REGULATIONS PERTAINING TO FEDERAL CONTRACTORS

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

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REGULATIONS PERTAINING TO FEDERAL CONTRACTORS

TUESDAY, AUGUST 8, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
St. Paul, MN.

The subcommittee met, pursuant to notice, at 8:40 a.m., at the Minnesota State Capitol, room 15, St. Paul, MN, Hon. David McIntosh (chairman of the subcommittee) presiding.

Members present: Representatives McIntosh and Gutknecht.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Bruce Gwinn, minority professional staff.

Mr. MCINTOSH. The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is called to order.

As chairman of this House subcommittee, I would like to welcome you to our eighth field hearing. We have already traveled to Virginia, Maine, Florida, Indiana, and were in St. Cloud yesterday. We will be going down to Rochester later this afternoon. The purpose of these field hearings is to hear what Americans think about our Federal regulatory system.

I would like to thank my colleague Mr. Gil Gutknecht, who is a fellow freshman and has been very active in the subcommittee in holding field hearings and also in several legislative initiatives, for hosting this today. Gil has done a tremendous job in representing the interests of the State of Minnesota.

Also, I should mention that the ranking member, Collin Peterson, isn't able to be here this morning. He was with us yesterday and will be this afternoon. He has been very helpful in terms of legislating and holding field hearings. I appreciate his willingness to travel around with me as we try to go out and seek the views of the American people.

The mission of our subcommittee is to cut back on unnecessary, burdensome, and sometimes just stupid regulations. Redtape and excessive regulations are choking American's competitiveness, costing workers their jobs, forcing families to pay more for everything from food to cars, causing farmers to lose their property, and forcing local taxpayers to pay higher taxes. This Congress is committed to putting a hold on regulations and cutting back on excessive and unnecessary redtape. We will force the bureaucracy to consider the loss of jobs, the loss of competitiveness and the cost to the

consumer as well as using good science and common sense in developing new regulations.

In last November's elections, Minnesotans and Americans everywhere, made it clear that they wanted to change the way business is done in Washington. So far in the 104th Congress, many of my colleagues and I have made this message our mission. Today we hold a hearing to give the people in Minnesota a chance to speak out on regulatory problems. The ideas communicated today will become part of the official record of this subcommittee and, as well, we will transmit them to the relevant committees about issues that they may be legislating on and, in particular, we will use them as part of a new process that Speaker Newt Gingrich has established called Corrections Day, where twice a month Congress will go to the floor and pass a bill to correct unnecessary and unworkable regulations.

By holding field hearings, we are able to hear directly from you, and I want to encourage all of the witnesses to participate fully and give us their information. Anything we are not able to cover in the relatively short timespan we have for each witness we can put in as a written part of the record and have that become part of the extended record for our hearings. The important thing to remember in all of this is that the costs of regulations are enormous. The Clinton administration estimates $430 billion a year. Private economists say it could be as much as $500 to $600 billion a year, which is about $6,000 per family in the United States.

If you think about it, there are 110 different agencies with 130,000 employees busily writing and enforcing and reviewing regulations everyday and in 1994 there have been 64,000 pages of new regulations. We have seen that pace slow down somewhat since last January, but our subcommittee identified 30 new regulations that, frankly, didn't make any sense. We call them the "Dirty 30" and we have put in resolutions to defund them this year in the appropriations bills. So we have been very, very busy in terms of cutting back on regulations and I welcome the comments of everyone here today.

Let me apologize in advance if we don't have time to allow people to read their whole testimony and I may ask you to summarize it after 5 minutes so we can make sure we hear from everyone here. Thank you again for coming.

Mr. Gutknecht, do you have any opening comments?

Mr. GUTKNECHT. Thank you Chairman McIntosh.

I want to welcome the subcommittee here to St. Paul and to our State capitol building where I held court for 12 years. It is like old home week to be back in the State capitol building. I also want to say a special welcome and thank you to your wife Ruthie in the back.

Ruthie, it is great to have you in St. Paul.

I also want to say a special thank you to Jane Belau, who worked very hard to help organize some of the testimony for us here today.

We have heard on the subcommittee—and I very much enjoy being a part of the Regulatory Reform Subcommittee and working with you and Representative Peterson to deal with this whole area of Federal regulation. What we hear more and more is that the

Federal Government tends to propose $50 solutions to $5 problems. What we are trying to do at every turn is to figure out ways we can make the Government's role in regulating economic activity and other events make sense. Earlier in this session, and I make it available to many of my constituents, we read a book called the Death of Common Sense. It seems to me that when you look at Federal regulations you can see, over and over again, what was meant by that book.

I think it is important, though, that we are out on the road hearing from real people. Altogether too often, when we were in Washington, we hear from the leaders or the representatives of large interest groups, but by going out in the field and actually hearing from real individuals, small business people, farmers, like we heard from up in St. Cloud yesterday and hopefully will hear from today, it gives us an opportunity to really hear from the people that have to deal with these regulations. We have already had some very good suggestions, as the chairman mentioned, with regard to Corrections Day, where we will bring bills quickly to the floor to correct some of the crazy and needless regulations that we hear.

One of the original missions that I wanted to have with this particular hearing was to talk about procurement reform. We have been told, for example, that in the Department of Defense there are 106,000 who are listed as buyers. The Department of Defense buys everything from paper clips to F–16 fighter aircraft. In fact, interestingly enough, we have 1,646 people responsible for buying the F–16. We buy one a week. Now, what we are trying to figure out is if there isn't a way that we can continue to buy F–16 fighter aircraft with less than 1,646 buyers making that acquisition.

As a matter of fact, the news gets even worse, not only do we have 106,000 buyers in the Pentagon, they have 200,000 managers. If we are ever going to balance the Federal budget, we are going to have to figure out ways that we can buy the things that we need without the tremendous amount of overhead that we have in the Pentagon and the Department of Defense. So one of the original intents of having this hearing was to hear from some of the people who actually deal with the Federal Government, whether it is through the Department of Defense of other procurement agencies, and see if there aren't some ways that we can figure out to use some private sector ideas to bring some sense and economies of scale to the purchase of goods and services for the Federal Government.

Later this afternoon, we will be going to Rochester, my home town, and we are going to hear principally about medical issues, as it relates to the FDA and regulation reform and how the FDA in some respects, and other government agencies, are hampering the advancement of new technologies, new drugs, new treatments, unbelievably so as it relates and compares to other parts of the world and other countries around the world. So that is going to be the principal issues we are going to hear about today.

There are also some other folks, I think, who are going to testify—I know we have heard a little bit about meat processing yesterday in St. Cloud. Hopefully Ms. Eaker is going to be here and talk a little bit about how it relates to some of the smaller meat processors.

So, again, I want to thank you, Chairman McIntosh, for coming to Minnesota. I want to thank the staff for helping put it together, and especially Jane Belau for all of her work in helping to line up some of the witnesses. So, with that, I thank you and welcome our first panel.

Mr. MCINTOSH. Thank you very much, Mr. Gutknecht, and thank you and your staff for all the hard work that you have put in to this hearing and the one this afternoon.

Our first panel today is a group of people who represent various parts of the construction industry and small business here in Minnesota.

If I could ask each of you to please rise. The chairman of the full committee, Mr. Clinger, has asked that we swear in each of our witnesses.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you.

Let the record show that each of the witnesses answered in the affirmative.

Our first witness is Ron Turner, president of the Minnesota Federal Contractors Counsel.

Welcome, Ron, and thank you for coming today.

STATEMENTS OF RON TURNER, PRESIDENT, MINNESOTA FEDERAL CONTRACTORS COUNSEL; JOE WEIS, CHAIRMAN, WEIS BUILDERS; AND TODD GODERSTAD, LEGAL COUNSEL, AMES CONSTRUCTION CO.

Mr. TURNER. Thank you, Mr. Chairman, and welcome to Minnesota.

Mr. Gutknecht, it is good to see you again, here. I hope you enjoy your recess.

As stated, my name is Ronald L. Turner. I am president of Computing Devices International, which is a unit of Ceridian Corp. We are the world's 69th largest defense contractor, with operations in the United States, Canada and the United Kingdom.

I am also chairman of the Minnesota Federal Contractor's Counsel and testifying today on behalf of the counsel. Now, the counsel represents over 40,000 Minnesota employees in a direct sense and nearly 100,000 others through vendors, suppliers and subcontractors. Our main products and services include defense products and weapons systems, avionics, mass storage devices, shipboard, ground-based artillery systems, aircraft and engine sensors, systems integrations services for the military, for the postal service, and for air traffic control, air and liquid filtration systems and exhaust systems, energy control technology, telecommunications products and services and transportation-related products and services.

Now, on February 28, 1995, I testified in Washington before the Committee on Government Reform and Oversight, the Subcommittee on Government Management, Information, and Technology, in front of Mr. Clinger, the chairman of the full committee, and Chairman Horn, the subcommittee chairman. I was representing the Aerospace Industries Association, American Defense Preparedness Association, American Electronics Association, Contract Services Association, Electronic Industries Association, the National Secu-

rity Industrial Association, Professional and Services Counsel, the Shipbuilders Counsel, and the Chamber of Commerce. I offered this testimony as record for details as you referred.

Mr. MCINTOSH. We would like to submit that in full as part of the record of this hearing, too.

Mr. TURNER. Great.

The issues that we identified on the Federal Contractors Counsel that concerned us were acquisition/procurement reform, oversight regulation complexity, maintaining critical skills and capabilities in the defense industrial base, having a level playing field for public/private competition, outsourcing and privatization, Government downsizing, continued awards to small disadvantaged companies, continued attention to product liability reform, balancing the Federal Government budget, continued attention to energy conservation and commercial purchasing practices.

The actions that we recommended as a group that should be taken to make it easier to provide products and services to the Government: maintain pressure to reform the acquisition process in line with the legislation that you have already issued under the FASA of 1994, continue paperwork reduction efforts, push for a reduction in R&D contracting oversight, promote commercial practices in Government contracting processes, ensure funding for critical programs, technology and capabilities and expansion of the use of commercial products and dual use of applications.

Now, in the interest of time, I would like to dwell on the issue of implementation. Your legislative activities especially, as I said, the Federal Acquisition Streamlining Act of 1994, have been bold and resourceful, but from my perspective, little has changed. Secretary Perry is well intentioned, knows the business as well as anyone, but he has a lot of things on his platter. Secretary Josh Gotbaum doesn't have the staff to implement. Colleen Preston has so many things going on that she can't possibly execute all the legislation. Not enough effort is being expended to force change. No pun intended, but there are quite literally armies trying to prevent change, and air forces and navies.

Last, a Navy admiral told me that his organization has more GS–12's today than 4 years ago, before a 40 percent budget cut. Today at Fort Belvoir the Defense Systems Management Course is teaching officers, GS–14's, to buy military hardware just like they did in 1980. Industry has cut over 1 million in the defense industry. There must be corresponding reductions in Federal jobs. The legislation you have already put in place must be forcefully implemented. As a taxpayer we can't afford to spend $10 billion per year on oversight to save $900 million per year in the Pentagon. You referenced just a few moments ago almost the same ratio. It is not economic.

As a contractor, Government buying practices are overwhelming. Many companies refuse to work for the Government. They would rather take their risks in China. And I am quoting literally. They don't want the Government auditing their records. They don't want to sign all the certifications that they have to to do business with the Government. They don't want to get a letter, like my company did last week, from the U.S. Attorney suggesting they overcharged on a contract 5 years ago and we haven't heard from anyone in 3

years. They don't want to be told by the Government how to do their jobs, like the 12,000 Government workers who visited the McDonnell-Douglas plant in St. Louis last year to tell them how to build airplanes.

You need these suppliers. They can do many tasks more efficiently than Government employees. They can perform tasks from maintaining airplanes to writing your payroll check. Some of your distinguished colleagues on the authorizations and appropriations side of the congressional business are sometimes accused of having a proclivity toward micromanagement. Now, I am normally against micromanagement but, in this case, to enforce your legislation, I promote it. We and you must cut the cost of doing business so we can afford to do the things we must do to field a viable, effective military. We don't need more money in the DOD budget. We need to efficiently apply what we have. It is good for business. It is good for government. It is good for the taxpayers and, yes, it is good for our country.

Thank you very much.

[The prepared statement of Mr. Turner follows:]

Testimony of the Acquisition Reform Working Group
Presented by
Mr. Ron Turner, President, Computing Devices, International
February 28, 1995
Before the House Committee on Government, Reform and Oversight
Subcommittee on Government Management, Information and Technology

Good afternoon, Mr. Chairman. My name is Ron Turner and I am President of Computing Devices, International. Headquartered in Minneapolis, Minnesota, Computing Devices is a leader in signal processing, digital image manipulation, ruggedized subsystems for harsh environments and real-time software systems. Its products and services are an integral part of systems for avionics, communications, intelligence, surveillance and other defense and aerospace applications.

Thank you for the invitation to testify on additional measures that will further streamline our government's procurement system. Today, I am pleased to testify on behalf of nine associations which have formed the "Acquisition Reform Working Group" (ARWG). These organizations are listed at the end of my statement. Together, we represent tens of thousands of companies and individuals, the overwhelming majority of which are small businesses, majority and minority-owned businesses, companies which do business with the Department of Defense only, with the civilian agencies only, and with both. We also have members of all sizes who refuse to do business with any federal agency, in part because of the very acquisition laws which are the focus of today's hearing.

We are pleased that this Committee is interested in pursuing additional legislation since your Chairman, Representative Clinger, was the principal advocate of acquisition reform in the last Congress. Those efforts culminated in the successful passage of the Federal Acquisition Streamlining Act of 1994 (FASA).

BACKGROUND

FASA is the result of a four-year bipartisan effort (beginning with the Section 800 panel review of Defense Department acquisition laws) to streamline and reform the existing costly and complex Federal procurement process. It represents the most comprehensive government-wide acquisition reform effort in over a decade. The principal objective of FASA is to strike a more equitable balance between the multitude of government-unique policy requirements imposed on Federal procurements and the need to lower the Federal Government's cost of doing business. The Act accomplishes this objective by making it easier for the government to acquire commercial goods and

services and to use commercial practices; by streamlining the rules and regulations for high-volume, low-value Federal procurements; and by improving access by small business to Government contracting opportunities. The Act also created, in most cases, a uniform government-wide acquisition policy.

The government spends approximately $200 billion a year on the procurement of goods and services. This volume of expenditures evokes an understandable concern about ensuring that the interests of the taxpayer are protected. This, in turn, has led to redundant controls, certifications, etc., which unnecessarily complicate the process, and also increase the cost of goods and services which the government buys. The result is a system overloaded with controls to guard against "fraud, waste and abuse" -- controls which shortchange the taxpayers because of the higher prices caused by non-value added costs. The workforce is so challenged just to cope with the proliferation of regulations and procedures that there is little time or incentive to be innovative or to exercise judgement and there is little or no individual accountability. Indeed, under the current system where judgements are routinely second-guessed and challenged and often result in charges of criminal conduct, few responsible contracting officials are willing to exercise flexibility at the risk of shortening their careers. This must be changed.

Other acquisition requirements enacted over the years such as second-sourcing and spare parts break-out resulted from an effort to inject a measure of competition into a market that is essentially a monopsony.

Two comprehensive reviews -- the Acquisition Law Advisory Panel on Streamlining and Codifying Defense Acquisition Law (the so-called Section 800 panel review) and, more recently, the National Performance Review -- have documented the need to streamline procurement procedures to increase access and competition in Federal procurement, and save the government money. The studies also indicated that current trends must be reversed as the first step to instituting a cultural change in the acquisition workforce.

Both studies concluded that the procurement system has evolved into a complex maze of laws and regulations that makes the process too cumbersome and fails to provide sufficient incentives for suppliers to deliver quality products and services at reasonable prices, or to allow government personnel to exercise prudent discretion and good business judgement. Furthermore, the studies showed that the current system discourages companies -- especially commercial companies -- from wanting to do business with the government.

As we moved toward addressing the barriers to a streamlined process, however, we remained cognizant of the reasons -- i.e., concerns over fraud, waste and abuse -- that created these barriers in the first place. FASA seeks to address the barriers

to streamlined, efficient purchasing and, at the same time, remains sensitive to those concerns.

FEDERAL ACQUISITION STREAMLINING ACT OF 1994

With the passage of the Federal Acquisition Streamlining Act of 1994, Congress took a significant step toward reforming the way in which the government procures goods and services. The Act addresses a wide range of issues and concerns relative to the essential public-private relationship and establishes a framework for new, more productive business relationships.

In particular, critical improvements were made in areas related to commercial item procurements, the Truth in Negotiations Act (TINA) requirements for cost and pricing data and the simplified acquisition threshold.

- Commercial items. Facilitating the procurement of commercial products and services is perhaps the single most important issue to be addressed in acquisition reform. It is, therefore, a major focus of FASA and is addressed in Title VIII.

This section is based on the premise that the forces of the commercial marketplace can be relied upon as much by the government as they are by all of us when we spend our money -- to ensure that product quality meets our requirements and that the prices and terms are fair and reasonable. The Act establishes a specific preference for procurements of commercial items. It also exempts such procurements from a number of statutory requirements, including several that currently are "flowed-down" to subcontractors.

- Truth in Negotiations Act (TINA). Current TINA requirements result in some of the more onerous burdens on industry due to the amount of financial information that a contractor is required to submit to the government.

Revisions to TINA are covered in Title I of FASA. The Act permanently increases the threshold, government-wide, to $500,000 (adjusted for inflation), below which certified cost or pricing data is not required. It also creates an exception for certain commercial item procurements.

- Simplified Acquisition Threshold (SAT). Title IV of FASA raises the SAT threshold from $25,000 to $100,000 for agency use of simplified contracting procedures. Such procurements would be exempt from a number of statutory requirements. This simplified process is also available to contractors for subcontract purchases under $100,000.

IMPLEMENTATION

It should be noted that in 1994 all parties agreed that the real test of FASA would be in the implementing regulations. ARWG would like to commend the Government Reform and Oversight Committee for taking an active role in the oversight of the implementation process. Acquisition reform is at a very critical point, and we certainly hope the Committee will continue carefully monitoring the regulatory process. Otherwise, all of the potential gains that FASA represents could be lost.

The Council of Defense and Space Industry Associations (CODSIA) has expressed great concern with the quality of the draft regulations to date and will provide the Committee with detailed comments on the implementing regulations as they are published. ARWG, too, believes that the draft implementing regulations fall short of the congressional intent to streamline the process. Indeed, as we move through the implementation phase, it may be necessary to consider additional legislation to clarify congressional resolve in a number of areas. These proposals, if necessary, will be developed once the Administration concludes its regulatory drafting this spring.

FUTURE LEGISLATION

ARWG KEY ISSUES

Acquisition reform is an issue of central importance to the Congress's goal of achieving a more efficient government and getting more from the budget dollars. The degree to which the government is able to acquire better quality and less costly sources of goods and services (e.g. by removing costly non-value added requirements) clearly will be a benefit to the American taxpayer and a step toward greater efficiencies in the government buying process.

To that end, the Acquisition Reform Working Group firmly believes that further legislation is necessary to fully effect the fundamental reforms needed to ensure the efficient and effective conduct of Federal Government contracting. ARWG recommends that these remaining key issues be addressed in the 104th Congress.

The ARWG recommendations encompass four broad categories:

(1) Additional streamlining and simplification measures. These include:

- certification elimination,
- elimination of non-standard clauses
- contract close-out streamlining
- simplified solicitation

Each of these issues applies across the entire range of

government procurement actions. While an "average" contract generally doesn't get the attention that a major weapons system does, the added cost on each individual contract in terms of extra paperwork, cost-of-money and inefficiency totals up annually to many millions of dollars in taxpayer money. For example, legislative action is needed to provide sufficient monies to streamline contract closeout without having to shift funds from current programs and also to prohibit non-value added paperwork and oversight steps; this would enable government buyers and contractors to concentrate their energies on the goods and services that have not yet been delivered.

Legislative action is also needed to eliminate the hundreds of statutory and regulatory contractor/offeror certification requirements, most of which are not really necessary to ensure the lowest price for a quality product. Certifications generally are a way of providing contracting personnel with a "comfort factor," or a double-check on information that is otherwise available but they subject contractors to severe statutory penalties for inadvertent misstatements.

(2) Global and international related measures. In this area, we are proposing legislative changes that will improve and enhance the acquisition process. An example is the elimination of recoupment of non-recurring cost. In the highly competitive global marketplace, recoupment often can mean a 20-30 percent competitive disadvantage to U.S. companies. With such a disadvantage, U.S. companies can lose sales opportunities which results in a loss of U.S. jobs, less U.S. defense capability and, with reduced volume due to the loss of sales, a higher cost to U.S. taxpayers for defense products.

(3) Additional commercial items procurement measures. The Congress enacted many significant commercial product reforms in FASA. A few important issues, however, remain -- issues that, despite last year's reforms, may continue to keep commercial companies from selling to the government. There are two additional areas we believe should be addressed in additional acquisition reform measures:

- A comprehensive list of statutory exemptions for commercial prime contracts, including TINA.

  The benefits gained by purchasing a commercial product are greatly reduced with the introduction of only a few government-unique terms and conditions. A commercial item purchased by the government cannot, as a practical matter, be treated differently than items sold to commercial customers. Therefore, to accommodate the government-unique terms and conditions, new systems must be established, causing increases in costs and

delayed schedules -- and the company becomes less competitive as a result. Piecemeal commercial products reform simply will not reap the cost savings and efficiencies the government needs in this critical budget environment. Statutes of greatest importance to commercial industry that were not clearly exempted last year include laws relating to Rights in Technical Data and the Truth in Negotiations Act.

We believe that no government-unique terms and conditions should apply to purchases of commercial products. When the government acts as a player in a larger commercial marketplace, it enjoys the same protection as other buyers and needs no unique protection. Competition ensures that the prices and terms are fair and reasonable, and that product quality meets contract requirements.

Also, I would like to emphasize the need for statutory relief rather than simple waiver authority for the executive branch. We have found that where waiver authority has been available to the Defense Department, for example, the department has been reluctant to use it, particularly when the procuring activity is required to elevate approval to the Agency Head or above. It can take years to secure waiver authority.

- Elimination of post-award audits for commercial product procurements. FASA, on commercial contracts, grants post-award audits for two years after award of a commercial contract. We believe that a competitive price for a commercial item can be established by market research techniques, surveys and the like. When this information is not available, the vendor can support the price of the commercial item through other objective evidence, such as customer orders and invoices and purchasing agreements with other customers. We believe the government, therefore, can audit price reasonableness information prior to reaching an agreement on the price of a commercial product. We want to make clear, however, that if a company commits fraud, the government should, and will, have full rights to impose the penalties under current commercial commerce law. Fraud simply cannot be tolerated in any marketplace.

(4) Small business and other items. ARWG supports programs that encourage and assist small businesses (including small disadvantaged and women-owned businesses) to obtain a "fair share" of federal procurement opportunities. FASA included many significant benefits and protections for small businesses in federal contracting. ARWG believes that more can be done by making permanent the Defense Department's pilot mentor protege program and extending it to all

government agencies; expanding the Defense Department's comprehensive subcontracting test program and providing clearer authority to civilian agencies for their own subcontracting programs.

ARWG also believes that attention should be given to addressing the information technology acquisition process. In addition, legislation should be enacted that authorizes sales by the Defense Department of low value plant equipment to incumbent contractors.

Attached is the list of the individual items which fall into these broad categories. A copy of the complete ARWG package has been submitted to the Subcommittee for inclusion in the record. Also, copies have been provided to all the offices of the Committee Members. ARWG recognizes that this package does not encompass all of the many issues that industry is interested in pursuing. Indeed, there are several coalitions working on additional legislative proposals.

Now is the time to enact additional acquisition reform initiatives that will bring us one step closer to the streamlining goals we all share.

CLINGER/SPENCE PROPOSAL

Turning to the bill recently introduced by Chairman Bill Clinger and Chairman Floyd Spence (House National Security Committee), ARWG applauds this proposal which encompasses revisions to the numerous procurement integrity statutes and the repeal of recoupment charges in the Arms Export Control Act.

ARWG's associations and member companies have fully supported initiatives both within the government and industry to enhance the ethical and efficient functioning of the acquisition process. Over the years, however, too many overlapping statutes have been enacted, aimed at preventing the same kinds of abuse but with different restrictions. The Clinger/Spence proposal is based on an initiative developed during the Bush Administration and adopted by the National Performance Review. It would further promote understandable government-wide standards that are not only rigorous, but readily understood and enforceable. Replacing the existing patchwork of complex, overlapping rules with a simpler, less burdensome structure is long overdue.

ARWG also commends the Committee's efforts to repeal the section of the Arms Export Control Act requiring a recoupment charge on government-to-government sales of major U.S. defense equipment. This requirement raises the price of our defense products in a competitive international marketplace, results in a loss of sales and U.S. jobs and accelerates the loss of industrial capability which may be vital to national defense.

The Pentagon, through regulations, had extended the recoupment policy to include major defense equipment (MDE) sold commercially, all other defense equipment and spare parts and civil items which were directly derived from military products and technology. This regulatory extension of recoupment was terminated by the Bush Administration. Repeal of the statutory requirement in the Arms Export Control Act is a key ARWG recommendation and we are pleased that the Clinger/Spence bill proposes to repeal this statutory requirement as well.

As you and the full Committee proceed with your deliberations on the Clinger/Spence bill, we would like to assure you of our desire to cooperate with you and assist you in any way possible.

ADMINISTRATION PROPOSAL

Last Friday, ARWG received a briefing by the Administration on its own follow-on legislation. In as much as we are still analyzing their proposal, it is difficult for us to weigh in with specific comments at this time. Having said that, we would be pleased to provide comment to the Committee once we have completed our review of the proposal.

We understand, however, that the Administration has expressed an interest in pursuing proposals that would eliminate the jurisdiction of the federal district courts to adjudicate protests. Last year, ARWG opposed this type of proposal, and it is unlikely that this sentiment will change. We encourage this Committee to look very carefully at the issue before altering a judicial system that, to date, has worked very well for all parties involved.

CONCLUSION

Again, the Acquisition Reform Working Group would like to thank the Subcommittee for this opportunity to testify. We recognize that it would be easy to rest on last year's laurels -- especially since this Committee did yeoman's work. More, however, remains to be done in order to promote an acquisition system that can move the government and industry into the 21st Century.

We appreciate the willingness of the Subcommittee and Committee Members to reach out to industry in developing acquisition streamlining measures. We look forward to continuing this dialogue.

1995 ARWG AGENDA

1. Contract Close-Out Streamlining
2. Simplified Solicitation
3. Certification Elimination
4. International Competitiveness
5. Additional Commercial Item Waivers
6. Amend Post-Award Audit
7. Elimination of Non-Standard Clauses
8. Domestic Source Restrictions
9. Waiver of Ethics Provisions
10. Information Technology Review
11. Increased Small Business Opportunities
12. Sale of Government Property

Acquisition Reform Working Group

Aerospace Industries Association
American Defense Preparedness Association
American Electronics Association
Contract Services Association
Electronic Industries Association
National Security Industrial Association
Professional Services Council
Shipbuilders Council of America
U.S. Chamber of Commerce

Mr. MCINTOSH. Thank you, Mr. Turner. I appreciate that.

Now, our second witness today on this panel is Mr. Joe Weis, who is chairman of Weis Builders.

Mr. Weis.

Mr. WEIS. Good morning. Thank you for the opportunity. My name is Joe Weis. I am chairman of the board of Weis Builders, Inc., a Rochester building company. We currently build in about 14 States. My two sons currently own and operate the business. I just show up for work.

I kind of want to make a general comment. First, now related to the topics at hand. That is, our firm, and I guess me in particular, belong to almost every civic and trade organization there is around. We have been very active in those organizations. And 20 to 25 years ago the main thrust of those organizations was education, training our employees, marketing skills, trade shows, et cetera. Currently, the main thrust of every one of those organizations is legislative. All of them have at least one or two lobbyists in Minnesota and several more in Washington and all these people are trying to do is stop the wonderful things that the State and Federal Government are trying to do to help business. Hopefully, with the new Congress, we will see some changes in that area.

So, with that, I would like to visit with you a little bit about OSHA. I would like to preface those comments by saying, hopefully we are not perceived as one of the bad guys. We were awarded the Associated General Contractors of Minnesota Safety Award for 1994. So hopefully we are doing something right, at least in the eyes of the premier trade association in the State. Specifically, I would like to address one section of OSHA, that being the so-called right-to-know section. Basically, what that requires us to do is provide a complete inventory of all hazardous materials used, collect material safety data sheets [MSDS] for all hazardous materials that are on inventory, provide complete hazardous warning labels on all drums and containers, develop a written compliance program, and conduct employee training.

To comply with this regulation, we have had to furnish each of our 32 superintendents with a small box of information, which I brought along here. Thirty-two of these, one to each superintendent and in that box, this is our safety program or policy, the rest of it are those MD or MSDS sheets and just on cleaning solvents there must be 30 sheets in there. There is just one sheet per file, but it is overkill. Let's face it, it is just overkill.

I guess, leaving that subject for a minute, I want to address another area of OSHA. I have in my hand the top 100 citations as cited by OSHA in 1991. I will just read you the top five: Fall protection guarding, open-sided floors and platforms; head protection from falling impact, falling or flying objects, electrical ground protection, electrical patch to ground missing; or discontinuous protective systems for trenching and excavating. Those are significant life-safety issues.

Let me read you the 1994 top 20, or the top 5 of the top 20 OSHA citations. General industry written programs, the top citations, recordkeeping, OSHA law; No. 2, AD–COM general industry information training, AD–COM construction written programs,

OSHA notice posted. If you notice there are no life-safety issues cited there. I think that is significant.

Well, I don't come to you with just problems. I come to you with solutions and I believe that Representative Ballenger, who has introduced H.R. 1834, would go a long way toward correcting not only the problems I cited for you, but many of the others. In just one provision it would prohibit citation for any de minimis violation which has no direct or immediate safety or health, such as violations for recordkeeping, reporting or notification. So I guess, in concluding, I want to urge particularly my representative Mr. Gutknecht, to get on the bandwagon and cosponsor 1834. I don't know where Mr. McIntosh is, but I would certainly urge him also.

I thank you for the time.

[The prepared statement of Mr. Weis follows:]

TESTIMONY FOR THE RECORD FROM JOE WEIS, PRESIDENT, WEIS UILDERS, INC.

GOOD MORNING. I WOULD LIKE TO THANK CHAIRMAN McINTOSH, REP. GUTKNECHT, REP. PETERSON AND REP. CONDIT FOR ALLOWING ME TO TESTIFY. MY NAME IS JOE WEIS, AND I AM THE PRESIDENT OF WEIS BUILDERS, INC., LOCATED IN ROCHESTER, MINNESOTA. MY TESTIMONY TODAY WILL FOCUS ON THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA).

ALTHOUGH OSHA HAS BEEN IN EXISTENCE FOR 25 YEARS, A SURVEY OF ₃MALL BUSINESS OWNERS RANKED IT AS THE SECOND MOST DISLIKED FEDERAL AGENCY, NEXT TO THE IRS. WHY HAS OSHA BECOME SO UNPOPULAR AMONG BUSINESS OWNERS? I BELIEVE THE ROOT OF OSHA'S PROBLEMS HAS THREE CAUSES:

1. THE REGULATIONS ISSUED BY OSHA
2. THE MEANS BY WHICH OSHA ENFORCES THESE REGULATIONS
3. THE ATTITUDE WITHIN THE AGENCY TOWARDS EMPLOYERS

₋ET ME BEGIN WITH OSHA'S REGULATIONS. OSHA REGULATIONS CAN BEST BE DESCRIBED AS "ONE-SIZE-FITS-ALL" SAFETY AND HEALTH STANDARDS.

WHEN DRAFTING REGULATIONS, OSHA DOES NOT RECOGNITION THE DIFFERENCES BETWEEN HAZARDS IN SPECIFIC INDUSTRIES OR THE DIFFERENCES BETWEEN SMALL AND LARGE COMPANIES. MOREOVER, OSHA REGULATIONS ARE SO COMPLICATED THAT YOU HAVE TO BE A LABOR LAWYER OR A SAFETY AND HEALTH PROFESSIONAL TO UNDERSTAND THEM. THE RESULT THIS APPROACH IS COMPLICATED, COSTLY "ONE-SIZE-FITS ALL" REGULATIONS THAT TOO OFTEN DEFY COMMON SENSE.

FOR EXAMPLE, THE PROPOSED ERGONOMICS STANDARD WOULD APPLY TO EVERY COMPANY IN THE NATION, EVEN THOUGH THERE IS NO SCIENTIFIC DATA INDICATING THAT EVERY BUSINESS IN AMERICA HAS AN ERGONOMIC PROBLEM. OSHA'S REGULATIONS WOULD BE LESS OF A PROBLEM IF THE AGENCY FOCUSED ON THOSE INDUSTRIES WHERE THERE IS SCIENTIFIC PROOF OF A SAFETY AND HEALTH HAZARD. INSTEAD, OSHA IS READY TO IMPOSES A NEW, COSTLY SET OF REGULATION ON EVERY COMPANY IN AMERICA, TO ADDRESS AN ITEM THAT ONLY OSHA PERCEIVES IS A "HAZARD" TO EVERY AMERICAN WORKER.

COMPLEX REGULATIONS LEAD TO ENFORCEMENT PROBLEMS. THE SHEAR NUMBER OF OSHA REGULATIONS MAKES IT NEARLY IMPOSSIBLE TO BE IN

100% COMPLIANCE WITH OSHA'S SAFETY AND HEALTH STANDARDS. OSHA'S INSPECTORS ARE WELL AWARE OF THIS FACT. THIS GIVES AN OSHA INSPECTOR A GREAT DEAL OF POWER OVER THE WORKSITES HE OR SHE IS INSPECTING. HOWEVER, THIS POWER IS NOT MATCHED BY REAL WORLD WORK EXPERIENCE. MOST OSHA INSPECTORS DO NOT HAVE A WORKING UNDERSTANDING OF THE INDUSTRY THEY'RE INSPECTING. THIS LACK OF EXPERIENCE, COMBINED WITH THE USE OF QUOTAS TO MEASURE JOB PERFORMANCE CREATES A "GOTCHA MENTALITY" AMONG MANY OSHA INSPECTORS. THE RESULTS OF THIS TYPE OF THINKING CAN BE SEEN IN THE FINES ISSUED BY OSHA. IN FISCAL YEAR 1994, THE TOP SIX CITATIONS ISSUED BY OSHA WERE FOR PAPERWORK VIOLATIONS.

IF ALL OSHA DID WAS ISSUE UNREADABLE REGULATIONS AND NIT-PICKING FINES, MOST EMPLOYERS WOULD HAVE SUCH BAD FEELINGS ABOUT THE AGENCY. HOWEVER, IT YOU FACTOR IN THE ATTITUDE OF OSHA TO THESE PROBLEMS, IT BECOMES CLEAR WHY OSHA IS HELD IN SUCH CONTEMPT.

THE FUNDAMENTAL PROBLEM WITH OSHA IS THAT MANY WITHIN THE AGENCY BELIEVE EMPLOYERS ARE INSENSITIVE TO THEIR EMPLOYER'S SAFETY, HEALTH AND WELL-BEING. THIS BELIEF IS REFLECTED BY THE WAY OSHA TREATS ALL EMPLOYERS. NO MATTER WHAT YOUR SAFETY

AND HEALTH EFFORTS, OSHA WILL TREAT YOU AS IF YOU'RE GUILTY UNTIL PROVEN INNOCENT. WITH THIS ATTITUDE, ITS NO WONDER THAT MANY EMPLOYERS HOLD OSHA IN SUCH LOW ESTEEM.

MR. CHAIRMAN, AS YOUR COMMITTEE CONTINUES TO INVESTIGATE REGULATORY REFORM ISSUES, I WOULD STRONGLY ENCOURAGE YOU TO FOCUS YOUR EFFORTS ON OSHA. FOR 25 YEARS, OSHA HAS ISSUED INFLEXIBLE, "ONE-SIZE-FITS-ALL" REGULATIONS, AND USED AGGRESSIVE ENFORCEMENT AND LARGE FINES TO BRING ABOUT COMPLIANCE WITH ITS SAFETY AND HEALTH STANDARDS. THIS APPROACH HAS NOT IMPROVED WORKPLACE SAFETY AND HEALTH.

ITS TIME FOR A NEW APPROACH ON WORKPLACE SAFETY AND HEALTH PROTECTION. IT IS TIME TO TURN OSHA INTO AN AGENCY THAT CAN WORK WITH EMPLOYERS AND EMPLOYEES TO IMPROVE WORKPLACE SAFETY AND HEALTH. I BELIEVE THAT HEARINGS LIKE THIS ARE AN EXCELLENT FORUM TO BEGIN THIS PROCESS.

I WANT TO THANK THE SUBCOMMITTEE ONCE AGAIN FOR THE OPPORTUNITY TO TESTIFY, AND I WILL ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

Mr. MCINTOSH. Thank you very much, Mr. Weis. I actually have cosponsored that bill as well and I think you are absolutely right.

Mr. WEIS. Work on Gil.

Mr. MCINTOSH. I will. I don't think it is going to be a tough sell.

Our next witness is Mr. Todd Goderstad, who is the legal counsel with Ames Construction Co. Thank you very much and welcome.

Mr. GODERSTAD. Good morning. Thank you for inviting us to testify this morning and welcome to Minnesota.

As you said my name is Todd Goderstad. I am legal counsel. I am also entitled contract administrator and, as such, for Ames Construction, I am responsible for identifying risks that the corporation may encounter in its construction operations.

Ames Construction is a family owned business. It was founded in 1961 by Richard Ames and his brothers and today it continues operating with offices in 5 States and we have operated in about 25 States across the United States as well as in Canada, I believe, and the former Soviet Union. We are involved in heavy dirt moving. Basically that is our line of work. We build dams and bridges. We do contract mining, things that involve moving mass quantities of dirt.

Somewhat interesting, a contractor I know very well recently said, you know I used to build roads, but now I am a social engineer. I think that is a good commentary on what we are here to talk about today. It seems that the family members that have been with us for 30 years working in this corporation have become so disillusioned with the amount of redtape that they no longer view the business as a construction corporation, but as some sort of a compliance machine. We are just very frustrated. People that we would like to pass the corporation on to, the new generation, are so disillusioned they don't want to be part of it.

Unfortunately, we have chosen a path that requires us to pay attention to regulations. Smaller companies that we are required to bid against have chosen either to ignore the regulations or have chosen to not have enough staff to pay attention to them. So we are at a competitive disadvantage because we are in compliance with the amount of regulations that you have heard about.

Let's face it, the thing that made America great and what has made this corporation that I work for great is that we are risk takers. Unfortunately, there are two kinds of risks. One is the quantifiable risks. We are used to dealing with how to move dirt, organizing people, machines and moving dirt. Unfortunately, there is a second risk and that is unquantifiable. One of the unquantifiable risks that we have been facing recently is dealing with regulations as well as the people that are selected or appointed or hired to enforce them.

Unfortunately, the regulations and their enforcement is not consistent across the board. The best intentions may have been made when enacting laws that are enforced by what could be characterized as zealots. I think the EPA is a good example of that syndrome. The folks that work in these agencies have two choices when they get done with school, they can go into some sort of a low-level political fundraising sort of activity or they can work for the Government. Many of them have chosen to work for the Government. I don't have a solution as to how to deal with the zealots

that are working on these rules. Somehow there has to be something. Unfortunately, we seem to have lost the gatekeepers, which would be the Federal judges that interpret the rules.

I see that I don't have much time so I would like to touch on a couple of things. One is that, in addition to making rules that are difficult to deal with, there is often a failure to implement the rules that are required in a timely manner. There are two items that come to mind. One is the U.S. District Court of Appeals for the District of Columbia decided a case called *Ball, Ball and Brasimer* v. *Robert Reich,* back in 1994. The Federal DOT and the Department of Labor and nobody else has seen fit to implement rules that would take into consideration that court decision, which deals with whether the Davis-Bacon Act covers truck drivers moving materials to and from jobsites. Another one is the recent decision by the Supreme Court, in *Adiran Constructors* v. *Peña.* It would seem that something like that should be dealt with swiftly in whatever means, not be thrown into a political football situation.

The final point I would like to make, really quickly, is that items such as the laws on sexual harassments, the Americans With Disabilities Act, the Civil Rights Act of 1990, the Family Medical Leave Act, State Workers Compensation, and the National Labor Relations Act, nobody takes into consideration how these various laws work together to impact small employers. The result has been almost impossible to take into consideration accurately what the impact of hiring and firing decisions have been. I will end there and accept your questions.

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

I appreciate all of you coming today and I have a couple of questions for each of the witnesses.

Mr. Turner, when you testified before Mr. Clinger did you get a chance to talk at all about the air traffic control systems? You had mentioned that briefly in your testimony.

Mr. TURNER. I did not.

Mr. MCINTOSH. Have you and your company looked at that in any way that involved the private sector in that area to upgrade the technology?

Mr. TURNER. My company has not, but some of the companies represented in the room here and represented in the council have.

If you want a comment, this is Jake Jones who is the vice president for Paramax Corp. and a member of the Minnesota Federal Contractors Council.

Mr. MCINTOSH. Welcome, Mr. Jones. It is my impression that the private sector certainly has the technology to dramatically improve the ability of our air traffic control. Why don't you come up, if you have a second.

Mr. Jones, would you mind if we swear you in to take testimony?

Mr. JONES. No, sir.

[Witness sworn.]

Mr. MCINTOSH. Let the record show that the witness answered in the affirmative.

This is an area where it strikes me that Federal regulations have really hindered the ability to use new technology in improving the safety of our air traffic control system. Can you describe your experience in this, in working with the FAA?

Mr. JONES. Well, the company involvement has gone back for many years with the FAA in primarily the terminal air traffic control area. The FAA is a fairly conservative customer. They are not terribly aggressive with technology, because their primary interest has been the safety of the flying public. That is hard to argue with, but the FAA is currently in the process of running three or four or five major programs that will upgrade, significantly upgrade, the technologies that are used to control air traffic here in the United States. Our company is involved in several of those as are other parts of the aerospace industry.

Mr. MCINTOSH. Is it the case, and someone told me this anecdotally, that they still use vacuum tubes in some of the FAA computers?

Mr. JONES. I don't believe that is the case.

Mr. MCINTOSH. I hope not, because it would seem quite a shame. I am not blaming the agency because I think the procurement laws tie their hands and by the time they have been able to fill all of the requirements there, the technology often has outstripped the ability of the Government on what to buy.

I was going to ask both of you if you had any suggestions for reforming those procurement laws that would allow them to be more aggressive in using that new technology?

Mr. TURNER. Well, I can, part of this is detailed in my testimony. Elimination of certifications that are unnecessary, I think there are over 100 certifications that you have to sign to do business with at least the Department of Defense, I am sure it is probably the same with the FAA. Elimination of all the burdens associated with the Truth in Negotiation Act and the fact that the Government should somehow accommodate accepting commercial practices. We buy things, individually, without certification data, without signing our lives away from a risk viewpoint and I think the Government is going to have to do the same thing. I think the Government will find out it is much cheaper to do that. We are all overcome with regulations because every time someone breaks a law or someone overcharges, we act with regulation or new rules, when we never eliminate regulations or rules and they keep building up to the point that you can't do business.

I think an audit done by, I think it was GAO, last year said that the Government saved in the Department of Defense $900 million by oversight and there is another audit that said that it cost 18 percent. There was an 18-percent penalty, or an 18-percent cost of regulation and oversight in the Pentagon. Now, conservatively the Pentagon buys $100 billion a year of equipment. This does not include service, just equipment, about $40 billion in procurement and $30 billion in research and development and about $30 billion in the operations and maintenance accounts.

Now, 18 percent of that is obviously approximately $18 billion. As I said, it is not economical to spend $18 billion to save $900 million. We are going to have to accept the fact that there may be some misapplication of funds in some cases, but generally, the contractors intend on doing a good job, their intentions are not to cheat the Government and we will have to accept that and the consequences of paying more taxes as a result.

Mr. MCINTOSH. Isn't the way the private sector deals with that is to have less paperwork going into the transaction, but have severe penalties if there is fraud on the other end?

Mr. TURNER. Well, the severe penalty that is the utmost one is not to do business with the person and that is what the Government should do. If they find someone that is cheating them there is an easy solution, you don't buy from them again.

Mr. MCINTOSH. That would be a pretty stiff incentive for people who only deal with the Government.

Mr. TURNER. Well, we live with that every day and so there is a way. You don't have to have thousands of people to enforce something that simple.

Mr. MCINTOSH. Thank you, I appreciate it.

I appreciate Mr. Jones coming up.

It frustrates me when we have a better solution available to us, but because of Government procedures, don't use it on behalf of the taxpayers who are funding the system.

I have a couple more questions but I am going to refer to Mr. Gutknecht for a round of questions and then come back.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I also serve on the Science Committee and the Technology Subcommittee and we have heard a lot about the FAA and the FAA is the largest purchaser of vacuum tubes in the world. As a matter of fact, we buy them from Czechoslovakia because there is nobody in the United States who produces vacuum tubes, at least in the quantity that the FAA needs. In fact, I don't want to alarm the traveling public, but if you go to Farmington and you take a tour of the base where the equipment devices and vacuum tubes that keep you safe while you are airborne are, that equipment was manufactured principally in the early sixties. I say that because I have been delayed twice in the last 3 weeks in Chicago because their system is broken down.

The story is even worse than that. We had a Technology Subcommittee meeting about 2 months ago and the General Services Administration and the GAO told us that they probably wasted about $4 billion in upgrading the system and they are still a long way from getting it upgraded.

The interesting thing, and this is for the chairman's benefit, in visiting some of the telephone companies, over the telecommunication deregulation issue, they told us that they do this every day. They route millions of telephone calls every day, in essentially the same way we route airlines. They believe that they could, with a relatively modest investment, modify some of their technology and control the airways much more efficiently than we do today. We have got a serious problem with the FAA.

Every several years they bring in a new administrator who comes to the Congress and says, well, yes, we had some problems, but now they are being taken care of. It is sort of like we have been there, we have done that and we keep doing the same thing. We have been upgrading the system since 1968 and it is still not upgraded. We are a long ways away from it. Not to alarm anybody, but that is another example of how the Federal Government is not the most efficient at managing, operating, upgrading or doing any of the other things that business does.

I have several questions though, and particularly for the gentleman from Ames Construction. I understand that Ames is also involved in environmental cleanup. In fact, I think they had a project down in Rochester. In visiting with Dick, he told me last year that he thought there could be an awful lot of money saved in environmental cleanup if we could change some of the rules and put a little common sense into it.

I was wondering if, Mr. Goderstad, you could maybe put some flesh on that and, if not today, maybe you could share with me later in some written information, because I would be happy to work with you.

Everybody wants to clean up environmental spills, everybody wants to make certain that we are doing all we can to get these sites cleaned up, but I think we also look to ourselves and our grandchildren to do it in the most cost effective way possible. If you have some specific suggestions, we would certainly like to hear them and I would like to work with you on that. Maybe you could share some now, or at some point in the future.

Mr. GODERSTAD. I do have a couple of specific observations, but I would like to also follow it up in writing and offer some specific suggestions. One of the problems that we face is that most of the work that we do for the Government we are required to provide a surety bond, ensuring that we will fully, faithfully, adequately, provide and perform the contract. In order to obtain the surety bond we are required to go through a surety company who will say yea or nay as to whether we get the bond or not.

Unfortunately, there was a decision in California, I believe in the Federal district court there called *Kaiser Aluminum and Chemical Corporation* v. *Catellus Development*, wherein the contractor was, the soil moving contractor was, transporting soil from the one side of the project to the other and as a result under the Federal Superfund law he was found to be a transporter and assessed liability for the cleanup of the entire site.

Now, what does that do for our surety, that tells them that anytime Ames gets near a Superfund job or potential contamination, we have a possibility of having to cleanup some outlandish site that we could never afford to do. That I think sets the background for what we are facing.

In addition, we are doing a project in Colorado for the Department of Energy, we are a subcontractor to Morrison Knutson Corp. On that project we have to haul uranium tailings from the former weapons-grade facility, no big deal. We have people that follow our trucks, I don't know—they may be Government employees or they may be Morrison Knutson employees, I am not certain right now, I will find out, looking to see if we have dropped a single drop of moisture out of those trucks. The entire site is already contaminated, yet we have this unbearable inspection procedure that has dramatically impacted our costs in performing the project.

Mr. GUTKNECHT. So, in other words, by dramatically increasing your costs, you dramatically increase ours.

Mr. GODERSTAD. Well, we would like to dramatically increase the Government's cost, but unfortunately we bid the project in a hard fixed price. So we are basically eating the cost right now.

Mr. GUTKNECHT. On this project, the next time you are going to have to get even.

Mr. GODERSTAD. On the next project we probably won't be competitive because we know now what the Government requires as far as the inspection. Unfortunately, that will make us noncompetitive and somebody will get the job who either doesn't own their own machines and have their own employees and just grovers everything out or someone will get the job that is not aware of the regulations and they will be the next victim of the system.

Mr. GUTKNECHT. My time has expired, but may I ask one more question?

Mr. MCINTOSH. Certainly.

Mr. GUTKNECHT. This is for Mr. Weis. I know you are not so much in the home building today, but have you seen the sheet that was put out by the National Association of Home Builders about how much regulations cost on a new house? I think I am correct, it is over $5,000.

Mr. WEIS. I think that is conservative.

Mr. GUTKNECHT. As it drives up the pricing per family.

Mr. MCINTOSH. It probably doesn't include the development, either the building of roads or the other add-ons that they require for new developments.

I have a couple of questions for Mr. Weis about the material safety sheets. I appreciate you bringing those to our attention and you may not be familiar with all the ones in there.

Mr. WEIS. No, I definitely am not.

Mr. MCINTOSH. I don't blame you. Is it your experience that workers on the site consult with those regularly to determine where there might be hazards on the worksite?

Mr. WEIS. No. I mean, it is not business as usual and I shouldn't say that, but, as a practical matter, if somebody is going to clean brick, are they going to go to that file when they only have to talk to the superintendent of safety training officer on the job and find out how they are supposed to handle that particular product? It just isn't going to happen.

Mr. MCINTOSH. The other thing that I have heard from people, that generally they were never consulted for many of the things in there, that there are also a lot of materials that were designated hazardous that are encountered in everyday life, like saw dust and dishwashing liquid in the men's room and those types of products. Is that the case, is that your experience with those material safety data sheets?

Mr. WEIS. Well, we had an instance where we were doing a K-Mart expansion in Illinois. K-Mart shipped in the fixtures and they shipped in a can of solvent with the fixtures and the OSHA guys came on the job, found that can of solvent, it was unopened I understand, but we were levied a fine of $6,000 for that particular can of solvent being there and not having a material data sheet for it. We did subsequently get the fine reduced to $1,500 and probably gotten it eliminated if we would have spent $1,000 sending our people to the hearings. The irony is that K-Mart sells this type of material over the counter.

Mr. MCINTOSH. So the average public can get access to this and generally does all right without the material safety data sheets. Let

me ask you this, to make sure I understand your earlier point about the top 100 safety regulations and OSHA violations, the first list you read were the actual risks that were cited?

Mr. WEIS. They were citations issued in 1991 for violations. They are legitimate, I couldn't put forth that more. Those are the kinds of things that could be tragic.

Mr. MCINTOSH. What was the second list?

Mr. WEIS. That was the 1994 list of the top violations which all deal with paperwork.

Mr. MCINTOSH. So between 1991 and 1994 there has been a shift in the way the agency has been fulfilling its mission. They have shifted away from true safety violations onto paperwork violations. This shift in policy, is that something that people in the industry were told would happen?

Mr. WEIS. I am not, in the sense of the day-to-day OSHA thing, but to my knowledge—I should say, if you will bear with me, I was a delegate to the White House Conference on Small Business. On the first morning of the conference he told us about the new OSHA under his administration. Here is the illustration that he used, because it is the No. 5 OSHA notice posted.

Anyway, he said, under the old OSHA you are required to put up, roughly, a 2-by-3 bulletin on each construction site, which informs all the workers of the various hazards of that construction site. He said if the OSHA inspector comes on the job and that poster isn't there, you are subject to a $400 fine, you will be fined $400, he said. Under the new OSHA, if the inspector comes on the job and that poster isn't up, the OSHA inspector is going to hand you the poster. Now, that sounds pretty good, but I don't think it has kind of filtered down to Minnesota yet.

Mr. MCINTOSH. I have noticed that quite regularly. We have Mr. Dear who is the Administrator of OSHA making a similar point, that he had changed the agency and they were no longer going after enforcement matters that were paperwork rather than real safety violations. I have become more and more convinced when I talk to people in the field, and I think your list confirms it, that if message is sincere it isn't getting beyond the Secretary of Labor's office and certainly doesn't seem to be applied in any real world fashion. I appreciate your testimony.

I appreciate all of the testimony from the panel today.

Did you have any further questions?

Mr. GUTKNECHT. No, Mr. Chairman, but Mr. Arneson has arrived and we would like to get him up.

I would like to thank the panel as well and we have got to keep pushing on all fronts, particularly this procurement reform.

It is something that, the more I learn about how much it costs us to buy things, the more I think that we have got to get other ways to do it more efficiently. We could afford a lot more technology, we could afford a lot more planes or missiles or whatever, if we were a little bit smarter about the way we acquire them, that and OSHA and all of the other things.

What we are really trying to do—and maybe I should say this parenthetically—what we are really trying to do is change this culture from a "gotcha" mentality, which I think has become pervasive throughout the Federal Government, to more of an attitude that we

want to work with the business community, we want to work with small business people. Frankly, we have got to change the attitude that you are out there trying to cheat us to more of an attitude that we want to work with you and, if we all work together, we can all come out ahead in this game.

That is going to be tough and, as the chairman mentioned, Mr. Dear indicated that he is changing the culture at OSHA, but that has not even filtered down to one of his assistant secretaries because I asked her what she thought the American people wanted from OSHA, her answer was more efficient and effective regulations. I said, with all due respect, I think what the American people really want is more reasonable regulations. So there is quite a cultural re-education that has to go on within the Federal Government at all levels and in all departments.

Thank you very much for being with us this morning. Thank you all.

Mr. Arneson, if you could join the next panel, that would be tremendous.

If we could call forward all of the speakers on our second panel, along with Mr. Arneson, then we could move forward with the second panel.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you and let the record show that each of the witnesses answered in the affirmative.

Let's have our first witness, Mr. Ted Arneson, president of Professional Instruments. Welcome.

STATEMENTS OF TED ARNESON, PRESIDENT, PROFESSIONAL INSTRUMENTS; DONNAVON EAKER, CO-OWNER, STEVE'S MEAT MARKET; CHARLES McDUFF, DIRECTOR OF GOVERNMENT AND TECHNICAL AFFAIRS, ECOLAB, INC.; LYLE CLEMENSON, PRESIDENT, CEI, INC.; AND WILLIAM SMITH, JR., EXECUTIVE VICE PRESIDENT, BROWN & BIGELOW

Mr. ARNESON. Is there a microphone or should I stand?

Mr. MCINTOSH. You may sit right there and I think the microphone in front of you is able to pick that up.

Mr. ARNESON. My name is Ted Arneson, I am a 71-year-old owner and founder of a very unusual high technology manufacturer in Minneapolis and Rochester, MN. I got started at it when I was 22 years old, partners with my brother. He was a very intelligent guy, for 30 years. At this time I am fighting guys like me who want to preserve these companies by passing them on to their kids. I am finding that a very, very difficult thing that I think you ought to have a really good look at because of the tragedy that is going on throughout the country with privately owned companies that are just simply folding because of the impossibility of getting around the estate taxes.

I have the good fortune of having six children, three sons and three daughters, so I can dilute the thing a little bit, but it is still a terrible problem. It is the zoning and the auctioning off of industries that were developed after World War II, with tremendous capabilities, which have had resounding effects on the economy and the defense of this country. They are simply going down the drain because of regulatory excesses all the way across the board and the

impossibility of transferring substantial sums or values, not sums of money but values, to the logical successors. This is something I think the economists have got to take a look at. It has been going on so long now that it is really serious and it is going to get a lot worse.

These companies have been companies that have done the bulk of the high schools' technical training and manufacturing. They are also the companies that are going to generate all the good paying jobs and that are being eliminated by all the large public corporations which are finding China and Malaysia and Thailand and Singapore to be a lot nicer place to work than here.

I might have mentioned that I am a 7-year member of the State OSHA Committee in Minnesota and that is not the subject of my discussion, but if you want to talk to me about OSHA matters I surely know a lot about them.

Government contracts are a terrible problem. My company has a record, an absolutely stunning record, of technology development. We were credited by the people at Livermore Laboratories in 1961 of changing the defense strategy of the United States. The equipment has been, all through the cold war era, regarded as so strategic that it is the subject of very fierce export requirements, which has given us a lot of trouble in developing overseas business. Even with those countries that are supposed to be OK to ship stuff to we have to go through a whole pile of paperwork. Countries like Japan I worry that if the United States got a bad attitude that they might shut off our profits at any time. That has given us a lot of trouble.

We, of our own volition, have made sure that our ultraprecision spindles and slides and the like don't get to the places that we know they shouldn't get, to the countries that like to play around with nuclear weapons.

We feel really that we are locked out from government contracting. We sell stuff to the Bureau of Standards in Japan and the National Physical Laboratory in Germany, but we can't sell to the U.S. Bureau of Standards because of your insane purchasing requirements.

That is nothing I can tell you about in 5 minutes, but I will be glad to come down to Washington any time you want me to. We have been tangled up in major committees for more than 5 years trying to fix that.

Thank you.

Mr. MCINTOSH. Thank you very much, Mr. Arneson. I would definitely take you up on your offer in several of those areas. Appreciate you bringing that information.

Mr. ARNESON. Old guys get cheap airplane tickets, I can travel there anytime.

Thank you.

Mr. MCINTOSH. Our next witness on this panel is Ms. Donnavon Eaker. Ms. Eaker, welcome.

Ms. EAKER. Thank you for the opportunity to speak to this committee.

Listening to the other gentlemen, I think we are a very tiny small business but, needless to say, we are members of the American society. My husband and I have been members of the Min-

nesota Association of Meat Processors since 1976. We are members of the National Association of Meat Processors since 1985. Right now I am serving as region four's director for the American Association of Meat Processors. Region four consists of Minnesota and South Dakota small meat processors.

My husband, Steve, and I have owned and operated a small retail fresh meat market and processing facility in Ellendale since 1973. We purchased an existing meat market which sold groceries and did custom meat processing for area farmers in this town of 549 residents. Since 1973 there are fewer and fewer farmers who raise livestock, so the custom-processing business has declined. The small town grocery store customers also dwindled because the big supermarket offered so much more for the commuters who now work in the larger area communities. Our main street in Ellendale now has less than a dozen businesses, whereas, in 1973 there were over 30 thriving businesses.

We have continued to grow and change because we specialized in the goods and services we offer and we do a good job. We decided in 1985 that if we did not diversify we would have to close our doors. Over the years we have continually upgraded and added to our present facility. Steve has won over 250 State and national awards for smoked and cured meats competitions and is known throughout the country for his expertise in smoked meats. It is always our goal to go into USDA inspection for our smoked meats and sausages.

In November 1991, we began the construction of an addition to our present facilities. The original target date for completion was November 1992. In April 1993, after over 6 months of delays and changes required by the USDA officials, we were finally approved to begin manufacturing our smoked meats and sausages. USDA would not allow us the opportunity to solicit new accounts until we were approved. Not until August 1993 were we able to secure enough accounts to start paying back the debt, with moneys received of products made in the new facilities.

We continued to meet our financial obligations, which was the loan repayment, even though we operated in the red for over 2 years. Needless to say, by the time we were able to turn the profit picture around, our credit rating at our lending institutions was severely damaged. We are still trying to recover and upgrade our lending status and credit ratings because of the delays and cost overruns of the USDA requirements. We have had several other USDA plant owners visit our plant and they have all noted that they certainly did not have to adhere to all of the requirements that we have had to comply with.

I spend at least 6 hours a day in my office doing required work for the USDA. I am constantly working on unnecessary requirements, whether it be product labels, nutritional labels, production forms or looking up FSIS directives or notices for clarification. The meat industry has recently come under attack by the USDA FSIS in the form of a mega-reg. This being the proposed HACCP, the Hazard Analysis and Critical Control Point regulations. The USDA officials admit that they will cost the small meat processor approximately $27,000 per year to implement the HACCP program. That's OK, because their definition of a small business is anyone up to

$2.5 million in annual sales. I am sorry folks, we don't have $2.5 million in sales in our little town and in our processing plant. The USDA officials estimate the cost for a medium-sized plant, which is $50 million in sales, to be just over $31,000 per year.

My husband is still trying to figure out where this money will come from after another round of increased Government costs. Because many small meat processors rose up, wrote letters, contacted Congressmen and attended informational briefings, these proposed regulations have been put on hold for at least 2 years to allow for negotiated rulemaking. I want to make just a short note on that rulemaking, because their original—I have gone to several of the hearings, they only wanted to hear from the consumer groups and the SSI officials, they did not want to hear from the small business person. I attended that HACCP briefing held in Kansas City in May and I came home feeling that our Government really did not listen to its people. It listens to those groups or individuals who seem to line their pockets and stroke the necessary folks to accomplish their goals. USDA does not understand business.

We employ over 15 full- and part-time people in our small community. With the ever increased cost of doing business will we survive? I don't know. Our business site sits on four lots in downtown Ellendale. Will those be empty buildings with no one there interested in going into business for themselves? I don't know.

Who will purchase this business when it comes time to sell? We have many friends in the industry who have had their business for sale for more than 5 years, with no takers yet. When young people see all the required Government regulations they certainly are not interested in a small town business. I don't blame them. Who will?

There are many days that I wish I had an 8-to-5 job, I wish I could just work for someone else. Sometimes, I think I am. I work for the Government and I work for the local bank and do not have a 401–K plan, a retirement fund, or a savings account. We have been in business for over 22 years. All our assets are in our business. This is our life. Our oldest daughter, who is 23 years old, made more money last year than I and my husband combined. Our children certainly do not want to take over a family business. They see the sacrifices we have made and they want to offer their families an easier life. Maybe they can go to work for the Government. Maybe that is an idea. They see the increased Government regulations and they are not willing to be a part of it. I wonder who will.

This country is built on many small businesses and the concept of family businesses providing jobs and a better way of life. Will only the large companies survive with the ever-increasing cost of Government regulations? Our small business, today, has a slim chance of surviving. With regulations like HACCP, we simply won't be there.

I thank you.

Mr. MCINTOSH. Thank you very much, Ms. Eaker. I appreciate it.

Ms. EAKER. HACCP.

Mr. MCINTOSH. Going after a regulation, right? We do think of them as pests sometimes.

Our next witness is Mr. Lyle Clemenson, president of CEI, Inc., which manufactures, markets, and sells specialized tool and maintenance repair parts.

Mr. Clemenson, welcome.

Mr. CLEMENSON. Thank you for inviting me.

A little bit about my background, I started three businesses from scratch—all three businesses with good, hard work and a little credit and without Government subsidy. I started my first business in a gas station in north Minneapolis. I repaired, bought, and sold foreign cars. To start the business I had to pay cash rent which I squeezed out of my pocket and paid the balance on so many cents per each gallon of gasoline. Inventory came from suppliers who were good enough to see that I would pay them when I got enough money. I employed five people and I sold that business in 1968. In 1969 I started a construction company and I employed as many as 60 people seasonally and, I guess, discontinued that construction company in 1978 because of some of the things I heard Joe Weis say earlier. OSHA came into effect and damaged a lot of construction companies.

I began my third business, CEI, which I have today. I started CEI with the money left over after selling my construction equipment and, of course, the bank. I also took a second mortgage on my house and I went in for a loan. We do manufacturing, marketing, and sales of proprietary products. What that is, is we manufacture our own products or we make and vend our own products and we sell them to our customers—cities, schools, hospitals, governmental agencies, and private business. We sell all over the United States, Canada, and even in some foreign countries. Today, I employ 58 people.

In June I was a delegate in a conference on small business in Washington. The conference delegates in Washington represent some of the Nation's 20 million businesses, of course, and small businesses as well as a wide range of industries. More than 75 percent of the delegates employed fewer than 50 people and 80 percent have an annual revenue of less than $5 million. The small business concerns, as you may be well aware of, are the regulations, taxation, human capital, capital formation, technology, environmental policies, et cetera.

I was chair of the regulation and paperwork as far as the delegation here in Minnesota and I am very happy to report that after working with a lot of people from all of the other States around the Nation here, our 5 resolutions made it into the top 20 of all the resolutions there. One of the regulational meetings that we had that was official, I think one of the other persons in the prior panel mentioned that we had a meeting with Joe Deer, on the 14th at about 9 or 10 a.m. His announcement was, and I am sorry to hear what the end result was, but he said, beginning immediately all OSHA personnel would be instructed that no business be fined for all first time visits and that the tone from this point forward would be a relationship between OSHA and small business, a partnering for safety. I am sorry to hear that that has not taken place.

I was moved by the consensus and the atmosphere of all those small businesses from across America who came to work together to accomplish those things that we set out to do. I am proud to

have been a part of that. I made a commitment to my business to go to Washington to try to make a difference. The conference cost each of us about $3,000 and I think it was a good investment.

In my business we sell all of our products across State lines and we have to fill out a multitude of forms. When we deal with the city or another entity we get pages of forms to fill out and it is a myriad of forms. Each entity sending out these forms has dozens of different ways to ask the same questions. Most of the forms are so complicated it takes an accountant to read and respond.

In addition to that, we seem to be always filling out forms for some kind of Government survey. After all these years, we spend about 20 percent of our accountant's time doing this and about $7,000 to $9,000 per year.

Just briefly, I want to end up with saying a good friend of mine owns a grocery store. On June 1, he had an OSHA inspector—and he employs about 30 people at his store—the inspector was there for 5 hours. The inspector wrote him up for 10 violations and 3 of those violations were fined, $4,500 total. One of the fines was $1,500 for not having an eyewash station. Can you imagine an eyewash station in a grocery store? The reason was, he had a battery in the little electric lift truck that he had within the store. He doesn't even service it, because he rents it and they do all the service. Another fine was for not having a written procedure for taking the basket out of his chicken fryer. The third fine for $1,500 was for not having an automatic off switch on his meat blender.

In conclusion, I have had the opportunity to have traveled and worked or done sales in 40 to 48 States, and in Mexico and Canada. I have found that all the small business persons that I have had an opportunity to meet or do business with, they are no different from us here in Minnesota. We all work hard and long hours to make our business work. I know that these same people do agree with me that we are in such a dire need and cutting back Government regulations needs to be a big part of that. Government would do well to get off our back so that small business can continue to hire 85 percent of those people hired.

Thank you.

[The prepared statement of Mr. Clemenson follows:]

Lyle Clemenson 612-425-1167 fa
CEI
8200 97th Ave. N.
Brooklyn Park, MN 55445

August 8, 1995

RE: Hearing on Government reform and Oversight

I have started 3 businesses from scratch. I started all three businesses with good credit and help from private industry and without government subsidies. The first business was a used foreign car sales and repair shop in north Minneapolis. I started it in a Cities Service gas station. We repaired, bought, and sold foreign cars. To start the business I paid some cash rent and I paid the balance with so many cents on each gallon of gas sold and my inventory came from suppliers that put in products and then I paid for those products as I sold them. I employed 5 people. I sold that business in 1968. The second business, a construction company I started that company in 1969 with money from the first business and established a small line of credit with a bank and of course mortgaged my home. I employed as many as 60 people seasonally. And my third business I began in 1978. I started this company with money left after selling my construction equipment and in addition to that I put a second mortgage on my home. This business is manufacturing, marketing, and sales of proprietary products. Our customers are maintenance departments of, private business, cities, schools, hospitals, and governmental agencies. We market and sell out products all over the United States, Canada and some foreign countries. Today I employ 58 people

In my business we cross state lines and are met with a multitude of forms. They are Affirmative Action with as many as seven or eight pages, and Taxpayer Identification form W9s. In addition to that we always seem to filling out forms for some kind of survey from some government agency. Filling out and recording these forms require a person to be of the accountant caliber. In our company it takes better than twenty per cent of accountant's time to keep these forms flowing. We calculate that our company spends anywhere from $7,500 to $9,000 per year just on regulatory paperwork. In addition to that there are other hidden costs to conform to safety requirements which are too numerous to mention here.

A good friend of mine owns a grocery store. On June 1 of this year he had an OSHA inspection. The inspector was in his store for 5 straight hours. When the inspector was done he had 10 violations and fines of $4,500. One of the $1,500 fines was for not having an eye wash station in his store. An eyewash station in a grocery store? In the store they have a electric powered cart for moving large boxes and it has a battery in it. The battery box is sealed and he has a service company do the service on it. The second $1,500 fine was for not having a written procedure for taking the basket out of the deep fryer, and the third $1,500 fine was for not having an automatic off switch on his meat blending machine. One of the most ridiculous violations was for having his checkout counter 3.5 inches too low.

In June I was a delegate to the White House Conference on Small Business in Washington.

The Conference delegates, in Washington, represented some of the nation's 20 million businesses--the smallest businesses as well as a wide range of industries. More than 75% of the delegates employ fewer than 50 people and 80% have annual revenues of less than $5 million.

Small businesses areas of concern: Regulations and paperwork, Taxation, Human Capital. Capital Formation, Community Development, Environmental Policy, Technology etc..

I was Chair of Regulation and Paperwork for our delegation. And I am extremely happy to

report that all five of our resolutions made it into the top twenty eight of all resolutions presented. Theses are a general synopsis of those resolutions.

1. Require government to do a cost/benefit analysis and risk assessment before instituting.

2. Require all agencies to simply language and forms, sunset and/or evaluate after 5 years and a single source of governmental regulations and requirements.

3. Require all agencies to provide cooperative/consulting environment and no first time fines.

4. Tort reform for product liability, fault based standard of liability, and recovery of costs from losing party.

5. OSHA to work with business to establish workable goals.

The tone of this small business conference was to shrink government and get the government off of our backs--we were not there for a handout.
I was moved by the consensus and the atmosphere of all those small businesses from across the U.S. wanting to work together to accomplish something. I am proud to have been a part of that.

I made a commitment to my business to go to Washington to make a difference. This conference cost each of us delegates about $3000. I am pleased to report that, I think, the money was well spent.

We had several conferences with other regulatory officials. I want to especially announce that in our meeting with Joseph Dear, Assistant Secretary of OSHA, on Wednesday June 14, he announced **that beginning immediately that all OSHA personnel would be instructed that no businesses would be fined on all first time visits. And that the tone from this point on would be the relationship between OSHA and industry would be one of partnering for safety.**

We have been planning a new facility. We had originally planned to build two stories. The ADA requirements killed that. We would have had to put in an elevator and cost to install was approximately $100,000.

I have had the opportunity to have traveled in, worked in or done sales in 40 of the lower 48 states and in Mexico and Canada. And I have met hundreds of small business persons. I have found that all of the small business persons of some we do business with, are no different than those of us right here in Minnesota. All of us work hard and long hours and usually mortgage everything we own to make our businesses work. I know that all of these same people would agree with me that we are in such dire need of cutting back government regulations and government period. Government needs to back off so we can keep our businesses going and continue to hire 85 percent of those people being employed

Separate listing of the five resolutions from the White House Conference

1. Congress should amend the Regulatory Flexibility Act making it applicable to all federal agencies including the Internal Revenue Service and the Department of Defense to include all of the following:

   a. require cost benefit analysis scientific benefit analysis and risk assessment on all new regulations and Internal Revenue Service interpretations.

   b. grant judicial review of regulations providing courts the ability to stay harmful and costly regulations and to require agencies to rewrite them.

   c. require small business representation on policy making commissions federal advisory and other federal commissions or boards whose recommendations impact small businesses. Input from small business representatives should be required in any future legislation policy development and regulation making affecting small business.

2. Congress shall enact legislation and appropriate enforcement provisions to include all of the following:

   a. require that all agencies provide a cooperative/consulting regulatory environment that follows due process procedures.

   b. require that fines take into account severity of infraction, size and type of company, past safety record and frequency and severity of violations.

   c. prohibit fines either for violations identified during a consulting visit requested by the company, or by an agency investigator and brought to the attention of the employer for the first time or if the company is found to be in substantial compliance; the employer and the inspector should negotiate a reasonable time table for compliance and fines should be levied only for failure to comply within that time table.

   d. allow small business the option to select mediation or binding arbitration.

   e. require that regulatory agencies put the fines that they impose and collect into the general treasury fund toward retiring the national debt: said agencies should be prohibited from receiving credit or usage of such monies, .

   f. require that the liability between the employer and the employee shall be relative to their respective culpability.

3. The President and Congress should:

   a) Return to a fault-based standard of liability.

   b) Eliminate joint and several liability in cases where the defendants have not acted in concert.

   c) Limit non-economic damages (such as pain and suffering mental anguish, or punitive damages) to a fair maximum dollar amount, e.g., $250,000.

   d) Restrict punitive damage awards to cases of willful and malicious conduct. The amount awarded should be split between the state and the plaintiff.

   e) Reduce awards in cases where a plaintiff can be compensated by collateral sources, to prevent windfall double recovery.

   f) The prevailing party in a legal action should have a statutory right to recover costs and attorney fees fro the non-prevailing party.

   g) Impose a uniform reasonable statute of limitations and repose in all civil actions, and hold defendants to the state-of-the-art in existence at the time the product was manufactured or a service performed unless willful abuse is proven.

4. Small Business and OSHA must work together in a non-adversarial, supportive relationship to attain public policy safety goals. To accomplish this, Congress must pass legislation as follows:

   1) Require that voluntary compliance audits be performed within sixty days of a request by a small business. Such audits must be educational and non-threatening with written results and no fines issued.

   2) Businesses which have completed a voluntary inspection and have corrected any deficiencies within the time allotted, will not be fined at a subsequent inspection for deficiencies which were missed or interpreted differently by the first inspector.

   3) Require that all enforcement inspections, no matter how limited the scope of the inspection, will result in an overall inspection score or grade to be issued in writing by the inspector. On the basis of that grade, no fines or penalties may be issued for deficiencies found if the facility, (or that portion of the facility inspected), has been found to be substantial compliance. In addition, in those cases where at least 90% of the entire facility has been inspected and the overall grade indicated that the company is in substantial compliance, OSHA will issue a letter of recommendation recognizing the company for its efforts. If needed, a definition of substantial compliance would include:

      a) limited number of violation/deficiencies found vs. number of items inspected.

      b) company has an active safety committee or program and demonstrates commitment to safety by management.

      c) major programs, i.e., right-to-know, confined space, lock out/tag out, training, etc., in place.

   4) Amend regulations to assign responsibility for regulatory compliance to the employee as well as the employer.

5. Congress shall enact legislation and appropriate enforcement provisions to include all of the following:

   a. require all agencies to simplify language and forms required for use by small business.

   b. require all Agencies to sunset and reevaluate all regulations every five years, using the same standards required for new regulations, with the goal of reducing its total paperwork burden by a least five percent each year for the next five years.

   c. require agencies to assemble information through a single source on all small business related government programs, regulations, reporting requirements, and key federal contract's names and phone numbers, with as much as is feasibly available by on line computer access.

Mr. MCINTOSH. Thank you very much, Mr. Clemenson. I appreciate your work on the small business conference. The gentleman I appointed as my representative reported that there were men like you, or men and women like you, from around the country who had worked very hard to propose changes in the Government. I appreciate you and, I believe Mr. Weis mentioned he was also a delegate, the effort on the part of the private citizens to help us in that way.

Our next witness is Mr. Charles McDuff, who is the director of government and technical affairs with Ecolab which markets disinfectants and sanitizers.

Mr. McDuff, welcome.

Mr. MCDUFF. Thank you.

My name is Charles McDuff and I serve as director of government and technical affairs for Ecolab here in St. Paul. Ecolab is the leading global developer of premium cleaning, sanitizing and maintenance products and services for the hospitality, institutional and industrial markets. Our customers include hotels and restaurants, food service, health care, educational facilities, quick service, fast food restaurants, dairy plants and farms, and food and beverage processors around the world.

We are headquartered here in St. Paul and we reach out to customers directly in 26 countries in North America, the Asian Pacific, and Latin America. We employ approximately 8,200 associates. In Europe we operate through a joint venture with the Hinkel KGA Co. and this joint venture does business in 23 countries. Additionally, through our licensee distributors and export operations, we serve customers in another 100 countries.

Ecolab is the expert in cleaning and sanitizing products. Sanitizers and disinfectants are a major part of our business and are used in a variety of services to control microorganisms to protect the public health. Food contact surfaces in restaurants, in dairies and food and beverage processors, on environmental surfaces in hospitals such as operating room floors and nursing homes and on a variety of fabrics and linens that are used throughout the markets we serve. Sanitizers and disinfectants are regulated as pesticides under FIFRA, the Federal Insecticide, Fungicide and Rodenticide Act. They are diluted with water before use and after application, they are discharged down the drain to the local publicly owned treatment works.

Unfortunately, sanitizer and disinfectant products are regulated the same as agricultural pesticides by the EPA. We, as others in our industry, have incurred numerous problems with the EPA from this one-size-fits-all approach to regulation. By using the same criteria for approving sanitizers that are used to approve agricultural pesticides, the regulatory process for sanitizers is unreasonably burdensome and protracted. In fact, we have one sanitizer product that has been under review by the agency since March 1993 and it still is not registered. We cannot sell a sanitizer product until it is registered by the EPA.

Additionally, there are proposed pesticide disposal regulations, the EPA maintenance fees, the State product registration fees, and State pesticide sales taxes. One good thing, I think we believe that we now have a fix for the EPA problems with H.R. 1627, which is now pending before Congress. Hopefully, we appreciate the support

of this subcommittee and look forward to the hope that Congress can pass this legislation this session.

I would like to mention a couple of other regulatory hurdles that we have to deal with daily. Our favorite topic, OSHA. Proposed OSHA indoor air quality rules require a 24-hour notice to employees before a pesticide can be applied in the workplace. Ecolab has fired extensive comments to OSHA, as well as testified last fall at the OSHA hearing. Can you see a restaurant manager having to inform the employees 24 hours in advance that a sanitizing product will be used innumerable times the next day on the food contact surfaces in the establishment.

Sanitizers are mandated for use by the FDA Food Code, the U.S. Public Health Service, as well as local and State regulations. Sanitizer products used on food contact surfaces, must be cleared as indirect food additives by the FDA before the EPA will even register them. These proposed OSHA requirements seem to provide a good example of over or at least uninformed regulation. Why can't our disinfectants and sanitizers be exempt from this very onerous proposal from OSHA?

The EPA last year proposed regulations in the Clean Water Act on discharged or processed waste water from pesticide manufacturing establishments. Since disinfectants and sanitizers are classified as pesticides the same regulations for agriculture pesticides again applies here. The proposed rule required that zero discharge of pesticide active ingredients to the sewer. Most sanitizer active ingredients have other nonregulated uses. For example, we use phosphoric acid in several of our EPA registered sanitizers. Phosphoric acid is also used in soft drinks, such as Coke. So no claims are made for the control of microorganisms, thus the product is not a pesticide. Again, thoughtless burdensome, regulations.

The problem here is how can we have zero discharge of the pesticide active ingredient, phosphoric acid, when the same material is also used in nonregulated products. Ecolab has provided extensive comments to the EPA and also has testified at the hearings on this issue. We hope that when the final rules are issued that disinfectants and sanitizers could be exempt.

Thank you for allowing me to tell you some of the hurdles of Ecolab.

Thank you.

[The prepared statement of Mr. McDuff follows:]

Testimony
of
Charles R. Mcduff

before the

House Subcommittee on National Economic Growth,
Natural Resources and Regulatory Affairs
Minnesota State Capitol

August 8, 1995

My name is Charles McDuff. I serve as Director, Government Technical Affairs, Ecolab Inc., St. Paul. Ecolab is the leading global developer of premium cleaning, sanitizing and maintenance products and services for the hospitality, institutional and industrial markets. Customers include hotels and restaurants, food service, healthcare and educational facilities, quick-service (fast food) restaurants, dairy plants and farms, and food and beverage processors around the word. Headquartered in St. Paul, Ecolab reaches customers directly in 26 countries in North America, Asia Pacific and Latin America and employs approximately 8,200 associates. In Europe, it operates through a joint venture with Henkel KGaA. The Henkel-Ecolab joint venture does business in 23 countries. Ecolab serves customers in more than 100 other countries through distributors, licenses and export operations.

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Ecolab is the expert in cleaning and sanitizing products. Sanitizers and disinfectants are a major part of our business and are used on a variety of surfaces to control microorganisms to protect the public health - food contact surfaces in restaurants, in dairies, in food and beverage processors, on environmental surfaces in hospitals and nursing homes, and on a variety of fabrics (linens) that are used throughout the markets we serve.

Sanitizers and disinfectants are regulated as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). They are always diluted with water before use and after application, they are discharged down the drain to the local Publicly Owned Treatment Works (POTW). Unfortunately, sanitizer and disinfectant products are regulated the same as agricultural pesticides by the Environmental Protection Agency. We, as well as others in our industry, have incurred numerous problems with EPA from this one size fits all approach to regulation. By using the same criteria for approving sanitizers that are used to approve agricultural pesticides, the regulatory process for sanitizers is unreasonably burdensome and protracted. In fact, we have one sanitizer product that has been under review by the Agency since March 1993 and it

is still not registered by the Agency. We cannot sell a sanitizer product until it is registered by the EPA. Additionally, we have proposed pesticide disposal regulations, EPA maintenance fees, state product registration fees and state pesticide sales taxes. We believe that we now have a fix for the EPA problems with HR 1627 which is now pending before Congress. We will appreciate the support of this subcommittee for this bill and look forward to its passage during this session of Congress.

I would like to mention a couple of other regulatory hurdles that concern Ecolab.

Proposed OSHA Indoor Air Quality rules require a 24 hour notice to employees before a pesticide can be applied in the work place. Ecolab forwarded comments to OSHA as well as testifing last fall at the OSHA hearing. Can you see a restaurant manager having to inform his employees 24 hours in advance that a sanitizing product will be used enumerable times the next day on food contact surfaces within that establishment? Sanitizers are mandated for use by the FDA Food Code, the U.S. Public Health Service as well as local and state

regulations. Sanitizer products used on food contact surfaces must be cleared as indirect food additives by the FDA before they can be registered by the EPA. These proposed OSHA requirements seem to provide a good example of over - or at least uninformed - regulation. Why can't disinfectants and sanitizers be exempt from this onerous proposal from OSHA?

The EPA last year proposed regulations under the Clean Water Act on discharge of process waste water from pesticide manufacturing establishments. Since disinfectants and sanitizers are classified as pesticides, the same regulations as for agricultural pesticides again applies here. The proposed rule requires a zero discharge of pesticide active ingredients to the sewer.

Most sanitizer active ingredients have other non-regulated uses. For example, we use phosphoric acid in several of our EPA registered sanitizers. Phosphoric acid is often used in soft drinks so no claims are made for control of microorganisms, thus the product is not a pesticide, and process waste water can be discharged without restrictions. Again, thoughtless, burdensome regulations.

The problem here is how we can have zero discharge of the pesticide active ingredient phosphoric acid when the same material is also used in non-sanitizing products which are not regulated.

Ecolab has provided extensive comments to the EPA and also has testified at the hearings on this issue. We hope that when the final rules are issued that disinfectants and sanitizers will be exempt.

Thank you for allowing me the time to present a few regulatory concerns of Ecolab.

CRM/83/95

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

Our final witness on this panel is Mr. William Smith, Jr., who is the executive vice president of Brown & Bigelow, which manufactures playing cards and calendars.

Mr. Smith, thank you for coming.

Mr. SMITH. Thank you.

Good morning, Chairman McIntosh and Congressman Gutknecht.

As you mentioned, my name is William Smith and I am executive vice president of Brown & Bigelow. We are a manufacturer and marketer of calendars, playing cards and promotional products. Brown & Bigelow employs over 1,000 people nationally and over 500 here in St. Paul where we have been based since 1896. Our production employees are represented by five separate labor unions.

Before I begin my testimony, I would like to thank you for the invitation to address this committee. I consider it a privilege to participate in the debate over regulatory reform in this country. I hope my comments this morning will provide one perspective on the role of the Federal Government in regulating the safety of the American workplace.

Specifically, I will argue two points. First, private industry can regulate its own workplace safety far better than the government; and second, legislation which must be enacted to protect the safety of employees should be left to State legislatures, not to the Congress.

In every State in the country, workers' compensation laws provide a financial incentive for companies to maintain a safe working environment and to focus management attention on reducing work-related accidents and injuries. I contend that this financial incentive protects employees from potential workplace hazards more effectively than the current procedures followed by OSHA. The agency's emphasis on citations, fines and paperwork impose a huge compliance cost while yielding few, if any, benefits for worker's safety.

To illustrate my point, I would like to contrast the differences between OSHA mandates and private sector initiatives on this issue. In 1993 my company's workers' compensation rating was 1.69, which means that on average for the 4 years preceding 1993 our production plant had 69 percent more work-related accidents and injuries than the average printing company had during the same period.

This experience rating dramatically increased our workers' compensation insurance premium and as a result became a serious management issue. During the last few years we have focused our attention on reducing work-related accidents and injuries in our plant and as a result of this effort our experience rating has dropped over 40 points to 1.28. This improvement in our rating has translated into savings of over $200,000 a year on our insurance premium.

During the last 5 years OSHA has inspected our plant eight times. Coincidentally, the first and foremost inspection occurred in the spring of 1991 during negotiations with our five labor unions. While each inspection revealed a few important issues that re-

quired attention, I was surprised by the amount of time the inspectors spent on perceived dangers in the workplace.

For example, in one citation we were fined a relatively small amount, $144, for the following infraction. Here I am quoting the report: "Fan blade guards at openings larger than one-half inch on the K-Mart fan in the pick and pack area." This was a standard fan one of our managers purchased from K-Mart on a hot summer day and our employees were using this fan in the same manner that a homeowner would use one. If the fan truly presented a danger, I suspect the consumer products safety commission would have forced the product off the market.

My point here is not to make light of one small example in a lengthy inspection report, but to point out that OSHA inspectors do not necessarily focus their attention on the areas of a workplace that have the most potential for causing accidents and injuries. In contrast, management and inspectors for insurance carriers have a financial incentive to focus their attention exclusively on the areas or operations of a workplace that have the potential to create workers' compensation claims.

In Brown & Bigelow's case I think it is fair to assume that our actions had more to do with reducing our work-related accidents and injuries than did OSHA's inspections of our plant. For these reasons, I contend that the economic incentive created by State workers' compensation laws allow private industry to regulate workplace safety more effectively than the Government can.

However, I recognize that while some of the efforts to enforce workplace safety and worker protection laws are misguided, their underlying principles are not. In 1993, I had the opportunity to tour several printing plants in the southern provinces of China and to watch barefooted teenagers operate heavy equipment and handle hazardous chemicals improperly. After that trip I realized that there is a need in this country for some legislation to protect workers. Our problem, however, is that we are on the opposite end of the regulatory spectrum from China. We are simply overregulated.

Here in Minnesota we have State statutes on the books which mirror Federal laws. Then we have the Occupational Safety and Health Division of the Minnesota Department of Labor and Industry, which is charged with enforcing both the State and Federal statutes in cooperation with the Minnesota office of OSHA. I believe one set of workplace safety and worker protection laws is adequate and one enforcement agency is enough. Since the State legislatures in this country are establishing the compensation that private industry will pay to injured workers, shouldn't they also have complete jurisdiction over workplace safety regulation within their respective States?

Mr. Chairman, as you and the other members of this committee consider regulatory reform, I urge you to consider abolishing OSHA, repealing the Federal legislation it enforces, and returning jurisdiction over workplace safety back to the States.

Thank you, Mr. Chairman, for the opportunity to address this committee.

Mr. MCINTOSH. Thank you very much, Mr. Smith. Let me say, in response to your testimony, that you've presented us with a very valuable, real example of the phenomena that, I think you're cor-

rect, which is business does have an incentive to create a work place that is safe for its workers.

Both Mr. Gutknecht and I were at a hearing with Mr. Dear at which he implied that businesses in general thought of their employees as being disposable and was decrying this. I asked him to cite examples and he came up with two pretty outrageous examples, but I really let him have it for implying that because there were two outrageous examples, that all businesses in this country felt that way and disagreed with him totally and think that you are correct that there is a strong incentive and a desire among most managers that I've met to make sure that they do have a safe work place for their employees.

So with your permission, I hope we can use that as an example of how you, in fact, added safety features in response to your own initiative on that.

In fact, let me ask you this. As you were going through the program, in response to the perceived costs of insurance premiums, what was the correlation as you improved your safety standards and performance to the OSHA inspections? Did they go down in frequency or did they increase?

Mr. SMITH. We've pretty much had annual OSHA inspections and follow-up inspections for the last 5 years. So I guess as our work-related accidents and injuries decreased, we noticed no difference in the number of times we saw our friend, the OSHA inspector.

Mr. MCINTOSH. And was there any difference in approach? Were they more intensive earlier?

Mr. SMITH. We have seen a noticeable change in the approach that OSHA inspectors take. Recently, they seem to have moved from the fines and the citations to a more consultive approach and actually are in a position now to be offering grants to companies to help implement safety committees and purchase of new and safer equipment and installation of guards and other protective devices. So there has been a change.

Mr. MCINTOSH. That's a good sign, then. That is good. Mr. Arneson.

Mr. ARNESON. Yes. I'd like to address that problem a bit. My company has the State's top string of Safety Council Awards of Honor, which very few small companies get. I've got 24 of them in a row. We operate a business where it's thoroughly feasible to get injured and we've done an outstanding job on it.

I want to tell you what that's done for our worker's comp costs, which should really be almost trivial. We're talking about 30 years of numbers that I've gathered which indicate that we have paid half-a-million dollars in worker's comp premiums and the insurance companies have paid out 14 cents on a dollar on that, some $60,000 over the years.

There is a floor below which you can't get as a small business. We can't self-insure. Big companies all self-insure, practically. They pay only the cost. We get stuck for whatever they seem to want to stick us with and improving our safety record isn't going to get you more than so far. The same thing happens in unemployment. We've paid out, since 1960, $200,000-some in unemployment payments. They've paid out $6,000 in costs.

And I don't think that we're unique in that. I think you'd find that that goes throughout the country. And somebody in Washington ought to figure out just how much of a skim the insurance companies are taking off the smaller companies, who really don't have any way to do anything about it.

Mr. MCINTOSH. It sounds to me like there might be a problem that they're not distinguishing between companies that have a long track record and fairly new companies, where you might want to ensure that you have a higher premium because of the likelihood they may go out of business and have liabilities incurred.

Mr. ARNESON. They habitually come to Minnesota and testify that they're losing money on comp. At 14 cents on the dollar paid out over 30 years, I don't think they have lost a lot of money on us. I think, actually, if I index that to the cost or the value of money over that period, they probably, on our account, have more equity than the company has.

Mr. MCINTOSH. That's pretty impressive. Let me alert everyone that I've got a question that I'll come back to, which is, have the regulations that your businesses have encountered affected your decision to expand and create more jobs? But before we come to that, I wanted to give everybody a warning so you could think about that.

Mr. McDuff, I wanted to focus in a little bit on your experience and put on the record that your products all are intended to make our food processing and food delivery service safer for people. Is that not correct?

Mr. MCDUFF. That's correct.

Mr. MCINTOSH. And, yet, I was struck by the fact that you had fairly onerous regulatory provisions by three of the worst regulatory agencies in terms of costs that they oftentimes imply—FDA, OSHA and EPA. Do you find that those regulations often overlap or provide conflicting guidance to your company?

Mr. MCDUFF. Particularly with the Food and Drug Administration and the EPA regulations, they kind of overlap on their procedures for registering product or getting a product cleared through the FDA.

Mr. MCINTOSH. And is there any consideration by the agency of the potential benefit for the product? Say you just said, well, this regulation is one too many, I'm going to stop making it. Do the agencies ever think, no, if we don't have that product available, there's a risk to people in restaurants and other food processing?

Mr. MCDUFF. I think they might mouth that, but whether they really believe it or not or whether they act upon it, I don't think that occurs very often. I think I look at the bureaucrat, maybe sometimes politicians, where you're talking about taking risk, the bureaucrat wants to make sure that he takes the least risk when he writes regulations. I guess the only solution is to have legislation that's more explicit and not leave so much up to the regulatory agency to draft rules to enforce a particular legislation.

Mr. MCINTOSH. Well, one of the general reforms we have in the regulatory area is an explicit requirement that they look at the benefits and determine what are the costs and the benefits. In your case, the benefit of your produce doesn't seem to affect the level of

regulation that's incurred along with the relative risk compared to other possible products.

I'm particularly amazed that they're mentioning that some of the ingredients that are heavily regulated because they are a pesticide or a sanitizing agent are consumed by humans in other uses.

Mr. MCDUFF. We use another active ingredient, citric acid, which is—and some pesticide products for the dairy industry, and citric acid is in every soft drink that we use every day, but yet we have times and problems getting those types of products registered with the agency.

Mr. MCINTOSH. Is that through the EPA?

Mr. MCDUFF. EPA and the Office of Pesticide Programs, their registration division.

Mr. MCINTOSH. So there's no notion that if it's generally regarded as safe, which is a term that FDA uses, EPA doesn't pay attention to that.

Mr. MCDUFF. EPA will not let you call any pesticide safe. Safe is a word that you cannot use with a pesticide product and disinfectants and sanitizers are pesticides. So you cannot use the word safe.

Mr. MCINTOSH. Sounds a little bit Orwellian. Thank you for that. I would ask perhaps that the staff might be able to contact you and get more details about some of your experiences. This sounds like a very good candidate for Corrections Day. If there are items that we allow people to eat and consume every day in soft drinks and other products that are then heavily regulated as a dangerous pesticide, it seems something has gone awry in our system there.

Mr. MCDUFF. You've got it right. Thank you.

Mr. MCINTOSH. Thank you very much. I thank all of the panel and would now turn to Mr. Gutknecht, if you have any questions.

Mr. GUTKNECHT. Thank you, Mr. Chairman. Just to reiterate what you just said, and that is that some of the points you've raised, Mr. McDuff, those would be good candidates for Corrections Day and perhaps we can work with you or you can work with our staff and we can put something together to have ready. The Speaker does want to do this once a month and we've had some good examples, but I think yours are perhaps among the best we've had on this road trip.

I want to come back to Ms. Eaker. We talked, I think, on the phone, I was on a car phone, and we've been pursuing this. Specifically, what is it—and I understand—I think I understand much better now than ever the nature of your problem. Specifically, what is it you would like us to do? Put an exemption, do away with HACCP?

Ms. EAKER. I guess one of the things I feel and our association feels is one of the reasons HACCP was put on hold was because someone somewhere started listening to the small business person. OK, we're out of business in our small town. That means a lot of business. And I am not advocating at all that the rights of the consumer groups are stopped, but they are not listening to the other side.

We just recently came back from our national convention in San Antonio and Russell Cross was there and he was one of the fea-

tured speakers and he was at one time—he might have been the Assistant USDA Secretary of Agriculture.

Three years ago, he was one of them that was implementing moving HACCP right along. He was working for the USDA. He is now working for Texas A&M University. A totally different approach when his paycheck is being signed by the private sector. He's telling us at the national convention that you people, as an association, have to fight HACCP. I thought that was very interesting.

And he went on to say that there's 9,000 deaths per year caused from food-borne illnesses, and I'm writing down what questions I'm going to ask him. It so happened that the gentleman before me asked him, well, how many of those are caused by meat and meat products, and he said, well, 2,500. And I got up and I asked, why isn't that up there and why isn't the fact that how many people are killed by cancer or tobacco-related illnesses, why isn't that put up there.

I also said what about the USDA Government against any farmer subsidy or anything, but the USDA is subsidizing our tobacco farmers. And a lot of our health problems are tobacco or cancer related and yet our USDA Government is funding that same scenario.

One of the things I feel strongly about is the fact that you, as Congressmen, have to listen to the meat processor out here. OK. We are a small segment of that whole food chain. We have the farmer out here raising the livestock. You have the guy that's slaughtering the livestock and further processing. Then you have the food service industry over here who is cooking the product, selling the product in the restaurant, whether it be Perkins, whether it be Panacookin, or whether it be Hilton. Then you have the consumer over here who takes that pound of hamburger, takes it home and cooks it.

Where is this one's responsibility, this one, this one, this one. The only one they're after right now is the guy who is trying to make a living, just like the other three, but because they've got their thumb on us, they can nail us. They're not addressing the farmer situation, they're not addressing the food service and they're not addressing the consumer—please, Mr. Consumer, Mrs. Consumer, cook that meat. Cook that meat so you do not have pink running and the juices run clear.

E. coli has been around since day one. E. coli will still be here. At the informational briefing in Kansas City, a member of STOP stood up and said I, as a taxpayer, want you to guarantee me safe food. An FSI official stood there and said that's what we're here for, ma'am. I'm sorry. If they're going to guarantee the American consumer safe food, then I've got beach front property cheap, a real good price in Iran.

Mr. GUTKNECHT. We've had this debate and one of the other members of the subcommittee is a gentleman by the name of Henry Waxman from California and we've had this discussion about food safety and I shared with him a story and I've shared it at several subcommittee meetings. A year-and-a-half ago, when I was a member of the State legislature, I was invited over to the Governor's mansion for breakfast one morning and, among others, I ate some

pineapple and I became very, very ill. In fact, there were 17 of us that got some kind of food-borne poisoning.

And I reminded Representative Waxman that that pineapple had been inspected by Federal inspectors at several different steps along the way and I said, you know, I got sick despite all of those Federal inspectors and all those Federal regulations. And I said I recovered in spite of all those Federal regulations.

And the problem is, and I think you just hit the nail on the head, we cannot create a risk-proof society. No matter how much regulation we pile upon industry, business, there are going to be certain risks. In fact, yesterday, you would have been interested, one of the people who testified yesterday in St. Cloud told us that 97 percent of the food-borne illness is a result of the way it's prepared, not the processor.

And I think another point that needs to be made, and I would encourage you to continue making this point with your members and as we have these debates and discussions about HACCP and food-borne poisoning and so forth, is that ultimately, if someone gets sick eating your meat products, ultimately you are the one who is responsible and I think the processors themselves take this responsibility much more seriously than sometimes the Federal regulators even think.

I know that if someone gets sick eating a particular brand of ice cream, they don't go back to the Federal inspectors. They go back to the manufacturer, the person whose name is on the carton, and we've seen that example here in Minnesota. I think that's a story that needs to be told again and again.

Well, I will work with you. And I'm sorry that he's not here today. In some respects, I'm speaking on behalf of Collin Peterson, Representative Peterson, who is not here this morning, but he also serves on this committee. He's a ranking member on this committee. He's also a very influential member of the Ag Committee and is working very closely with food processors on this whole HACCP issue. I hope you will continue to keep us informed, because we are listening, more than you might think.

But there is an honest difference of opinion between members of this committee. There are those who honestly believe that if we had more rules and regulations and more inspectors, that we could create a completely risk-proof food supply, and there are those who believe that no matter what you do, you're still going to have some bad things happen to good people.

Mr. Arneson, you had your hand up and I'm out of time, but perhaps the chairman will yield you a minute.

Mr. ARNESON. I've had a very interesting part in some of the stuff you're talking about. My company developed an essential part of the first spectrometer that would measure parts per trillion.

Mr. MCINTOSH. You're the guy. Now that we can measure parts per trillion——

Mr. ARNESON. If I had any idea of the mischief that that has caused. I want to tell you something about that. We had the No. 1 Superfund site in the United States, the first major one at Riley Tarr in St. Louis Park. I rented a building right across the street from it. That particular deal has cost my company a good half-a-million dollars or maybe a million real estate values.

But I also want to tell you that 20 years ago, we were dealing in parts per million, then we got to parts per billion and, with a little help from my company, parts per trillion. A part per trillion is 1 second in 31,000 years and there are 2 trillion miles traveled by all the vehicles in the United States per year. You can have a lot of cyanide in water at a lot of parts per trillion and never make a bit of difference.

The apocalyptics, however, who just deluge you guys in Washington with the idea that we're dying from everything we touch, eat and breathe, my answer to that is the biggest problem that we've got in the United States and the one we can't solve is too many old people, and I couldn't say that till I got to be 70.

There isn't any way to solve that problem, that I can figure out, and my life span has come up 20 years in the last, I don't know, 40 or so. I think that it's time for you people to just chase them out of the Capitol and get down to some sensible level of apocalyptic problems.

Mr. MCINTOSH. And leave things like that to the good Lord. Thank you, Mr. Arneson. Mr. Clemenson, you had a comment and then I've got a quick question for you.

Mr. CLEMENSON. What happened to our company, in 1986, we were sued for product liability. Our attorneys told us that if we went to court, it's a good chance that the guy would win, and that was during the time of the fantastic amount of product liability suits.

After that happened, it did happen, we did settle. It would cost us—we felt we were not liable for us, but it would cost us more to go to court than it would to pay the guy off. But what we did after that is we got out of manufacturing. Essentially, today, we draw our own plans and then we hire vendors to manufacture our products.

Another reason we got out of manufacturing is workman's comp, which people are talking about here, and then, of course, regulations. A big number of things. So we cut our force. Today we have marketing and sales people only. But you asked earlier about more jobs. I think the most important thing that we look at is we, and we see it all around the country, having been in Washington with these other businesses, is that we are really short and will be short the next 10 to 15 years of qualified workers. That's where a lot of the problems begin.

We hire people to come in to work in our places and many of them do not even have the first beginning skills of employment, meaning responsibility, timeliness, simple math computation, communication, both oral and written. Our company has a test now, so that they can't get in our company unless they have some of these basic things, and that's part of the problem we have.

One of the other things I just want to—briefly. I'm reading a book called "The Death of Common Sense." I'm sure most of you know that. That's really the basis. We have gotten to the point where we're defining every single word in a law and what happens is that everybody is interpreting those definitions differently. So we've got people out here making rules and making determinations and they're not being able to use their head. That's what is happening. That's really the basis of what's going on.

Mr. MCINTOSH. Thank you. I appreciate that. Mr. Clemenson, I wanted to come back to one thing you mentioned in your testimony. At the White House Conference on Small Business, you indicated that Joe Dear came and announced that from that point forward, they would have a policy in OSHA around the country that there would no longer be first-time fines, that they would consult and give people a chance to correct the problem. Is that correct?

Mr. CLEMENSON. Absolutely. This is almost word-for-word. It says beginning immediately, all OSHA personnel would be instructed that no business would be fined for all first-time visits and the tone from this point forward would be a relationship between OSHA and small business, a partnering for safety. That's almost word-for-word and I sat in the second row down from the platform where he spoke.

Mr. MCINTOSH. I appreciate that. I think I may, with your leave, follow up with him with a letter, asking him how successful that's been since that date and make sure that he knows there are some people looking over his shoulder to fulfill those types of promises.

Mr. Arneson.

Mr. ARNESON. I think it would be well to say that had the election gone the other way in Washington last year, that we would be looking at the favored bill of OSHA crazies, which was a felony penalties bill for serious accidents or work place deaths, which provided for a quarter-of-a-million dollar fine, up to 10 years in prison for the owners, the managers and the supervisors, and which had in it the provision that insurance or the corporation couldn't pay the fines. It would be levied against individuals. This was the bill of Metzenbaum and Dingell and Ted Kennedy and they really were hot to pass it.

They've gotten religion since the recent election, but don't count on that.

Mr. MCINTOSH. Did you say religion or they're in remission?

Mr. ARNESON. Don't count on that. Don't count on them at OSHA, I know them very well, to really get out of the hobby cop business. They like it. They've practiced it. It's been a terrible, terrible penalty on the United States.

I paid for the surveying of the National Association of Toolmaking firms. I got over a thousand responses. We asked how many hours they could compute of worker hours and asked for reports of work place deaths of grievous accidents. A billion hours came in, one work place death by electrocution, not really in the normal line of the business, but some maintenance work. A billion hours, one work place death.

I couldn't tell you how much it cost my industry to conform with the nonsense that OSHA has been sticking on us. And Minnesota has been excelled in it by having far more stiff requirements than the Federal ones. It's time to straighten it out.

Mr. MCINTOSH. I think Mr. Smith has a very good point on that, that there are incentives for the private sector employer to make sure they have a good work place.

Mr. ARNESON. I can't think of a worse day than having an employee killed. There is nothing in my life that would affect me worse than that. Probably a little worse if one of my three sons

working there, but we treat our employees pretty much the same way.

Mr. MCINTOSH. That's family. Well, thank you all for coming today. I really appreciate the testimony. It will be enormously helpful to us. I've been jotting notes to myself about different people to send copies of it to Washington. So it will indeed be very helpful to us, both panels, in providing this information.

At this point, we're going to move to a feature of the hearing that we refer to as the open mic portion, where anyone in the audience who would like to present additional testimony could please come forward. I don't know if anybody has given Karen their name. The process would be for you to give her your name and I'll be able to call it out and call you forward.

While Karen is getting additional names, the first one she's given to me is Ms. Ann Hines, if you'd like to come forward. If you could please stand for a second and raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Thank you. Let the record show the witness answered in the affirmative. Ms. Hines, welcome and please give us your testimony.

STATEMENT OF ANN HINES, NATIONAL ASSOCIATION OF MANUFACTURERS

Ms. HINES. Thank you. I'm Ann Hines, representing the National Association of Manufacturers, which is a Washington-based trade group with 13,500 members. And, remarkably and interestingly enough, two-thirds of those members are small manufacturers. Collectively, the membership of the NAM produces 80 percent of the U.S. manufactured product.

Mr. Chairman and Congressman Gutknecht, I'd like to thank you for your leadership on the No. 1 most important issue for the manufacturing community, which is regulatory reform. The NAM is the founding member of the Alliance for Reasonable Regulation, a broad-based coalition of more than 2,600 trade associations and primarily small companies from across the country.

Companies from Minnesota, like Canon Equipment, Shaldol, Carter Day, CEI, Brown & Bigelow, are some of the people that you'll be hearing from throughout the State today and yesterday. Collectively, these members represent more than one-half our country's economy and jobs. The coalition is chaired by NAM's president, Jerry Jaznowski.

Over the past decade, American manufacturing has worked hard to improve its efficiency and productivity dramatically. At the same time, they have cut their costs. And why have they done this? So that they can be competitive in the 21st century and it's about time the Federal Government did the same.

Study after study by non-partisan scientific and economic organizations recommend a major overhaul of the regulatory reform system by expanding the use of risk assessment and cost-benefit analysis. Simply stated, we need to address the most critical health and safety environmental issues first, putting our limited resources behind programs that will achieve common sense objectives.

Democrats and Republicans alike agree that the Superfund program is the poster child for regulatory inefficiency and abuse. The

reason that this program can be singled out so easily is that over the last 15 years, 30 billion taxpayer dollars have been spent to clean up less than 5 percent of the identified Superfund sites. The bulk of the money has been spent on lawyers and consultants and no one can say that this program is working.

We urgently need Federal legislation to establish a rational foundation for our regulatory system which helps to ensure good decisionmaking based on the best unbiased science and sound economic principles. Specifically, we need legislation enacted in this Congress, in the 104th Congress. We need legislation that will significantly improve the results of the system and regulatory abuse. In short, if we had a smarter regulatory system, one with balanced common sense and the guts to establish priorities once and for all, we would save more lives.

A recent study by the Harvard Center for Risk Analysis estimates that more scientific risk-based analysis for regulatory programs could save 60,000 lives in the United States alone each year. So what's at stake in the next 5 years, the next 10 years if we don't pass regulatory reform—600,000 American lives.

Thank you very much. We look forward to working with you in the future and everybody else in this room and thanks for coming to Minnesota.

Mr. MCINTOSH. Thank you. Thank you very much. Let me ask you, Ms. Hines. Do you have any specific recommendations in the Superfund area and could you put together a little bit of information of some examples here in Minnesota on that?

Ms. HINES. We'd be happy to do that for you.

Mr. MCINTOSH. That would be helpful to us. I'll ask unanimous consent we keep the record open for, say, 10 days. Is that enough time? And then we can incorporate that into it.

I think you're right. Superfund is an area where we spend between 60 and 80 percent of the resources chasing lawyers and paying legal bills and consultant bills rather than actually cleaning up the environment. It's a travesty and has not served anyone well since it's been in place. Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, I would just—Ms. Hines, we were discussing last night the study that you alluded to that was done at Harvard. I think the professor's name is Graham. We're going to try and get him down to Washington to talk about this basic analysis that he's done, because I think it is very instructive, and we would like to work with you.

I would just encourage you and your members, though, to continue to keep the volume up, because as late as yesterday, we were accused in St. Cloud on this subcommittee of being out to gut environmental and worker protection laws. And I don't think that's the case at all. As Mr. Smith alluded to, I think everyone acknowledges that there is a basic need for a certain amount of regulation at the State and Federal level, as well, but I think there is a growing feeling in this country that we've gone far, far too far in the area of regulation and we have to somehow get that pendulum back more to an equilibrium.

Thank you.

Mr. MCINTOSH. Thank you. Let me second that, because we saw last week, in the appropriations process, an effort that our sub-

committee had to de-fund some of the most egregious regulations, where there were very little benefits and enormous costs. We ended up winning that vote on a 210–210 tie, because several people hadn't made it back yet. And the reason was it snuck up on us and we didn't have a lot of people out there in the private sector arguing the problems with these regulations.

So we need to enlist your help, and if you can pass that back up the chain, to stay on top of it and help us in that way. That would be enormously helpful in our effort. Our subcommittee is going to work really hard to make sure these things happen.

But the one thing I've noticed my colleagues pay attention to more than anything else are their constituents. So if we can keep that going, that will be great. Thank you.

Our next person to testify is Mr. Rick Krueger, who is with the Minnesota High Technology Council.

Mr. GUTKNECHT. Mr. Chairman, if I might. Mr. Krueger and I were freshmen together back many years ago when we came to the State legislature. He came from up north and I came from down south and we came to the legislature together.

Mr. KRUEGER. I can't help but thinking that we probably could have saved about half the time and testimony had we had the alarm system that you do with the clock at the table.

Mr. MCINTOSH. You think that would be a good innovation.

Mr. KRUEGER. That seemed to work pretty well.

Mr. MCINTOSH. Thank you. Mr. Krueger, welcome and please give us your testimony. I'm sorry. The staff reminds me I need to ask you if you'd take the oath. Please rise.

[Witness sworn.]

Mr. MCINTOSH. Thank you. Let the record indicate the witness answered in the affirmative. Mr. Krueger.

STATEMENT OF RICK KRUEGER, THE MINNESOTA HIGH TECHNOLOGY COUNCIL

Mr. KRUEGER. On behalf of the Minnesota High Technology Council and its approximately 100 members, I'd like to welcome you to Minnesota and thank you for the opportunity to testify before you. MHTC is a trade association representing private companies who have high technology products and/or apply high technology in their operations.

We're in many different industries, ranging from computer-related to medical to entertainment, publishing, telecommunications, defense, and so on, retail and many others, too. But in talking with our members, one gets the sense very quickly that dealing with government, particularly the Federal Government, is too often a confusing maze of information and agencies and it's particularly frustrating and intimidating when trying to get something reconciled.

In the general area of efficiency and reforming government, businesses have gone in the direction of customer satisfaction and performance-based operations. As companies re-engineer using information technology, it's to become leaner, flatter and more responsive. Generally, customers, as a result, are seeing greater convenience, enhanced quality of goods and services, and ease of use.

Contrast that to government agencies that seem to be providing a dizzying array of rules and regulations and still operating on time schedules that look like a 1950's length of a work day. During your spring break, Congress-person Gutknecht attended our briefing session we had for new Members of Congress, attended the entire session, I might add.

Mr. GUTKNECHT. Got a gold star.

Mr. KRUEGER. That's right. Got a red star—got a star for that, gold star. And the rest of my comments are based on observations that came from our members, many of which were expressed that day. Ron Turner, who was your first witness today, is the chair of the MHTC and he discussed defense contractor issues. When you go to Rochester, I'm sure you'll hear about the FDA approval process for new products being too cumbersome.

The new areas I'd like to touch on are three. One is in the area of tort reform and product liability, where generally we'd like to see more sanity and predictability, particularly in the legal process when it comes to inappropriate use of products and frivolous suits.

Education—we are extremely interested in higher education, research and development. I could go into a little bit more detail on any of these issues. But R&D helps to accelerate the application of technology in industry, too. And then just last Friday, we released a report on information infrastructure, which I'm prepared to give you a copy of. I have that. I have a report showing how a research university is an economic engine for the region.

So with that, I'm more than willing to stand for questions.

Mr. MCINTOSH. Thank you, Mr. Krueger. Actually, if you've got copies of both of those reports, I'd ask unanimous consent that they be made part of the record.

[The report entitled, "Products of An Unheralded Industry" can be found in subcommittee files.]

Mr. MCINTOSH. I have no questions. Mr. Gutknecht.

Mr. GUTKNECHT. Neither do I. And I apologize, but we do have to—not only do we have a timer, but we've got to be in Rochester at 1:00.

Mr. MCINTOSH. Thank you for coming. Let me tell you that your former colleague from the State legislature is doing an excellent job in Washington and has impressed a lot of the people there. It's a privilege to be able to serve with him now.

Another person who indicated they'd like to testify is Mr. Maurice Shanier. I hope I pronounced that correctly.

Mr. SHANIER. Yes, you did. Very well, as a matter of fact. Thank you very much.

Mr. MCINTOSH. Thank you. Please come forward and I'll ask you to stand and raise your right hand.

[Witness sworn.]

Mr. MCINTOSH. Thank you very much.

STATEMENT OF MAURICE SHANIER

Mr. SHANIER. Thank you, sir. I promise to be brief. Through the conversation I've heard over the last couple of hours, I realized a common theme that I wanted to suggest to you and this team—body that I'm in front of, which is essentially that the American

taxpayers have entrusted Government with the good stewardship of their money in the form of taxes which you collect from us.

And I think that the Government has done an admirable job in maintaining that stewardship and that trust level, but they've implemented that in a means that can hamper industry by virtue of oversight and regulation. In other words, they are so careful to make sure that fraud, waste and abuse does not take place that they have inadvertently cost the consumer or the taxpayer additional dollars to get the same job done.

And what I'm here to suggest is that you embrace the axiom that the commercial marketplace does on a daily basis, which is an economic axiom, which essentially says that the marketplace will correct for stupidity. So that if you engage in a business transaction with a company that does something stupid, fraudulent, wasteful or abusive, you will no longer participate with that company and the marketplace itself will wipe it out. That way, you could engage in an absolutely free, no-cost oversight and regulation committee, called the marketplace, and they will take care of all the atrocities that happen over the course of time, just as we do on the consumer level.

If I get a bad set of tires, and in Minnesota that's crucial during the snow months, if I get a bad set of tires from a dealer, I will never go back to that dealer again and they will go out of business. I would just suggest that the government employ those same kind of market regulations and let them self-govern themselves. That's all of my testimony.

Mr. MCINTOSH. Appreciate that. Thank you. I like that as a marketplace lesson, that the marketplace will correct for stupidity. I rail often against stupid regulations and maybe you've revealed the problem that there's no marketplace for regulations. So there's nothing to correct the stupidity that ends up coming out of the agencies.

One of the things that one of the earlier panelists, I believe it was Mr. Smith, mentioned was that the States could do a better job of regulating and maybe the reason there is there is some competition. If one State has a stupid set of regulations for businesses, they, in today's world, can move their facilities into a different State where there's a better climate.

I appreciate that insight. If you don't mind, I'm going to quote you on that.

Mr. SHANIER. Feel free.

Mr. MCINTOSH. Great. Thanks. Mr. Gutknecht.

Mr. GUTKNECHT. I would just echo that, which is really what we're trying to do. We're talking about Medicare. We've got a big problem. It doesn't really relate to this committee hearing, but if you compare what—what we've got to do is learn from the private sector. The private sector has learned that competition and market forces work.

With all of the tinkering that we've done over the last hundred years, we have not been able to improve on Adam Smith's invisible hand. I mean, it still works, whether we try to regulate against it or not. I really agree with you. And what we're really talking about is a paradigm, and that's an overused term, but there is a mindset shift that has to happen.

And Speaker Gingrich, and part of the reason he created this particular subcommittee and has put so much emphasis on regulatory reform, is that he has said that we cannot, in a 21st century world marketplace, compete effectively when we go into it with a 19th century bureaucratic model. So what we're really trying to do is change the whole mindset and the whole culture in Washington, and that's going to be a very difficult job. But with the help of people like yourself, that's such a simple story. It would make a great bed piece, if you'd like to write one, about changing the whole mentality, and that's what we're up against.

We appreciate all the people who have testified here today. It's been a great hearing and we look forward to another good hearing this afternoon in Rochester, where we'll hear about medical technology and the FDA and how all of these regulations are actually, in some respects, hurting the health of American consumers. Thank you very much.

Mr. MCINTOSH. Thank you. Thank you very much. I wanted to just check. Was there anyone else who wanted to come forward and testify or add anything today? Yes, sir.

Mr. ARNESON. I wanted to add, Representative Gutknecht, that we'd like to see the Highway 52 speed limit raised a little bit. And if you're going to get there by 1:00 by car, I'd like to have you pledge that you're going to watch the double nickel.

Mr. GUTKNECHT. I will be watching it.

Mr. MCINTOSH. Thank you. You know, the Senate is actually moving ahead of us in that area. They have passed a law getting the Federal Government out of setting speed limits for the States and I'm hoping we can catch up with them in that area in the House.

Mr. GUTKNECHT. Mr. Chairman, speaking of the Senate and in response to Ms. Hines, I would hope that you would apply a little pressure to some of our counterparts in the Senate, because we moved ahead quite quickly at regulatory reform in the House, but it's languishing in our——

Ms. HINES. That's right.

Mr. GUTKNECHT. Good. Thank you.

Mr. MCINTOSH. Perhaps one of the Minnesota Senators could be the 60th vote for closure on that. Wouldn't that be great? Thank you all for coming. The subcommittee is now adjourned. I appreciate all the participants.

[Whereupon, at 10:45 a.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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