H.R. 830, PAPERWORK REDUCTION ACT AND RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 830

TO AMEND CHAPTER 35 OF TITLE 44, UNITED STATES CODE, TO FURTHER THE GOALS OF THE PAPERWORK REDUCTION ACT TO HAVE FEDERAL AGENCIES BECOME MORE RESPONSIBLE AND PUBLICLY ACCOUNTABLE FOR REDUCING THE BURDEN OF FEDERAL PAPERWORK ON THE PUBLIC, AND FOR OTHER PURPOSES

FEBRUARY 7, 1995

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

88-696 CC WASHINGTON : 1996

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052351-6

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

WILLIAM F. CLINGER, JR., Pennsylvania, *Chairman*

BENJAMIN A. GILMAN, New York
DAN BURTON, Indiana
CONSTANCE A. MORELLA, Maryland
CHRISTOPHER SHAYS, Connecticut
STEVEN SCHIFF, New Mexico
ILEANA ROS-LEHTINEN, Florida
WILLIAM H. ZELIFF, JR., New Hampshire
JOHN M. MCHUGH, New York
STEPHEN HORN, California
JOHN L. MICA, Florida
PETER BLUTE, Massachusetts
THOMAS M. DAVIS, Virginia
DAVID M. MCINTOSH, Indiana
JON D. FOX, Pennsylvania
RANDY TATE, Washington
DICK CHRYSLER, Michigan
GIL GUTKNECHT, Minnesota
MARK E. SOUDER, Indiana
WILLIAM J. MARTINI, New Jersey
JOE SCARBOROUGH, Florida
JOHN B. SHADEGG, Arizona
MICHAEL PATRICK FLANAGAN, Illinois
CHARLES F. BASS, New Hampshire
STEVEN C. LATOURETTE, Ohio
MARSHALL "MARK" SANFORD, South Carolina
ROBERT L. EHRLICH, JR., Maryland

CARDISS COLLINS, Illinois
HENRY A. WAXMAN, California
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
JOHN M. SPRATT, JR., South Carolina
LOUISE MCINTOSH SLAUGHTER, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California
COLLIN C. PETERSON, Minnesota
KAREN L. THURMAN, Florida
CAROLYN B. MALONEY, New York
THOMAS M. BARRETT, Wisconsin
GENE TAYLOR, Mississippi
BARBARA-ROSE COLLINS, Michigan
ELEANOR HOLMES NORTON, District of Columbia
JAMES P. MORAN, Virginia
GENE GREEN, Texas
CARRIE P. MEEK, Florida
FRANK MASCARA, Pennsylvania
CHAKA FATTAH, Pennsylvania

BERNARD SANDERS, Vermont (Independent)

JAMES L. CLARKE, *Staff Director*
KEVIN SABO, *General Counsel*
JUDITH MCCOY, *Chief Clerk*
BUD MYERS, *Minority Staff Director*

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

DAVID M. MCINTOSH, Indiana, *Chairman*

JON D. FOX, Pennsylvania
JOHN M. MCHUGH, New York
RANDY TATE, Washington
GIL GUTKNECHT, Minnesota
JOE SCARBOROUGH, Florida
JOHN B. SHADEGG, Arizona
ROBERT L. EHRLICH, JR., Maryland

COLLIN C. PETERSON, Minnesota
HENRY A. WAXMAN, California
JOHN M. SPRATT, JR., South Carolina
LOUISE MCINTOSH SLAUGHTER, New York
PAUL E. KANJORSKI, Pennsylvania
GARY A. CONDIT, California

EX OFFICIO

WILLIAM F. CLINGER, JR., Pennsylvania
CARDISS COLLINS, Illinois

MILDRED WEBBER, *Staff Director*
DAVID WHITE, *Clerk*

CONTENTS

	Page
Hearing held on February 7, 1995	1
Statement of:	
Coakley, Robert, executive director, Council on Regulatory and Information Management; Jack Sheehan, legislative director, United Steelworkers of America; and Bob Stolmeier, president, KLC Corp	56
Crapo, Hon. Michael D., a Representative in Congress from the State of Idaho	6
Dodaro, Gene, Assistant Comptroller General, Accounting and Information Management Division, U.S. General Accounting Office; accompanied by Christopher Hoenig, Associate Director, Accounting and Information Management Division, Information Resource Management Policy and Issues Group	43
Katzen, Sally, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget	9
Miller, James, chairman, Citizens for a Sound Economy; and James McIntyre, attorney, McNair and Sanford, P.A	31
Letters, statements, etc., submitted for the record by:	
Coakley, Robert, executive director, Council on Regulatory and Information Management, prepared statement of	59
Crapo, Hon. Michael D., a Representative in Congress from the State of Idaho, prepared statement of	8
Dodaro, Gene, Assistant Comptroller General, Accounting and Information Management Division, U.S. General Accounting Office, prepared statement of	45
Katzen, Sally, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget:	
Number of Federal employees responsible for implementing the Paperwork Reduction Act	22
Prepared statement of	11
McIntyre, James, attorney, McNair and Sanford, P.A., prepared statement of	36
Miller, James, chairman, Citizens for a Sound Economy, prepared statement of	32
Sheehan, Jack, legislative director, United Steelworkers of America, prepared statement of	68

H.R. 830, PAPERWORK REDUCTION ACT AND RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS

TUESDAY, FEBRUARY 7, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 2154, Rayburn House Office Building, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh, McHugh, Fox, Scarborough, Ehrlich, Tate, Peterson, and Spratt.

Also present: Representative Clinger [ex officio], and Representative Collins [ex officio].

Staff present: Mildred Webber, staff director; Kevin Sabo, chief counsel, full committee; Jon Praed, chief counsel; Karen Barnes, press secretary; and David White, majority clerk.

Mr. MCINTOSH. A quorum being present, the hearing is now called to order.

Thank you all for coming and joining us today. I wanted to say thank you in particular to Chairman Clinger and Mrs. Collins for coming.

Today we will be looking at a couple of the regulatory reform measures included in the Contract With America—chiefly the Paperwork Reduction Act, which finds its home in this committee, and Title III of H.R. 9, the Job Creation and Enhancement Act of 1995. This act imposes risk assessment requirements on agency rulemaking.

Reauthorization of the Paperwork Reduction Act is long overdue. It has not been reauthorized since 1986 and has been expired, in effect, since the beginning of this decade. I was shocked to find that the predecessor of this committee, the Government Operations Committee, had not even held an oversight hearing on the act for well over 3 years. In view of the paperwork burdens imposed on individuals and taxpayers, overseeing the implementation of this act will be a high priority of this committee during this Congress.

On Monday of this week, Chairman Clinger, Congressman Sisisky, and I introduced H.R. 830 designed specifically to reauthorize the Paperwork Reduction Act and strengthen the Office of Information and Regulatory Affairs, an office in OMB that I have high regard for and feel is necessary in order to reduce paperwork and

regulatory burdens throughout the Government. It is nearly identical to a bill pending in the Senate with a few strengthening changes.

In brief, this bill is intended to reauthorize appropriations for the Office of Management and Budget's Office of Information and Regulatory Affairs for an indefinite period of time to carry out the provisions of the Paperwork Reduction Act of 1980. In addition, I would imagine that in H.R. 9 there will be other duties that are assigned to OIRA and it would be appropriate to include those in the Authorization Act as well, strengthening OIRA and agency responsibilities for the reduction of paperwork burdens on the public, particularly through the inclusion of all federally sponsored collections of information, in a clearance process involving public notice and comment, public protection, and OIRA review.

It establishes policies to promote the dissemination of public information on a timely and equitable basis and in useful forms and formats; it strengthens agency accountability for managing information resources and the support of efficient and effective accomplishment of agency missions and programs. Finally, it improves OIRA and other central management oversight of agency information resources management policies and practices.

[NOTE.—The bill H.R. 830 can be found in subcommittee files.]

Mr. MCINTOSH. We have also asked our witnesses to provide testimony on Title III of the Job Creation and Wage Enhancement Act of 1995. This Title requires that for all proposed Federal rules that have an economic impact of $25 million or more, agencies would have to perform an analysis of costs and benefits as well as the risks. For final rules, a certification would be required that the benefits from the rule will justify the costs imposed and that the rule would substantially advance protection of human health and the environment. In addition, a peer review process of risk assessment would be conducted for regulations with an impact of over $100 million. Risk assessment and cost-benefit analysis is crucial to setting our priorities given our limited resources and also finding out how we can regulate in the least costly and burdensome manner and maximize the benefits intended from those regulations.

We have an outstanding list of witnesses to speak on these topics today. Our first witness is the Honorable Sally Katzen, Administrator of OMB's Information and Regulatory Affairs. She will be followed by a panel of former OMB directors including James Miller who served during the Reagan administration and James McIntyre who served during the Carter administration. Next will be Assistant Comptroller General of the General Accounting Office, Gene Dodaro, who will speak on information resource management requirements included in the Paperwork Reduction Act. Mr. Dodaro is accompanied by Mr. Chris Hoenig of the GAO staff.

The final panel will consist of Robert Coakley, executive director of the Council on Regulatory and Information Management. I know that Robert has been laboring in this field for many years, and I am glad to have him here today. Jack Sheehan, legislative director of the United Steelworkers of America. And, finally, my constituent and friend, Bob Stolmeier, president of KLC Corp. in Shelbyville, IN.

The staff has informed me that we have a request from one of our colleagues in Congress. Before we turn to him, let me ask if Chairman Clinger has any remarks that he would like to make at this point.

Mr. CLINGER. Thank you very much, Mr. Chairman.

As you stated, yesterday we did introduce H.R. 830, the Paperwork Reduction Act of 1995. The bill resulted from months of hard work by both members and staff of the House and Senate working to the common goal of strengthening and centralizing the regulatory review function at the Office of Management and Budget.

The legislation we consider now is premised on what I believe to be Congress' continuing belief in the principles and requirements of the Paperwork Reduction Act of 1980. All of the legislation's amendments to the 1980 act are intended to further its original purposes—to strengthen OMB and agency paperwork reduction efforts, to improve OMB and agency information resources management including in specific functional areas such as information dissemination, and to encourage and provide for more meaningful public participation in paperwork reduction and broader information resources management decisions.

With regard to the reduction of information collection burdens, the legislation maintains the act's 1986 goal of an annual 5 percent reduction in public paperwork burdens. OMB is required to include in its annual report to Congress recommendations to revise statutory paperwork burdens. The legislation includes third party disclosure requirements in the definition of "collection of information" to overturn the Supreme Court's decision in *Dole* v. *United Steelworkers of America.* This will ensure that collection and disclosure requirements are covered by the OMB paperwork clearance process.

The act is also amended to require each agency to develop a paperwork clearance process to review and solicit public comment on proposed information collections before submitting them to OMB for review. Public accountability is also strengthened through requirements for public disclosure of communications with OMB regarding information collections, with protection for whistle blowers complaining of unauthorized collections, and for OMB to review the status of any collection upon public request.

In combination with more general requirements such as encouraging data sharing between the Federal Government and State, local, and tribal governments, the legislation strives to further the act's goals of minimizing Government information collection burdens while maximizing the utility of Government information.

Mr. Chairman, I am pleased the committee is moving so swiftly to enact this important legislation. I look forward to hearing the views of our many distinguished witnesses this morning and also look forward to hearing the witnesses' assessment of the risk assessment provisions of the Job Creation and Wage Enhancement Act of 1995.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. Chairman.

Let me now turn to the ranking member, Mr. Collin Peterson from Minnesota.

Mr. PETERSON. Thank you, Mr. Chairman.

I would defer to the distinguished ranking member of the full committee if she has a statement, if that would be all right.

Mr. MCINTOSH. Certainly.

Mrs. COLLINS. Thank you.

Mr. Chairman, I thank you for holding this hearing on legislation to reauthorize the Paperwork Reduction Act which is language without reauthorization since 1989. It is a pleasure to see movement at last, and I would like to congratulate the President's team at OMB. Their efforts to forge a compromise is an important factor in getting where we are today.

During the last 2 years we have seen how the Office of Information and Regulatory Affairs can and should operate. Under the leadership of Administrator Sally Katzen, OIRA has used its authority to review regulations to reduce the burden on small businesses while following congressional intent. At the same time, OIRA has moved aggressively to make Government information more accessible to the public. That has been a bipartisan goal.

The Office of Information and Regulatory Affairs has also led the way in bringing innovation to information collection. This is a central part of the Paperwork Reduction Act. Under Ms. Katzen's leadership, we have improved both the way we collect information and become more selective in what we collect. I am particularly pleased that for the first time in 30 years we have removed a substantial portion of the bias against women in the way we collect unemployment statistics. We are now using the latest technology to reduce the burden on the public of collecting this information.

This rereauthorization puts into law a number of principles which will make Government information more accessible to the public. The bill requires the Government to develop a system to help citizens locate information held on a particular topic. It also requires those agencies to charge no more for that information than the cost of disseminating it to the public. The Government should not be making any profit by charging citizens for information developed with taxpayers' dollars.

This bill contains a number of improvements in how we use information to better manage agencies and improvements in how we communicate with the business community and the public. It is a good compromise in many areas.

There is one place in the bill, however, where there is no compromise and I am disappointed in the solution that has been chosen. It represents the Paperwork Reduction Act, I believe, in its worst light. I am of course referring to the decision to overturn the Supreme Court decision in *Dole* v. *United Steelworkers of America.* The subject of that case were Federal requirements that when hazardous chemicals are used at a workplace there should be a common site where those hazards are posted. OMB stepped in and blocked those requirements in the name of relieving the burdens on business. The Steelworkers sued, and in 1990 the Supreme Court, in a unanimous decision, agreed with the Steelworkers that OMB had overstepped its bounds. This bill would overturn that unanimous decision, and that is wrong.

Now I fail to understand why the authors of the Contract With America constantly protect business and routinely ignore protecting citizens. Aren't the Steelworkers and other workers part of Amer-

ica, or is this actually a contract with big business? In the debate over the regulatory moratorium we see this same issue. Stop regulations, we are told, even if those regulations protect coal miners from fires or cave-ins.

I am offering a simple amendment to strike the language in this bill that overturns the Supreme Court decision. The Paperwork Reduction Act should be used for that purpose; that is, reducing paperwork; it should not be used to endanger health and safety by eliminating notices of hazards to workers.

Mr. Chairman, I yield back the balance of my time.

Mr. MCINTOSH. Thank you, Mrs. Collins.

Mr. Peterson, did you have a statement?

Mr. PETERSON. Mr. Chairman, I just would want to commend you for holding this hearing, and I don't have a prepared statement, but I do have a couple of comments I would like to make if that would be all right.

First of all I want to associate myself with the remarks that were just made by the distinguished ranking member in terms of the case that is being overturned in this legislation. I also have some concerns about that, and I am here today to learn more about the Paperwork Reduction Act. I have to admit to you that I am not very familiar with this act, and, as you are aware—I think we have had some discussions—it kind of troubles me that we have to create a bureaucracy in the Government to try to untangle what the bureaucracy is doing wrong. It just flies in the face of reason, at least in the way that I view things, and it seems to me there should be a better way to do it. Maybe there isn't, and maybe this is the best we can do, but, you know, in this new information age we ought not to have any paper at all if we were doing things correctly. And to have a paperwork reduction program—I don't know, it just seems to fly in the face of where we are going in this country, and in my own personal understanding of the act the only thing I have ever really been involved with is doing income tax returns, and at the bottom of the pages or in the instructions—I can't remember exactly where—they have these ridiculous estimates of what it takes to fill out these forms. Now whoever is doing this ought to be investigated because they have for example 48 hours to do a form that can be done in 15 minutes, and if we are paying people to make these kinds of estimates under this act, this is one place, it seems to me, we ought to look at.

In any event, what I am here today to do mostly is to learn more. I commend you for holding this hearing. I also, as someone who has been interested in the concept of cost-benefit analysis and risk analysis, I am also looking forward to getting some testimony in those area. So I commend you for holding the hearing and look forward to hearing the witnesses.

Mr. MCINTOSH. Thank you very much, Mr. Peterson.

Let me ask if any of the other members have opening statements that they would like to make at this point. If not, we will move on to witnesses.

Mr. Fox.

Mr. FOX. Mr. Chairman, just a brief comment, first to give our gratitude to you as the chairman of the committee for embarking on this important effort and your leadership as well as that of the

overall leadership of Mr. Clinger in what he is doing with the minority leadership as well.

I would say in looking over this legislation, which is a step in the right direction for this Federal Government, I also think that the 5 percent goal that we had in 1986 of reducing paperwork ought to be more like a 50 percent reduction in the view of Americans, I believe. The other item I think is worth clarifying is, if we have less regulations we will have a chance for businesses to grow, produce, and hire by having higher paying jobs, more profits, and therefore more people employed. So that is part of the way I think less regulation in this country can go, and I thank you for the opportunity.

Mr. MCINTOSH. Thank you very much, Mr. Fox.

Mr. MCINTOSH. Do any of the other members have statements at this time? If not, let me now turn to one of our colleagues who has asked to come and testify before us, the Honorable Michael Crapo from Idaho. He is here with a suggestion of a means to strengthen the legislation.

Welcome Michael, and we appreciate your coming and taking time before us.

STATEMENT OF HON. MICHAEL D. CRAPO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. CRAPO. Thank you, Mr. Chairman, and I appreciate the opportunity to come before you and the other members of the committee this morning.

I would ask at the outset if I could get unanimous consent to submit my written comments as a part of the record.

Mr. MCINTOSH. Seeing no objection, so ordered.

Mr. CRAPO. Thank you.

Mr. Chairman and members of the committee, I have already submitted some specific language which I believe should be included as an amendment to the legislation that we are considering. I think that a critical aspect of your work on Title V, H.R. 9, is the strengthening amendment which I have suggested.

When Congress enacted the PRA in 1981, it specifically included public protection provisions in section 3512 designed to prevent unauthorized regulatory requirements from being imposed on the public. These days, we are doing a lot of work to try to address the question of agency actions which are improperly imposed on the public. We talk about it through unfunded mandates, we talk about it through regulatory reform and other areas, but section 3512 specifically states that every regulation must be cleared by OMB and bear an OMB control number or they can be disregarded by the public. This was bipartisan legislation with Senators Danforth and Chiles, and as the lead sponsors and during the hearings on the PRA in 1979 and 1980, both left little doubt as to their intent with regard to this section.

Senator Danforth said if an information request goes out of Washington without being approved by the paperwork watchdog, the person who gets it doesn't have to answer it, and Senator Chiles said a properly cleared form will have an OMB number in the right corner, and if it is not there it is going to be a bootleg

form and everybody should be on notice that they can throw that form away, they won't have to fill it out.

Unfortunately, it has come to my attention that a great deal of confusion exists among regulatory agencies and the courts regarding what Congress intended in enacting this important legislation which has allowed some agencies to blatantly disregard the public protection provisions of section 3512. In at least one case I know of, a Federal agency did not clear a rule with OMB, did not have an OMB control number, and then penalized a company for not complying with that invalid regulation. So far, the agency has actually refused to even respond to the threshold question of whether it has complied with the PRA. I am sure that many of you have heard of similar cases from your own constituents.

Some courts have held that private citizens do have the right to use a violation of the PRA as a defense when the violation of Federal regulations is brought against them, which means you have to wait until you are attacked for not complying with the regulation or promulgation in violation of the PRA and then use the violation as a defense.

Unfortunately, most courts have refused to take the next logical step and conclude that the public has an affirmative right of action to challenge a bootleg regulation. If you are an attorney or a litigator you understand the importance of this distinction, but I can assure you that it is critical in making it clear that citizens have an affirmative right of action that means they can immediately move to set aside agency action that is not in compliance with the PRA rather than waiting to be attacked and not knowing whether they will be able to sustain the defense to that attack.

Title V of H.R. 9 contains several amendments strengthening the PRA, and the addition of an amendment clarifying the intent of Congress that private citizens have an affirmative right of action to challenge bootleg rules promulgated by the Federal agency without an OMB control number would further strengthen this legislation by providing an important check against regulatory excess.

I have had a chance to review some of the testimony you will hear today, and I note that Mr. Robert Coakley, the executive director of the Council on Regulatory and Information Management, will be testifying later this morning on behalf of the PRA Coalition. Mr. Coakley makes a number of excellent suggestions, one of which is very similar to mine regarding the need for an affirmative private right of action to enforce the PRA. He suggests granting a private right of action to any citizen who petitions the Director of OMB for a ruling on a possible PRA violation and does not get a response.

Although I am unable to stay for the entire hearing today, I would like you to know that Mr. Coakley's suggestions regarding this issue are a very good first step, but I urge the subcommittee to go even further and to take the more direct approach to this issue along the lines I have suggested.

Mr. Chairman, I thank you and the members of the committee for your courtesy in allowing me to testify today, and I look forward to working with you on these amendments.

[The prepared statement of Hon. Michael D. Crapo follows:]

PREPARED STATEMENT OF HON. MICHAEL D. CRAPO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Good morning Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to testify this morning on what I view as a critical aspect of your important work on Title V of H.R. 9 to clarify and strengthen the Paperwork Reduction Act (PRA).

When Congress enacted the PRA in 1981 it specifically included "Public Protection" provisions in Section 3512 designed to prevent unauthorized regulatory requirements from being imposed on the public. Section 3512 specifically states that every regulation must be cleared by OMB and bear an OMB control number or they can be disregarded by the public. This was bipartisan legislation with Senators Danforth and Chiles as the lead sponsors. During the hearings on the PRA in 1979 and 1980, both left little doubt as to their intent regarding Section 3512:

- "If an information request goes out of Washington without being approved by the paperwork watchdog, the person who gets it doesn't have to answer it" (Senator Danforth, 1979).
- "A properly cleared form will have an Office of Management and Budget number in the right corner. And if it's not there, it's going to be a bootleg form and everybody should be on notice that they can throw that form away, that they won't have to fill it out." (Senator Chiles, 1980).

Unfortunately, it has come to my attention that a great deal of confusion exists among the regulatory agencies and the courts regarding what Congress intended in exacting this important legislation, which has allowed some agencies to blatantly disregard the Public Protection provisions of Section 3512. In at least one case I know of, a Federal agency did not clear a rule with OMB and did not obtain an OMB control number, and then penalized the company for not complying with the invalid regulation. So far, the agency has refused to even respond to the threshold question of whether it complied with the PRA or not. I'm sure that many of you have heard of similar cases from your constituents.

Some courts have held that private citizens have the right to use a violation of the PRA as a defense when charged with a violation of Federal agency regulations, which means that you have to wait until you are attacked for not complying with a regulation promulgated in violation of the PRA and then use the violation as a defense. Unfortunately, most courts have refused to take the next logical step and conclude that the public has an affirmative private right of action to challenge a bootleg regulation. If you are not an attorney, in particular a litigator, you may not realize how important this distinction is—but I can assure you that it is critical because making it clear that citizens have an affirmative right of action means that they can immediately move to set aside agency action not in compliance with the PRA.

Title V of H.R. 9 contains several amendments strengthening the PRA. The addition of an amendment clarifying the intent of Congress that private citizens have an affirmative private right of action to challenge bootleg rules promulgated by a Federal agency without an OMB control number would further strengthen this important legislation by providing an important check against regulatory excess.

I have had a chance to review some of the testimony that you will hear today and note that Mr. Robert Coakley, Executive Director of the Council on Regulatory and Information Management, will be testifying later this morning on behalf of the Paperwork Reduction Act Coalition. Mr. Coakley makes a number of excellent suggestions, one of which is very similar to mine regarding the need for a affirmative private right of action to enforce the PRA. He suggests granting a private right of action to any citizen who petitions the Director of OMB for a ruling on a possible PRA violation and does not get a response. Although I am unable to stay for the entire hearing today, I would like you to know that Mr. Coakley's suggestions regarding this issue are a very good first step, but I urge the Subcommittee to go even further and take a more direct approach to this issue along the lines I have suggested.

Mr. Chairman, I thank you and the Members of the Subcommittee for your courtesy in allowing me to testify today, and I look forward to working with you and the Subcommittee on such an amendment.

Mr. MCINTOSH. Thank you very much, Mr. Crapo.

I was wondering, just for clarification, would the proposed action lie against the agency or against OIRA for failing to issue a control number?

Mr. CRAPO. Under the amendment which I have proposed, it provides that any action taken by the Federal Government that is not

in compliance with the PRA is subject to a private right of action to enjoin or set aside the action, which would be an action against the agency seeking to undertake the illegal enforcement activity.

Mr. MCINTOSH. OK. That was what I had assumed was the purpose of that. I wasn't quite clear from the description of Mr. Coakley's amendment if that was the case, so I will check with him later as well.

Thank you. I appreciate that.

As you know, I am a big proponent of empowering citizens to make sure that the Government agencies respond to the standards that we set forth in these areas, and so I have a great deal of sympathy with your proposal.

Mr. CRAPO. Thank you.

Mr. MCINTOSH. Seeing no other questions, thank you for joining us today.

Mr. CRAPO. Thank you, Mr. Chairman and members of the committee.

Mr. MCINTOSH. And now for our first witness this morning. The Honorable Sally Katzen is the Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget. Ms. Katzen has a long and respected career as an administrative law attorney and is a leader in the American Bar Association's Administrative Law Section.

Ms. Katzen administers the Paperwork Reduction Act and has been working under that statute without benefit of reauthorization, but continuation through appropriations. I look forward to your testimony in telling us how that has worked and how you see the provisions of these strengthening amendments affecting your ability to conduct that review.

Ms. Katzen.

STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Ms. KATZEN. Thank you, Mr. Chairman. Good morning, members of the subcommittee.

I have had a long career. I have an even longer written testimony which I ask be incorporated in the record so that I could use my brief time here to summarize the salient points.

I am very pleased to be here to discuss the current legislative efforts to improve the Paperwork Reduction Act and will also comment briefly on Title III of H.R. 9, the risk assessment provisions. The administration, as you know, looks forward to working with you on these particular issues and on the general question of regulatory reform in the coming months.

It is truly gratifying to be here today in what I hope is the last phase of improving and strengthening the Paperwork Reduction Act. For more than 2 years, Congress has had legislative proposals to update and expand the Paperwork Reduction Act consistent with and building upon its original purposes. My commendations to the congressional staff who have worked professionally and constructively to develop a consensus, a bipartisan approach, which is contained in H.R. 830 and in S. 244, which the Senate Governmental

Affairs Committee reported out on February 1. I am pleased to report that the administration supports those efforts.

In my written statement I have provided a detailed history of the Paperwork Reduction Act, which dates back to the Federal Reports Act of 1942. I go through the 1980 and 1986 amendments of the Paperwork Reduction Act, showing how the act sets forth agency and OMB responsibilities to ensure that the needs of the Federal information collectors and users are balanced against the burdens placed on information providers. The Paperwork Reduction Act integrated this paperwork control function within a broader information resource management context so as to link all the act's purposes under a single management umbrella in order to focus the attention of agencies on the twin tasks of reducing public information collection burdens and maximizing the utility of Government information to perform Government functions efficiently and effectively.

My written statement also provides information about the implementation of the act and the Supreme Court's decision in *Dole* v. *Steelworkers,* which brings me to the current stages of the legislative effort.

Several years ago there was a growing bipartisan consensus that the act needed to be strengthened, that the uncertainties introduced by the *Dole* decision needed to be resolved, and, I would admit from my own self-interest, that appropriations for the Office of Information and Regulatory Affairs be reauthorized.

There were two basic legislative proposals. I am going to use the Senate numbers because that is where the action has been the past 2 years. S. 560 was introduced by Senators Nunn and Roth, and that became H.R. 2995 in the House. The other was S. 681, which was introduced by Chairman Glenn.

These two bills approached the issue from two different sides, but they were largely compatible, and the efforts that were undertaken in the last 2 years or a bipartisan basis were to find the elements that were in common—or at least compatible—and merge them into a stronger, better bill. That bill was reported out by the Senate and retained the designation of S. 560. As the chairman noted, no hearings were held on the House side.

What you have before you in H.R. 830 is very similar to S. 560, accepted by the Senate last year. H.R. 830 provides further strengthening of the Paperwork Reduction Act and further strengthening of information resource management provisions.

There are minor differences between the House bill and the Senate bill. Some of them attempt to preserve the text of the existing statute; others appear to be based upon specific proposals in H.R. 9; some are totally new. As this legislation moves forward, we will have an opportunity to discuss these differences. They are minor in the scheme of things. The most important point is that we have now a bill in the Senate and in the House which has bipartisan support and which the administration supports, and I would urge that we move promptly to resolve this issue.

If I can turn then to Title III of H.R. 9, risk assessment and cost-benefit analysis for new regulations. Title III, by its terms, seeks to bring greater scientific and economic rationality to the regulation of the risks of health, safety, and the environment, in its own

words, in order to provide for sound regulatory decisions and public education. The administration actively supports these goals. We have spoken frequently and forcefully of the need for good data, for good analysis of costs, of benefits, of risks, and for an open and transparent process. That is what I do every day in reviewing regulations.

We have not only talked about it but we have done a great deal administratively—through our Executive Order 12866, through the Regulatory Working Group, and in task forces in the White House and with the agencies. Moreover, this administration is on record in support of legislation that is fair, effective, and affordable. It is with regret that I have to say that Title III does not live up to these standards nor does it live up to its own professed standards of regulatory efficiency and cost-effectiveness.

Many who have testified in support of Title III testify in favor of cost-benefit and risk analysis. I concur, but I urge you to look at the words of the bill as they are written. As drafted, Title III is an extreme measure which is fraught with consequences, I assume unintended, that would only exacerbate the problem it seeks to address—an inflexible regulatory system which is insufficiently attuned to the benefits and costs of rulemaking.

This bill, as drafted, is subject, I believe, to the same criticisms that many of you have leveled against the regulatory system. It is too broad, it is too prescriptive, and it is too costly. My written statement sets forth a number of those concerns. I have testified before the Commerce Committee on Title III.

I would also note that much of what is in Title III is replicated in Title VII, and I testified yesterday before the Judiciary Committee on that provision. There are differences between Title III and Title IV that need to be reconciled. Part of the problem comes from the attempt to write this in very specific provisions rather than—if you will forgive me lapsing into regulatory jargon—through the use of performance standards instead of a command and control approach to this subject.

I would be happy to answer any questions that you have because it remains my hope that we will be able to work together to bring the American people a rational regulatory system that protects our health and safety and the environment, on the basis of sound science and sound economics, without imposing undue costs or burdens. That is my objective; I know that is your objective. I would be happy to work with you in that effort.

[The prepared statement of Ms. Katzen follows:]

PREPARED STATEMENT OF SALLY KATZEN, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Good morning Mr. Chairman and Members of this Subcommittee. I am Sally Katzen, Administrator of the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). It is a pleasure to be here to discuss the current legislative efforts to improve the Paperwork Reduction Act of 1980. I am also pleased to discuss Title III of H.R. 9, which is called "Risk Assessment and Cost-Benefit Analysis for New Regulations." The Administration looks forward to working with you on these important topics, and on improving the regulatory system in general, in the coming weeks and months.

I. PAPERWORK REDUCTION ACT OF 1995

It is gratifying to be able to appear here today, on what I hope is the last phase of improving the Paperwork Reduction Act. This Act is important for all Americans. The authors of the Paperwork Reduction Act in 1980 and those who amended it in 1986 recognized that information is valuable—indeed essential to decision-making in both the private and public sectors—but that it is not a free resource. Its collection, organization, and use by some necessarily imposes costs and burdens on others.

For more than two years, Congress has had under active consideration legislative proposals to update and expand the Paperwork Reduction Act consistent with and building upon the Act's original purposes. Congressional staff have worked professionally and constructively to develop a consensus, bipartisan approach which is contained in the draft "Paperwork Reduction Act of 1995," that has been circulated for comment. We are pleased to report that we support this effort.

Before discussing the Paperwork Reduction Act of 1995, I would like to step back a little and put this legislative effort to amend the Paperwork Reduction Act of 1980 into perspective.

A. The Paperwork Reduction Act of 1980

Enactment of the Paperwork Reduction Act of 1980 was an outgrowth of an effort to modernize the Federal Reports Act of 1942, a law intended to help allay public concerns related to the growth of paperwork and reporting requirements resulting from our wartime mobilization efforts. The opening lines of the Federal Reports Act of 1942 capture the core of the Paperwork Reduction Act's concern for reducing information collection burdens and improving the management of Federal information resources:

> It is hereby declared to be the policy of the Congress that information which may be needed by the various Federal agencies should be obtained with a minimum burden upon business enterprises (especially small business enterprises) and other persons required to furnish such information, and at a minimum cost to the Government, that all unnecessary duplication of efforts in obtaining such information through the use of reports, questionnaires, and other such methods should be eliminated as rapidly as practicable; and that information collected and tabulated by any Federal agency should insofar as is expedient be tabulated in a manner to maximize the usefulness of the information to other Federal agencies and the public.[1]

During the mid-1970's, growing public complaints about government "red tape" led Congress to create the Commission on Federal Paperwork. The Commission reported in 1977 that the annual cost of Federal paperwork was $100 billion, and it concluded that a new, broader information management framework was needed to control the growing Federal information appetite and help agencies more efficiently and effectively perform their legitimate information functions.

> It is time to view the problems of paperwork and red tape, not as documents to be managed, but rather as information content to be treated as a valuable resource. By applying the principles of management to this valuable national resource we not only get at the root cause of paperwork and red tape, but cause a rippling effect in the application throughout Government: the design of programs is improved; government becomes more sensitive to the burdens it imposes on the public, becomes more understandable, and develops clearer goals and objectives. In the end, government improves the delivery of services to people as well as fulfills its other functions of regulation, defense, enforcement and revenue collection more effectively.
>
> Information resource management . . . can . . . make a significant impact in reducing the economic burdens of paperwork on the public by reducing duplication, clearly justifying information needs, improving reporting forms and collection processes, and effectively and efficiently utilizing information handling techniques and technologies.[2]

In Congress, the consensus view was to strengthen the leadership in agencies, as well as OMB oversight, to reduce public paperwork burdens and improve the management of information resources in Federal agencies. The result was the Paperwork Reduction Act of 1980.[3] It passed Congress with broad bipartisan support and was enthusiastically signed into law in December 1980 by the outgoing President,

---

[1] Public Law 831 (December 24, 1942); 56 Stat. 1078, section 2.

[2] "Information Resources Management: A Report of the Commission on Federal Paperwork," September 9, 1977, p. 16.

[3] P.L. 96–511.

Jimmy Carter, and just as enthusiastically endorsed by the new President, Ronald Reagan.

The Paperwork Reduction Act strengthened the paperwork clearance process established under the Federal Reports Act by (1) clarifying that the Act covered recordkeeping requirements and information collection activities associated with regulations; (2) consolidating Federal paperwork review authority in OMB; (3) requiring agencies to eliminate duplication, minimize burdens, and develop plans for using the information before requesting OMB approval of proposed information collection activities; and (4) creating a "public protection provision" stating that no penalty may be imposed on a person who fails to respond to an unapproved paperwork requirement. The other major initiative of the Paperwork Reduction Act was to integrate this revitalized paperwork control process within a broader information resources management (IRM) context, linking fulfillment of all of the Act's purposes under a consolidated management "umbrella."

Thus, the Paperwork Reduction Act created a single management framework within Federal agencies to govern their information activities, and it consolidated governmentwide policy and oversight functions for these activities in a new OMB Office of Information and Regulatory Affairs. These IRM functions included the review and approval of agency information collection requests, Federal statistical activities, records management activities, privacy of records, interagency sharing of information, and acquisition and use of automatic data processing, telecommunications, and other technology for managing information resources. In its scope, the Act represented an historic effort to focus the attention of Federal agencies on the twin tasks of reducing public information collection burdens and maximizing the utility of government information to perform government functions more efficiently and effectively.

B. The 1986 Amendments to the Paperwork Reduction Act

Building on six years of experience, Congress acted to further strengthen the Paperwork Reduction Act in 1986. The 1986 amendments, adopted with large bipartisan support, established an annual five percent paperwork burden reduction goal, required agencies to provide the public with more information about paperwork proposals, and revised the definition of "information collection request" to include paperwork contained in regulations. With regard to information resources management, the 1986 amendments established new requirements and deadlines for IRM plans and policies; required the appointment of a professional statistician to carry out a broadened array of OMB's statistical policy oversight functions; revised the scope of the Act's information technology provisions; and strengthened OMB responsibilities for information security and dissemination.

C. Third Party Disclosure

In 1990, in a case titled *Dole* v. *Steelworkers of America*,[4] the Supreme Court interpreted the language of the Paperwork Reduction Act and ruled that OMB lacked authority to disapprove third party information disclosure requirements. The Court based its decision on its view that the specific statutory language in the Act required that the Federal agency receive or use that information, despite legislative history suggesting that the sponsors intended to include third party disclosure within the scope of the Act.

Third party disclosures have been interpreted by various agencies to include Federal requirements for labeling, self-certification recordkeeping, conveying information between third parties; and conveying information directly to State or local governments. In each instance, the information is not required to be given to the Federal government.

Third party disclosure requirements are being used in part because agencies, with their limited resources to collect and analyze information, have discovered that their program objectives may be met by requiring private parties to provide information directly to the intended beneficiary. Third party disclosure also serves to supplement enforcement efforts since self-certification and recordkeeping that is made available to the public can replace extensive information collections that the agencies themselves would have to prescribe.

A few years ago, GAO was asked to review the impact of the *Dole* decision. In summary, GAO found:

> [T]here is a great deal of variation in the number and type of ICRs [information collection requests] no longer being sent to OMB for approval. To date, 77 submissions or portions of submissions have not been forwarded to OMB for renewal based on the *Steelworkers* decision: 63 of 351 total submissions at DOL

[4] 494 U.S. 26 (1990); see *Action Alliance* v. *Sullivan*, 930 F.2d 77 (D.C. Cir. 1991).

(including 48 of 49 in OSHA), 12 of 720 at HHS, and 2 of 235 at EPA. This accounts for a change of approximately 89 million burden hours.[5]

In the wake of the GAO report, various bills were introduced to make explicit what the proponents thought was the original congressional intent—namely, to bring third party disclosures under the Paperwork Reduction Act review process.

D. Implementation of the Paperwork Reduction Act

The Paperwork Reduction Act has provided a way to measure trends in paperwork burden and to monitor progress across agencies. In the first years after the passage of the Act, agencies made considerable progress in reducing paperwork burdens (e.g., 12.8% in 1982 and 10% in 1983). After these early efforts, however, the paperwork problem proved to be more intractable. The governmentwide burden estimate increased each year, despite specific reductions by various agencies each year. Some of the increases came from new statutory requirements. Other increases came from agency reevaluation of existing estimates. The biggest increase in the late 1980's and early 1990's came from a recalculation of burden hours by the Department of the Treasury (primarily IRS), not because of new burdens imposed on the public. Indeed, from 1988 to 1993, the non-Treasury burden hours remained relatively flat.

As part of this Administration's commitment to improving the regulatory system, we have stepped up our efforts to evaluate agency need for information collected from the public.' In November 1994, we updated the form and instructions that agencies use to submit an information collection for our review and approval. We specifically added to the instructions a requirement that, for revisions or extensions of existing information collections, the agency "indicate the actual use the agency has made of the information received from the current collection." This enables us to ensure that agencies have used the information they have previously collected; if not, we are prepared to disapprove its continued collection. In addition, to encourage the collection of information by electronic means, we have asked agencies to identify on this form the percentage of responses that they plan to collect electronically.

E. Legislative Efforts in the Last Congress

At the beginning of the 103rd Congress, two bills were introduced in the Senate—S. 560 by Senator Nunn, and S. 681 by Senator Glenn. A large number of House Members, on a bipartisan basis, introduced the counterpart to S. 560 as H.R. 2995. That bill is now found in H.R. 9, Title V.[6] While the House of Representatives did not act on H.R. 2995 in the 103rd Congress, the Senate did mark-up and then pass S. 560.

The process during the 103rd Congress built a bipartisan consensus that can lead to a significant improvement in the Paperwork Reduction Act. S. 560 as introduced (the same as H.R. 9, Title V) contained a number of provisions designed to strengthen the paperwork clearance process. These included redrafting definitions explicitly to include third party disclosure; the continuation of the five percent paperwork burden reduction goals; and a more explicit statement of agency paperwork clearance responsibilities, including a specific responsibility to consider, for small business, establishment of differing compliance or reporting requirements that take into account the resources available to respondents. S. 681 focused more on the need for agencies to strengthen information resources management. It established policy standards for information dissemination; strengthened OMB statistical policy oversight; and included a number of changes designed to ensure better integration of information policy management in the electronic age.

Staff of the Senate sponsors of both bills, working together collaboratively with OMB, GAO, and other interested groups, sought to identify the best features in each of the bills, and to build upon them. Their goal was to create, synergistically, a recodification of the Paperwork Reduction Act that is more effective and stronger than either bill individually. The Administration actively supported this effort, and eventually announced its support for Senate passage of this product, which retained the number S. 560.

S. 560, as passed unanimously by the Senate last October, embodied not only the principal improvements found in both S. 560, as introduced, and in S. 681, but also a number of other improvements.

---

[5] "Paperwork Reduction: Agency Responses to Recent Court Decisions," GAO/PEMD–93–5 (February 1993), p. 7.

[6] It is my understanding that the fact that a few provisions included in H.R. 2995 do not appear in H.R. 9, Title V, was an inadvertent oversight.

As to the paperwork clearance process, S. 560, as passed by the Senate in the last Congress, directs agencies to establish a more thorough and open agency paperwork clearance process to improve the quality of paperwork review and increase public confidence in government decision-making. The senior agency official responsible for information resources management, independently of the program office initiating or sponsoring the information collection activity, is required to evaluate the need for the information, the burden estimate, the agency's plans for management and use of the information to be collected, and whether the proposed collection meets the other requirements of the Paperwork Reduction Act.

S. 560, as passed by the Senate, also directs agencies to consult with the public on their proposed collections and to certify to OMB that the clearance steps have been taken. These steps include assuring that there is a real need for the information, that the collection was not unnecessarily duplicative of information otherwise reasonably accessible to the agency, and that the burden to be imposed has been minimized. S. 560, as passed, also clarified that "burden" includes the respondent's resources expended in acquiring, installing, and utilizing technology and systems, and directs OMB to issue guidelines by which agencies are to estimate burden.

Similarly, S. 560, as passed by the Senate, strengthens Federal agency responsibilities in the area of information resources management (IRM). It spells out the Act's functional IRM areas (paperwork control, dissemination, etc.) as agency operational responsibilities to match OMB's policy and oversight responsibilities. Accountability for carrying out these responsibilities is more clearly spelled out. Under the leadership and direct responsibility of each agency head, the legislation assigns program officials the responsibility and accountability for information resources assigned to and supporting their programs, and assigns IRM oversight within the agency to the senior official responsible for information resources management.

F. The Support for Improving the Paperwork Reduction Act Continues

This year, the bipartisan progress that was attained in the 103rd Congress is continuing. Senators Nunn, Roth, Glenn, Bond, and Bumpers, among others, introduced the bill that passed the Senate last October. That bill is now designated as S. 244.[7] The Senate Committee on Governmental Affairs ordered S. 244 reported on February 1.

In this chamber, H.R. 9, the "Job Creation and Wage Enhancement Act," contains a Title V, "Strengthening of Paperwork Reduction Act," which is essentially H.R. 2995, 103rd Congress (a counterpart to S. 560, as introduced). Chairman Clinger, taking advantage of the bipartisan legislative efforts over the past two years, recently circulated for comment a draft "Paperwork Reduction Act of 1995," which contains not only the significant features embodied in H.R. 9, Title V, but also the improvements contained in S. 244, as ordered reported. The Administration supports S. 244, as ordered reported. Similarly, the Administration supports your draft "Paperwork Reduction Act of 1995," and we urge that you move it forward for consideration by the full Committee and House of Representatives.

I should note that there are some differences between the House and Senate versions of this bill. Some appear merely to preserve the text of the existing statute; others appear to be based upon specific proposals in H.R. 9, Title V; some are totally new. As this legislation moves forward, we would welcome the opportunity to discuss with you the differences between your draft bill and S. 244, and to work with you to accommodate whatever concerns may arise.

II. "RISK ASSESSMENT AND COST-BENEFIT ANALYSIS FOR NEW REGULATIONS," H.R. 9, TITLE III

I would now like to discuss Title III of H.R. 9, which is called "Risk Assessment and Cost-Benefit Analysis for New Regulations."

A. Improving Regulatory Decisions

Title III seeks to bring greater scientific and economic rationality to the regulation of risks to our health, safety, and environment. It recognizes that "[e]nvironmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk." At the same time, it finds that [t]he public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner, . . . so that the incremental costs of regulatory options are reasonably related to the incremental benefits." To this end, it proposes to bring the "most scientifically objective

[7] With a few changes, modified in part to reflect agency concerns, S. 244 is identical to S. 560, 103rd Cong., in the form it passed the Senate.

and unbiased information concerning the nature and magnitude of health, safety, and environmental risk" to bear on regulatory problems "in order to provide for sound regulatory decisions and public education." The result, it finds, will be to "allow for public scrutiny and [to] promote quality, integrity, and responsiveness of agency decisions." The Administration actively supports these goals.

B. Administration Efforts to Improve Risk and Cost/Benefit Analysis

We have not only spoken often of the need for risk and cost/benefit analysis, for good data and sound analysis, and for an open and transparent process, but have already done a great deal to encourage and enhance their development and use. Executive Order No. 12866, which the President signed on September 30, 1993, represents the cornerstone of our efforts. It recognizes that there is an important role for regulation in safeguarding the health, safety, and environment of the American people. At the same time, it emphasizes that Government has a basic responsibility to govern wisely and carefully, regulating only when necessary and only in the most cost-effective manner.

The Executive Order requires agencies to propose or adopt regulations only after determining that their benefits justify their costs, and that the rules themselves are developed according to sound regulatory principles, including the use of market-based incentives. It also requires agencies to base their regulatory decisions on the best reasonably obtainable scientific, technical, economic, and other data. And it specifically calls for the use of risk analysis in regulatory decisionmaking. The Executive Order states that "[i]n setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction." It also asks agencies, in developing regulations, to consider "how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency."

The Executive Order established the Regulatory Working Group, which I chair, and which serves "as a forum to assist agencies in identifying and analyzing important regulatory issues (including . . . the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making. . ."). One of the subcommittees of the Regulatory Working Group has been focusing on the issue of risk analysis, and it recently produced a set of principles to give agencies more specific guidance in assessing, managing, communicating, and prioritizing risks.

The Administration endorses efforts to promote the use of risk and cost/benefit analysis as part of the Federal rulemaking process. Risk and cost/benefit analysis are particularly valuable tools in helping agencies make decisions that would reduce risks to health, safety, and the environment in a sensible and cost-effective manner. The Administration therefore supports risk and cost/benefit legislation that is fair, effective, and affordable. But we do not support legislation that is likely to burden the regulatory process with unnecessary or costly requirements. We have reviewed Title III of H.R. 9 and regret that it appears not to live up to these standards, as well as to its own professed standards of regulatory efficiency and cost-effectiveness.

C. Title III of H.R. 9; Overview

As drafted, Title III is an extreme measure, fraught with consequences, we assume unintended, that would only exacerbate the problem it seeks to address: an inflexible regulatory system insufficiently attuned to the benefits and costs of rulemaking. Indeed, many of the criticisms to which our current regulatory system is subject—that there are too many requirements, many of which are too burdensome, that it fails to tailor regulations to the particular characteristics of the regulated community, that it relies on command and control rather than performance standards, that it requires excessive paperwork, that it produces rules that are difficult to understand—can be leveled against the approach taken in Title III. Its provisions apply too broadly, are too prescriptive and too costly, and would create endless analytic loops and excessive opportunities for litigation. Let me be more specific.

1. Title III is Over-inclusive and Too Rigid

Title III creates risk assessment, risk and cost/benefit analysis, and peer review requirements for agencies in connection with regulatory programs designed to protect "human health, safety, or the environment." These terms, which at their core are an apt description of a category of well-defined regulatory programs, would as used here apply to a large number of unintended agency regulatory activities. For example, do you really want the Department of Commerce to have to go through the Title III risk assessment, certification, and peer review process before issuing a rule opening fishing season at a particular set of fisheries? The Department of Interior before it authorizes the seasonal hunting of certain migratory birds otherwise illegal to shoot? The Internal Revenue Service before it revises its income tax regu-

lations concerning the electric vehicle or the alcohol fuel tax credit? The Bureau of Alcohol, Tobacco, and Firearms before it restricts the sale of a type of explosive? The Department of Transportation before it issues mirror requirements to help school bus drivers see children near the bus? The Occupational Safety and Health Administration before it can protect the forklift drivers who are crushed in roll over accidents because of inadequate training?

In some areas, Congress has spoken about factors that agencies are to consider in issuing health, safety, and environmental regulations, and it has done so clearly. It has, on occasion, explicitly or implicitly precluded the consideration of cost and risk in decisionmaking. The Delaney Clause and technology-based standards are two examples. In those instances, what purpose is served by requiring an agency to perform a full-blown risk assessment (including a discussion of laboratory and epidemiological data and of comparative animal and human physiology, routes of exposure, bioavailability, and pharmacokinetics; a presentation of plausible and alternative assumptions, a full description of the model used in the risk assessment and the assumptions incorporated therein, and a indication of the extent to which this model has been validated by empirical data; a statement of the reasonable range of scientific uncertainties; a best estimate of risk; an explanation of the exposure scenarios employed by the risk analysis; comparisons to other health risks; and an analysis of any substitution risks), to assess costs and benefits, to make the required certifications, to conduct an external peer review, and to prepare a written response to the peer review panel's comments? In such instances, we believe Title III would serve only to increase costs, delay agency action, and, in the last analysis, make the federal government look foolish.

Even in those circumstances where the underlying statute does not preclude consideration of cost and risk, the requirements in Title III are too broad and undifferentiated given the different missions of different agencies. For example, the focus of several of Title III's provisions appears to be on cancer risks. That may be relevant to EPA's regulation of toxic chemicals, but does it make sense when evaluating OSHA's regulation of safety hazards in the construction industry, FEMA's regulation of fire and flood hazards, or the DOT's side impact standards for auto safety? What purpose would be served by requiring the FAA, in determining whether an airplane should be grounded because of icing problems, to "explain the exposure scenarios" used in its risk assessments, and the Department of Commerce, in regulating fisheries, both to compare the risk of fish depletion to six other risks and to issue a statement of the human health risks its regulation could potentially create?

The excessive breadth of Title III's one-size-fits-all risk assessment model is also reflected in the many ways its provisions would be triggered. For example, under Section 3103, every time an agency prepares a risk assessment (except in emergencies or for screening analyses), it would have to do so according to detailed risk assessment standards. And Section 3105, which dictates how risk characterizations are to be made, applies every time an agency makes a document characterizing risks available to the public. There is no distinction based on the significance of the decision or the use to which the risk assessment is being put. But does it really make sense to go through the full drill in every instance? Would there not be some cases where the cost of following these detailed procedures would overwhelm the benefit to be derived from the risk assessment?

We have noted that Subtitles B and C, which require risk and cost/benefit analyses, and peer review, respectively, do include dollar thresholds. As drafted, agencies would have to do risk and cost/benefit analyses for any regulation with an annual effect of over $25 million. For peer review, the threshold is $100 million—unless it is a final rule under Section 3201(a)(5)(A) and the agency has received relevant information from interested parties, in which case the threshold falls to $25 million.

In preparing Executive Order No. 12866, the Administration consciously selected $100 million as the threshold for requiring a cost/benefit analysis, having determined that the resources devoted to regulatory analysis should be commensurate with the significance of the regulatory decision to be made. There were suggestions at the time that the threshold should be higher, since 12 years earlier President Reagan's regulatory review executive order had drawn the line at $100 million. Now Title III would set the threshold at a quarter of the level President Reagan selected 14 years ago.

Consider also that the requirements of Subtitles B and C can be triggered below the specified threshold if the regulation is likely to result in a "major increase" in prices or would have "significant adverse effects on competitiveness, employment, investment, productivity, innovation, or on the ability of the United States to compete with foreign" enterprises. Who is to determine what constitutes a "major" increase or a "significant adverse affect" on innovation? Is it the agency? Or is it the regulated industry? A proposed regulation could cause an industry to be faced with

a 10 percent increase in the cost of one of its inputs. To some of the companies in that industry, 10 percent may be major. Does that mean that a rule whose overall annual cost is $100,000 (or less) must follow the elaborate risk and cost/benefit analysis and peer review steps in Title III, which could easily cost the taxpayers two or three (or more) times that amount?

2. Title III is Too Prescriptive and Unduly Layered

Unfortunately, Title III is not only broad and costly, but unduly prescriptive and unnecessarily layered as well. The terms of the bill set forth with precision each and every step that an agency is to take. For example, Section 3105 tells agencies that any characterization of risk is to describe the subject of the risk characterization, to estimate risks on the basis of a "best estimate," to state a "reasonable range of scientific uncertainties," to explain exposure scenarios used in the risk assessment, to make six comparisons (of two different varieties) to other risks with which the public is familiar and routinely encounters, to include a statement of any significant substitution risks to human health, and to present a summary of any risk assessments submitted by public commenters.

This is quintessential command and control. It tells agencies how to do something—rather than specifying what is to be achieved (or, in regulatory parlance, the performance standard that is to be met). But that is one of the principal legitimate criticisms of our regulatory system—namely, that it relies too heavily on command and control rather than on performance standards. Would it not be better to set forth the goals that agencies should achieve rather than telling them precisely how to do their work?

There is general agreement that agencies should use objectively verifiable scientific methods, provide sufficient information so that their scientific analysis could be replicated, explain and make transparent their assumptions, (including who or what is being protected and why), and provide meaningful explanations of risks (including comparisons that are meaningful to the public and relevant to the decision being made). Why draft detailed provisions setting forth the fine points of each of these standards?

Section 3104(a) (which seeks to distinguish scientific findings from policy considerations) and Section 3104(b)(2) (which requires an explanation of assumptions, an explanation of the basis for any choices, identification of any policy or value judgments that have entered into the analysis, and a description of any model used in the risk assessment and the assumptions it incorporates) represent a promising start in that direction. If this were all there were, we would not be so negative. But, as noted above, these general statements are simply one version of multiple requirements. It's like requiring that a belt be worn while saying that the prescribed dress code requires suspenders, all to keep the pants up.

Add to the analytical steps and written certifications and explanations that Title III would require the extensive reporting requirements in Section 3106 and Section 3301(g). Consider: 15 months after enactment, the President would be required to issue guidelines for conducting and a format for summarizing risk assessments; three months later, each agency would have to publish a plan to review and revise its earlier risk assessments; and within the following 18 months, each agency would have to provide a report to Congress on the types of policy judgments it had made in its risk assessments. The President, meanwhile, in addition to reviewing his guidelines every four years, would have to appoint special Peer Review Panels that would conduct—every year—a review of the risk and cost assessment practices of each agency and submit an annual report to Congress. This does not seem consistent with Title V of H.R. 9, "Strengthening the Paperwork Reduction Act."

Title III's peer review requirements (Subtitle C) follows the same pattern of excessive prescription and unnecessary layering. Subtitle C starts off promisingly enough. Each agency, Section 3301(a) states in part, "shall develop a systematic program for peer review of risk assessments and economic assessments used by the agency . . . consisting of independent and external experts who are broadly representative and balanced to the extent feasible," and "may provide for differing levels of peer review depending on the significance or the complexity of the problems or the need for expeditiousness." That seems adequate to do the job and is sensitive to the notion that the amount of analysis devoted to a regulation should be proportional to its significance. But then Section 3302(b) describes precisely what a peer review panel must do, how the agency shall respond to the peer review, and even which of the panel's comments must be published as text and which as appendix. In fact, Title III's peer review provisions carry micromanagement so far that they make an exception to customary standards of ethical conduct and prohibit agencies from restricting the participation in peer reviews of those with an interest in the outcome. Why couldn't agencies be required simply to have a peer review plan, tai-

lored to the types of risks they address and the relevant sciences that are involved? The plan could be made available to the public and could indicate which type of risk assessments would be subject to peer review, whether external or internal.

3. Other Issues

Unfortunately, Title III not only emulates some of the most undesirable techniques used in our current regulatory system, but it also creates seemingly endless analytic loops that could introduce additional inefficiency and delay in the rulemaking process. Section 3201(a)(3), for example, requires that each proposed or promulgated rule be accompanied by, among other things, a statement of "other human health risks potentially posed" by the rule and each regulatory alternative to it. This requirement is wholly open-ended: must the agency list all health risks each alternative could create, no matter how unlikely or remote these risks may be? Then consider that a statement of other health risks is itself a risk characterization and consequently must also be prepared and presented according to the detailed requirements set out in other parts of Title III.

The objective of risk legislation should be to improve the regulatory process, not to create unproductive paper record requirements or additional opportunities for litigation. Title III, however, does the latter. Because Title III does not preclude judicial review, the Administrative Procedure Act, which authorizes judicial review of final agency action, would apply. Section 3301(e), moreover, explicitly makes peer reviews and agency responses to peer reviews part of the administrative record "for purposes of judicial review of any final agency action." Presumably then, both an agency's compliance with each of the bill's procedural steps and the content of the agency's risk and cost/benefit analyses could become the subject of court challenges once a final rule is promulgated. That would be unfortunate, as it would likely require the Federal agencies to spend added time satisfying (with the extra margin needed to assure affirmance in court) each of Title III's many steps, and producing even more paper and an even larger record—efforts that would take a good deal of time without producing sounder regulations.

Before closing, it is important to note that although Title III alone is before this Committee, it is only one piece of a larger bill. As you consider our testimony on Title III, the Judiciary Committee is about to take up Title VII, "Regulatory Impact Analyses." Title VII requires each agency, before proposing or issuing a regulation, to go through 23 analytical steps to perfect the regulatory impact analysis. Step six is a statement that describes and quantifies the risks to human health or to the environment; step seven is a cost-effectiveness requirement; step eight is a description of alternative approaches considered by and suggested to the agency; and steps 10 and 11 require an estimate and evaluation of costs and benefits. These are the same analyses that are to be performed under Title III. Is the agency to do it twice? There are some differences in these Titles, such as different thresholds. How are these to be reconciled? We would ask you to consider Title VII carefully when you take up Title III, just as we will ask the Judiciary Committee to consider what is in Title III when it takes up Title VII.

If the layering of the regulatory process with complicated requirements were costless, we would not object so much to the prescriptiveness and inflexibility of Title III. But we must be clear about what is at stake. The effect of the requirements of Title III, whether taken alone or in conjunction with Title VII, is not to bring sound science to bear on regulation, but to load on the regulatory system so much that it cannot move forward, retarding substantially our ability to take sensible steps to protect human health and human safety and the environment while creating more bureaucracy, more paperwork, and less efficiency in government.

Because it is too broad, too prescriptive, too costly, and too inviting of additional litigation, the risk assessment and cost/benefit provisions of H.R. 9 would cause far more problems than they would solve. It remains my hope, however, that we will be able to work together to help to bring the American people a rational regulatory system that protects our health and safety and the environment on the basis of sound science, without imposing undue costs and burdens.

* * * * *

Thank you for the opportunity to testify. I look forward to working with you cooperatively to help enact into law meaningful and helpful improvements to the Paperwork Reduction Act. I also look forward to working with you to develop sound proposals for developing better quality and more effective regulations. I welcome the opportunity to answer any questions you may have.

Mr. MCINTOSH. Thank you very much, Ms. Katzen.

Let me actually turn to one question in the risk assessment area. There has been a proposal in the Senate, that Senator Dole has worked on in that area, that would, among other things, grant centralized review of those risk assessments in OMB or perhaps another entity in the White House. What is your opinion about that concept in the risk assessment and cost-benefit analysis?

Ms. KATZEN. I think the concept is sound. Centralized regulatory review began with President Ford with his inflationary impact statements and was carried through by President Carter and then Presidents Reagan and Bush with Executive Order 12291.

There were questions about the legitimacy or the appropriateness of centralized review, and one of the small successes that I take some pride in is that in the 2 years that we have been in office under Executive Order 12866, which is President Clinton's Executive order on regulatory review and reform, the issue of centralized review has rarely been raised. We have heard few, if any, challenges to the legitimacy or the appropriateness of centralized review.

Our Executive order states that the agencies are the primary decisionmakers, but it reaffirms the legitimacy, the appropriateness, of an office—and it is my office in OMB—that provides the guidance, that provides the review, that provides the oversight to the agencies in carrying out their regulatory responsibilities. I believe that is now a noncontroversial issue. To the extent that the Dole bill, and I know Senator Roth has dropped a bill on regulatory reform, codifies the authority of OMB to review regulations, I believe that is appropriate.

Mr. MCINTOSH. Let me now turn to another strengthening provision that is similar to what Mr. Crapo was suggesting in the Paperwork Reduction Act. In fact, let me ask you, under both authorities, what would your view be to allowing judicial review so that members of the regulated community would have some ability to affect what the agencies are doing in these two areas?

Ms. KATZEN. As a lawyer who has practiced administrative law for 30 years, I believe that the courts should be available to the citizens. But I also note that in each and every Executive order that has been written, including President Reagan's, there has been a bar on judicial review of this particular function. That is not surprising. It is not surprising because there are a number of avenues of challenging regulations, and if the cost-benefit materials are in the record, they can be looked at as supporting—or not providing support for—the agency decision. But to enable review on whether the agency has taken the procedural steps to assemble the data, I believe opens endless opportunities for litigation.

In the area of paperwork reduction, I would note that there are two areas of confusion that raised the issues the gentleman was discussing. One is, I think, as a result of the *Dole* decision and the extent to which some third-party disclosure documents are or are not subject to review, and this bill would clarify and put that issue to rest by providing that they are to be reviewed.

The particular suit that he was referring to—I believe he identified it as an instance—involved an Inspector General that undertook an investigation and sent out questionnaires to obtain certain information. Because the questionnaires were sent to more than 10

individuals, there is an argument that they should have come within the Paperwork Reduction Act. Inspector Generals are special creatures, as this committee knows, as the Judiciary Committee knows. We have used this instance as an opportunity to work with the Inspectors General to bring them within the ambit of this act in a collegial way to make sure they understand the responsibilities that they have.

There have not been a lot of challenges made, and section 3512, the public protection provision that he referred to, is in fact where most of the questions have come up in the tax area.

I noted that Congressman Peterson was mentioning tax forms. Under the paperwork burden which we calculate each year, roughly 80 percent of the paperwork burden in this country comes from a single department. That is the Treasury Department, driven largely by the IRS.

Now the good news is that 1040–EZ came out of our process, trying to find an easier way to file your tax information, and the IRS Commissioner, Peggy Richardson, has been working with us to try to develop other simplified forms. But my point here is that when you hear about paperwork and you talk about reducing paperwork by a percentage, realize that most of that paperwork is tax forms that generate revenues, and that is, I think, an important consideration in this area.

Mr. MCINTOSH. Thank you very much.

Let me just say, from my experience, that the prospect of a citizen's review of the process in NEPA, for example, has greatly strengthened the ability of the regulated community to have input and to ensure that the agencies are complying with the statutory requirements, and so for that reason, I have a great deal of sympathy with using that tool for allowing the regulated community to have greater impact on the agencies and the agencies stricter adherence to the statutes.

My time has expired. Let me turn now to Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

How many people work in this process? Do you have any idea?

Ms. KATZEN. My staff is about 50 FTEs.

Mr. PETERSON. Fifty?

Ms. KATZEN. Fifty, 5–0.

One of the things I like about the bill before you is that it imposes the obligations and the responsibilities on the agencies. Your comment I thought was well taken: Do we need to create a new bureaucracy to do what the agencies should be doing in the first place? And one of the strong points of the legislative proposals both here and in the Senate is that they say that the agencies themselves are responsible for renewing new paperwork, for making them available to the public, and for receiving and responding to the public's comments back, and that is highly salutary.

Mr. PETERSON. How many people then work in each of these processes? Do you have a handle on that at all?

Ms. KATZEN. I don't have that number. It will differ from agency to agency. In many instances it is part and parcel of the regulatory group. In other instances it is separate.

Mr. PETERSON. Do they actually have somebody designated as a paperwork reduction person?

Ms. KATZEN. Yes, there is a senior information resource management person for each agency, and they generally have responsibility for implementation of the Paperwork Reduction Act.

Mr. PETERSON. Do you work with those folks?

Ms. KATZEN. Yes, I do, sir.

Mr. PETERSON. Can we find out how many people are in these agencies working on this? Is that something we can find out?

Ms. KATZEN. We certainly can try.

Mr. PETERSON. I would like to know.

[The information referred to follows:]

Honorable Collin Peterson
U.S. House of Representatives
Washington, DC 20510

DEAR CONGRESSMAN PETERSON:

At the February 7th hearing of the Committee on Government Reform and Oversight, you asked how many Federal employees were responsible for implementing the Paperwork Reduction Act. According to information supplied by the agencies in response to OMB Circular A–11, "Preparation and Submission of Annual Budget Estimates," we estimate that approximately 122,000 FTE are used in direct support of information resources management, primarily through the oversight and use of information technology (as you know, FTE is not an employee head count). We estimate that an additional several hundred Federal workyears are expended annually in direct administration of the paperwork clearance function.

Of course, many other Federal FTE are involved in the collection, creation, management and dissemination of information. These include FTE involved in processing tax returns at the Internal Revenue Service, collecting and analyzing Federal statistics at the Census Bureau and the Bureau of Labor Statistics, disseminating scientific research results at the National Science Foundation and the Department of Energy, and evaluating and managing technical data provided by contractors to NASA and the Defense Department.

I have enclosed the agency-by-agency breakdown of the 122,000 and a copy of the instructions given to agencies for supplying those data. Should you desire further information, please do not hesitate to contact me.

Sincerely,

SALLY KATZEN

FY 1995

Information Technology Work-years Requested

Agency	Work-years in FTE's
NAVY (MARINES)	16,355
DEFENSE—OTHER	15,849
NASA	14,493
ARMY	12,964
TREASURY	11,223
AIR FORCE	10,785
HHS	8,561
AGRICULTURE	7,240
VA	5,412
INTERIOR	3,881
COMMERCE	3,259
JUSTICE	2,404
STATE	2,145
TRANSPORTATION	1,414
CORPS OF ENGINEER	842
EPA	834
ENERGY	640
LABOR	553
OPM	535
USIA	371
HUD	370
EDUCATION	270

FY 1995—Continued

Information Technology Work-years Requested

Agency	Work-years in FTE's
RRB	252
FEMA	208
AID	183
SEC	166
PCC	152
SMITHSONIAN	152
NRC	135
NARA	117
SSS	100
SBA	96
FCC	71
NSF	58
EX/IM BANK	49
EEOC	48
OA	47
CFTC	28
FTC	27
PEACE CORPS	25
GSA	24
USITC	23
NLRB	17
CPSC	14
ICC	11
ACDA	10
GRAND TOTAL	122,413

EXCERPTED FROM OMB A–11 SECTION 43.

DEFINITIONS

Personnel—Work-years for civilian and military personnel compensation, personnel benefits (including overtime/shift pay) and travel for personnel whose principal duties are directly related to information technology systems. Agencies should report work-years based on their best estimate of the time spent on information technology functions by all personnel connected with these functions (e.g., policy and management, systems development and operations, telecommunications, computer security, contracting, secretarial support, etc.). If user organizations have personnel principally assigned to information technology support functions for the user organization, work-years for these personnel should be included. However, work-years should not be reported for personnel in user organizations who simply use such systems incidental to the performance of their primary functions.

Mr. PETERSON. The other thing I would like to know is, what kind of a background do these people have that do this?

Ms. KATZEN. The qualifications will range from those with administrative experience generally.

Mr. PETERSON. What does that mean?

Ms. KATZEN. Used to running programs, management, analysis.

Mr. PETERSON. Government programs?

Ms. KATZEN. Government programs.

Mr. PETERSON. I hate to interrupt you, but maybe we ought to require that they have never served in government before they serve on these things. It might bring a different perspective to things.

Ms. KATZEN. Well, we have instituted a couple of changes. One you mentioned in your opening statement, and that is the use of technology. On the form that the agencies have to submit to us—and we have streamlined that form consistent with paperwork reduction—we have asked them to identify the extent to which they

afford an opportunity for electronic transmission of the data, and if they are not doing that, why not.

Another change that we made last year was to ask them if it is a renewal of approval of a form. Currently, when you get an OMB control number it is for 3 years and 3 years only, so they have to come back and demonstrate continuing need for the information. We have added a new instruction that requests information on how the agency has used the information, because we have heard that some information is not being used on a timely basis. So we are instituting a number of management—I would call those management—techniques to ensure that this process is working.

Mr. PETERSON. So there is some effort to try to get away from paperwork?

Ms. KATZEN. Absolutely.

Mr. PETERSON. And who is doing that? That is someone in your shop?

Ms. KATZEN. Yes. I have an Information Technology and Policy Branch in my office, and they are concerned with enhancing use of information technology. It is also part of the Vice President's National Performance Review. We developed a whole series of proposals to use information technology to have Government perform better and cost less.

Mr. PETERSON. Well, I guess maybe it is not appropriate here, but I would just—from what I have seen of what has happened in my investigations of other agencies in terms of trying to develop computer systems—and I am frankly not very impressed—it seems to me from what I have been able to see that the agencies that are set up that are supposed to guarantee that you do the right thing in my opinion actually guarantee that you do the wrong thing.

For example, GSA being involved in computer purchasing. I really have a hard time seeing that they are serving a useful purpose. I don't know how you fix this.

Ms. KATZEN. We have done some work in thinking about this area. Part of the problem is the budget system, which is on an annual basis. For these kinds of systems, you need really several years to figure out where you are left; otherwise, you are left at the end of the year; and so there have been a number of efforts made to try to bring some rationalization, and I would be happy to talk with you further about that.

Mr. PETERSON. The problem is, the technology changes every 6 months.

Ms. KATZEN. Exactly.

Mr. PETERSON. And the way the Government operates, they can't do anything unless it is 3 years, and so they always are two or three generations behind, and we have really made a mess out of this whole area, the agencies that I have looked at. I mean I think we would almost be better off to give each Federal employee a budget of $2,000 and tell them to go out and buy whatever they want and let them figure out how to talk to each other than what we are doing.

Ms. KATZEN. The procurement reform legislation of last year will be very helpful, especially with respect to purchasing things that have a very short shelf life.

One of the problems that we have with decentralized control is that many agencies have their own systems, which may work well within the agency but cannot communicate with that of another agency, and so we need to have greater interoperability.

Mr. PETERSON. And some of the agencies have systems that can't even talk to each other within the agency.

Ms. KATZEN. That is also a problem.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Peterson.

I would like to now turn to my colleague Mr. McHugh.

Mr. MCHUGH. Thank you, Mr. Chairman.

Ms. Katzen, welcome. I appreciate your continuing efforts in this important regard.

I have one question. During your comments you mentioned that you saw the differences between the current House bill and the Senate bill as being minor in the scheme of things. Can I interpret that to mean that you consider those totally inconsequential in that you don't have a preference as to the Senate bill over the House bill or vice versa?

Ms. KATZEN. They are not major issues, but I do have a view on each of them; some I prefer the Senate version and some I prefer the House, but none is so significant that would cause us to be concerned about passage of either bill as it now sits. In any event, there are some provisions where I think the House bill states it better, and there are others where I think the Senate bill states it better.

Mr. MCHUGH. But you feel the President would sign either version?

Ms. KATZEN. Yes, sir.

Mr. MCHUGH. In the interests of time and because we are on the House side, could you detail for us which House provisions you feel are better?

Ms. KATZEN. My own self-interest starting first: The very last provision of the bill provides a permanent authorization for OIRA appropriations whereas the Senate, I think, is for 4 years. I will take the House one there happily.

Second, there is a disclosure provision in which what has traditionally been an OIRA function in the Senate bill moves to the Director's Office of OMB, and I think it should stay where it is in the House bill. There is a provision—I'm sorry, I——

Mr. MCHUGH. Well, I understand that is out of left field. If you would compare those more fully, I think it would be helpful to have your position on the record regarding the differences between the two provisions.

Ms. KATZEN. All right. There is a provision having to do with information dissemination that has been added to the House bill that I think goes beyond the scope of the bill and gets into a particular matter; I think the Senate had it right in not including it. I could discuss this with counsel for the committee if you would like. I have done a side-by-side. It is just that it is voluminous and I am sitting here flipping through pages and don't want to take your time.

Mr. MCHUGH. Yes. That would be fine with me.

Ms. KATZEN. Surely.

Mr. MCINTOSH. Ms. Katzen, would you be willing to submit that side-by-side for the record? I understand how those things, sometimes you want to be careful. Maybe the staff could share looking at it.

Ms. KATZEN. I will provide it to the staff. That would be fine.

Mr. MCINTOSH. OK. I understand.

Ms. KATZEN. It was done very quickly for the testimony, and I don't want to represent that it is totally accurate. I know it is very much——

Mr. MCINTOSH. 99.9 percent accurate.

Ms. KATZEN. Exactly.

Mr. MCINTOSH. OK.

Mr. McHugh, did you have any further questions?

Mr. MCHUGH. No further questions, Mr. Chairman.

Mr. MCINTOSH. Thank you.

Mr. Spratt, do you have any questions for the witness?

Mr. SPRATT. Thank you, Mr. Chairman.

I am just educating myself as we go along because this provision came to the House floor last year on a vote, and I think it probably came to the attention of most of us with the same sort of preparation I made for this hearing.

My first encounter with the Paperwork Reduction Act was years ago. It didn't parade under this name, but we were doing a study in the Pentagon to revamp the way the Defense Department compensated for profits. We had done quite a bit of work with people I was working with, with the Industry Advisory Committee. Completely with their concurrence, we were putting out a questionnaire to ask different questions about capital employed and different techniques of pricing capital and what-have-you, all ready to go, and we found out there was this law which nobody had taken note of before. Our problem then was to go to OMB, explain it to them, find somebody in OMB who knew something about it, and then generate some interest in OMB.

As a result, a project that had quite a bit of momentum suddenly came to a screeching halt and something that was needed was delayed for nearly 1 year because nobody in OMB had any expertise in the issue really and those who had a passing acquaintance with it didn't have a lot of interest in it either.

That is my first question. Do you have resident in OMB today the knowledge, skills, to really do cost-benefit analysis, professional cost-benefit analysis, and also to do risk assessment analysis, which I take is infinitely more complex than cost-benefit analysis?

Ms. KATZEN. We do have very highly trained people. When I look at the credentials of my staff, I am awed. They all have advanced degrees in public policy or economics. The Statistical Policy Office is in our office, including the Chief Statistician of the United States. On some questionnaires, there is an issue as to whether you are going to get statistically significant responses.

One of the things about the bill is, it has certain time limits. We can't just stop things dead in their tracks, nor would we want to. My efforts have consistently been to be responsive to the agencies, and if in fact an agency comes forward with a type of questionnaire that has been prevetted with the group to whom it is going and there is concurrence on the need and concurrence that it is the

minimum amount of paperwork required, it can be processed very expeditiously.

Our objective is not to stand in the way where there is consensus but to bring to bear a second opinion where a form otherwise would end up on your desk and you would say, "Oh, no, another piece of paper." For too many people in this country, their only contact with the Government is forms, and they don't like it, and they are not happy, and we need to be responsive to that, and I think that is what this act is all about.

Mr. SPRATT. But when it comes to regulatory oversight, do you have the talent and the people sufficient to make a rigorous——

Ms. KATZEN. I have some of the most talented, knowledgeable, experienced people in the field of cost-benefit analysis. Many of the people that are now testifying on these issues about the need for it are alumni of our office. I say this with enormous pride that my staff is fully equipped to do the job that they are being asked to do.

Mr. SPRATT. Now with respect to risk assessment, does the same hold true with respect to risk assessment?

Ms. KATZEN. That is right. Recall, we are not being asked to do the basic research and to make the analysis ourselves, but to review it. I have likened our position to that of a Ph.D. thesis advisor. The doctoral candidate comes forward and the doctoral candidate should do the research and should do the analysis. The thesis advisor should say things like, "Are you aware of this body of data?" "Are you aware of that body of data?" "How does your assumption in chapter one square with your assumption in chapter two?" "You haven't thought through the implications of what you are proposing in chapter three." Those are questions that an analyst can apply to a process, and that is what we do. We are not there to do the basic research, we are not there to replicate what the agencies should be doing; we are there to make sure the agencies do what they are supposed to do in the first instance. That is why I speak of the primacy of the agencies with the review function in OMB.

Mr. SPRATT. You took your text on I think it is Title III of H.R. 9, which requires risk assessment.

Ms. KATZEN. Right.

Mr. SPRATT. Which, if I could just ask one further question about this, Mr. Chairman?

Mr. MCINTOSH. Certainly. No objection.

Mr. SPRATT. Thank you.

As I understand it, the President's Executive Order 12866 sets out a very broad and nonspecific standard for risk assessment to the extent it should be done. I think it is sort of an admonition rather than a requirement.

The bill, on the other hand, sets down some very, very specific provisions about risk assessment, and you are saying you are trying to fit too many disparate cases to one type of standard and some very onerous standards to boot. Is there some ground in between that we can come to that is a happy medium?

Ms. KATZEN. Yes, I think there is. I think the risk assessment could be set in terms of a performance standard that specifies such items as using good data, good analysis, and transparency. One of

the complaints about agencies' risk assessment, which is legitimate, is that there are very conservative assumptions that are used; in some instances properly so because that is what the statute calls for. There is then a piling on of conservative assumption on conservative assumption on conservative assumption that may or may not be legitimate.

The important thing is that the decisionmaker knows what those assumptions are and that they are conservative and they are being added on one to the other, and that the public is aware of that, in terms of opening up the process and making assumptions clear.

But my problem with the risk assessment provision of Title III is that it is all cancer related, all end points. You are talking about extrapolating from mice to men in every instance, but in some instances if you are talking about airplanes falling out of sky or forklifts falling over, it doesn't matter what some of the studies of laboratory epidemiological materials are.

If you are concerned about other end points, it is not just fatalities from cancer, as troubling as they obviously are, and I do not mean to belittle it, but some hazards can have effects on your reproductive systems or on your respiratory systems that will be terribly serious, and render you unproductive, and you can't hold a job, and you are a drain on your family and on society, but you are still alive. We need to resist the one size cancer end point which is what is cast in concrete in Title III, subpart A.

Mr. SPRATT. Does OMB then have a formulation that goes beyond 12866, is more extensive, more rigorous, than this simple reference in Executive Order 12866 that might substitute for Title III?

Ms. KATZEN. We have a Regulatory Working Group, and one of the subcommittees is the subgroup on risk analysis—which has worked to develop principles—broad principles, that are much more specific than Executive Order 12866 but not as prescriptive as Title III, that sets forth the various processes that should be used by agencies. We are using them internally to bring the agencies closer to the state-of-the-art because there is enormous variety in the agencies.

One of the other problems with Title III is that it applies Government-wide. Some agencies are very good in their analysis, and some are not so good, and some of the ones who are not so good lack experience because their statutes preclude consideration of cost or consideration of risk. We need those agencies to learn the skills, learn the methodologies, and that is what we are working on.

Mr. MCINTOSH. The time of the gentleman has expired.

Did you have any further questions?

Mr. SPRATT. Thank you, Mr. Chairman.

Mr. MCINTOSH. Let me just close along the same line by asking, Ms. Katzen, whether the provisions in Title III on risk assessment would provide tools that would be helpful in conducting a related activity that Justice—now Justice Breyer, then Professor Breyer, wrote about setting priorities in addressing in the regulatory process areas where there are risks to society? He pointed out numerous examples where we would regulate quite extensively for a relatively minor risk and leave unattended much more significant risks to health. Is that something that you feel currently ade-

quately equipped to do, and, second, whether H.R. 3 or some of the other provisions on risk assessment would help further that process of prioritization?

Ms. KATZEN. I think there is a need for prioritization. I think that we are not well equipped now. But Title III wouldn't do it. It would not provide the wherewithal. An agency's analysis is only as good as its data, and what we need is support for getting better data to make some of these comparisons. What we also have to focus on are the statutes. That is why I am very glad that Congress is engaged in this debate, because there are a certain number of things that the executive branch can do, but if we are talking about different areas and priorities, those are largely governed by the organic statutes and what one subcommittee will want for the agencies under its jurisdiction may be very different from another subcommittee's choices.

For example, at the Labor Department under OSHA, they are talking about risks that are 1 in a 100, while at EPA they are talking about risks that are 1 in 1 million. Now that may be right, that may be wrong, but that is not something that we can solve except through the organic statutes, which set those criteria. Maybe one should be adjusted or the other, but that is why I think it is important to engage the Congress in reviewing these issues, and I think Justice Breyer's last 10 percent theory is an excellent example of the need for more prioritization. He also likes the Office of Information and Regulatory Affairs. So I subscribe to that.

Mr. MCINTOSH. Yes, I am aware he is quite a supporter.

Perhaps, though, there is some need for an overarching statute in this area that sets a standard of risks that would be—the level at which the Government begins to engage in protecting society so that you don't have this disparity among agencies.

Ms. KATZEN. I am not sanguine about being able to do it with a simple one-size-fits-all, let's modify all statutes with one. There are such differences in the kinds of risks we deal with, the kinds of regulations we have, the kinds of resources available to the Departments. There are different threshold levels that pertain. Even within a Department like the Department of Transportation, it does very different things in auto safety than it does in Coast Guard regulation, than it does in the field of aviation.

Mr. MCINTOSH. But don't you see some benefit to society by stepping back and seeing that each agency or component of an agency that has its own program understands the risks, understands what they are trying to accomplish in their regulatory effort; and that unless they fit into a larger picture, we end up having certain agencies driving to much more risk prevention than another agency, and as a result you may steer more social resources into fighting that risk than would otherwise be available for tackling a greater risk to society or greater cause?

Ms. KATZEN. I agree that this is something that warrants, indeed demands, attention. But I do not think that it is something that can be handled by a one-size-fits-all piece of legislation. I think there are a number of tasks that we need to do, and that is what I hope that we will be able to work together on in the coming weeks and months, because there are many areas where our regulatory system can be improved in this process.

Mr. MCINTOSH. Finally, the section of Title III that this committee has jurisdiction over, although I don't believe we have any intention of marking it up since other committees are taking up the bill, is the peer review section. Do you have any specific comments on the way the peer review is structured?

Ms. KATZEN. The peer review section begins very promisingly by setting forth a standard that provides flexibility for the agencies and calls for a plan. It then goes into supreme micromanagement. I mean there is a provision that says what goes in the text and what goes in an appendix, and, with all respect, it seems to me that is just a tad too much command-and-control.

There is another provision that I know has raised a lot of concern having to do with conflict of interest—saying that someone should not be excluded from a peer review panel simply because he or she has a financial interest in the outcome, but then as you go through you find that a peer review is necessary for any document made available to the public and it must include any information supplied by an interested party. So you have an endless analytic loop where an industry representative could submit risk information, which would then have to be reviewed by a panel, including a representative of the industry before it could be commented on.

I think if you start at the beginning of the section, and stop quickly, you have the basis for a sensible performance standard. What you want in peer review is objective, verifiable, integrity—someone who is outside the process, who says, "This can be replicated and this makes sense," with the assumptions transparent. That is what you are looking for in the process, and if you write that that is what is to be achieved and that each agency should develop a plan to achieve it, then I think you are on the right track. If you go down the track that is here though, you are saying what goes in the text and what goes in the appendix, and I think that is a waste of your time.

Mr. MCINTOSH. Thank you for your comments. I assume there is some historical antecedent to that of which I am unaware, but that somebody is trying to address. We will look at that.

Do any of my colleagues have any further questions for Ms. Katzen?

Seeing none, thank you very much for coming today. I appreciate that.

Ms. KATZEN. Thank you.

Mr. MCINTOSH. And we may have some additional questions. If we could submit them to you, that would be helpful to us as we are compiling the record on this bill, and we will transmit those to you today.

Ms. KATZEN. I would be happy to respond.

Mr. MCINTOSH. OK. The next panel is two former Directors of the Office of Management and Budget who have been leaders in this area both in terms of paperwork reduction and regulatory review.

Mr. James Miller served in OMB during the final years of the Reagan administration. He also served President Reagan as the first OIRA Administrator. In between then, he has served as chairman of the Federal Trade Commission. He is currently chairman of Citizens for a Sound Economy, a citizens grassroots organization.

Mr. James McIntyre is an attorney with McNair law firm and served as the OMB Director during the Carter administration.

Thank you both for joining us today. I welcome both of you and ask, if possible, for you to summarize your written statements.

The staff is reminding me that I have been negligent in one of my duties, and that is swearing in the witnesses. Please don't feel that because we are beginning with you that we have any reason to doubt your veracity. It is merely an omission on my part with the earlier witness, Ms. Katzen, although I am sure we can all agree that her veracity is without question.

If you would both rise please.

[Witnesses sworn].

Mr. MCINTOSH. Thank you both.

Mr. Miller, would you please begin.

STATEMENT OF JAMES MILLER, CHAIRMAN, CITIZENS FOR A SOUND ECONOMY; AND JAMES MCINTYRE, ATTORNEY, MCNAIR AND SANFORD, P.A.

Mr. MILLER. Thank you, sir. I am glad to have an attorney present at my left elbow, and a very distinguished one at that. Thank you, Mr. Chairman.

I have a statement that I have provided for the committee and would ask that that statement be included in the record.

Mr. MCINTOSH. Without objection, it shall be done.

Mr. MILLER. Well, sir, I am delighted to be here. This is an extremely important topic, and I am delighted to be here with my friend, Jim McIntyre.

As you know, the Paperwork Reduction Act is not a matter of partisan interest, it is of considerable bipartisan interest. In fact, the Paperwork Reduction Act was the last bill passed by Congress that was signed into law by President Carter. It came into being under President Reagan, and established, among other things, an Office of Information and Regulatory Affairs. I was the first Administrator of that office, and Ms. Katzen is the latest.

Whether you are a Republican or a Democrat, it seems to me that it makes sense to reauthorize the Paperwork Reduction Act. Indeed, let me say I think it would be incumbent upon Congress to give the PRA permanent authorization. I note that in this legislation—if I understand it correctly—you fold the Office of Information and Regulatory Affairs into OMB as a permanent arrangement. I think it makes sense to give it a permanent lease on life.

I think from my experience—and there are people like Wendy Gramm and others who could probably comment on this to more effect, having lived with the sort of hiatus on reauthorization for a while—that it sort of puts OIRA at something of a disadvantage vis-a-vis the agencies it has to deal with to be in a bit of limbo. Sometimes agencies tend to encourage that state of limbo for OIRA. To the extent that OIRA has to fight on several fronts, their effectiveness in dealing with the agencies is somewhat compromised.

So I would urge you to move forward with the reauthorization of the Paperwork Reduction Act. Give it a permanent authorization, make it part of OMB, and have the OMB Director more directly responsible for its budget and its affairs is not a bad idea, in my judgment.

On the issue of risk assessment which is Title III of H.R. 9, I think it would be a good idea to approve Title III as well as Title VII which I testified on yesterday. I think risk assessment is a very good idea. The only suggestion I have there is to make it an integral part of the centralized review process. If I read Title III correctly, it essentially requires risk assessment to be done but does not make it part of the review process.

Now, there are two reasons to have it as part of the review process. One is to help have some outside monitoring of the agencies' compliance with the review process. But I also think it extremely important that the agencies begin to make decisions about what to regulate based on what those risk assessments show. That is to say that I think we can agree that while there is excessive regulation in many areas, there are areas of regulation the agencies don't address where the benefits of regulation are considerable as related to their cost. Failure to make decisions and establish priorities according to what those risk assessments show means that the Federal Government is passing up opportunities to protect citizens at very little cost in some areas. So, it may sound strange—coming from me—that I am suggesting that Federal Government do a better job when it does regulate, but I think that if you were to amend Title III to make risk assessment part of the centralized review process, I think it would tend to improve overall rulemaking and improve the cost-effectiveness of Government regulatory activity.

Mr. Chairman, that is all that I want to say in opening remarks, and I would be glad to respond to your questions and those of other panelists, and I am anxious to hear what my friend, Jim McIntyre, has to say on these issues.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF JAMES MILLER, CHAIRMAN, CITIZENS FOR A SOUND ECONOMY

Good morning. Mr. Chairman and Members of the Committee: Thank you for the opportunity to present the views of Citizens for a Sound Economy, a 250,000 member advocacy group that promotes market-based solutions to public policy problems. As you may know, I was the first Administrator of the Office of Information and Regulatory Affairs (OIRA), a post established under the Paperwork Reduction Act. Thus, I have a strong interest in reauthorizing the Paperwork Reduction Act as well as implementing the other regulatory reforms included in the "Job Creation and Wage Enhancement Act of 1995," (H.R. 9). In addition to a strong Paperwork Reduction Act, improved tools for conducting benefit-cost analysis and risk assessment are required to eliminate unnecessary regulations that do not provide benefits commensurate with their costs.

Federal information requests impose a burden of more than six billion hours on consumers and businesses. The costs of excessive regulations and paperwork present a significant obstacle to economic growth while raising consumer prices and unnecessarily restricting consumer choice.

REAUTHORIZING THE PAPERWORK REDUCTION ACT

The Paperwork Reduction Act was first passed in 1980 with strong bipartisan support under the leadership of former Senator Lawton Chiles and former Representative Frank Horton. As signed into law by former President Jimmy Carter, the primary objective of the act was to minimize the federal paperwork burden imposed on the general public. To this end, the Office of Information and Regulatory Affairs was established to review agency information collection requests and to eliminate any unnecessary or duplicative burdens. The act set specific goals for paperwork reduction, with federal agencies required to reduce the paperwork burden by five percent the first year; additional five percent reductions were required for each of the three following years.

The Paperwork Reduction Act has made progress towards eliminating unnecessary paperwork. Since 1981, OIRA has eliminated more than 600 million hours annually of federal information requests, saving consumers more than $6 billion each year, by modest estimates. Unfortunately, these savings have been overwhelmed by the dramatic increase in the federal paperwork burden. In 1980, consumers required 1.3 billion hours to comply with federal information requests. By 1992 this figure had jumped to 6.5 billion hours—the equivalent of more than three million people working full time just to satisfy the federal paperwork burden. Federal information collection requests impose real costs on the economy that raise prices for consumers and reduce the productivity of American businesses. Further, these costs are often disproportionately borne by small businesses.

Reauthorizing a strong Paperwork Reduction Act, therefore, should be an important element of any regulatory reform efforts. Moreover, reauthorization must reaffirm the primary goal of the 1980 act—minimizing the federal paperwork burden on consumers. Title V of H.R. 9 does just that, calling for federal agencies to minimize "the Federal paperwork burden imposed through Federal collection of information, with particular emphasis on those individuals or entities most adversely affected. . ."

A reauthorized Paperwork Reduction Act must also address the issue of third party disclosures. These are information collections mandated by the federal government for use by third parties. A lack of clarity in the language of the original Paperwork Reduction Act has created a significant loophole that exempts an entire class of federal information collection requests. A 1990 Supreme Court decision, *Dole* v. *United Steelworkers of America*, found that third party disclosures were not covered by the act.

It is estimated that this decision exempted up to one-third of the federal paperwork burden (over two billion hours) from review by OIRA. Federal Trade Commission information collection submissions to OIRA dropped by 88 percent after the court case, and the Occupational Safety and Health Administration has virtually stopped submitting paperwork approval requests to OIRA.

It must be remembered that federal information collection requirements, whether used by the federal government or third parties, impose a substantial burden on consumers. Agencies must be accountable for all paperwork burdens they impose on the public. Title V of H.R. 9 closes the loophole introduced by the Supreme Court decision, restoring the review process for all federally imposed paperwork burden. To this end, I encourage the new Congress to quickly pass a strengthened Paperwork Reduction Act.

RISK ASSESSMENT

Title III of H.R. 9 introduces risk assessment, an additional tool for ensuring that federal regulations are reasonable and generate benefits that justify the costs of regulation. Americans spend more than $100 billion annually to reduce risks; the proper use of risk assessment will help ensure that scarce dollars are not squandered in attempts to reduce trivial risks that pose little or no threat to the public. Risk assessment provides a more meaningful evaluation of the need for regulation, as well as a better understanding of the risks involved and the benefits of allocating scarce resources to eliminate particular risks.

Risk assessment should be viewed as an important complement to benefit-cost analysis. Since benefit-cost analysis and centralized regulatory review were formalized in 1980 with Executive Order 12291, consumers have saved billions of dollars by eliminating excessive regulation. Deregulation in the transportation sector, for example, has increased consumer welfare by over $30 billion. However, in recent years, health and safety regulations have surpassed economic regulations as the source of the federal regulatory burden. While benefit-cost analysis was successful in identifying excessive economic regulations, it is not as well suited for identifying excessive health and safety regulations. Identifying the optimal level of safety requires new tools that can be used in conjunction with benefit-cost analysis.

Risk assessment allows a more careful evaluation of the potential benefits of a regulations by identifying particular hazards and the threat they pose for the public. Accurate risk assessments allow both the regulators and the public to evaluate whether a regulation is reducing real risks that consumers face in their daily lives. Risk assessments also provide an opportunity to compare different risks, allowing more rational and informed decisions concerning the benefits of particular regulations relative to their costs.

To be effective, risk assessments must be based on sound, scientific principles. The risk assessments should provide the public with useful information that can be

used to make realistic risk comparisons. Risk assessment should require at the following:

- An open and transparent risk assessment. The analysis should identify the underlying scientific assumptions used in the assessment so that all concerned parties can evaluate the assessment.
- Objective and unbiased estimates of risk. The conservative, worst-case scenario underlying current risk assessment methodology provide little more than an upper bound estimate of risk that is difficult to compare or evaluate relative to other risks. Important assumptions are buried in the analysis, limiting the usefulness of the assessment.
- Full disclosure of the information underlying the risk assessment. Exposure levels, the population at risk, confidence levels, and ranges of risk should be included in all risk assessments to allow the public a better understanding of the risk in question.

Establishing a risk assessment process that incorporates the best available scientific knowledge while clearly explaining the underlying assumptions will provide an important addition to benefit-cost analysis that can be used to reduce the burden of federal regulation by identifying those cases where regulations reduce negligible risks at very high prices. Risk assessment allows establishes one more check in the regulatory process where it is possible to ensure that a regulation provides net benefits for the public.

Title III of H.R. 9 is an important step towards reforming the risk assessment process within the federal government. The legislation makes the process more open while improving the use of science in risk assessments. In fact, risk assessment provisions included in Title III are "to present the public and executive branch with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks in order to provide for sound regulatory decisions and public education."

However, in its current form, H.R. 9 lacks two fundamental elements of an effective risk assessment process. First, the legislation should include centralized review with presidential oversight. OIRA plays this vital role for benefit-cost analysis and there should be a similar role established for risk assessment. The president and his science advisers should have the capability to oversee and coordinate risk assessments within the executive branch. It is an important part of the president's constitutional obligation to manage the executive branch. Centralized review of the regulatory process has been underway began in the 1970s and was formalized in 1980. Risk assessment is a vital element of the regulatory process and should be included in any centralized review of agency regulations.

The second element that this committee should consider adding to Title III of H.R. 9 is a requirement for risk prioritization. Not only should agencies conduct risk assessments, but they should use the findings of these assessments when determining how to allocate scarce resources. Consumers are better served when dollars are spent reducing the greatest risks. Risk prioritization would require agencies to rank various risks and address the most dangerous hazards first. Including this requirement in Title III would ensure more reasonable regulations that provide greater protections to consumers.

CONCLUSION

Both a reauthorized Paperwork Reduction Act and regulatory reform are crucial for ensuring the federal government does not impose excessive or duplicative burdens on the American public. Although there have been successes in reducing the paperwork burden and unnecessary regulations, the overall burden of federal regulation has grown substantially since 1980. H.R. 9 contains reforms that will allow further reductions in unnecessary regulations and burdens. As a former Administrator of OIRA, I am an ardent supporter of a strong reauthorization of the Paperwork Reduction Act; Citizens for a Sound Economy has also been working to ensure reauthorization. Risk assessment is another important tool for avoiding unnecessary regulations. I urge you to move forward with H.R. 9 as an important step towards rationalizing the federal regulatory burden. I will be happy to answer any questions on these issues. Thank you, Mr. Chairman and members of the Committee.

Mr. MCINTOSH. Thank you very much, Mr. Miller.

I am shocked to learn that the agencies may not wholeheartedly embrace OIRA review.

Mr. McIntyre.

Mr. MCINTYRE. Thank you, Mr. Chairman. It is also a pleasure for me to be here testifying with my friend, Jim Miller. It is amazing how OMB Directors generally agree on most things regarding budget matters no matter what party they may be from. We do have a few disagreements, but in general we generally agree on the basic principles.

I would also like to comment, Mr. Chairman, this is the first time I have testified in this room that Congressman Horton, who was one of the cofathers of the Paperwork Reduction Act, hasn't been present. He was a real champion of trying to reduce Government paperwork, and I also considered him to be a friend both while I was at OMB and afterwards.

The Paperwork Reduction Act, when established, actually passed on my watch. I worked very hard to get that bill passed. I felt very strongly that it should be passed and that it should include independent agencies. We had a tremendous amount of pressure on the President to veto the bill, but he signed it and exhibited his personal and very strong beliefs that we needed to control the Federal paperwork.

I even felt so strongly about the need to control Federal paperwork that prior to the passage of the act, I established in OMB the Office of Regulatory and Information Policy to begin to deal with the challenge of reducing paperwork and red tape.

Paperwork reduction is a bipartisan issue, and much of what I have to say about it is relevant to any President or any Congress no matter which party controls the respective branches of our Federal Government. To that end, Mr. Chairman, I would like to ask that my testimony be incorporated in the written record of the committee.

Mr. MCINTOSH. Seeing no objection, it will been done.

Mr. MCINTYRE. The Paperwork Reduction Act was needed to give some teeth to a central management function necessary for a President to manage the regulatory system. The President and supporters in Congress believed that the Paperwork Reduction Act should be passed and signed because it established important authorities in a framework of accountability for any President, any Congress, the executive branch agencies, and our citizens with respect to regulatory paperwork requirements. A strong traffic cop function enables the President to better carry out his executive responsibilities, and, equally, Congress through its oversight function, can more effectively hold the executive branch accountable if the President is more effective than if he is not.

The President's job is to manage the whole interest of the executive branch instead of the fragmenting concerns of thousands of iron triangles that pervade the Nation's capital. OMB is the appropriate agency to perform that function for the President, and the Paperwork Reduction Act provides OMB the tools and the staff to carry out this function on behalf of the President in his executive management role.

I am also very pleased to see that the House bill would reauthorize OIRA indefinitely and provide for such sums as may be necessary for it to carry out its responsibilities. I believe that is a very important provision in the House bill and would urge you to fight very strongly to retain that provision.

I also am pleased to see that the bill strengthens OIRA and the agency's responsibility for the reduction of paperwork burdens on the public, and particularly I am pleased to see that you have addressed the problem of *Dole* v. *United Steelworkers of America.* I think that case leaves potentially a very large loophole in the Paperwork Reduction Act, and I think that the House bill would ensure that such information collection requests would be covered. I think that is very important to the objectives of the Paperwork Reduction Act.

I also am pleased to see the emphasis on 3-year reviews and the opportunity to apply new information technologies to reduce paperwork burdens. We live in an information age, and Government should be encouraged to be smart and take advantage of new information technology.

One other provision that I strongly support, that I am not sure all OMB Directors would support, is the public participation requirements. I have found in my experience in the private sector that it is important that the public participate in information collection requirements of agencies. Believe it or not, agencies don't know everything about the groups or the individuals or the companies they are trying to regulate, and when they sit down and meet with people who are experienced they can find out some very important things that will help them make better decisions and still carry out their responsibilities. So I support the public participation and again would urge you to make sure that is retained.

I have one suggestion. I would like to see that the requirement to reduce the paperwork burden by 5 percent be increased to 10 percent. While this is a goal, I still think it is important to have those goals out there and would urge you to consider increasing the goal from 5 to 10 percent.

With respect to the risk assessment issue, my suggestion in my testimony was that while risk assessment should be left in the hands of the agencies and their staffs and scientists, the President needs to have someone properly staffed on the various policy options representing him to ensure use of standardized methodologies, to ensure integrity of the process, and to hear disputes between and among the agencies. In my judgment, the Director of OMB is the logical person to provide this support for the President.

Thank you.

[The prepared statement of Mr. McIntyre follows:]

PREPARED STATEMENT OF JAMES MCINTYRE, ATTORNEY, MCNAIR AND SANFORD, P.A.

Good morning, Mr. Chairman and Members of the Committee.

My name is Jim McIntyre. I served as Deputy Director (1977) and Director (1978–81) of the Office of Management and Budget during President Jimmy Carter's administration.

Thank you for the opportunity to testify before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs, and to share my perspective gained from four years in the White House Office of Management and Budget regarding the President's responsibilities for regulatory policies in the executive branch of our government.

I strongly support legislation such as Title V of H.R. 9, and the draft version of the Chairman's mark which reauthorize appropriations for the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) and strengthen OIRA and agency responsibilities for the reduction of paperwork burdens on the public. These bills are also very similar to S.244, introduced by Senator

Nunn, Senator Roth and others, and passed out of the Senate Government Affairs Committee on February 1, 1995.

The Paperwork Reduction Act provides tools for OMB to better staff the President in his executive management role. It also establishes a clearance process ensuring public notice and comment, public protection and OIRA review. I feel very strongly that strengthening OIRA and agency responsibilities for the reduction of paperwork burdens on the public is important for the efficient operation of government. In fact, I felt so strongly about this that, even after President Carter lost his bid for reelection, I continued to work hard for the passage of the Paperwork Reduction Act in 1980, and President Carter signed it in December over the veto recommendations of several agencies. In anticipation of the 1980 Act, I established the Office of Regulatory and Information Policy, the predecessor of the Office of Information and Regulatory Affairs, in OMB to begin the challenge of reducing paperwork and red tape. Paperwork reduction is a bipartisan issue and much of what I have to say, is relevant for any President and any Congress, no matter which party controls the respective branches of our federal government.

Many agencies resisted the idea of reducing paperwork and red tape, even though the President had asked them to do so. Thousands of reasons were invented to avoid our requests for information on the need, practical utility, cost effectiveness, and alternatives for proposed regulatory requirements. Whether it was "turf", or the imperatives of program missions, there was resistance to following through on the common sense questions asked about paperwork and regulatory demands upon the public.

The Paperwork Reduction Act of 1980 was needed to give teeth to a central management function necessary for a President to manage the regulatory system. The President and supporters in Congress believed that the Paperwork Reduction Act should be passed and signed because it established important authorities and a framework of accountability for any President, any Congress, the Executive Branch agencies, and our citizens with respect to regulatory paperwork requirements. A strong "traffic cop" function enables the President to better carry out his executive responsibilities. Equally important, Congress, through its oversight function, can more effectively hold the executive branch accountable if the President is more effective than if he is not.

The President's job is to manage the "whole interest" of the Executive Branch instead of the fragmenting concerns of thousands of "iron triangles" that pervade the Nation's Capitol. OMB is the appropriate agency to perform that function for the President, and the Paperwork Reduction Act provides OMB the tools to staff the President in his executive management role. I believe that the burden of federal regulatory and paperwork requirements would be far greater today if it weren't for the 1980 Act. The 1980 Act, however, needs to be strengthened to support and encourage OIRA in the role it plays as the President's surrogate for information policies and ultimate check for agency conformance to the common sense criteria in the Act as well as to provide for public participation in the information collection process.

In that regard, I am pleased to see that the draft Chairman's mark would reauthorize OIRA indefinitely and provide for such sums as may be necessary for it to carry out its responsibilities. The draft Chairman's mark clarifies and strengthens OIRA's and the agency's responsibilities for the reduction of paperwork burdens on the public in a clearance process enhancing public participation.

The legislation also addresses problems created by the Supreme Court decision in *Dole* v. *United Steelworkers of America*.[1] In this case, the Supreme Court held that the Paperwork Reduction Act did not cover federally sponsored information collections which were provided to third parties. While the intent of the authors of the 1980 Act (of which I consider myself to be one) was clearly that such requests were covered, this Court decision leaves a gaping hole in a coherent information collection process in which the public has an opportunity to participate. The draft Chairman's mark (as well as Title V of H.R. 9 and S.244) would ensure that such information collection requests would be covered.

The emphasis on three year reviews and the opportunity to apply new information technologies to reduce paperwork burdens are sound. We live in an information age and government should be encouraged to be smart and take advantage of new information technology. I also support public participation in the information collection process to ensure that agencies obtain correct information on how the private sector works and to be sure that all reasonable alternative approaches have been explored before issuing regulatory mandates.

I suggest that the requirement to reduce the paperwork burden by 5% be increased to 10%. The committee may want to consider making this a binding provi-

[1] 494 U.S. 26 (1990).

sion, however, it may be too difficult to administer and enforce. But it should certainly by established as a goal. With the continued increase in paperwork requirements imposed by new legislation, it is more important than ever that agencies look at ways to reduce the existing paperwork burden requirements. Ten percent seems like a reasonable goal to establish in light of the total paperwork burdens imposed by the federal government on the American people and in light of the potential to reduce burdens by the use of new information technologies.

In the context of today's testimony, I was asked by the Committee to comment on the issue of risk assessment. While I am not an expert on risk assessment, I do have some experience with the subject which leads me to the following recommendation. Risk assessment is a very controversial issue. But, if the Congressional objectives of Title III of H.R. 9 are to be achieved, an agent of the President is needed to coordinate government-wide efforts. Risk assessment and the government-wide management of risk assessment are two very different things. While risk assessment should be left in the hands of the agencies and their staff and scientists, the President needs to have someone properly staffed on the policy options representing him to ensure use of standardized methodologies, to ensure integrity of the process and to hear disputes between and among agencies. The Director of OMB is the logical person to provide this support for the President for the government-wide management of risk assessments.

In conclusion, Mr. Chairman, a strong OIRA will ensure that agencies follow the law and comply with such Congressional requirements as imposed through the Regulatory Flexibility Act, the Administrative Procedures Act and the Paperwork Reduction Act. Too often, agencies ignore the law. The American public want to see that the law is followed.

Mr. MCINTOSH. Thank you very much, both Mr. Miller and Mr. McIntyre. I appreciate hearing from both of you and the bipartisan support for this effort. In fact, as I was listening to your testimony, I was thinking back to the fact that merely 5 years ago these issues would have been quite controversial, and in fact we have come a long way, that we have developed this consensus in the effort to reduce the regulatory and paperwork burden on the private sector.

I will reserve the rest of my time for questions after my colleagues if they haven't been addressed by then.

Let me turn now to Mr. Peterson. Mr. Peterson has no questions. Let me turn to Mr. Fox.

Mr. FOX. Thank you, Mr. Chairman.

I would first ask that, to either gentlemen, some advocates of the paperwork reduction have called for a mandatory 5 percent reduction of the paperwork burdens each year in lieu of the 5 percent goals in the current legislation. Would a mandatory 5 percent reduction be achievable in your opinion, or should it be a greater percentage?

Mr. MCINTYRE. Well, I am not sure that you can achieve a mandatory reduction. I think that is an important question. I think, however, it is important to set a goal, and as I said in my testimony, I think a 10 percent goal is reasonable.

The problem that I have with the mandatory requirement is that often it is very difficult to measure first of all, to have good measures of what the actual paperwork burdens are, and then how do you reduce those, but also it is important to recognize that Congress, like through the Clean Air Act amendments of 1990, puts tremendous paperwork burdens on agencies, and I think there are some real problems with trying to enforce a mandatory requirement.

What do you do if an agency doesn't comply, for example? Do you fire the head of the agency? There are just some real problems, I think, in administering it, but I do think having a goal is important, and having an agency that can address whether or not the

agencies or departments meet those goals through the budget process I think is probably the appropriate way to go.

Mr. FOX. I just have one more question.

Mr. Miller.

Mr. MILLER. Could I just suggest something? If you have a specific target that is very rigid, you will end up with the agencies gaming that target or that specific requirement, and sometimes, you will leave things out. So, for example, from 1 year to the next you may find that there was a whole area of paperwork requirements that you didn't know about, and so you have been reluctant to put it in the base because then that means that you can't possibly obtain your reduction target.

On the other hand, it is quite important to have legislated particular targets because that gives OIRA a very strong hand in dealing with the agencies. Then OIRA can say, Congress has mandated that we reduce the paperwork burden, and I know that you have got problems, but we have got to do this.

So reduce it as much as feasible, at least 5 percent, or maybe, as Mr. McIntyre was suggesting, reduce it 10 percent unless there are extraordinary circumstances to the contrary.

Mr. FOX. Let me ask you gentlemen one more question, if I may. Often we find the public's perception varies from the actual reality of the risk and therefore drives the allocation of resources and determines our priorities. What role should the public play in the risk assessment process?

Mr. MILLER. Well, I think they should play a direct role, as my colleague here was suggesting. I think open access is really important.

Could I speak to something I think is really important for Members of Congress to think about, and that is, the paperwork burden is very much a function of what Congress requires, and just a mind set of Congress to realize that if you make some changes, you, by changing the law, can relieve the American people of a lot of paperwork burden.

Let's take, for example, as you probably know, more than half of the paperwork burden is filling out income tax forms; it is IRS. Now I remember—this is a true story. I remember meeting with the head of IRS in the Office of the Deputy Treasury Secretary, and I suggested that—try to think of innovative ways to reduce the burden. I said, "I'm not sure we should have income tax filing every year. Why not file every other year. For example, you could"——

Mr. FOX. You ought to run for office. I think that is a good slogan to run on.

Mr. MILLER [continuing]. "Say, if you were born on an odd-numbered year, then you file on odd-numbered years, so you file every 2 years. That would reduce the burden somewhat, maybe not cut it in half but reduce it a lot."

Mr. FOX. It may not reduce the pain.

Mr. MILLER. So I felt the IRS Director was going to faint, and the Deputy Director of the Treasury, Jim McNamara said, "Jim Jim, no, that doesn't make sense. I think they ought to file every third year." Of course at that point the Director did have a coronary.

But it just shows that the requirements that you have really determine how much paperwork is out there, and all the efforts of an OIRA cannot reduce that paperwork burden below that necessary level. You can, in turn, simplify the tax laws or whatever. That would reduce the paperwork burden dramatically.

Mr. FOX. Thank you very much.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you, Mr. Fox.

If only they would let our committee take care of that. We, unfortunately, don't have jurisdiction over everything.

Let me turn now to Mr. McHugh.

Mr. MCHUGH. Both of you gentlemen—Mr. McIntyre, Mr. Miller indicated in his written testimony—support the provisions of this bill that overturn *Dole*. We have heard, both this morning and as we talk to various people about this legislation, that from those who would consider—that overturning places in jeopardy the safety of many American workers in the workplace. I assume you don't share that assessment. I would be interested to hear your comments as to how you feel such a situation would not occur and why this is an important provision of the bill.

Mr. MCINTYRE. I don't think the situation would occur because the requirement is simply that OMB's level is to review what the agency has done and to comment on whether it is within the law, whether there are other alternatives that would accomplish the objective better, or to basically make sure that the agency has looked at all of the issues. OMB is not in a position of substituting its judgment about the need for safety for that of the agency, so I do not see any risk.

I think the people that see risk are folks that have direct pipelines that are part of the iron triangle that I mentioned, that have direct pipelines to these agencies, that want their positions adopted as opposed to what may be a reasonable position adopted. I think that is the big difference. I think it is very important that this loophole in the law be eliminated.

Mr. MCHUGH. Mr. Miller.

Mr. MILLER. I agree with what he said.

Mr. MCHUGH. Simply said.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you very much, Mr. McHugh.

Let me turn now to my colleague from Florida, Mr. Scarborough.

Mr. SCARBOROUGH. Thank you, Mr. Chairman. I would just like to thank Mr. McIntyre and Mr. Miller for coming. I have no questions at this time.

Mr. MCINTOSH. Thank you very much.

And last but not least, my colleague from Maryland, Mr. Ehrlich.

Mr. EHRLICH. Thank you, Mr. Chairman.

I understand what you all said today about the mind set that has existed around here for a long time. I also understand the point you made with respect to the ineffectiveness of mandatory reductions. In view of those two observations, since you two have been around since the inception of this act in 1980, what grade would you give this act? Has it worked?

Mr. MCINTYRE. Since you administered it, I'll let you go first.

Mr. MILLER. On a scale of 1–10, a 9.

Mr. MCINTYRE. I think given the environment that OIRA has had to operate under with no authorization, having to struggle under some of the limitations of the Supreme Court case, I think they have done an excellent job, and I would give them an 8 or a 9 also.

Mr. EHRLICH. What one thing would you like to see us accomplish to reach a 10?

Mr. MILLER. I think constant encouragement of OIRA and an indication of confidence in it, and I think that requires some oversight of OIRA and some working together with the OIRA Director. I am very high on Ms. Katzen. I think she is a very capable person. I think the extent to which OIRA doesn't do its job—I hate to say it this way—is probably due to the ability of agencies to circumvent OIRA and to defeat its requirements.

Mr. MCINTYRE. I think one of the most important things you could do is pass this House bill.

Mr. MILLER. Yes.

Mr. MCINTYRE. That is the most important thing you could do to support OIRA and to get it up to a 10.

Mr. EHRLICH. Thank you.

Thank you, Mr. Chairman.

Mr. MCINTOSH. Thank you.

I have got two questions, one on the risk assessment area although one applies to both. In risk assessment in the House bill, there is no provision for centralized review, and there have been proposals that would model what was done in the Paperwork Act for that area and for cost-benefit. Do you see that as a helpful change to the legislation, to strengthen OIRA's ability to have input, essentially giving them final sign-off authority before regulations go forward, that the agencies have accurately done cost-benefit and risk assessment?

Mr. MILLER. I think the answer is yes, and I think OIRA should be instructed or encouraged to utilize the science office in the White House to help with evaluations of some of the technical materials in ways that they probably are not quite as facile now, but I think this would be very helpful. And back to what I was saying earlier, I think it would help prioritize the Government's regulatory activity and result in its being much more cost effective than it is now.

Mr. MCINTYRE. I agree with what Mr. Miller said, but I also would like to support what Ms. Katzen said. I think she gave a very good statement on the risk assessment issue.

One of the problems you need to be concerned about in this legislation, in my judgment, is that Title III does tend to be very prescriptive. I think it is focused more on health issues and other types of issues that arise throughout the Government. It would probably work better to establish what you mean by risk assessments and establish performance standards you expect the agencies to take into account and then give OMB the authority to oversee that on behalf of the President, and it also helps you with your oversight responsibilities if OMB is doing its job.

I really think when you get too prescriptive you find you just can't outthink agencies, you can't outthink industry, and you can't outthink the American people here in Congress, and you are not

going to think of it all, so it is much better to establish the broad standards in the legislation, sort of like a performance standard, and then let the executive branch try to implement that, and you use your oversight powers to make sure they do what you want done.

Mr. MCINTOSH. And perhaps create incentives in a system that lead toward the right result.

Mr. MCINTYRE. Absolutely.

Mr. MCINTOSH. With that in mind, the second question I wanted to ask was related to a proposal that one of our colleagues, Mike Crapo from Idaho, made before you were here, Mr. Miller. I don't know whether you heard his testimony, Mr. McIntyre. Essentially he said that under the Paperwork Act, that citizens can have a legal defense if the provisions are not followed but they don't have an affirmative ability to come in and challenge an agency that refuses to follow through the provisions of the Paperwork Act. He recommended that we grant that, and similar proposals have been made in the risk assessment and cost-benefit analysis.

Let me turn first to you, Mr. Miller, because I know from working with you, you have a healthy skepticism of lawyers and their ability to help a situation, but in this case, what would your comment be to that suggestion?

Mr. MILLER. Well, present company excepted, I do have some skepticism about the overlitigiousness of our society.

I would grant authority to people who are impacted by regulations the right to seek judicial review of the procedural requirements. I would not want to put every judge in the position of having to make judgments about whether the benefit-cost analyses were done correctly or the risk assessments were done correctly.

I think some kind of arbitrary and capricious standard should apply. Perhaps you could even look at how agencies perform under the standard to see whether they begin to game it or whatever. If they do, then grant these rights to individuals, as was suggested.

If you will recall the history of review under Executive Order 12291, at the very beginning it worked extremely well, the agencies did comply. But as time went on, with the Supreme Court decision holding that OIRA could not hold up a regulation where there was a judicial requirement timetable, the agencies began to work with their committees to get judicial timetables, and so there is a way of gaming it and getting around it. I suspect that agencies would find ways of gaming and getting around some of these requirements. Certainly a way of scotching that would be to give a right of private action to individuals affected by regulations. So I think it is a good idea to explore.

Mr. MCINTOSH. Thank you.

Mr. McIntyre.

Mr. MCINTYRE. Part of the problem I think the American people have with the Federal Government is that it doesn't work very well, and I don't think we want to put a lot of other opportunities to throw monkey wrenches into the process.

Often times the failure to act is more a political issue than it is a legal issue, and just because the Director of OMB doesn't answer somebody's letter or something like that, I am not sure I would want to take that kind of issue to court. But I do think we need

to have built into our laws provisions so that if agencies don't follow the law then that is certainly challengeable in court.

I would be very careful. We are a very litigious society anyway, and I would be very careful about giving people the opportunity to go to court over just whimsical things. That would be my concern about the civil suit. But if it is structured toward the procedure and following the law, then I would support that.

Mr. MCINTOSH. And let me ask just one quick follow-up on that. In general, does the Administrative Procedures Act and the remedies under that provide sufficient ability to review that, or do we need to grant explicit rights for challenging agencies that may not follow, say, a cost-benefit or a risk assessment procedure?

Mr. MCINTYRE. I think you probably need to have some further legislation to address the cost-benefit and the compliance with the Paperwork Act. That is really not—I am not entirely certain, but my judgment is that it probably would not be completely covered by the Administrative Procedures Act.

Mr. MCINTOSH. Thank you. Thank you both for your testimony today. I appreciate it, and it has been greatly helpful to us.

Mr. MILLER. Thank you, sir.

Mr. MCINTYRE. Thank you.

Mr. MCINTOSH. Our next panel represents the General Accounting Office. Mr. Gene Dodaro is the Assistant Comptroller General at the Accounting and Information Management Division of GAO. He is responsible for all of GAO's financial management and budget work as well as in issues surrounding the Government's use of information technology. He is accompanied by Christopher Hoenig, the Director of GAO for Information Resource Management Policies and Issues. In that position, he leads GAO's efforts to identify and implement valuable private and public sector practices for use in improving the performance of Federal agencies.

Welcome to both of you. So that I don't neglect my duties, if I could ask each of you to rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you.

STATEMENT OF GENE DODARO, ASSISTANT COMPTROLLER GENERAL, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY CHRISTOPHER HOENIG, ASSOCIATE DIRECTOR, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, INFORMATION RESOURCE MANAGEMENT POLICY AND ISSUES GROUP

Mr. DODARO. Good morning Mr. Chairman, members of the subcommittee. We are pleased to be here today to discuss H.R. 830. It contains important provisions to strengthen the Government's management of technology and reduce collection burdens placed on the public, and we fully support the information management provisions of the bill.

With your permission, Mr. Chairman, I would like to have my detailed statement submitted into the record.

Mr. MCINTOSH. Seeing no objection, it will be done.

Mr. DODARO. While my detailed statement discusses various aspects of the bill, I would like to focus my brief remarks this morn-

ing on the information technology aspects of the legislation for two very important reasons. First, as has been mentioned here this morning, there is great potential to using technology to help reduce the burden on the public in terms of collecting information; second, because Federal agencies are experiencing tremendous problems in attempting to use technology to improve service and reduce cost.

Federal problems with information technology are becoming increasingly severe in the last 14 years since the original passage of the Paperwork Reduction Act. During this time the gap between the public's expectation for modern, effective service and the Government's performance has widened considerably, and it grows wider every day. More and more, the American people are experiencing the everyday benefits of technology in the private sector such as 24-hour, one-stop customer service numbers, automated bank tellers, overnight package delivery, and telephone credit card payments. Our national government, however, has been unable to achieve similar improvements. Unfortunately, the Federal sector lags far behind leading organizations that have successfully used information technology to streamline their operations and enhance service levels.

After spending a quarter of a trillion dollars since the passage of the Paperwork Reduction Act, the Government is in the worst possible situation. It is investing heavily in projects that often fail to produce dramatic service improvements or significantly reduce costs. Serious system development problems exist throughout the Government in key agencies such as the Federal Aviation Administration, the IRS, the Defense Department, the Department of Agriculture, the Social Security Administration, and the Veterans' Administration, to just name a few notable examples.

To help find solutions to these problems, GAO studied successful organizations to learn how they effectively use technology to improve their performance. We found that organizations used a set of fundamental management practices that were instrumental in their success. These practices are described in this report we issued last May [indicating document] which we have made available to members of the subcommittee, and we would be happy to talk about it at any length at a future point in time. The practices contained in this document require no legislative action, and Federal agencies can readily adopt these best practices, although the provisions in H.R. 3400 would ensure that they do so.

Many agencies need and want our help. Our report has been widely received. Over 14,000 copies have been distributed, and we have given 120 briefings to over 2,000 Federal decisionmakers. These practices, however, need to be implemented, not just talked about. That is why we are very pleased that H.R. 830 incorporates them.

Let me underscore a few key examples of how the bill incorporates these practices. First, the bill strengthens accountability for information management results by placing it with senior program management, not just information resource officials in the agencies. Too often Federal managers leave important decisions to technical staff. This lack of involvement consistently produces excessive spending on information technology solutions that do not fix underlying business problems.

Second, the proposed legislation requires agencies to more rigorously control information technology investments. Time and time again, we find agencies using technology to automate inefficient processes. Further, enormous projects are allowed to proceed unchecked for years without any demonstrated progress or meaningful benefit.

Third, H.R. 830 recognizes the need for improved skills. Government agencies are too often held back by an antiquated skill base. Improved qualifications are essential if we are to make progress in this important area.

Collectively, these changes can help improve the Government's chances of achieving real results from the $25 billion a year investment it makes in information technology. We fully support your efforts. They come at a critical time when many agencies are struggling to identify and improve the way they deliver services and control costs.

Moreover, straining capabilities in the information technology area can open up untapped opportunities to achieve paperwork reduction. We believe this is a fruitful area that the subcommittee may want to focus its attention on in the future. Today's information technology can help reduce the need for paperwork entirely or in large part. It offers tremendous opportunities for submitting and exchanging information electronically without the need for additional entry or collection.

However, Federal agencies must improve their capabilities to take full advantage of these opportunities. For example, both witnesses this morning mentioned the Internal Revenue Service and the fact that about 80 percent of the information burden is caused by tax return filing. The IRS desperately needs to improve its information systems.

We are actually in the perverse situation right now where many people buy home computer packages to prepare their tax returns, generate their forms, send them into the IRS service centers, they are put in carts, transferred around the service center in paper baskets, taken by IRS people and entered the data manually from the paper return into their computer systems. This causes tremendous amounts of error. It also overburdens the system so that IRS cannot do properly its matching responsibilities and follow up on delinquent returns and filings.

So technology can also not only help reduce the burden on the public, but it can also produce much more effective and efficient Government operations. Much needs to be done to bring the Government into the information technology age.

This concludes my opening statement, Mr. Chairman. We would be glad to answer any questions you may have or other members of the subcommittee.

[The prepared statement of Mr. Dodaro follows:]

PREPARED STATEMENT OF GENE DODARO, ASSISTANT COMPTROLLER GENERAL, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to be here today to discuss the Chairman's draft legislation reauthorizing the Paperwork Reduction Act (PRA). The PRA is a vital component of an overall legislative framework—including the Chief Financial Officers Act, the Gov-

ernment Performance and Results Act, and the Federal Acquisition Streamlining Act—designed to resolve basic management problems that undermine effective implementation of many government programs. We commend the efforts of your Subcommittee and the full Committee to revise the current statute to help strengthen government's management of information and technology.

Last year before the Senate Committee on Governmental Affairs, we outlined several proposals to improve the information management and technology aspects of the PRA.[1] The Comptroller General again supported these proposals before that Committee last week.[2] Today, I will comment on several of these proposals now included your draft legislation. In addition, I will summarize our work relating to the government's role in limiting the paperwork burden on individuals and businesses.

THE NEED TO IMPLEMENT MODERN INFORMATION MANAGEMENT PRACTICES USED BY LEADING ORGANIZATIONS

The public environment has changed dramatically in the 14 years since initial passage of the PRA. The law was enacted at a time when information management was viewed largely as a support function rather than as an integral part of agency management and operations. Since then, rapid changes in information technology and management techniques have greatly increased the act's potential to help streamline operations and produce higher quality services delivered more effectively, faster, and at lower cost.

These developments make it essential to update the act and place it within the context of the information age of the 1990s and beyond. GAO's work over the last decade highlights how most federal agencies have invested in costly information systems projects that have produced little return in operational improvements or reductions in costs.[3] Agencies also still lack essential information to manage programs, control costs, and measure results. This poor record exists even though federal agencies have invested a quarter of a trillion dollars in information technology since the act was passed in 1980.

We find huge, complex computer modernizations at great risk from two basic management problems: (1) the failure to adequately select, plan, prioritize, and control system and software projects and (2) the failure to use technology to simplify, direct, and reengineer functional processes in ways that reduce costs, increase productivity, and improve service. These problems—involving an annual investment of $25 billion in public funds—permeate critical government operations in key agencies, such as the Federal Aviation Administration (FAA), the Internal Revenue Service (IRS), Defense, Agriculture, Veterans Affairs, and the Social Security Administration.

There is much to be done to bring our national government into the information age. Improvements to the PRA are an essential element of this process. We know from our research on leading organizations that effective management solutions do exist. In a May 1994 report, we described a set of fundamental practices that were instrumental in these organizations' success.[4]

Executives in the leading organizations we studied actively invest their time to manage risks and maximize the return on information technology projects using the following 11 practices.

DECIDE TO CHANGE

1. Recognize and communicate the urgency to change information management practices
2. Get line management involved and create ownership
3. Take action and maintain momentum

DIRECT CHANGE

4. Anchor strategic planning in customer needs and mission goals
5. Measure the performance of key mission delivery processes
6. Focus on process improvement in the context of an architecture

---

[1] Improving Government: Actions Needed to Sustain and Enhance Management Reforms (GAO/T–OCG–94–1, Jan. 27, 1994); Paperwork Reduction Act: Opportunity to Strengthen Government's Management of Information and Technology (GAO/T–AIMD/GGD–94–126, May 19, 1994).

[2] Government Reform: Using Reengineering and Technology to Improve Government Performance (GAO/T–OCG–95–2, Feb. 2, 1995).

[3] Appendix I lists key GAO reports.

[4] Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology—Learning From Leading Organizations (GAO/AIMD–94–115, May 1994).

7. Manage information systems projects as investments
8. Integrate the planning, budgeting, and evaluation processes

SUPPORT CHANGE

9. Establish customer/supplier relationships between line and information management professionals
10. Position a Chief Information Officer as a senior management partner
11. Upgrade skills and knowledge of line and information management professionals

Essentially, they employ three basic principles: They decide to manage information technology differently, direct technology resources towards high-value uses, and support improvements with the right people and training. In particular, they

- increase accountability for information technology results by involving executives and line managers in information technology decisions and creating ownership,
- establish an outcome-oriented strategic information management framework by (1) linking technology investments to business needs that are defined in customer terms, (2) managing and controlling information technology as an investment, (3) measuring the results of technology by examining its impact on mission effectiveness and efficiency, and (4) integrating information management into organizationwide planning, budgeting, and financial management, and
- institute proper support for information management with the right mix of skills, knowledge, and defined roles and responsibilities for managers and technical specialists.

Leading organizations implement these practices as an integrated set to strategically manage for short- and long-term performance improvements. Used in this manner, the practices can serve as a vital starting point for lasting solutions to the problems and challenges we face in improving federal operations. We did not find any federal case study agency using all these practices as mutually reinforcing activities.

CHANGES NEEDED TO BOLSTER INFORMATION MANAGEMENT PROVISIONS IN THE PRA

We are pleased that several changes contained in your proposed legislation to reauthorize the PRA are based on the best practices followed by leading organizations. Despite the urgency to change, little meaningful progress towards improving government productivity, mission performance results, and service delivery can be achieved unless federal agencies adopt these sound strategic information management approaches. The improvements to the PRA can help construct a useful framework to bring modern technology management approaches to the federal government. Let me illustrate by focusing on changes made by several key provisions contained in the proposed legislation.

INCREASING ACCOUNTABILITY FOR INFORMATION TECHNOLOGY RESULTS

Current provisions in the PRA place the responsibility for effective information management and technology on designated senior officials for information resources management (IRM) and their respective organizational units. Executives and senior program managers, the initiators and benefactors of mission improvement efforts, are excluded from accountability for achieving results from information system investments. In contrast, leading organizations make business or line managers accountable for technology decisions and results. Under this arrangement, technology investments are initiated and evaluated in terms of proposed and achieved benefit to the business.

In many government agencies, however, information issues are often viewed as an administrative function that is delegated to technical staff. Designated senior IRM officials are often burdened with a number of additional administrative responsibilities, such as payroll, human resources management, contracting, and space management, that keep them from giving adequate attention and review to information management issues. Consequently, information and technology initiatives are often not treated as integral parts of an overall strategic approach to mission improvement, but rather as separate improvement efforts in and of themselves.

For example, IRS' Tax System Modernization has been underway for 6 years and has spent $2.5 billion without the necessary technical and management foundation

in place.[5] At the Department of Agriculture, we recommended that officials halt a multibillion project to improve service to farmers called Info Share because senior management was not directly involved in managing the project and essential reengineering was not taking place before major investments were to be made.[6] At the Department of Defense lack of program management involvement and support is one of several key reasons why the Department's Corporate Information Management initiative has not approached its projected potential to save billions of dollars.[7]

Section 3506 of the proposed legislation strengthens the accountability of the agency head and program managers for information resources supporting their programs. Working with the designated senior IRM official and the Chief Financial Officer, they are to define program information needs and develop strategies to meet those needs. As our case study research demonstrates, increasing program managers' accountability and involvement works because it focuses information management decision-making and systems development activities on measurable mission outcomes of strategic importance.

ESTABLISHING AN OUTCOME-ORIENTED FOCUS

The current law also does not emphasize mechanisms for selecting, controlling, or evaluating information systems projects in ways that maximize value or effectively manage risks. The legislation assumes that requiring agencies to prepare plans for meeting the agency's information technology needs would translate into real results. Instead, leading organizations use well-defined processes to direct scarce technology resources towards high-value uses. They use technology to assist in reengineering critical functions, and then they carefully control and evaluate the results of information systems spending through specific performance and cost measures, which are monitored throughout the project.

Investment decision processes are in place to help executives prioritize among competing projects, concentrate on choosing the right mix of technology projects to meet critical mission needs, and evaluate projected versus realized payoffs. In this way, unexpected problems are surfaced quickly and resolved with focused management attention. This helps reduce delays, cost escalations, and failure to meet business and customer needs.

By contrast, government agencies often buy computer hardware before they evaluate their current business functions, lack discipline and accountability for their investments, and fail to rigorously monitor systems projects for real results. Time and again, we have found agencies using technology to simply automate existing inefficient and ineffective processes rather than focusing on how it can be used to achieve better results and improve mission performance.

Poor information systems management has plagued efforts to improve some of the government's most critical activities. For example, after more than 12 years and costs exceeding $2.5 billion, the FAA has chosen to cancel or extensively restructure elements of its problem-plagued Advanced Automation System. We attributed major schedule delays and cost escalations to a host of managerial and technical factors, including FAA's failure to (1) accurately estimate the technical complexity and resource requirements of the effort, (2) stabilize system requirements, and (3) adequately oversee contractor activities.[8]

In another case, we found that the Veterans Benefits Administration (VBA) procurement of $680 million in computers, communications equipment, and associated commercial software products was proceeding before old processes had been redesigned or new performance goals set. In 1992, we determined that without any business process reengineering, this substantial technology investment would potentially eliminate only 6 to 12 days from the average of 151 days it took VBA to process an original compensation claim.[9]

Provisions in the proposed legislation also call for strengthening processes that agencies use to decide their information technology expenditures and to set goals for measuring progress in using information technology to increase productivity and accomplish outcome-oriented results. Most importantly, Section 3506 requires agen-

[5] Tax System Modernization: Status of Planning and Technical Foundation (GAO/T–AIMD/GGD–94–104, Mar. 2, 1994).

[6] USDA Restructuring: Refocus Info Share Program on Business Processes Rather Than Technology (GAO/AIMD–94–156, Aug. 5, 1994).

[7] Defense Management Initiatives: Limited Progress in Implementing Management Improvement Initiatives (GAO/T–AIMD–94–105, Apr. 14, 1994).

[8] Advanced Automation System: Implications of Problems and Recent Changes (GAO/T–RCED–94–188, Apr. 13, 1994).

[9] Veterans Benefits: Acquisition of Information Resources for Modernization Is Premature (GAO/IMTEC–93–6, Nov. 4, 1992).

cies to assess and manage their information technology initiatives with defined processes for selecting, controlling, and evaluating the initiatives based on anticipated benefits compared to actual results. Additionally, Sections 3504 and 3505 help better manage risks by requiring the Director of the Office of Management and Budget (OMB) to take steps to infuse more discipline and accountability into the government's technology expenditures.

INSTITUTING PROPER SKILLS AND ROLES

The current act does not emphasize the necessary technical skills or the clear delineation of management roles and responsibilities, both of which are needed to manage information technology as part of an overall business strategy. Leading organizations work to anticipate and define key skills needed, starting at the top of the organization with a qualified Chief Information Officer (CIO). The CIO, as a senior management partner, helps to focus executive decision-making on high-value technology issues, decisions, and investments. Leading organizations also delineate the responsibilities of program managers—who assert control over information system project funding and direction—and information management professionals—who concentrate on applying the best technological solution to a business problem.

Conversely, government agencies are all too often held back by an antiquated skill base and confused roles and responsibilities that consistently inhibit the effectiveness of major system development and modernization efforts. Our work at FAA and IRS, in particular, have highlighted the consequences of failing to accurately estimate the technical complexity and resource requirements of large system modernizations. Although the PRA establishes designated senior officials for information resources management for all departments and agencies, it does not preclude responsibilities from being largely delegated to lower management levels, is silent on essential qualifications for the position, and does not limit responsibilities exclusively to information resources management.

To help address this issue, Sections 3504 and 3506 of the proposed legislation require that training be developed to educate program officials about information technology. Section 3506 also requires joint participation of program and IRM officials in the development of systems and capabilities to meet program needs.

In addition, we are pleased to see that the senior IRM official for the agency retains a direct reporting relationship to the head of the agency and is to be selected with special attention to the professional qualifications essential for effectively supporting top management and program officials in defining information needs and strategies. Because of the magnitude of information management problems facing most federal agencies, ideally it would be preferable for this official to have only assigned responsibilities directly related to information management.

MINIMIZING BURDEN

Another primary goal of the PRA is to minimize the federal paperwork burden imposed on individuals and businesses. Care must be taken, however, in interpreting measures of paperwork burden. For example, we reported in 1993 that while the paperwork burden OMB reported rose from over 1.8 billion hours in 1987 to nearly 6.6 billion hours in 1992, most of this increase was due to a redefinition and reevaluation of burden hours by the Department of the Treasury, not because of new burdens imposed on the public.[10]

The difficulty in precisely quantifying burden lies, in part, with methodological approaches that involve complex interpretations and questionable data, making empirical assessments of burden reduction suspect. Section 3502 of the proposed legislation expands the current definition of "burden" to include acquiring, installing, and utilizing technology and systems as part of the provision of information to the federal government. While this redefinition may further complicate the task of measuring paperwork burden, it may also provide a more complete picture of the actual burden imposed on individuals and businesses.

Paperwork burden can be caused by the complicated nature of underlying statutes. For example, in a recent study of tax system burden we found that businesses tax compliance burden was primarily a function of the complexity of the tax code and frequent changes to the code.[11] Paperwork burden can also be caused by the way rules are enforced. A study we completed last year of workplace regulations found that the employers and union representatives we spoke with generally sup-

[10] Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Changes (GAO/PEMD–94–3, Dec. 6, 1993).

[11] Tax System Burden: Tax Compliance Burden Faced by Business Taxpayers (GAO/T–GGD–95–42, Dec. 9, 1994).

ported the need for these kinds of rules, but were concerned about the operation of the regulatory process and paperwork requirements.[12] The business and union leaders called for a more service-oriented approach to regulation in which agencies would provide more information and permit more input to agency standards-setting and enforcement. Therefore, some of the problems associated with paperwork burden may not be resolved until underlying legislative and implementation issues are addressed.

Some of the continuing regulatory problems may also be due to the paperwork clearance process pursuant to the PRA. Section 3507 of the proposed legislation makes certain changes in that process, including shortening the amount of time OMB has to review proposed rules. Section 3506 (c) of the proposed legislation also explicitly requires federal agencies to establish a forms clearance process to approve proposed collections of information prior to sending them to OMB for approval. Section 3507 describes the clearance process at both OMB and the agencies in some detail. In doing so, the proposed legislation may alleviate some of the problems we have found. In 1994, we reported that disagreements between the Environmental Protection Agency (EPA) and OMB about the clearance process contributed to the lapse of EPA's information collection approvals and the loss of $2 million in enforcement penalties.[13]

Section 3506 (c) (3) requires agencies to certify that they have reduced, to the extent practicable, the information collection burden they impose on the public. This includes establishing different compliance and reporting requirements for small entities, which is consistent with principles in the Regulatory Flexibility Act of 1980. However, we reported last year that federal agencies frequently fail to comply with this act because of a lack of enforcement provisions and processes.[14] We recommended several changes to improve the act's enforcement, some of which have already been implemented. For example, OMB and the Small Business Administration have agreed to work together more closely to ensure that agencies' regulatory flexibility analyses are complete. While the Chairman's proposed draft legislation does not strengthen the act's enforcement provisions, it does emphasize that agencies should consider the resources and capabilities of those who have to respond to the information collection requirements.

The proposed legislation also clarifies an important implementation issue that has been the subject of litigation. In a 1993 report, we examined the effects of two court cases on federal agencies—*Dole* v. *United Steelworkers of America* and *Action Alliance of Senior Citizens* v. *Sullivan*.[15] We found that neither OMB nor the three agencies we examined had developed any formal guidance on how to implement the decisions, and that there were clear differences of interpretation between the agencies regarding what information collections were subject to clearance by OMB. Therefore, we recommended that, in the absence of a legislative change, the Director of OMB issue guidance to clarify when agencies are required to submit information requests for review under the PRA. Section 3502 of the proposed legislation redefines the term collection of information, and thus addresses our recommendation of establishing a common understanding of the information collections that are subject to OMB review.

CONCLUSIONS

Mr. Chairman, there is much work to be done in getting the federal government to engage seriously in the difficult task of modernizing its operations. Improvement goals must be set, accountability for results reinforced, the skills of the federal workforce modernized, and targets of opportunity for eliminating, consolidating, privatizing, or reengineering government functions identified . Achieving these objectives can be greatly facilitated by a solid legislative foundation that emphasizes the use of modern management practices in guiding the crucial decisions ahead. In this regard, we believe that your proposed legislation takes positive steps for improving governmentwide management of information technology at a time when momentous decisions are being made on actions to reduce or consolidate hundreds of federal programs.

---

[12] Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS–94–138, June 30, 1994).

[13] Environmental Regulation: Differences Remain Between EPA and OMB Over Paperwork Requirements (GAO/RCED–94–254, Aug. 23, 1994).

[14] Regulatory Flexibility Act: Status of Agencies' Compliance (GAO/GGD–94–105, Apr. 27, 1994).

[15] Paperwork Reduction: Agency Responses to Recent Court Decisions (GAO/PEMD–93–5, Feb. 3, 1993).

Looking ahead, this Subcommittee can also play a leadership role in focusing on the importance of using technology to minimize the burden of federal information collection requirements. This can be done by exploring how information technology can help better reduce the need for paperwork and facilitate information sharing between agencies.

In addition, while we should remain attentive to the difficulties of measuring burden, I firmly believe that the government should continue to minimize the impact of federal information needs on individuals and businesses. The changes embodied in the proposed legislation are steps in that direction.

Mr. Chairman, this concludes my statement. I would be glad to answer any questions you or other members of the Subcommittee may have at this time.

Mr. MCINTOSH. Thank you. Thank you very much for joining us today.

I will defer my questions until my colleagues have had a chance to ask theirs.

Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

As you probably realize, I couldn't agree with you more. I suppose I shouldn't have such a bad attitude about this and be so skeptical. I guess what I am curious about, and I still don't really understand this whole paperwork reduction business as well as I should, but it just seems to me there is a lot of effort being put into that whole process and by extending it we are just kind of continuing and kind of ratifying that effort. I mean without reading this, I am persuaded that this is what we need to do.

Are we going to be sending the wrong signal with this? I mean you may have met with all of these people and given them all this information, but I am highly skeptical whether it sinks in or not or whether they understand what you are talking about.

Mr. DODARO. Well, Congressman, there is definitely a need to follow up to implement this, and there is a role both for the agencies and for the Congress. For example, what we have developed with this material is to help them benchmark where they are against these practices so that they can begin to make improvements. They definitely need to improve their skill base. They definitely need to quit throwing technology at the problem and really approach it from a business direction.

I will give you just one example which I think really illustrates this point. The Social Security Administration handles disability claims, so if somebody is disabled they can file a claim, and it takes the Social Security Administration 155 days on average to give an initial response to that claim. They were going to buy computers to automate that process. We said, "whoa, wait a minute. Why don't you go back and figure out exactly how long it takes you to process that claim." In the 155 day average, it only takes them 13 hours of staff time to really process that claim, and what they need to do is streamline their business processes. They were having 25 to 30 different people handle the claim, forms and files were passed from person to person, claims were waiting in review. Whereas in the private sector, if you have a claim, whether it is an automobile insurance claim, et cetera, you can call right away and have one person answer your claim.

Now Social Security has listened to us. They have hired some experts to help them reengineer their process, and right now they have a proposal to shrink that processing time up to 40 days. We are hopeful that if we can bring these modern management prac-

tices to the Government that the Government can more effectively use technology. I don't think we have a choice but to keep working on it, and I do think the bill helps improve this.

You know, one of the neglected aspects of the Paperwork Reduction Act has been the information technology component of the act. There has been a lot of focus on the paperwork reduction side, appropriately so, but the areas of information technology have been neglected, and the Government really hasn't put a lot of investment in that area in terms of people.

Mr. PETERSON. Well, I think we also have a mind set problem. You know, it just seems if somebody comes to Government from a different background, just even in our offices there is this mind set that unless you have all this bureaucracy and people checking each other, somehow or another you are doing something wrong, and those of us that try to do something different literally get criticized because there is this whole mentality in the Government that everybody has got to check everybody else and there has got to be all this paperwork. It drives me crazy. You know, that is why I am skeptical.

Ms. Katzen talked about the example of coming up with the form EZ. Well, frankly, I am not convinced at all that has been any significant improvement in anything. The problem that I see from people, they can't figure out which form to file. I mean that is the question I get all the time: Am I supposed to file on the EZ or on this other form? There really isn't a whole lot of difference; they just eliminated some lines.

And you are right on the point in terms of the way the IRS does all of this and they haven't focused on making it simple to electronically file your return. I mean I was just with my son this weekend, who is trying to file his return electronically, and you can't do it because you have got to have a private vendor that you have got to be signed up with and all of this monkey business, and he finally just gave up and mailed it in, and so now they are going to have to input that form manually.

You know, with the Internet and all, why can't the IRS just have a way that you can call up and transmit it without going through all this other stuff?

Mr. DODARO. Yes. Basically they still have technology that they installed in the 1960's.

Mr. PETERSON. That doesn't work.

Mr. DODARO. And it doesn't work very effectively. They have magnetic tapes. Until recently, they would input the data on magnetic tapes and actually have to physically fly the tapes around the country to input into their computer system. Now they have finally installed some efforts to at least transmit data electronically within themselves.

Mr. PETERSON. If they just had whatever these new servers are, these A platforms or whatever they are—they are a PC. I mean all they need is three or four of them. They can do everything in every region just with that, and it would only cost $20,000. You see, they are so into this——

Mr. DODARO. I think your point, Congressman—well, I think your point in terms of mind set is very important. What we found—and this is why we are advocating that top officials get in-

volved in this in the agency—we found systems problems in these leading organizations. They just didn't automatically figure out how to do this. The key where they started is, their top executives really spent time to invest in this area and how they can improve their business, and they made it a critical part of their operation.

Mr. PETERSON. But generally they are forced into this because the bottom line isn't there and they have got a problem and they have got to fix it. The trouble in Government is, there is no bottom line and nobody still thinks this is a serious problem. I mean all this talk about reinventing government and balancing the budget, but there really, truthfully, has not been any serious attempt to actually do something significant in these agencies in terms of downsizing, getting rid of all this middle management that shouldn't have been put there in the first place, and all this other stuff that is there.

My time has expired, but I just hope that there is some way we can—those of us that are interested can try to bust through this.

Mr. DODARO. I think one way to start, Congressman, if I may just add one more issue, is by getting control of the budgets of these agencies. I mean we have advocated slowing down some of these major initiatives that aren't going to produce a good return on the public's investment, and that gets the attention of top officials both at IRS and at Social Security—at the Agriculture Department we recommended stopping the $2.6 billion effort that wasn't headed in the right direction. So I think good oversight and using the leverage of the budget process is a reasonable proxy for the Government for a bottom line beginning.

Mr. PETERSON. Thank you very much.

Mr. MCINTOSH. Thank you.

Let me turn now to Mr. Scarborough.

Mr. SCARBOROUGH. Thank you, Mr. Chairman.

Let me say up front that you certainly have an ally in saying that we need to slow down the budgets of these agencies. I personally believe we need to reduce the number of existing agencies by three or four as soon as possible. But what would you say—and I would like to ask each one of you to respond to this—what would you say to critics who would say, on one hand you are saying we need to make sure that the IRS updates its information services, and we need to bring modern management capabilities I think were your words, to these agencies on one hand, and then on the other hand you say we need to cut their budgets?

Obviously you are not going to be able to update the information services on a huge, monstrous bureaucracy like the IRS that is in 1960's technology without significant cost. Have you all done a cost analysis of that, and what would you say to critics that say you can't have it both ways?

Mr. DODARO. Well, what I would say to that is that we are investing an awful lot of money and getting little in return for it. For example, at the IRS they have spent an estimated $2.5 billion working on their tax system modernization effort for the last 6 or 7 years and we have seen very little progress in that area.

What I would say is that what we find in leading organizations is that they first cut through, as we were talking before, their mind set and really change the way they were doing their business oper-

ations first and then figured out how to bring technology in. They broke their projects down to a more manageable size, they didn't undertake these massive efforts that the Government is trying to undertake. They broke it down, they measured the results, and then they focused on having good performance measures and good cost information to be able to weigh the two. In the Government you have neither at this point. You don't have good measures of what exactly the modernization efforts are supposed to accomplish, and you don't always have good reliable information about the cost.

I will let Chris offer his views on it.

Mr. HOENIG. I would just make two points on that, Congressman, getting back to something that Congressman Peterson had mentioned, that most of the leading State and private sector organizations that we studied actually generated their sense of urgency to change by a problem with the bottom line, whether it was a budget cut or some other significant problem. That forces the urgency to change and ultimately to reevaluate the existing pool of capital investment and redistribute it.

Right now there is plenty of money being spent. What needs to be evaluated is the redistribution of the current pool of capital investment, and that is why it is not an either/or question. Ultimately the forcing function of the cost reduction typically stimulates a real redirection as long as you have got the discipline of the investment control processes that force you to look at prioritization of high-value and low-risk types of investments versus low-value, high-risk types of investments.

Mr. SCARBOROUGH. You stated—one of you stated that the IRS has spent $2.5 billion over the past 6 or 7 years updating the process, their information services. What did that money go to?

Mr. DODARO. It went to a collection of various projects. For example, now they are trying to study the imaging—how to image the returns, and they have had different projects under way over time, and we can submit—I have detailed information on that that I can submit for the record.

Mr. MCINTOSH. If the gentleman would yield 1 second, they are studying imaging?

Mr. DODARO. Yes.

Mr. MCINTOSH. They ought to just go to any computer store and buy technology off the shelf.

Mr. DODARO. A big problem is that they have about 1,000 computer programmers over there that are trying to develop the software themselves, which is a problem in many agencies. I mean there are plenty of off-the-shelf opportunities. But again it goes back to the mind set that, "We have created this; we need to create it ourselves," so a lot of the moneys went for personnel costs in a number of these areas, a number of the moneys went for upgrade of hardware components, but the big problem is developing the software.

Mr. PETERSON. Would the gentleman yield?

Mr. SCARBOROUGH. Sure.

Mr. PETERSON. You know, you don't have to go to the IRS. We have it right here in the House. You cannot do what you need to do because the HIS bureaucracy is in your way and literally you can't get done what you need. I mean that is my talk about the

mind set. It is not just in the agencies, it is in the Congress, and it is in these budget committees. I mean that is the problem right there in our own committee. They don't understand this.

Mr. SCARBOROUGH. Let's say Bob Livingston was ready to write you a check and say, "How much do you need to get the IRS into the 21st century, get their information services into the 21st century?" I understand you haven't done an exact accounting, but can either of you two come close to estimating what type of price tag such a task would take?

Mr. DODARO. I think it would be very difficult at this time.

The two things I would start doing at the IRS which they are not doing now, we have urged them for years, is, No. 1, begin to streamline their business processes. They are just throwing people at the problem, and that is not going to get anywhere; and, second, I would look at fixing their financial information. They don't even have good information on how much accounts receivable they owe.

We did our first financial audit at IRS a few years ago, and we haven't been able to give them an opinion on their financial statements. They thought they had $110 billion of accounts receivable. We figured they only had 65 when we looked at it, and, of that, only 20 was collectible. So you have bad financial data to start with, and then you have the people issue, and I would look to hire and bring in people who have state-of-the-art experience with this.

Part of the reason that they are having difficulties is that their work force is largely skilled in old technology and they haven't had a lot of new talent come into the agency. They have tried, but it is very difficult to attract and retain the right type of people to undertake these massive operations. I mean this is not a small task to try to do this given the complexity of the Tax Code and the amount of paper that they are taking in, but it is very difficult at this time to do it, but I would definitely start with those three areas. I would get control on the people, I would focus effectively on trying to get better information, and I would look at my business processes and really figure out how you can streamline those first before I even ask for a lot of additional money. They could get away right now with their existing computer systems for a while until they could come up with a good plan. I don't think they have a good plan now, they have a collection of projects and things they are studying.

For example, Congressman Peterson mentioned electronic filing. They have not figured out how they could use electronic filing yet as part of their modernization effort. It doesn't make sense now. Right now, you have to pay to electronically transmit their data. I think they charge $65. You can only transmit it when you are due a refund, and the average person—people find this just absolutely perplexing. So there's a lot of their policies that you could start with as well.

Mr. SCARBOROUGH. Thank you.

Mr. MCINTOSH. The time of gentleman has expired.

Thank you both very much for appearing today. I appreciate your testimony and helpful insights. In fact, Mr. Peterson and I were just talking that perhaps this area is something that we should look further into in the subcommittee after we finish the legislative work that we have under the Contract With America.

So thank you. I appreciate that.

Mr. DODARO. Thank you, Mr. Chairman, and we would be very happy to work with you in the future.

Mr. HOENIG. Thank you.

Mr. MCINTOSH. Thank you.

Our final panel is a group of concerned citizens and representatives of interest groups. First we are joined by Mr. Robert Coakley, executive director of the Council on Regulatory and Information Management. Mr. Coakley was formerly on the staff of the Senate Governmental Affairs Committee and, working for then Senator Chiles, helped draft the original Paperwork Reduction Act. I welcome him here and look forward to his insight.

We also have Mr. Jack Sheehan, who is the legislative director of the United Steelworkers of America. The Steelworkers brought the lawsuit which was referred to earlier in some of the testimony and eventually resulted in the ruling by the Supreme Court that certain information collections were not covered by the Paperwork Reduction Act. I am certain that Mr. Sheehan will discuss that case and welcome him here today.

Finally, I am very pleased to welcome Mr. Robert Stolmeier, president of KLC Corp. Mr. Stolmeier is a constituent and a friend from Indiana's Second District. I have asked him to join us to discuss the impact of Federal paperwork burdens on his business, and I want the record to demonstrate that I appreciate Mr. Stolmeier for traveling to Washington to appear before this subcommittee and welcome him here today.

Before we begin testimony, if each of you could rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you.

Mr. Coakley, if you could lead off today.

STATEMENT OF ROBERT COAKLEY, EXECUTIVE DIRECTOR, COUNCIL ON REGULATORY AND INFORMATION MANAGEMENT; JACK SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA; AND BOB STOLMEIER, PRESIDENT, KLC CORP

Mr. COAKLEY. Thank you, Mr. Chairman. Chairman McIntosh, Congressman Peterson, members of the committee, thank you for the opportunity to testify on the Paperwork Act of 1995.

My testimony today is on behalf of the Paperwork Reduction Act Coalition, and if you permit, Mr. Chairman, I will summarize it and ask that my full statement be included in the record.

Mr. MCINTOSH. Without objection, it will been done. I appreciate that.

Mr. COAKLEY. The coalition is an ad hoc organization composed of some 75 trade, professional, taxpayer, and citizen organizations which came together some 5 years ago to support development, passage, and enactment of strengthening amendments to the Paperwork Reduction Act of 1980. Seven organizations serve on the coalition's steering committee, and they and their memberships have been most active and persistent in supporting the evolution of the bill you have before you this morning. They are C–RIM, the U.S. Chamber of Commerce, Citizens for a Sound Economy, the National Association of Manufacturers, the National Federation of

Independent Business, National Small Business United, and the Small Business Legislative Council. Mr. Chairman, we are enthusiastically united in our support for this legislation, and that is a broad broad-based coalition that is not always together, but we are together on this one.

Let me say that we just look very much forward to working with you, our renewed work with you and with this committee, to see the Paperwork Act signed by the President before spring. We welcome the opportunity to change the experience of the past three Congresses. It is time. It is time to embrace these proposed changes, look to the future, and move forward to the hard work of implementation and oversight.

My organization—as to the need for this legislation, my organization estimates that we as a Nation spend almost an amount of time and effort equal to 9 percent of the Gross Domestic Product just to meet the Government's information needs. That is a huge figure. It presents a picture of the enormity of the cumulative Federal paperwork burden. Couple this concern with the fact that violations of reporting and recordkeeping requirements are often attached to new fines and criminal indictments, and you further sense how out of whack the overall Federal role has become.

The paramount reason that we need this legislation, and it needs to be enacted to strengthen the tools of the Paperwork Reduction Act, is that the ability of the executive branch to meet the promises of the original act are eroding. It needs to be strengthened, corrected, and renewed, not weakened by time and neglect, and we believe that the erosion which has occurred to the act's underpinning will be reversed by this legislation.

The Paperwork Reduction Act makes basically two fundamental promises. First, it promises that Government will check the need for information before it asks citizens to maintain or provide that information. Control numbers assigned to each information collection as proof that it has been approved are to be displayed on all information requests. It amounts to a good housekeeping seal, Mr. Chairman, so that every citizen can see that their Government has at least checked on something before they are asked to go through the effort of maintaining or providing it, and absent the display of a validly assigned number, we have this rather strong provision, the public protection provision, that says, notwithstanding any provision of law, public protection prevails over bootleg requirements; you don't have to fill out or you don't have to maintain or provide the information.

The second promise of the Paperwork Act is that the effective use of the structural and policy framework established by the law to improve information and resources management will minimize the public burden.

Now there have been three key crucial factors behind the erosion that we have seen in the nineties. The *Dole* decision is key and is perhaps the most significant one, but the problem today is also agencies who increasingly ignore the spirit and letter of the law and 6 years of the Congress and the executive not being able to agree on what amendments to the act are needed.

Let me point to what we believe the relationship of Title V of H.R. 9 and your proposed addition of it is to the other regulatory

reforms in the contract, and the coalition wishes to stress that a strong OIRA, a strong regulatory traffic cop for the President, is central to other sections of the regulatory reform agenda contained in the contract.

A strong and clearly accountable institution to assist the President to carry out his review of executive agency actions on the regulatory front is key to strong congressional oversight of the regulatory system, and it is key to other reforms and regulatory flexibility, risk assessment, and risk management, cost-benefit analysis, and protections against regulatory abuses that Congress declares it wants done or taken seriously by the executive branch.

Parenthetically, Mr. Chairman, let me add that the coalition was very supportive of President Clinton's issuance of Executive Order 12866 on regulatory planning and review. We particularly welcomed the President's focus on the integrity of the regulatory process and his explicit directive to agency heads, language which was not found in the previous Executive order under President Reagan and President Bush, his explicit directive to agency heads in section 6(a)(3) of that order to follow the law, to adhere to the procedural requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Our problem has been that despite repeated instances of bringing violations of these laws to the agencies' and OIRA's attention, we and the President's directive are too frequently ignored, and we believe these failures to act when laws are ignored by Federal agencies enrages the public. It destroys confidence in the workings of government. A stronger OIRA and a more vigorous congressional oversight will be necessary if the public perception of a fair and reasonable regulatory process that has integrity is to be reinvented and established.

A corollary point on the relationship to the contract, Mr. Chairman, is the point we just left with the GAO witnesses, and it is that the PRA is the statute which links the executive and agency regulatory actions with new information technology in the information age. This, too, is key to successful implementation of other regulatory reforms in the contract, and the proposed amendments you are looking at today will further inextricably link the information aspects of regulatory action with regulatory review.

Let me turn to our recommendations. We as a coalition do recommend that the burden reduction goal of 5 percent be raised to 10 percent. We believe the committee should consider language to make goals more enforceable, thereby encouraging agencies to eliminate existing burdens when they find it necessary to add new information burdens. We have had a good deal of discussion on how you might go about doing that today, Mr. Chairman.

My quick suggestion here is, more focus needs to be put on how we come up with the basic inventory of what is out there on burden. That way, measuring goals and accomplishments becomes a lot more doable thing and there is a lot less game playing that Director Miller and Director McIntyre talked about.

The proposal that you have before you today, Mr. Chairman, has a provision which enables anybody in the public to petition their Government and ask as to whether a paperwork requirement, a

regulatory paperwork requirement, is covered under the act, and whether the act has been complied with.

Our experience with this in the past has been somewhat frustrating, and what we recommend now is that a private right of action should be granted to any citizen who petitions the Director of OMB for a determination of whether a paperwork request is subject to the act's protection and does not get a response.

Stated another way, a citizen should have standing to sue in court and seek an appropriate remedy if the Director does not answer the mail and respond to alleged bootleg requirements, and we recommend specific language there, Mr. Chairman. You are probably somewhat familiar with it. It is found elsewhere in the contract, but the point that we make here is that it is one thing to say that a citizen has a right to petition and get an answer, but we have been doing that, many members of our coalition now, for some time and there are too frequently, too often, instances where you don't get any answer at all.

Ms. Katzen this morning spoke of the case that my organization was a part of, of going to court seeking review under the Administrative Procedures Act to ask for an opportunity to publicly comment on a survey by the Department of Labor. The judge did not entertain our case, but his basic point was that your remedy is with the Administrator of OIRA. We wrote her in January a year ago and also sent her the judge's suggestion, and we have yet to this date had an opportunity to respond to this request. Whether or not that bootleg or potential bootleg is covered under the act has been a request that has come from a number of organizations, and there has been no response.

So what we are suggesting here—and there are a number of other examples to this that we could take—that we could go through here. I believe Congressman Crapo this morning was thinking of a different example. But this is one where we as a coalition in our 5-year evolution have come to somewhat of a new point of view, and it would be different from what is in the legislation now, and we strongly recommend that you take it up, and very sympathetic with your view that this is a means properly constructed that could be used to empower the public to see to it that the law is followed. We also recommend that the bill be amended——

Mr. MCINTOSH. Mr. Coakley, if you could summarize the remainder of your testimony, and perhaps we can elicit it in questions.

Mr. COAKLEY. Surely. The bill should be amended to explicitly require all recordkeeping requirements contain the specific retention requirement, and, Mr. Chairman, that is one that would save billions of dollars.

Thank you.

[The prepared statement of Mr. Coakley follows:]

PREPARED STATEMENT OF ROBERT COAKLEY, EXECUTIVE DIRECTOR, COUNCIL ON REGULATORY AND INFORMATION MANAGEMENT

EXECUTIVE SUMMARY

• The Paperwork Reduction Act Coalition enthusiastically supports the Paperwork Reduction Act of 1995 (PRA). Recall that last Congress a full quarter of the entire Congress, Democrats and Republicans alike, actively sponsored similar legislation. Title V of H.R. 9 of the "Contract" has its origins in similar legis-

lation which passed the Senate unanimously and was supported by President Clinton last Congress. Enactment of the PRA of 1995 will be an important example of how the new leadership in Congress will overcome the gridlock and frustration on bills which promise common sense regulatory relief to the American public.

• An amount of time and effort equal to 9 percent of the Gross Domestic Product is dedicated to meeting the Federal Government's information needs. This is a huge figure, presenting a picture of the cumulative paperwork burden. The paramount reason new legislation needs to be enacted is that the ability of the Executive branch to meet the promises of the existing law is eroding. The Act needs to be strengthened, corrected, and renewed, not weakened by time and neglect.

• Three crucial factors contribute to the erosion: the Supreme Court decision in *Dole* v. *United Steelworkers of America;* agencies who increasingly ignore the spirit and letter of the law; and six years of Congress and the Executive not being able to agree on what amendments to the Act are needed. The Coalition believes the PRA of 1995 will reverse the erosion.

• The Coalition stresses that a strong Office of Information and Regulatory Affairs, a strong regulatory traffic cop for the President, is central to implementing other parts of the regulatory reform agenda contained in H.R. 9 of the "Contract".

• Seven recommendations are made to improve the legislation upon which the Committee will be deliberating imminently. The bill's present goal to reduce the public burden of paperwork five percent should be raised to ten percent. Language to make the goals more enforceable should be considered. A private right of action should be granted to any citizen who petitions the Director of OMB for a determination of whether a paperwork request is subject to the Act's protection and does not get a response. Strong whistleblower language should be retained and all recordkeeping requirements should be required to contain specific record retention requirements. Billions of dollars of waste will be eliminated.

Chairman McIntosh, Congressman Peterson, members of the Committee. Thank you for this opportunity to testify on the Paperwork Reduction Act of 1995.

My name is Robert Coakley. I am Executive Director of C–RIM, the Council on Regulatory and Information Management. I also serve as Co-Chair, with Nancy Fulco of the U.S. Chamber of Commerce, of the Paperwork Reduction Act Coalition. My testimony today is on behalf of the Coalition.

The Coalition is an ad hoc organization composed of some seventy-five trade, professional, taxpayer, and citizen organizations which came together five years ago to support development, passage, and enactment of strengthening amendments to the Paperwork Reduction Act (44 USC 35) of 1980. Those amendments include reauthorization of appropriations for the Office of Information and Regulatory Affairs (OIRA), an office within the Executive Office of the President created by the Congress in the 1980 Act.

Seven organizations serve on the Coalition's steering committee and they and their memberships have been most active and persistent in supporting the evolution of the bill before you this morning. They are C–RIM, the U.S. Chamber of Commerce, Citizens for a Sound Economy, the National Association of Manufacturers, the National Federation of Independent Business, National Small Business United, and the Small Business Legislative Council.

THE COALITION'S POSITION

Mr. Chairman, we are enthusiastically united in our support for this legislation. As you well know, this legislation has its origins in H.R. 2995, the Paperwork Reduction Act of 1994, legislation whose primary sponsors in the last Congress were Chairman Clinger and Congressman Sisisky, and whose provisions are presently manifest in Title V, of H.R. 9, the "Job Creation and Wage Enhancement Act of 1995". We believe these amendments to the generic Paperwork Reduction Act (PRA) are a vibrant and vital piece of the "Contract With America" that can be enacted quickly and with overwhelming bipartisan support.

Moreover, passage of the PRA of 1995 will be an important example of how the new leadership in the Congress can help overcome the gridlock and frustration on bills which promised common sense regulatory relief to the American public and enjoyed strong bipartisan support. Recall that last Congress a full quarter of the entire Congress, Democrats and Republicans alike, actively sponsored similar legislation. The Senate passed the PRA of 1994 unanimously and President Clinton supported

the effort. Nevertheless, the Chairman to the House's Government Operations Committee refused repeatedly to hold hearings or otherwise act on the legislation.

The Senate Committee on Governmental Affairs unanimously reported companion legislation last Wednesday. Senators Nunn and Roth, the primary sponsors of S.244, anticipate full Senate action soon. We very much look forward to our renewed work with you Mr. Chairman, and with this Committee to see the Paperwork Reduction Act of 1995 signed by the President before Spring. We welcome the opportunity to change the experience of the past three Congresses. It is time to embrace these proposed changes, look to the future, and move forward to the hard work of implementation and oversight.

WHY THE LEGISLATION IS NEEDED

The Coalition testified before the House Small Business Committee (October 28, 1993) and the Senate Committee on Governmental Affairs (May 19, 1994) last Congress. The views expressed by our Coalition on those occasions as to why the legislation is needed are even more valid today. Let me reiterate the most important reasons and conclude with some recommendations to the Committee.

My organization, C–RIM, estimates that an amount of time and effort equal to 9 percent of the Gross Domestic Product is dedicated to meeting the Federal Government's information needs. That is a ballpark figure of what the off-budget cost of federal paperwork requirements—the "hidden taxes" of government programs—amounts to.

Here is how we reach that number. The Government's own estimate of the hours it takes the public to collect information, report, keep the records, fill out the forms, and answer all the questions that accompany the delivery of federally sponsored services is compiled for the annual Information Collection Budget. The fiscal 1991 estimate (the last annual estimate reflected in an Annual Report by the Office of Information and Regulatory Affairs) is 6.5 billion hours. Eighty-three percent of that is associated with the Treasury Department.

Treasury's large share is due to an adjustment made by the IRS in the late 1980's when an IRS commissioned 5-year study by Arthur D. Little indicated that the IRS previously had underestimated the burden of its reporting and recordkeeping requirements by a factor of 7. It adjusted its burden figures accordingly. The rest of the Government did not.

Take the remaining 17 percent, adjust it conservatively by a factor of 4 instead of 7, and the total burden hour number comes to 10.2 billion hours.

Time is money. At 50 dollars an hour—a reasonable estimate of the average cost of an hour spent for meeting federal reporting or recordkeeping requirements—the cost of the federal paperwork burden comes to 510 billion dollars, which approximates 9 percent of the 1992 Gross Domestic Product.

This is a huge figure, presenting a picture of the enormity of the cumulative federal paperwork burden. Relate it to individual small business persons for example, and you begin to sense why so many are so anxious about so much paperwork. A small business person often can not even do what they are being asked to do. A new employee means new paperwork mandates, and that affects choices about growth and new jobs. Couple this concern with the fact violations of reporting and recordkeeping requirements are often attached to new fines and criminal indictments, and you further sense how out of whack the overall federal role has become.

- It suggests that estimates that forty-eight cents out of a dollar in health care go to paperwork costs are probably on point.
- It explains why so many teachers are concerned about having to spend too much time filling out forms instead of teaching students.
- It helps explain why federal contractors are enthusiastic about the prospective impact of streamlining the Federal procurement process. A 10 percent saving on paperwork costs in a 200 billion dollar program is 20 billion dollars that the taxpayers do not have to pay to get the same amount of goods and services to meet our acquisition needs.
- It explains why state and local government officials are so concerned over the paperwork burden. They are affected by some 20 percent of the overall burden, suggesting that over 100 billion dollars of the cost to meet the Federal Government's information needs are involved in unfunded mandates.

No one denies the importance of information in delivering vital government services and meeting necessary government roles—be it health care, environmental protection, education, defense conversion, taxes, or the incentives for new job creation in our economy—but the problem of excessive, cumulative regulatory paperwork pervades the ability to make progress on every single domestic issue of our time.

The paramount reason new legislation needs to be enacted to strengthen the tools in the Paperwork Reduction Act is that the ability of the Executive branch to meet the promises of the existing Paperwork Reduction Act is eroding. The Act needs to be strengthened, corrected, and renewed, not weakened by time and neglect.

The erosion which has occurred to the Act's underpinning needs to be reversed. We believe the Paperwork Reduction Act of 1995 will accomplish this objective.

WHAT THE PRA DOES

The existing law makes two essential promises:

- First, it promises the public, state and local government, educational institutions, federal contractors, and business persons, big and small, that their Government will check the need for information before anyone is asked to provide information or maintain records. It entitles the public—who must provide and maintain the information the Government needs—to participate in the development and oversight of each information request. Control numbers, assigned to each information collection as proof that it has been approved are to be displayed on all information requests. Absent the display of a validly assigned number, no one is obligated to respond. Notwithstanding any provision of law, "public protection" prevails over "bootleg requirements."

The premise is that the Government has an affirmative responsibility to do its job before anyone in the public is mandated to respond to a paperwork request.

- Second, it promises that effective use of the structural and policy framework established by the law to improve "information resources management" will minimize the costs and public burden of providing and maintaining the information that Government needs to deliver services and maximize the usefulness of the information collected.

As the Speaker and the President have both highlighted recently, we live in the Information Age. Transition to a "third wave" society is upon us. Applying new information technology and being "smart" about how Government meets its vital information needs will reduce the burden upon the public and deliver more with less. Certainly, this broad strategic approach is critical to a successful reengineering of how the federal government operates and asks American citizens to participate.

THREE CRUCIAL FACTORS BEHIND EROSION

The problem today is that the law's effectiveness is increasingly eroded by three major factors: the Supreme Court decision in *Dole* v. *United Steelworkers of America;* agencies who increasingly ignore the spirit and letter of the law; and six years of Congress and the Executive not being able to agree on what amendments to the Act are needed.

- The *Dole* decision has confused Federal agencies as well as the public as to what is covered by the Act under the "public protection" section and other provisions providing procedural safeguards, such as the public notice and OIRA approval requirements. The Court decision suggests that some paperwork requirements—where the public respondents do not provide the information requested directly to the government but rather to a third party—are not within the scope of the Act. This interpretation strikes at the heart of the definition of recordkeeping requirements in instances where the data are not provided directly to the government. Most importantly, it has given agencies an excuse to avoid meeting responsibilities under the law.

The damage done to the integrity of the statute by this Court case cannot be overestimated. OMB's own Information Collection Budget (ICB) of 1992 notes that in fiscal 1991, the first year after the decision, the Departments of Labor, Transportation, Health and Human Services, as well as the Environmental Protection Agency and the Federal Trade Commission, began to remove information collections from what they previously recognized as covered.

More specifically, the budget document noted that the FTC removed 88 percent of its paperwork burden. It also noted that the Occupational Safety and Health Administration (OSHA) determined that virtually none of its information collection requirements are subject to the Act. OSHA has ruled that all recordkeeping activities used to monitor compliance with health and safety standards are exempt from provisions of the PRA.

The General Accounting Office, in its February 1993 report, "Paperwork Reduction, Agency Responses to Recent Court Decisions" (GAO/PEMD–93–5), examined the impact of the decision on agency interpretations of the law and found "inconsistency and confusion". The examination was restricted to OMB

and three agencies, the Environmental Protection Agency, Health and Human Services, and the Department of Labor. Significantly, GAO identified the differences between how the three agencies viewed the decision and cited examples of previously cleared information collections no longer submitted for public comment and OMB review. And as GAO put it, "OMB does not object when an agency does not submit ICRs for OMB review based on the agency's interpretation of the case."

Mr. Chairman, we respectfully observe that you can drive truckloads of paperwork requirements through that opening to escape accountability. We believe that is what is happening increasingly.

The Coalition's position is that all regulatory paperwork requirements should be covered by the Act's protections—not just those that are submitted to the federal government. If the erosion surrounding the Act's promises is to be reversed, we believe Congress must take this step to clarify what the PRA means.

• The second factor contributing to the erosion is the growing tendency of agencies to fail to follow the requirements of law—to just plain ignore the law. The Act requires federal officials to go through some common sense steps to check for need and duplication, and to seek public participation and approval from OIRA before they display the corresponding control number—the "Good Housekeeping Seal" if you will—that mandates that the public maintain or provide information. Any information collection lacking this control number is an illegal "bootleg" collection. The Government thus has an affirmative responsibility to do its job before asking the public to do theirs.

The "sunset" provisions of the law require paperwork requirements to be reapproved every three years, and the law explicitly prohibits an agency from going out and collecting information without a validly assigned control number. Once agencies find that very little happens if they fail to meet their responsibilities, they tend to ignore them. We believe this is happening ever more frequently, and absent enactment of this legislation, the integrity of the regulatory process is likely to deteriorate further.

For example, in a June 1987 GAO Report, "Information Management, Status of Formerly Approved Paperwork Requests" (GAO/IMTEC–87–22), investigators sampled how well agencies were meeting the three year sunset requirement for paperwork. They found that agencies failed to follow the law 8 percent of the time.

This finding raised minor concerns compared to the situation Administrator of EPA, Carol Browner, found when she assumed her position. In February of 1993 the Administrator of EPA, Carol Browner, publicly announced an internal agency-wide investigation of EPA's failure to comply with the PRA. As she put it, "[it] has been brought to my attention that OMB approval for some information requests has not been consistently maintained."

To the best of our knowledge, the final results of the investigation are not available to this day, two years after the initial announcement. We do know that EPA had to halt its law enforcement program until it could assess the consequences of hundreds, if not thousands, of instances where the agency failed to follow the law over the past ten years.

While Administrator Browner moved forcefully to correct the problem, she did not report the Agency's lack of management controls regarding its information resources as a "material weakness" in her latest Federal Managers Financial Integrity Act Report to Congress, and OIRA's most recent annual report does not list the violations as required by the PRA's "Responsiveness to Congress" section. Moreover, in reviews of EPA notices in the "Federal Register", we continue to observe that the "bootleg" problem in new regulations persists.

We believe the proliferation of "bootlegs" is occurring across the government. The EPA is only the tip of an iceberg. During the recent rulemaking regarding the Education Department's rewrite of accreditation procedures—a rule which will fundamentally change the Federal Government's relationship with higher education—the OIRA noted that for four years the Department had not met the requirements of law and justified the paperwork required of educational institutions in the existing procedures. Recall the Agriculture Department's recent rulemaking on "safe meat" handling. Despite a tortuous rulemaking involving litigation and a Federal Judge ordering a reopening of the public comment period, the rule still does not display a validly assigned control number indicating that its information requirements are legally enforceable and subject in the three year "sunset" requirements of the PRA.

These abuses must be stopped if we are to reverse further erosion of trust in the integrity of the rulemaking process.

• The third factor in the erosion is the inability of the Executive branch and Congress to come to an agreement on what amendments to the PRA are needed. The authorization language for appropriations to OIRA expired in 1989. Since then, three Congresses during both the Bush and Clinton Administrations have been considering various proposals to amend the PRA. A major effect has been to signal to the agencies that they do not need to pay much attention to the role Congress assigned to the OIRA. The inability to amend the Act has contributed significantly to neglect of the Act's promises.

We believe legislative action to enact these amendments, and a strong signal from Congress are absolutely essential if creditability is to be restored to the promises made by the PRA to the American people. For this reason, the Coalition believes Title V of H.R. 9 of the "Contract with America" carries special significance. We believe the legislation you are considering today will reverse the erosion which has accelerated since the Supreme Court decision in February of 1990.

RELATIONSHIP OF THE PRA TO OTHER REGULATORY REFORMS IN THE "CONTRACT"

The Coalition wishes to stress that a strong OIRA, a strong regulatory traffic cop for the President is central to other sections of the regulatory reform agenda contained in H.R. 9 of the "Contract".

The PRA stands as the single most important instance where Congress declared it wants the President, through OMB to review the regulatory actions of the agencies. As President Carter noted when he signed the law after the November 1980 elections:

> The act I'm signing today will not only regulate the regulators, but it will also allow the President, through the Office of Management and Budget, to gain better control over the Federal Government's appetite for information from the public. For the first time it allows OMB to have the final word on many of the regulations issued by our Government. . . . (Presidential Documents, Administration of Jimmy Carter, December 11, 1980, at 2795.)

A strong, and clearly accountable institution to assist the President carry out his review of executive agency actions on the regulatory front is key to strong Congressional oversight of the regulatory system. It is key to whether reforms in regulatory flexibility risk assessment, risk management, cost benefit analysis, and protections against regulatory abuses that the Congress declares it wants done are taken seriously by the executive branch.

Parenthetically, let me add the Coalition was very supportive of President Clinton's issuance of Executive Order 12866 on Regulatory Planning and Review. We particularly welcomed the President's focus on the integrity of the regulatory process and explicit directive to agency heads in Section 6(a)(3) of the Order to follow the law—to adhere to the procedural requirements of ". . . the Administrative Procedure Act, the Regulatory Flexibility Act, [and] the Paperwork Reduction Act . . .".

Our problem has been that despite repeated instances of bringing violations of these laws to the agencies and OIRA's attention, we and the President's directive are too frequently ignored. We believe these failures to act when laws are ignored by federal agencies enrages the public. It destroys confidence in the workings of government. A stronger OIRA and more vigorous Congress oversight will be necessary if the public perception of a fair and reasonable regulatory process that has integrity is to be reinvented and established.

A corollary point is that the PRA is the statute which links the Executive and agency review of regulatory actions with new information technology and the information age. This too, is key to successful implementation of other regulatory reforms in the "Contract". The proposed amendments will further inextricably link the information aspects of regulatory action with regulatory review.

RECOMMENDATIONS

Mr. Chairman, we were asked to review the legislative proposal the Subcommittee will be deliberating upon imminently. We make the following recommendations which we believe will strengthen and improve the legislation.

1. The bill's present goal to reduce the burden of all federally sponsored paperwork by five percent should be raised to ten percent. The Committee should consider language to make the goals more enforceable, thereby encouraging agencies to eliminate existing burdens when they find it necessary to add new information burdens.

2. The proposals language requiring a written answer by the Director of OMB to a public inquiry of whether a paperwork request is subject to the paperwork act tracts the Senate bill's language. We recommend the corresponding language con-

tained in the "Contract" be used. It is stronger and more clear. (Replace Section 3517(b) of the proposal with Section 5306 of H.R. 9).

3. A private right of action should be granted to any citizen who petitions the Director of OMB for a determination of whether a paperwork request is subject to Act's protections and does not get a response. Stated another way, a citizen should have standing to sue in court and seek an appropriate remedy if the Director does not answer the mail and respond to alleged "bootleg" requirements. We recommend that the following language be added at the end of the appropriate section. "Whoever is adversely affected by the failure of the Director to respond under this subsection, may in a civil action obtain appropriate relief."

4. The "whistleblower" language adopted by this proposal to amend the existing law's Section 3507 (h) should be retained. It is the language contained in the "Contract" and is superior to the language in Senate bill S.244.

5. The bill should be amended to explicitly require all recordkeeping requirements contain a specific record retention requirement. Recordkeeping requirements should not be approved unless they display how long respondents must keep them.

This recommendation has been highlighted by a professional association in the Coalition, The Association of Records Managers and Administrators, as a change which will eliminate billions of dollars of waste. The Coalition urges the Committee to adopt such an amendment.

6. The Coalition has been asked whether we support permanent or periodic authorization of appropriations for the Office of Information and Regulatory Affairs. We acknowledge there are arguments on both sides of this question. We support periodic authorization. We believe periodic authorization does create an incentive for the Congress to periodically revisit how well the Act is working and encourages needed Congressional oversight.

7. The proposal tracts the Senate bill's change of the existing law's definition of "information resources management" and adds a complementary definition for "information resources". As we testified before the Senate last Congress, this concept is fundamental to the Act's entire structure. We remain concerned that these two defined terms may narrow the existing law's meaning that the management of information resources encompasses more than just the direct use of information technology and labor resources by Federal agencies. It includes the use of the public by agencies to maintain and provide information.

Accordingly, we recommend that the phrase, "and the persons who provide or maintain information to fulfill the Federal Government's information needs" be added at the end of the proposed definition for "information resources". This will reinforce the Act's central contribution that the most important aspect of better information resources management is that it will lead to a reduction of the burden on the American public.

Mr. MCINTOSH. Thank you. I appreciate that.

When we get to the questions, I will want to explore further on that question of legal review.

Mr. Sheehan, thank you for joining us today and welcome. If you could provide your insights into this issue.

Mr. SHEEHAN. Thank you, Mr. Chairman.

We do have a broader text, and I submitted a summary text which I will read to you right now.

The original Paperwork Reduction Act was passed by Congress in 1980 as a response to what was perceived as a legitimate concern about the multitude of Federal regulations and reporting requirements. Like all human endeavors, government is an imperfect enterprise. Occasionally some agencies of Government were drafting and implementing regulations and reporting requirements unaware of related activities occurring at other agencies of Government. As a result, duplicative regulations and reporting requirements increased the cost both of Government agencies as regulators and to those entities that were being regulated. Thus the PRA was originally designed as a response to the lack of interagency coordination.

Continuing efforts to improve efficiency and effectivess of Government regulations are a legitimate objective of public policy. The

burden, however, of duplicative disclosure to Government agencies should not be confused with the obligation of disclosure to exposed populations. Thus, for example, with regard to effectiveness within Government, the EPA is conducting its own common sense initiative designed to streamline its rulemaking and enforcement activities. The Steelworkers Union is participating along with other interested parties in helping EPA to achieve its goals. Other agencies such as OSHA have also initiated their own internal regulatory reforms to improve their effectiveness. Additionally, President Clinton's Executive Order 12866 which provides for improved regulatory coordination and planning within Federal agencies builds upon previous Executive orders by both Democratic and Republican Presidents.

Problems arise, however, when such laws as the Paperwork Reduction Act are used as legislative vehicles not to improve how Government regulates but rather to prevent Government from regulating.

The legislation before the subcommittee would overturn the 1990 Supreme Court decision in *Dole* v. *United Steelworkers of America* where the Court held that OMB did not have the authority to disapprove provisions of OSHA's hazard communications standard requiring employers to disclose information about the hazards of toxic chemicals to workers. The *Dole* case reached the Supreme Court after years of foot dragging by OMB in complying with decisions of the lower Federal court which had previously found OMB had exceeded its legal authority in blocking third party disclosure requirements in OSHA standards. Indeed, throughout the 1980's OMB became a superregulator, substituting its views and its political ideology for scientific and policy determinations by the regulatory agencies.

Furthermore, I am unaware of even one example where OMB used its review authority to recommend that OSHA strengthen a proposed standard to protect worker safety and health. Indeed, the presumption on the part of OMB seems to have always been that the best regulation is the least regulation or no regulation despite sometimes overwhelming evidence to the contrary.

Despite this unfortunate record at OMB, the legislation before you today would give OMB sweeping new authority to interfere with the obligations of employers to disclose information to their workers about safety and health in the workplace. Under the legislation, OMB's review authority would be extended to all information required to be disclosed to third parties and the public.

Justice Brennan, in his court case, observed: "Among regulatory tools available to Government agencies charged with protecting public safety and health are rules which require regulated entities to disclose information directly to employees, consumers, and others. Disclosure rules protect by providing access to information about what danger exists and how they can be avoided."

It is absolutely clear based on the history of the last 12 years that this change in the law which you are now contemplating will inevitably have a chilling effect upon the willingness and the ability of regulatory agencies to impose disclosure requirements in the future.

Now, Mr. Chairman, let's not forget the extensive procedural safeguards which already exist in current law before an agency can promulgate a final rule. Each agency's organic law sets out the scope of that agency's regulatory jurisdiction and often sets limits on the extent of its regulatory authority. Whenever an agency proposes a draft proposal, it is usually after there has been considerable public demand for action.

Under existing Executive orders as well as the Paperwork Reduction Act, draft proposals are subject to review by OMB. Moreover, another set of procedures under the Administrative Procedure Act must be followed. The final rule is once again subject to review by OMB and is open to judicial review challenge after it has been promulgated.

It is clear that regulatory agencies are not simply proposing unwarranted and unneeded rules given this lengthy process. Overturning *Dole* does not facilitate the dissemination of important health and safety information. Instead, it makes it easier to keep people in the dark about risks to their health and their lives. Overturning *Dole* does not make Government smaller, more efficient, more effective. Instead, it reaffirms OMB's role as a superagency of the Federal Government that can substitute nonscientific, political, economic judgments on urgent issues of workplace safety and health. Setting aside and overturning the *Dole* decision, this legislation is flawed in a number of ways that we mentioned in our text.

I am very close here to the end, I think, and perhaps I should stop.

Mr. MCINTOSH. If you could go ahead and summarize the remainder of it, yes, that would be great, Mr. Sheehan.

Mr. SHEEHAN. The one item that I would just make a brief reference to is this whole question of risk assessment and cost-benefit analysis, and, frankly, Mr. Chairman, if you read your own bill you will see an unbelievable prescriptive text, and obviously there are many of the regulated people in the private sector that are complaining about prescriptive texts of regulations that apply to them.

If there is some kind of rule of consistency here, what you are imposing on these agencies is an unbelievable text, I think. In reading some of the literature, you will find that also being spoken about in others. I have a sentence in my testimony which indicates that methodologies, detailed in this act, are excessively prescriptive and are inducive to gridlock, regulatory gridlock, which would cause an agency to be bogged down in the labyrinth of vague and theoretical exercises. Again I have heard comments that regulatory opponents would like to see that process being subjected to judicial review. We would have had one holy war going on if each of the steps in this procedure of risk assessment and cost-benefit analysis would be subjected to subsequent judicial review.

Frankly, Mr. Chairman, we need regulations. The marketplace can't do it for us. We have to internalize these costs. We do it through a regulatory government.

Thank you.

[The prepared statement of Mr. Sheehan follows:]

PREPARED STATEMENT OF JACK SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

Mr. Chairman, I will address the reauthorization of the Paperwork Reduction Act first followed by some comments on the risk assessment provisions of Title III in H.R. 9, the Job Creation and Wage Enhancement Act of 1995.

The original Paperwork Reduction Act was passed by Congress as a response to what was perceived as a legitimate concern about the multitude of Federal regulations and reporting requirements. Like all human endeavors, government is an imperfect enterprise. Occasionally, some agencies of government were drafting and implementing regulations and reporting requirements unaware of similar activities occurring in other agencies of the government. As a result, duplicate regulations and reporting requirements increased the costs both to government agencies as regulators and to those entities that were being regulated. Thus, the PRA was originally designed as a response to a lack of interagency coordination. Continuing efforts to improve the efficiency and effectiveness of government regulations are a legitimate objective of public policy.

For example, the Environmental Protection Agency (EPA) is conducting its own "Common Sense" initiative designed to streamline its rulemaking and enforcement activities. The Steelworkers union is participating along with other interested parties in helping EPA to achieve its goals. Other agencies, such as OSHA, have also initiated their own internal regulatory reforms to improve their effectiveness. Additionally, President Clinton's Executive Order 12866 which provides for improved regulatory coordination and planning within Federal agencies, builds upon previous executive orders by Democratic and Republican presidents dating back to the early 1970's. The Executive Order requires new disclosure procedures which are already producing increased openness and accountability. For example, the public can now know when agencies have submitted proposed regulations to OMB for review. The public can also learn what non-governmental entities have contacted OMB regarding regulations. There is also new recognition that lengthy delays in reviewing regulations, such as plant safety guidelines, literally costs workers' lives. These are legitimate examples of efforts to improve government regulation.

Problems arise, however, when laws such as the PRA are used as legislative vehicles not to improve how government regulates, but to prevent government from regulating.

The legislation before the Subcommittee would overturn the 1990 U.S. Supreme Court decision in *Dole* v. *United Steelworkers of America* where the Court held that the Office of Management and Budget (OMB) did not have the authority to disapprove provisions of OSHA's Hazard Communication Standard requiring employers to disclose information about the hazards of toxic chemicals to workers.

The *Dole* case reached the Supreme Court after years of foot-dragging by OMB in complying with the decisions of lower Federal courts which had previously found that OMB had exceeded its legal authority in blocking the third-party disclosure requirements in the OSHA standard.

Indeed, throughout the 1980's, OMB became a "super regulator" substituting its views and its political ideology for the scientific and policy determinations of the regulatory agencies.

Other examples of OMB's extensive interference under Executive Orders on scientific and technical issues include:

- Blocking the OSHA proposed standard on grain elevator safety for 1½ years until OSHA included provisions for dry sweeping instead of mechanical controls for dust recommended by the National Academy of Sciences. During this period of delay, dozens of workers were killed or seriously injured in grain elevator explosions nationwide;
- Forcing OSHA to delete a short-term exposure limit (STEL) from a court-ordered standard on the toxic chemical ethylene oxide. The U.S. Court of Appeals for the D.C. Circuit later found that the short-term exposure limit was necessary to protect workers from peak exposures to this cancer-causing chemical and ordered OSHA to issue the short-term limit;
- Developing its own risk assessment for formaldehyde in an attempt to prove that OSHA's risk estimates were too high and the proposed regulation too strict. In its review of the final standard, the Court of Appeals for the D.C. Circuit held that OSHA's risk estimates may, in fact, have been too low. The court ordered OSHA to reconsider its estimates and whether the lower standard was warranted.

Throughout the 1980's, I am unaware of even one example where OMB used its review authority to recommend that OSHA strengthen a proposed standard to protect workers' health and safety. Indeed, the presumption on the part of OMB seems

to have always been that the best regulation is the least regulation or even no regulation, despite sometimes overwhelming evidence to the contrary.

Despite this unfortunate record at OMB, the legislation before you today would give OMB sweeping new authority to interfere with the obligation of employers to disclose information to their workers about safety and health risks in the workplace. Under the legislation, OMB's review authority would be extended to all information required to be disclosed to third parties and the public.

Justice Brennan observed in his opinion in the Dole case:

> Among the regulatory tools available to government agencies charged with protecting public health and safety are rules which require regulated entities to disclose information directly to employees, consumers, or others. Disclosure rules protect by providing access to information about what dangers exist and how they can be avoided.

It is absolutely clear based upon the history of the past 14 years that this change in the law will inevitably have a chilling effect upon the willingness and the ability of regulatory agencies to impose disclosure requirements in the future.

It is wrong both morally and as a matter of public policy not to tell a steelworker in Wheeling, an oil worker in Houston, or a manufacturing worker in Chicago when they are at risk from known toxic or hazardous materials in the workplace, especially after the agencies have followed a lengthy rulemaking process.

Mr. Chairman, lets not forget the extensive procedural safeguards which already exist in current law before an agency can promulgate a final rule. Each agency's organic law sets out the scope of that agency's regulatory jurisdiction and often sets limits on the extent of its regulatory authority. Whenever an agency proposes a draft proposal, it is usually after there has been considerable public demand for action. Under existing executive orders as well as the PRA, draft proposals and draft rules are subject to review by OMB. Assuming that this initial hurdle is successfully overcome, another set of procedures under the Administrative procedures Act must be followed. These include publication of a Notice of Proposed Rulemaking in the Federal Register, providing for notice and comment. The agency must then review the docket of public comments and take these comments into consideration before drafting its final rule. The final rule is once again subject to review by OMB. Agencies must also pay attention to the requirements of the Regulatory Flexibility Act and other executive orders as well.

It is clear that regulatory agencies are not simply proposing unwanted or unwarranted rules given this lengthy and costly review process. More often than not, regulations are proposed because there is a clear need. These review procedures may take years. OSHA's confined space rule took 17 years to implement from the time it was first initiated. The Hazard Communication Standard, originally developed in 1974, was not fully extended to all workplaces until 1987.

Overturning *Dole* does not facilitate the dissemination of important health and safety information. Instead, it makes it easier to keep people in the dark about risks to their health and their lives.

Overturning *Dole* does not make government smaller, more efficient, or more effective. Instead, it reaffirms OMB's role as a superagency of the Federal government that can substitute its non-scientific political or economic judgments on urgent issues of workplace health and safety.

Aside from overturning the *Dole* decision, this legislation is flawed in other ways as well.

For example, it includes an expanded, overly-broad definition of what constitutes a paperwork burden to include "time, effort, and financial resources expended for organizing, installing and utilizing technology and systems" in addition to resources necessary to review and complete information collections. Thus, practically all costs of regulatory and statutory compliance with requirements such as workplace monitoring of toxic chemicals or environmental releases would be considered to be a paperwork burden that must be minimalized. Again, OMB would have the authority to determine if such measures have practical benefits and should be scaled back even though other statutes might specifically require such measures. Again, OMB should not be put in the position of making such determinations where it clearly lacks the expertise to make sound decisions. These decisions should properly be made at the regulatory agencies.

Another problem with the bill as drafted is that it fails to balance the paperwork burden reduction with the benefits which may be derived from information collection. There is every presumption in the bill that regulations and reporting requirements impose unnecessary burdens. Unfortunately, there is very little recognition of the benefits derived from information collection. Information collection is viewed

as bad and intrusive, rather than as an essential function of a responsive and responsible government.

Finally, the authority to grant waivers or exemptions from paperwork compliance is too broad.

Allowing regulated entities to be exempted by OMB from compliance with a requirement to collect information may seriously undermine the integrity of data previously collected by an agency, thereby creating inaccurate impressions for both the regulatory agencies and the public. Additionally, exemptions and waivers which produce an inaccurate picture of the need for a particular regulation undermines public confidence in the role of government.

It should be noted here also, Mr. Chairman, that regulatory agencies often have the power to grant waivers or exemptions in their organic laws and that this authority is frequently used where it is appropriate. If waivers or exemptions are to be granted, it should be done selectively based upon solid evidence of need or particular circumstances. Waivers and exemptions should not be made by OMB; they should only be granted by the agency which has the history, experience, and expertise to make a sound judgment.

The United Steelworkers therefore urges the Subcommittee and the full Committee not to overturn the Supreme Court decision in *Dole* v. *Steelworkers*. We would also strongly urge you to address the imbalance in the current bill which includes numerous presumptions against record-keeping and information collection requirements.

Mr. Chairman, I would also like to address a few comments to the risk assessment provisions contained in Title III of H.R. 9, the Job Creation and Wage Enhancement Act of 1995.

Title III, Subtitle B—Analysis of Risk Reduction Benefits and Costs—would require agencies to estimate the risk for every major regulatory action to protect human health, safety, the environment, conduct a comparative analysis of the risk addressed by the regulation relative to six other risks to which the public is exposed (three regulated by the agency and three with which the public is familiar), and estimate the cost of implementation and compliance with the regulation.

Risk assessment issues have usually been left to the scientists and technocrats. Recent discussions about risk assessments, however, have had little to do with science, but a lot to do with politics. Specifically, some would like to use risk assessment as a tool for slowing down or stopping regulations.

I am reminded of the old admonition "Don't miss the forest for the trees." I am afraid that some in Congress may be missing the forest and the trees.

Assume for a moment that a parent is repeatedly hitting their child in the head. Which do you think would be better? Assess how much damage the parent can inflict without doing serious harm to the child? Or find a way to stop the parent from hitting the child?

The principal problem with risk assessment is that it puts the focus of action in the wrong place; namely, in assessing the risk instead of minimizing or avoiding the risk in the first place.

In theory, risk assessments and comparative risk analyses sound like appropriate solutions to prioritizing dangers faced by the public. In fact, in a recent survey conducted by the Harvard Center for Risk Analysis, 83 percent of the 1,000 respondents felt that the government should use risk analysis to identify the most serious environmental problems and give them the highest priority.

The same survey, however, also resulted in 66 percent of the respondents stating that government is not doing enough to protect the public from environmental pollution, and 76 percent said that when scientists are uncertain about how harmful pollution is, environmental regulations should err on the side of safety, even if that makes regulations more expensive. It is clear that what the American people really are concerned about is not over-regulation, but under-regulation, especially when it relates to environmental protection and public health and safety. In general, the American people believe that the role of government is to protect them from risks they cannot control.

Legislating science almost always produces bad public policy. The examples contained in Title III on risk assessment and cost-benefit analyses are no exception.

Title III is based on the assumption that risk assessment and cost-benefit analyses will provide a realistic estimate of risks, costs, and benefits. This assumption, however, fails to recognize that both risk assessment and cost-benefit methodologies are relatively recent, crude, value-laden policy instruments that can, at best, only illustrate a portion of the costs, benefits, and risks associated with complex regulatory programs. By writing specific risk assessment and cost-benefit methodologies into law, Title III effectively discounts and possibly precludes other valid and poten-

tially more reliable methods of determining the impact, effectiveness, and appropriateness of regulations.

Averaging a particular risk across the whole population may yield a very different interpretation of data than if it is averaged across subsectors of the population which face high exposure. This could result in erroneous decisions not to regulate or to issue regulations which are too weak even though high exposure communities would face a disproportionate number of illnesses or deaths. Any movement toward standardizing regulatory methodologies would thus be inappropriate.

A "one size fits all" philosophy is not practical or wise in a society and economy such as ours where some of the most dangerous threats to workers' health and safety are unseen and difficult to detect. Currently, agencies are free to use different assumptions and models, consistent with the variety of laws and regulations for which they are responsible.

Placing undue weight on risk assessments and cost-benefit analyses threatens to open a Pandora's box of ethical as well as political questions:

- Do risk assessments and cost-benefit analyses serve to bring government officials and citizens closer together in the search for solutions to pressing problems or do they simply remove officials even further from the real life daily concerns and problems of the American people?
- Will workers be afforded regulatory protection in some industries where it is more affordable but not in others where it is more costly?
- Will certain workplace risks be condoned as being simply unavoidable or too expensive to eliminate?
- What level of workplace injuries or fatalities will be considered acceptable after analyzing risks, costs, and benefits?

These are real questions which concern steelworkers and all American workers. I hope, Mr. Chairman, that these questions will also be of concern to you and the Members of the Subcommittee. We urge you to proceed with caution and great care. The health and lives of millions of Americans depend on it.

Thank you.

Mr. MCINTOSH. Thank you very much for your testimony, Mr. Sheehan.

Let me turn now to our final witness and welcome Mr. Stolmeier. I particularly appreciate hearing the perspective of citizens, as I have stated often in conducting the business of this subcommittee.

Mr. Stolmeier.

Mr. STOLMEIER. Thank you, Mr. Chairman. It is an honor to be invited here to testify.

As you mentioned, my name is Robert Stolmeier. I am president of KCL Corp. in Shelbyville, IN. KCL is a privately held small business that was founded in 1906, almost 90 years ago.

Through a process of extrusion, printing, and conversion, KCL manufactures reclosable plastic bags, commonly called Zip Lock bag, and I have several here if you would care to see what our product looks like. We employ about 375 people in the United States and about 100 in Canada. Our largest plant is unionized and pays an average rate, including fringes, of about $14 an hour. In the United States market, KCL competes with several multi-billion-dollar domestic companies as well as many small Asian companies who have little overhead, no OSHA, no EPA, no EEOC, no OFFCP, and they pay their employees pennies per hour.

Although KCL is classified as a small business, our 375 employees make us large enough to be subjected to the paperwork requirements of virtually every law and regulation put forth by Federal, State, and local Government. Paperwork requirements put forth by OSHA and IOSHA, by EPA and IDEM, by the EEOC, by the OFFCP, and by the IRS and the Indiana Department of Revenue. These requirements are, in fact, a tax on KCL. They are unfunded mandates which absorb a portion of KCL's limited resources.

I have brought with me today just two examples of the paperwork burden that has been placed on our company. The first example is in my hand. I am holding a single copy of KCL's 1994 affirmative action plan. It totals 415 pages, and it weighs 4½ pounds. The reason this plan is so large is because the EEOC would not not accept our plan until we set minority employment goals at from 5 to 7 percent. However, the minority population of Shelbyville, IN, is less than 2 percent. Each year we make a sincere effort to fulfill all of the steps outlined in this plan, and I want to accentuate, we try to fulfill the plan, but each year we fall short of our goal, so each year our plan becomes more complex and we do more and more paperwork.

The second example is the MSDA, the material safety data sheet. We are required to have these forms on all material we purchase and to keep multiple files within easy access of all our employees and to send them to all of our customers who request the forms. Even though our bags contain no hazardous material, our customers request this form to complete their files for OSHA inspections. As you can see, the MSDS for plain reclosable bags that contain no hazardous material is 5 pages long. This is one of them.

The burden this and all the other paperwork requirements place on small business is severe. The price of every bag we sell is higher because of the cost of these paperwork requirements. Since our foreign competitors don't incur these costs, their prices are lower and they enjoy an even larger share of our domestic market.

The second impact the paperwork burden has is that it diminishes our already limited resources. Our time, money, and creativity needs to be invested in new and improved products, not wasted on paperwork that has no value to anyone.

Thank you for listening to me, and may I answer your questions, please.

Mr. MCINTOSH. Thank you very much, Mr. Stolmeier.

As you may have gathered from Mr. Sheehan's testimony, the material safety data sheets were a subject of the lawsuit that questioned some of the Paperwork Act. Could you share with us some of the requirements, things that you are required to disclose about your plastic bags in that material data safety sheet?

Mr. STOLMEIER. Well, I can begin at the beginning. It says section 1. It is supplier information. Section 2, hazardous ingredients and the percentage of those. There's none. Section 3, physical and chemical characteristics; boiling point, not applicable; vapor pressure, not applicable; vapor density, not applicable. And then we go into the specific gravity, point 092, point 091 to 096. It goes into all of the data that exists on this bag, and I can't tell you I'm familiar with every one of these, you know; it is our engineers that put this together.

But the problem that arises is, someone could simply say, "Well, why is all this done?" Obviously this bag isn't going to hurt anyone.

Our customers are required by OSHA to keep files of all of the material. The customer doesn't want to take the chance that OSHA is going to come in and say, "Do you—you know," "Is there hazardous material here?" And if the inspector says, "Well, how do I know? How do I know?" If you don't have the data sheet, you can't prove to the inspector, you will be in violation, and you could be

fined. Now maybe on that they wouldn't be fined, maybe they would go out and find it, but the reality is, everybody ends up with material data sheets on everything.

The raw material that we receive—that is what we make our product out of—is called polyethylene resin. It is FDA approved for direct contact with food. You could eat it. I wouldn't recommend it. It wouldn't hurt you, unless you ate too much of it, I suppose.

This is the material safety data sheet that we receive from the supplier, and we buy it only from large companies, and it is, I don't know how many pages, I didn't check the number. It is 6 pages long, and it goes into very interesting things: For example, what to do if there is respiratory discomfort or irritation occurs. Move the person to fresh air. It sounds reasonable. I don't know that I need a Government regulation to tell me to do that. Our laws—and these regulations are so oppressive that they affect everything. It isn't done by exception. It involves everything we do.

Mr. MCINTOSH. So you are at risk of receiving a fine if you don't have exactly the right paperwork?

Mr. STOLMEIER. Absolutely, and we are inspected by IOSHA periodically, and they come in and check those files.

Mr. MCINTOSH. Let me ask you this, and it may be difficult to calculate, but could you estimate the effect if, say, those two and maybe some other paperwork requirements that you are aware of were reduced in your business, would that affect your ability to hire new employees?

Mr. STOLMEIER. It couldn't affect our—well, it would affect our ability, because what we would do is redirect that investment. We wouldn't let anybody go, but, as I said in my comments, we would direct that to developing new and improved products, which increases employment, which increases the amount of goods and services we can put out into the marketplace that people buy. It is a question of just redirecting the effort at this point.

It saps your strength, is what it does, and it saps the ability to have an organization fired up to do what it needs to do. Today in listening—frankly, in listening to some of the agencies about the IRS that can't accept, you know, electronic data processing, I mean that is appalling for a taxpayer to come to Washington and listen to that. I have to tell you that.

Mr. MCINTOSH. Would you be able to survive in the marketplace if you had such limitations?

Mr. STOLMEIER. I would like to compete with them. I would put them out of business overnight, overnight. We have three plants, one in Texas, one in Canada, and one in Shelbyville, and they are all linked. We don't have all of this paper. We have—a customer calls in the morning, we ship in the afternoon, we don't wait 135 days, and we are only a $29 million company. You know, we have to do that to survive.

Again, when people see us filling out all these data sheets and filling cabinets with all those data sheets, people say, "What are we doing that for?" "Well, you have to do it." And you get into the "we have to do it," or we are doing it just to fill the requirements. That is what government does. If you get into that, people say, "Well, why do I do my job right? Why do I make it as efficient as it has

to be if they don't have to do that?" You have to get almost every part of the organization.

We have had to remake our business in the last 6 years. We have gone from an industry that was controlled by patents and didn't have any foreign competition to one that is wide open to foreign competition. Prices of our product are half what they were 5 years ago, half, and we have to make more and more product at less and less cost, and we have to do it efficiently.

We had terrible data processing 10 years ago. Today we can give you a price instantly. You call up for a custom bag, and you have it immediately. We will punch it in the computer and tell you right now what is available, when it is available, and when you are going to get it. I don't understand why somebody who is spending billions and billions of dollars can't do it a heck of a lot better than I can do it.

Mr. MCINTOSH. Thank you. We are all wondering that.

Mr. Sheehan, let me ask you quickly: You touched upon it briefly in the summary of your remarks, but you found that the ability to challenge the Paperwork Reduction Act was helpful in furthering your views about its overreach. Would you, on the other hand, limit the ability of others who might challenge decisions under that act or under related acts for risk assessment to be able to have access to the judicial system to stand up for their point of view and challenge the agency's decisions?

Mr. SHEEHAN. First of all, I was thinking about the comments that were just made there. If you don't mind, I would like to say something with regard to that.

However, your direct question was that we had experience in challenging the Paperwork Reduction Act. I don't know that we did challenge the Paperwork Reduction Act at all. What we did was go to court because of a decision by OMB, which prohibited OSHA from requiring that there be a disclosure to the workers in the workplace.

But the comment that I would make directly to you, Mr. Chairman, is that we are very well aware that judicial review of regulatory agencies is a hazard for rulemakers and those for whom the rules are being made. However, it is part of the due process, and I don't think you can change the Administrative Procedure Act to limit or even exclude judicial review. But under the proposed Paperwork Reduction Act, the action of the Administrator of the OMB in deciding whether certain information should be disclosed or not, is itself not subjected to judicial review. Why not?

I heard Mr. Miller earlier say that he would subject OMB to judicial review only if the procedures were not followed but their decisions should not be subject to judicial review.

OSHA, for instance, is subject to a dual review procedure: first where an OMB procedure is not followed and; second, based on the evidence on the record, when a final rule or standard is promulgated. So in a way you have a double standard there.

But I think you have to be very careful that what you are putting into this act is so prescriptive that OMB or the agency itself can be challenged all up and down the line.

But if you will let me just make one comment here, and I will make this very brief.

Mr. MCINTOSH. If there is no objection. My time has expired, but continue.

Mr. SHEEHAN. I think the only point that I would make after listening to the comment just made by my cowitness: The issue before your committee is not whether a disclosure standard is too detailed or too lengthy. The question before your committee is whether there should be a disclosure standard in the first place. There are very few of us that would object to an unreasonable lengthy standard. But the question that is before you in the repeal of the *Dole* v. *Steelworkers* is that there would then be no obligation for disclosure even if the disclosure was modest and reasonable.

Mr. MCINTOSH. Let me check on that. It is my understanding that the case actually went to whether or not those disclosures would be reviewed by OIRA, not whether or not there was a disclosure that was required by the substantive statute.

Mr. SHEEHAN. No.

Mr. MCINTOSH. The question in the *Steelworkers* case was that OIRA should not be involved in OSHA's decision about whether there would be a disclosure, not whether or not OSHA should have made a requirement for a disclosure.

Mr. SHEEHAN. No. It is my understanding—and maybe I am not going to say it quite the same way, but if I could respond to that, it is my understanding that OMB canceled a decision by OSHA to disclose information to workers in its hazard standard. The issue is: the Supreme Court indicated that OMB did not have authority under the Paperwork Reduction Act to prohibit this agency from requiring paperwork, namely disclosure to employees. It could prohibit or limit the paperwork requirement of OSHA and other agencies by requiring information for the Federal Government. But the court said OMB went further and claimed under the Paperwork Act that OSHA could not require employers to give the information to the workers. That is what is under discussion, and that is what is before you in this committee.

Mr. MCINTOSH. Right, but not necessarily all disclosures. It was that particular decision. In other words, OMB could say yes, it makes sense for OSHA to require disclosure about hazardous substances that truly are hazardous as compared to substances like plastic that are inert.

Mr. SHEEHAN. But OMB could just as equally say no.

Mr. MCINTOSH. Right. They ultimately have the authority to do that under the changes that would be made to the statute.

Mr. SHEEHAN. Under the changes. My point is that it is the rulemaking process itself through which the affected agency that could make a determination as to whether information should be disclosed. Not every hazardous substance needs to have disclosure, but that would be part of the rulemaking process. Some of these rulemaking processes, as you know, take a long time—many years. Employers and others can participate in that rulemaking process. But if the agency then says it is in the best interest of affected workers or the community to disclose that information, that proposal becomes subject to judicial review under the Administrative Procedure Act. Why then should some people in the White House have this authority to overturn that decision and then not have that decision subject to judicial review?

Mr. MCINTOSH. OK. I understand your point.

Let me answer your question why they should have that ability, or at least in my view, and that is because of these myriad of examples that we have seen where OSHA has made the wrong substantive call and we have a great deal of faith that OIRA will make better judgments in this area. But I think you have analyzed correctly what is at stake in making the change or not. Thank you very much.

Let me turn now to Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman. I apologize, I was working on something else, I didn't hear all of that, so I don't want to be redundant.

Mr. Sheehan, I guess I share what I know about this situation, the concern of what happened in your particular case, your court case. My question is, are there other examples of this that have happened that you are aware of? This is an area I am not real familiar with.

Mr. SHEEHAN. No, not that I know of. But let me put it to you this way. I just happened to hear the previous witness from the administration say that after the Supreme Court decision was rendered, the agencies no longer submitted to OMB their rules and regulations on disclosure because the Supreme Court had indeed upheld the agency's right to require in its rule that there could be disclosure. Hence the agencies no longer submitted to OMB, for the purpose of the Paperwork Reduction Act, review of those disclosures. I think she mentioned that there were some 77 cases that might have previously been submitted to OMB and—pardon my language, to the OMB axe. After the Supreme Court decision they were no longer submitted to OMB for review.

So it isn't so much there were many cases in the past. When this act passes, how many more proposals now will really proliferate here? How many issues involving disclosure to communities and to workers will be subjected to OMB? For what purpose? To decide whether you can restrict the paperwork required in giving proper disclosure, not necessarily because of too much detailed forms. Should a worker or a community be made aware of the fact there is a hazard?

Mr. PETERSON. I am not sure who can answer this question, but OMB doesn't have to take anything into consideration other than the paperwork reduction?

Mr. SHEEHAN. That is my understanding.

Mr. COAKLEY. If I may, Congressman.

Mr. PETERSON. Is that true, Mr. Chairman?

Mr. MCINTOSH. I'm sorry?

Mr. PETERSON. That OMB doesn't take anything into consideration other than paperwork reduction when they are looking at these regulations. I mean they must be looking at more than that.

Mr. MCINTOSH. Their authority in granting the control number is to look at the paperwork reduction, and it is my understanding——

Mr. PETERSON. My question is, does that take precedence over everything else? In other words, if it was clear that whatever the situation was was going to be—a threat, would they go ahead and

suspend it because there was going to be less paperwork? Is that the way it works?

Mr. MCINTOSH. Oh, in other words, are they not allowed to also take into consideration the underlying goal and the benefit from the paperwork? No, I think their goal is to maximize those benefits and reduce any unnecessary paperwork but when there is a clear benefit for it. Otherwise, you would end up with the result where you didn't have any forms.

Mr. PETERSON. Well I'm not sure, the way the Government works, if that is what would happen.

Mr. Coakley, did you have a comment?

Mr. COAKLEY. If I may, Congressman, there is a standard of review in the act, determination of need for information, which includes practical utility, but essentially it is the agency's responsibility to justify that they have met that standard of need when they promulgate an information request, and if that information request is to occur in a rulemaking, as was the case in the Court case, that standard of review, the Director of OMB reviews whether the agency has done that and has the final decision.

But in a rulemaking that is all on the record, subject to statutory time limits as to how long he can make that decision, and indeed if he disapproves what the agency believes it has justified, the act very specifically entitles judicial review in the case of paperwork in rules.

So the issue in the Court case is not so much whether there will be a standard for disclosure, the issue is whether the procedural requirements of the Paperwork Act will extend to those instances when agencies promulgate disclosure requirements in rulemaking.

Mr. PETERSON. And I apologize, I haven't read this case, and I admit I don't know a whole lot about this. So did this case not have the effect of suspending this disclosure? I mean, is that not what happened after it was all——

Mr. SHEEHAN. If the Supreme Court had not overturned Secretary Dole, information would not have to be disclosed to workers because OMB would have intervened and said it is not needed.

Mr. PETERSON. And this went through the whole process, and you lost. Is that is correct?

Mr. SHEEHAN. No, no. It went through the OSHA review process. Then it went——

Mr. PETERSON. And OSHA said that there should be disclosure.

Mr. SHEEHAN. Said there should be disclosure, and OMB intervened.

Mr. PETERSON. Said no?

Mr. SHEEHAN. Said no. Then it went to a lower court, and then it moved up to the Supreme Court, and the Supreme Court said back off.

Mr. PETERSON. Back off to OMB?

Mr. PETERSON. To OMB, right. And then subsequently, OSHA——

Mr. PETERSON. And that was a unanimous decision?

Mr. COAKLEY. No it was not. I would like to correct that part of the record. Mrs. Collins mentioned that was unanimous. It was not unanimous. It was a 7–2 decision. Justice White wrote a very vig-

orous dissent, and he was joined by Justice—the Chief Justice, Justice Rehnquist.

Mr. PETERSON. I have got a little bit more time. Well, maybe I can get this clarified on my own. It is just, I am not understanding exactly what the ramifications are of this. We have a vote on, and maybe I can visit with——

Mr. COAKLEY. Congressman, if I can make just a quick 1-minute statement though, what was done in the past isn't important for what you all ought to do today. The real issue is whether or not you think this act ought to cover those paperwork requests that the Government sponsors when an outside party has to provide information to a third party, and if you want a quick tangible feel for that, look at all the requirements we ask employers to employ employees. Do we want to apply the standards of practical utility and need to those kinds of paperwork requirements when the Government offers them, or don't we? And that is what is really is at stake here, and what the Court did in the past, what we in the coalition have argued is, it created an argument that all the agencies use now to basically say we don't have to pay attention to the act.

So we really see whether you overturn this or not as an issue of whether you want an act or not. But from the perspective of once you reach that determination that you want an act, whether you want them to cover disclosure requirements, is the next decision.

Mr. SHEEHAN. I guess I would just add to that, if I might, the question is whether during the rulemaking procedure there should be intervention so that the disclosure is not unnecessarily detailed. You have a rulemaking process and procedure to do this. What is before you is whether, regardless of how realistic the disclosure requirement might be, can OMB just simply say, based on paperwork reduction, we can control an agency promulgating even reasonable disclosure requirements? That is what is at stake.

Mr. MCINTOSH. Mr. Fox had one question, and then I think we will stand in recess.

Mr. FOX. Thank you, Mr. Chairman.

I was going to ask Mr. Stolmeier whose testimony I thought was very illuminating as well as the other colleagues who joined him. But I do want to ask him, how often do you get employees Mr. Stolmeier, asking to look at these materials data safety sheets?

Mr. STOLMEIER. Very, very infrequently. Out of 375 employees, if we have had 2 or 3 ask for it, it would be a lot. Maybe once or twice. So you might get five requests in a year, maybe not even that. You might go a year without even anybody looking at them.

Mr. FOX. All right. What percentage of time are you spending on fulfilling regulations from the Federal Government or State government?

Mr. STOLMEIER. I wish I could answer that with a precise number, but it is such an all-involving thing, and what affects one affects somebody else. Somebody in one department fills this out and takes it to somebody else who ends up in the computer department. It is a substantial portion of our time.

Mr. FOX. And what percentage of your costs, if you know?

Mr. STOLMEIER. Again, it is a substantial portion. I don't have a number for you. I wish I did.

Mr. FOX. I understand. Well, if you get those figures you can send them on to our chairman. I know he would appreciate disseminating them to us.

Mr. STOLMEIER. I will.

Mr. FOX. I thank you all three of you for your testimony.

Mr. MCINTOSH. Yes. Thank you all for coming. I appreciate hearing from you.

This subcommittee stands adjourned.

Mr. COAKLEY. Thank you, Mr. Chairman.

Mr. SHEEHAN. Thank you.

[Whereupon, at 12:35 p.m., the subcommittee was adjourned.]

○