposed rule-  
 13 making under section 553 of title 5,  
 14 United States Code or under other  
 15 statutory rulemaking procedures re-  
 16 quired for that rule, and

17 (B) the text of the rule as so con-  
 18 tinued, modified, or consolidated; and

19 (3) in the case of a rule that the agen-  
 20 cy head proposes to terminate, a notice of  
 21 proposed rulemaking for termination  
 22 consistent with paragraph (2)(A).

23 (d) RULEMAKING.—After publication of the  
 24 final report under subsection (c) for a sunset  
 25 review of a rule, the head of the agency which

*No  
 deadline*

1 conducted such review shall conduct the rule-  
2 making which is the subject of the notice  
3 under subsection (c).

4 SEC. 9. DESIGNATION OF AGENCY REGULATORY REVIEW  
5 OFFICERS.

6 The head of each agency shall designate an officer  
7 of the agency as the Regulatory Review Officer of the  
8 agency. The Regulatory Review Officer of an agency shall  
9 be responsible for the implementation of this Act by the  
10 agency and shall report directly to the head of the agency  
11 and the Administrator with respect to that responsibility.

12 SEC. 10. RELATIONSHIP TO OTHER LAW; SEVERABILITY.

13 (a) RELATIONSHIP TO APA.—~~Except to the extent~~  
14 ~~that there is a direct conflict with the provisions of this~~  
15 ~~Act, nothing~~ Nothing in this Act is intended to super-  
16 sede the provisions of chapters 5, 6, and 7 of title 5, Unit-  
17 ed States Code.

18 (b) SEVERABILITY.—If any provision of this Act, or  
19 the application of any provision of this Act to any person  
20 or circumstance, is held invalid, the application of such  
21 provision to other persons or circumstances, and the re-  
22 mainder of this Act, shall not be affected thereby.

1 SEC. 11. EFFECT OF TERMINATION OF A COVERED RULE.

2 ~~(a) EFFECT OF TERMINATION, GENERALLY.—If the~~  
3 ~~effectiveness of a covered rule terminates under section~~  
4 ~~3—~~

5 (a) EFFECT OF TERMINATION, GENERALLY.—If a  
6 covered rule is terminated pursuant to this  
7 Act—

8 (1) this Act shall not be construed to prevent  
9 the President or an agency from exercising any au-  
10 thority that otherwise exists to implement the stat-  
11 ute under which the rule was issued;

12 ~~(2) in an agency proceeding or court action be-~~  
13 ~~tween an agency and a non-agency party, the rule~~  
14 ~~shall be given no legal effect (subject to paragraph~~  
15 ~~(3)) except at the request of the non-agency party;~~  
16 ~~and~~

17 [(2) in an agency proceeding or court  
18 action between an agency and a non-  
19 agency party, the rule shall be given no  
20 conclusive legal effect but may be submit-  
21 ted as evidence of agency practice and  
22 procedure; and]

23 (3) ~~notwithstanding section 3,~~ this Act shall not  
24 be construed to prevent the continuation or institu-  
25 tion of any enforcement action that is based on a

1 violation of the rule that occurred before the effec-  
2 tiveness of the rule terminated.

3 (b) EFFECT ON DEADLINES.—

4 (1) IN GENERAL.—Notwithstanding subsection  
5 (a), any deadline for, relating to, or involving any  
6 action dependent upon, any rule terminated under  
7 this Act is suspended until the agency that issued  
8 the rule issues a new rule on the same matter, un-  
9 less otherwise provided by a law.

10 (2) DEADLINE DEFINED.—In this subsection,  
11 the term “deadline” means any date certain for ful-  
12 filling any obligation or exercising any authority es-  
13 tablished by or under any Federal rule, or by or  
14 under any court order implementing any Federal  
15 rule.

16 SEC. 12. JUDICIAL REVIEW.

17 (a) IN GENERAL.—A denial or substantial inexcus-  
18 able delay in granting or denying a petition under section  
19 4(c) shall be considered final agency action **subject to**  
20 **review under section 702 of title 5, United**  
21 **States Code.** A denial of a congressional request under  
22 section 4(d) shall not be subject to judicial review.

23 (b) TIME LIMITATION ON FILING A CIVIL ACTION.—  
24 Notwithstanding any other provisions of law, an action

1 seeking judicial review of a final agency action under this  
2 Act may not be brought—

3 (1) in the case of a final agency action denying  
4 a public petition under section 4(c) or continuing  
5 without change, modifying, or consolidating a cov-  
6 ered rule, more than 30 days after the effective date  
7 of that agency action; or

8 (2) in the case of an action challenging a delay  
9 in granting or denying a petition for a rule under  
10 section 4(c), more than 1 year after the period appli-  
11 cable to the rule under section 4(c)(4).

12 (c) AVAILABILITY OF JUDICIAL REVIEW UNAF-  
13 FECTED.—Except to the extent that there is a direct con-  
14 flict with the provisions of this Act, nothing in this Act  
15 is intended to affect the availability or standard of judicial  
16 review for agency regulatory action.

17 SEC. 13. DEFINITIONS.

18 In this Act:

19 (1) ADMINISTRATOR.—The term “Adminis-  
20 trator” means the Administrator of the Office of In-  
21 formation and Regulatory Affairs in the Office of  
22 Management and Budget.

23 (2) AGENCY.—The term “agency” has the  
24 meaning given that term in section 551(1) of title 5,  
25 United States Code.

1 (3) APPROPRIATE COMMITTEE OF THE CON-  
 2 GRESS.—The term “appropriate committee of the  
 3 Congress” means, with respect to a rule, each stand-  
 4 ing committee of Congress having authority under  
 5 the rules of the House of Representatives or the  
 6 Senate to report a bill to amend the provision of law  
 7 under which the rule is issued.

8 (4) RULE.—

9 (A) GENERAL RULE.—Subject to subpara-  
 10 graph (B), the term “rule” means any agency  
 11 statement of general applicability and future ef-  
 12 fect, including agency guidance documents, de-  
 13 signed to implement, interpret, or prescribe law  
 14 or policy, or describing the procedures or prac-  
 15 tices of an agency, or intended to assist in such  
 16 actions, but does not include—

17 (i) regulations or other agency state-  
 18 ments issued in accordance with formal  
 19 rulemaking provisions of sections 556 and  
 20 557 of title 5, United States Code;

21 (ii) regulations or other agency state-  
 22 ments that are limited to agency organiza-  
 23 tion, management, or personnel matters;

24 (iii) regulations or other agency state-  
 25 ments issued with respect to a military or

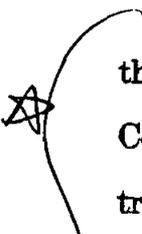
1 foreign affairs function of the United  
2 States;

3 (iv) regulations, statements, or other  
4 agency actions that are reviewed and usu-  
5 ally modified each year (or more fre-  
6 quently), or are reviewed regularly and  
7 usually modified based on changing eco-  
8 nomic or seasonal conditions;

9 (v) regulations or other agency actions  
10 that grant an approval, license, permit,  
11 registration, or similar authority or that  
12 grant or recognize an exemption or relieve  
13 a restriction, or any agency action nec-  
14 essary to permit new or improved applica-  
15 tions of technology or to allow the manu-  
16 facture, distribution, sale, or use of a sub-  
17 stance or product; and

18 (vi) regulations or other agency state-  
19 ments that the Administrator certifies in  
20 writing are necessary for the enforcement  
21 of the Federal criminal laws.

22 (B) SCOPE OF A RULE.—For purposes of  
23 this Act, each set of rules designated in the  
24 Code of Federal Regulations as a part shall be  
25 treated as one rule. Each set of rules that do



1 not appear in the Code of Federal Regulations  
2 and that are comparable to a part of that Code  
3 under guidelines established by the Adminis-  
4 trator shall be treated as one rule.

5 (5) SUNSET REVIEW.—The term “sunset re-  
6 view” means a review of a rule under this Act.

7 **SEC. 14. SUNSET OF THIS ACT.**

8 This Act shall have no force or effect after the 10-  
9 year period beginning on the date of the enactment of this  
10 Act.

**EXECUTIVE OFFICE OF THE PRESIDENT**

December 6, 1995

**TO:** (See below)

**FROM:** Wesley Warren, CEQ / Michael Fitzpatrick, OIRA

**SUBJECT:** Regulatory Reform

**THERE WILL BE AN INTERAGENCY CONFERENCE CALL ON REGULATORY REFORM THURSDAY, DECEMBER 7, 1995 AT 5:00 P.M.** The purpose of the conference call is to discuss Congressional activities on regulatory reform. To access the conference call, dial (202) 757 - 2104, code # 9186.

We need to request that the agencies not place more than one call into the conference line. However, agencies can choose to have more than one person on the line used to call in. Please let us know if there should be a different contact for your agency for this call than is listed below.

For your review and comment, you will find attached to this memo copies of the two versions of the Section 28 comparative risk language which, though dropped from the Safe Drinking Water Act before the vote last week, may arise again. Additionally, please find a copy of the Morella Amendment to HR 2196. ( Total # pgs. - 23 )

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	514-1724	DOJ
Richard Carro	622-0650	622-1188	Treas
Floyd Williams	622-0725	622-0534	Treas
Bob Hickmott	260-5200	260-4046	EPA
Gary Guzy	260-7960	260-3684	EPA
Kate Perry	564- 4088	564- 0022	EPA
Bob Wager	(301)-504-0515	(301)504-0016	CPSC
Neil Eisner	366- 4723	366-9313	DOT
Cresence Massei	366-9714	366-3675	DOT
Melanie Bellar	208-7693	208-5533	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
Maryann Kanc	326-2450	326-2050	FTC
Kate Fulton	942-0014	942-9650	SEC
Ed Jurith	395-6709	395-6708	ONDCP
Kitty Higgins	456-2572	456-6704	WHOCA
Tracy Thornton	456-6493	456-2604	WHLA
Martha Foley	456-6799	456-2271	WHO
Linda Lance	456-6605	456-6212	OVP
Michael Waldman	456-2272	456-7431	DPC
Marcia Seidner	456-6202	456-6025	OSTIP
Ellen Seidman	456-2802	456-2223	NEC
Mike Toman	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC

In SDWA

**SEC. 28. ASSESSING ENVIRONMENTAL PRIORITIES, COSTS, AND BENEFITS.**

(a) DEFINITIONS.--In this section:

(1) ADMINISTRATOR.--The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) COMPARATIVE RISK ANALYSIS.--The term "comparative risk analysis" means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(3) RISK.--The term "risk" means the likelihood of harm to human health, the environment, or public welfare.

(4) SERIOUSNESS.--The term "seriousness" or "serious" means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(b) FINDINGS.--Congress finds that--

(1) comparative risk analysis, cost-benefit analysis, and risk assessment are useful but imperfect tools that serve to enhance the information available for developing environmental regulations and programs;

(2) comparative risk analysis, cost-benefit analysis, and risk assessment can also serve as useful tools in setting priorities and evaluating the success of environmental protection programs;

(3) cost and risk are not the only factors that need to be considered in evaluating environmental programs, as other

factors, including values and equity, must also be considered;

(4) comparative risk analysis, cost-benefit analysis, and risk assessment should be presented with a clear statement of the uncertainties in the analysis or assessment;

(5) periodic reports by the Administrator on the seriousness of risks, and on cost-effective responses to those risks, will provide Congress and the general public with a better understanding of--

(A) national environmental priorities; and

(B) expenditures being made to achieve reductions in risk; and

(6) periodic reports by the Administrator on Agency priority setting also will--

(A) provide Congress and the general public with a better understanding of--

(i) the strengths, weaknesses, and uncertainties of comparative risk analysis, cost-benefit analysis, and risk assessment; and

(ii) the research needed to reduce major uncertainties; and

(B) assist Congress and the general public in evaluating environmental protection regulations, programs, and laws with impacts on human health, the environment, or public welfare, to determine the extent to which the regulations, programs, and laws adequately and fairly protect affected segments of society.

(C) ENVIRONMENTAL PRIORITIES, COSTS, AND BENEFITS...

(1) SETTING PRIORITIES...

(A) IN GENERAL... The Administrator shall carefully assess and rank risks based on their seriousness. The Administrator shall use the resources available pursuant to environmental laws to address the risks that--

(i) the Administrator determines to be the most serious, and

(ii) can be addressed most cost-effectively.

(B) DETERMINING THE MOST SERIOUS RISKS.-- In identifying the most serious risks under subparagraph (1) (A) (i), the Administrator shall use the best data readily available.

After completion of the comparative risk analysis required by subsection (d) of this section, the Administrator shall explicitly take account of the results of this analysis.

(C) REVIEW.-- The Agency's priority setting under this paragraph shall be reviewed by the Director of the Office of Management and Budget and the Director of the Office of Science and Technology Policy before the submission of the Agency's annual budget requests to Congress.

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(2) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.-- The Administrator shall incorporate the priorities identified under paragraph (1) into the Agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget requests to Congress and when announcing its regulatory agenda in the Federal Register,

the Agency shall identify the risks that the Administrator has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the Agency's requested budget and regulatory agenda reflect those priorities. The Agency shall identify any other factors that impacted its priority setting.

(d) COMPARATIVE RISK ANALYSIS.--

(1) REQUIREMENT.--(A) No later than 6 months after the date of enactment of this Act, the Administrator shall make appropriate arrangements for--

- (i) a comparative risk analysis, which shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated by the Agency; and
- (ii) a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks.

(B) The Administrator shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(C) Nothing in this subsection shall be construed to prevent the Administrator from entering into a sole-source arrangement with a nationally recognized scientific institution or scholarly organization.

(2) CRITERIA.--The Administrator shall ensure that the arrangement under subparagraph (1)(A)(i) provides that--

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(A) the scope and specificity of the analysis are sufficient to provide the President, the Administrator, and Congress guidance in allocating resources among programs to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, including significant opportunities for public input and for providing public comment on the results before making them final;

(C) the analysis is conducted by a balanced group of individuals with expertise relevant to performing the analysis, such as toxicologists, biologists, engineers, and experts in medicine, industrial hygiene, environmental effects, and pertinent social sciences;

(D) the methodologies and principal scientific determinations made in the analysis are subjected to independent peer review, and the conclusions of the peer review are made publicly available as part of the reports required under subsection (a) (2); and

(E) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.--No later than 3 years after the date of enactment of this Act, the comparative risk analysis required under subparagraph (1) (A) (i) shall be completed. The comparative risk analysis shall be reviewed and revised at least

every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Administrator shall arrange for such review and revision in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.--The study of methodologies required by subparagraph (1) (A) (ii) shall be conducted at the time of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient breadth to test and recommend approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.--No later than 180 days after the date of enactment of this Act, the Administrator shall enter into a contract with the National Research Council to provide technical guidance to the Agency on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist the Agency in complying with subsection (c) of this section. After the study required by subparagraph (1) (A) (ii) is completed, such technical guidance shall be revised to reflect the findings and recommendations of the study.

(e) REPORTS.--

(1) PRELIMINARY REPORT.--Not later than 1 year after

the date of enactment of this Act, the Administrator shall report to Congress and the President on the risks that the Administrator will address, and the approaches and methodology the Administrator will use, in carrying out the comparative risk analysis and making the determinations required by this section.

(2) PERIODIC REPORTS.--On completion of the comparative risk analysis required by this section, but not later than 3 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall report the findings of the comparative risk analysis to Congress and the President, and make the report available to the general public. Each periodic report also shall detail how the Agency has complied with subsection (c) and describe the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk.

(A) EVALUATION OF RISKS.--In each periodic report prepared pursuant to this paragraph, the Administrator shall, to the extent practicable, evaluate risk management decisions under Federal environmental laws, including title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.), that present inherent and unavoidable choices between competing risks, including risks of controlling microbial versus disinfection contaminants in drinking water. Each periodic report shall address the policy of the Administrator concerning the most appropriate methods of weighing and analyzing the risks, and shall incorporate

information concerning--

(i) the severity and certainty of any adverse effect on human health, the environment or public welfare;

(ii) whether the effect is immediate or delayed;

(iii) whether the burden associated with the adverse effect is borne disproportionately by a segment of the general population or spread evenly across the general population; and

(iv) whether a threatened adverse effect can be eliminated or remedied through technology or a protection mechanism.

(B) RISK REDUCTION OPPORTUNITIES.--In each periodic report prepared pursuant to this paragraph, the Administrator shall identify reasonable opportunities to achieve significant risk reduction through modifications in environmental regulations, programs, and laws. The Administrator shall make recommendations to Congress and the President that would assist the Agency in setting priorities to address risks in a manner consistent with the requirements of subsection (c), including the enactment, reform, or repeal of environmental laws, and the modification or elimination of statutorily mandated deadlines.

(C) UNCERTAINTIES.--In evaluating the risks referred to in subsection (c), the Administrator shall--

(i) identify and explain the principal uncertainties in the characterization of risks that are ranked;

and

(ii) determine --

(I) the type and nature of research that would likely reduce the uncertainties; and

(II) the cost of conducting the research.

(f) IMPLEMENTATION.--In carrying out this section, the Administrator shall--

(1) consult with the appropriate officials of other Federal agencies and State and local governments, members of the academic community, representatives of regulated businesses and industry, representatives of citizen groups, and other knowledgeable individuals to develop, evaluate, and interpret scientific and economic information;

(2) make available to the general public the information on which the priority setting and determinations under this section are based.

(g) SAVINGS PROVISION AND JUDICIAL REVIEW.--

(1) IN GENERAL.--Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment, nor shall it preclude the Administrator from considering any appropriate factors when establishing the Agency budget, strategic planning, regulatory agenda, enforcement, and research activities.

(2) JUDICIAL REVIEW.--Compliance or noncompliance with

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the provisions of this section shall not be subject to judicial  
review.

AMENDMENT NO. \_\_\_\_\_

Calendar No. 226

Purpose: To modify the provisions with respect to comparative risk assessment.

**IN THE SENATE OF THE UNITED STATES—104th Cong., 1st Sess.**

**S. 1316**

To reauthorize and amend title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act"), and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by MR. CHAFEE (for himself, MR. KEMPTHORNE, MR. BAUCUS AND MR. REID)

Viz:

- 1 Beginning on page 179, line 16, section 28 of the bill
- 2 is amended to read as follows:
- 3 **SEC. 28. ASSESSING ENVIRONMENTAL PRIORITIES, COSTS, AND**
- 4 **BENEFITS.**
- 5 (a) DEFINITIONS.—In this section:
- 6 (1) ADMINISTRATOR.—The term "Administrator"
- 7 means the Administrator of the Environmental Protec-
- 8 tion Agency.
- 9 (2) COUNCIL.—The term "Council" means the
- 10 Council on Environmental Quality.

1           (3) RISK.—The term “risk” means the likelihood  
2 of an occurrence of an adverse effect on human  
3 health, the environment, or public welfare.

4           (4) SOURCE OF POLLUTION.—The term “source  
5 of pollution” means a category or class of facilities or  
6 activities or naturally-occurring substances or condi-  
7 tions that present risks to human health, the environ-  
8 ment or public welfare.

9           (5) COMPARATIVE RISK ASSESSMENT.—The term  
10 “comparative risk assessment” means a process to  
11 systematically estimate, compare and rank the size  
12 and severity of risks from various sources of pollution  
13 for evaluating the degree of risk reduction resulting  
14 from strategies for reducing or preventing those risks.

15 (b) FINDINGS.—Congress finds that—

16           (1) comparative risk analysis, cost-benefit  
17 analysis and risk assessment are useful but imperfect  
18 tools that serve to enhance the information available  
19 for developing environmental regulations and pro-  
20 grams;

21           (2) comparative risk analysis, cost-benefit  
22 analysis and risk assessment can also serve as useful  
23 tools in setting priorities and evaluating the success of  
24 environmental protection programs;

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1           (3) cost and risk are not the only factors that  
2           need to be considered in evaluating environmental  
3           programs, as other factors, including values and  
4           equity, must also be considered;

5           (4) comparative risk analysis, cost-benefit  
6           analysis and risk assessment should be presented with  
7           a clear statement of the uncertainties and assumptions  
8           in the analysis or assessment;

9           (5) current methods for valuing ecological  
10          resources and assessing intergenerational effects of  
11          sources of pollution need further development before  
12          integrated rankings of sources of pollution based on  
13          the factors referred to in paragraph (3) can be used  
14          with high levels of confidence;

15          (6) methods to assess and describe the risks of  
16          adverse human health effects, other than cancer, need  
17          further development before integrated rankings of  
18          sources of pollution based on the risk to human health  
19          can be used with high levels of confidence;

20          (7) periodic reports by the Council on the costs  
21          and benefits of regulations promulgated under Federal  
22          environmental laws, and other Federal actions with  
23          impacts on human health, the environment, or public  
24          welfare, will provide Congress and the general public

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1 with a better understanding of—

2 (A) national environmental priorities; and

3 (B) expenditures being made to achieve  
4 reductions in risk to human health, the environ-  
5 ment, and public welfare; and

6 (8) periodic reports by the Council on the costs  
7 and benefits of environmental regulations will also—

8 (A) provide Congress and the general  
9 public with a better understanding of the  
10 strengths, weaknesses, and uncertainties of  
11 cost-benefit analysis and risk assessment and  
12 the research needed to reduce major uncertain-  
13 ties; and

14 (B) assist Congress and the general  
15 public in evaluating environmental protection  
16 regulations and programs, and other Federal  
17 actions with impacts on human health, the  
18 environment, or public welfare, to determine  
19 the extent to which the regulations, programs,  
20 and actions adequately and fairly protect affect-  
21 ed segments of society.

22 (c) COMPARATIVE RISK ANALYSIS.—

23 (1) RANKING.—

24 (A) IN GENERAL.—The Council shall

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1 identify and, taking into account available data  
2 (to the extent practicable), compare and rank  
3 sources of pollution with respect to the relative  
4 degree of risk of adverse effects on human  
5 health, the environment, and public welfare.

6 (B) METHOD OF RANKING.—In carrying  
7 out the rankings under subparagraph (A), the  
8 Council shall—

9 (i) rank the sources of pollution  
10 considering the extent and duration of  
11 the risk and the availability of cost-effec-  
12 tive risk reduction opportunities; and

13 (ii) take into account broad soci-  
14 etal values, including the role of natural  
15 resources in sustaining economic activity  
16 into the future,

17 (2) EVALUATION OF REGULATORY AND OTHER  
18 COSTS.—In addition to carrying out the comparison  
19 and rankings under paragraph (1), the Council shall  
20 estimate the private and public costs associated with  
21 each source of pollution and the costs and benefits of  
22 complying with regulations designed to protect  
23 against risks associated with the sources of pollution.

24 (3) UNCERTAINTIES.—In evaluating the risks

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1 referred to in paragraphs (1) and (2), the Council  
2 shall—

3 (A) identify the major uncertainties  
4 associated with the risks;

5 (B) explain the meaning of the uncertain-  
6 ties in terms of interpreting the comparison,  
7 ranking and evaluation; and

8 (C) determine the type and nature of re-  
9 search that would likely reduce the uncertain-  
10 ties.

11 (4) CONSIDERATION OF BENEFITS.—In carrying  
12 out this section, the Council shall consider and, to the  
13 extent practicable, estimate the monetary value, and  
14 such other values as the Council determines to be  
15 appropriate, of the benefits associated with reducing  
16 risk to human health and the environment, including—

17 (A) avoiding premature mortality;

18 (B) avoiding cancer and noncancer  
19 diseases that reduce the quality of life;

20 (C) preserving biological diversity and  
21 the sustainability of ecological resources;

22 (D) maintaining an aesthetically pleasing  
23 environment;

24 (E) valuing services performed by eco-

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1 systems (such as flood mitigation, provision of  
2 food or material, or regulating the chemistry of  
3 the air or water) that, if lost or degraded,  
4 would have to be replaced by technology;

5 (F) avoiding other risks identified by the  
6 Council; and

7 (G) considering the benefits even if it is  
8 not possible to estimate the monetary value of  
9 the benefits in exact terms.

10 (5) CONSIDERATION OF COSTS.

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**(6) REPORTS.—**

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**(A) PRELIMINARY REPORT.—**Not later than 1 year after the date of enactment of this Act, the Council shall report to Congress on the sources of pollution that the Council will address, and the approaches and methodology the Council will use, in carrying out the rankings and evaluations under this section. The report shall also include an evaluation by the Council of the need for the development of methodologies to carry out the ranking.

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**(B) PERIODIC REPORT.—**On completion of the ranking and evaluations conducted by the Council under this section, but not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Council shall report the findings of the rankings and evaluations to Congress and make the report available to the general public.

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22 Council shall—

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**(1)** consult with the appropriate officials of other Federal agencies and State and local govern-

1       ments, members of the academic community, repre-  
2       sentatives of regulated businesses and industry,  
3       representatives of citizen groups, and other knowl-  
4       edgeable individuals to develop, evaluate, and inter-  
5       pret scientific and economic information;

6               (2) provide significant opportunities for public  
7       participation in the rankings and evaluations under  
8       this section; and

9               (3) select, not later than 2 years after the date  
10       of enactment of this Act and after consultation with  
11       the Council of Economic Advisors, methods for  
12       determining costs and benefits of environmental  
13       regulations and other Federal actions, including the  
14       valuation intergenerational costs and benefits, after  
15       opportunity for public comment.

16       (c) INDEPENDENT REVIEW.—Before the Council  
17       submits a report prepared under this section to Congress, it  
18       shall provide for independent technical review of the report  
19       and publication of the review and comments on the review.

20       (f) INCORPORATING RISK-BASED PRIORITIES INTO  
21       BUDGET AND PLANNING.—The Administrator shall consider  
22       the results of the comparison and ranking prepared by the  
23       Council under this section in the Agency's budget, strategic  
24       planning, regulatory agenda, enforcement, and research

1 activities. The Agency shall explain how the results of the  
2 analysis as well as other factors have been used, when  
3 submitting its budget requests to Congress and when  
4 announcing its regulatory agenda in the Federal Register.

5 (g) COMPARATIVE RISK STUDY.—

6 (1) REQUIREMENT.—No later than 6 months  
7 after the date of enactment of this Act, the Adminis-  
8 trator shall make appropriate arrangements with the  
9 National Academy of Sciences to conduct a study of  
10 the appropriate use of comparative risk analysis in  
11 addressing risks to human health, the environment and  
12 public welfare. The study shall consider the appropri-  
13 ate use of comparative risk analysis in (A) setting the  
14 Agency's strategy, priorities and budget; and (B) its  
15 use in the development, modification, or repeal of  
16 programs, regulations, and laws which impact on  
17 human health, the environment and public welfare.

18 (2) ELEMENTS TO BE STUDIED.—In conducting  
19 this review, the National Academy of Sciences shall  
20 evaluate the comparative risk studies conducted by the  
21 Agency, the Science Advisory Board and the States.  
22 The review shall consider both the scientific and  
23 technical aspects of such studies as well as those other  
24 factors which need to be considered in utilizing the

1 results of such comparative risk studies. The review  
2 should examine the adequacy of current data and  
3 methods for evaluating and comparing risks and  
4 factors such as equity and values that are implicit in  
5 such comparisons.

6 (3) REPORT.—A report on the results of the  
7 study shall be submitted to the Congress and to the  
8 Administrator no later than 30 months after the date  
9 of enactment of this Act. The report shall be present-  
10 ed in such manner that clearly distinguishes between  
11 scientific conclusions and any policy or value judge-  
12 ments.

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**AMENDMENT TO H.R. 2196  
OFFERED BY MRS. MORELLA**

Page 21, after line 19, insert the following new sub-  
section:

1 (d) UTILIZATION OF CONSENSUS STANDARDS BY  
2 FEDERAL AGENCIES; REPORTS.—(1) To the extent prac-  
3 ticable, all Federal agencies and departments shall use,  
4 for procurement and regulatory applications, standards  
5 that are developed or adopted by voluntary consensus  
6 standards bodies.

7 (2) Federal agencies and departments shall consult  
8 with voluntary, private sector, consensus standards bodies,  
9 and shall participate with such bodies in the development  
10 of standards, as appropriate in carrying out paragraph  
11 (1).

12 (3) If a Federal agency or department elects to use,  
13 for procurement or regulatory applications, standards that  
14 are not developed or adopted by voluntary consensus  
15 standards bodies, the head of such agency or department  
16 shall transmit to the Office of Management and Budget  
17 an explanation of the reasons for adopting such standards.  
18 The Office of Management and Budget shall annually  
19 transmit to the Congress all explanations received by it  
20 under this subsection.

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