

TESTIMONY OF JOHN FOWLER, GENERAL COUNSEL  
U.S. DEPARTMENT OF TRANSPORTATION  
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON SMALL BUSINESS  
SUBCOMMITTEE ON EXPORT OPPORTUNITIES AND  
SPECIAL SMALL BUSINESS PROBLEMS.

OCTOBER 21, 1981; 9:30 AM

PLACE: ROOM 2359-A OF THE RAYBURN HOUSE OFFICE BUILDING.

INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE:

I AM PLEASED TO BE HERE TO TESTIFY ABOUT THE REGULATORY FLEXIBILITY ACT (RFA) AND HOW THE DEPARTMENT OF TRANSPORTATION (DOT) HAS IMPLEMENTED IT. NEIL EISNER, ASSISTANT GENERAL COUNSEL FOR REGULATION AND ENFORCEMENT, IS WITH ME TODAY. HE HAS THE GENERAL RESPONSIBILITY FOR OVERSIGHT OF DOT'S REGULATORY ACTIVITY, INCLUDING COMPLIANCE WITH PRESIDENT REAGAN'S EXECUTIVE ORDER 12291 ON "FEDERAL REGULATION." AS OUR REGULATORY FLEXIBILITY OFFICER, HE IS OUR LIAISON WITH THE SMALL BUSINESS ADMINISTRATION'S (SBA) OFFICE OF ADVOCACY ON MATTERS RELATED TO THE REGULATORY FLEXIBILITY ACT.

BACKGROUND

LET ME BEGIN BY GIVING YOU A BRIEF OVERVIEW OF OUR REGULATORY ACTIVITIES. EACH OF DOT'S NINE OPERATING ADMINISTRATIONS, IN ADDITION TO THE OFFICE

OF THE SECRETARY, HAS AUTHORITY TO ISSUE REGULATIONS. THESE ADMINISTRATIONS ARE:

THE UNITED STATES COAST GUARD  
FEDERAL AVIATION ADMINISTRATION  
FEDERAL HIGHWAY ADMINISTRATION  
FEDERAL RAILROAD ADMINISTRATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
URBAN MASS TRANSPORTATION ADMINISTRATION  
SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION  
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION  
MARITIME ADMINISTRATION

THE SCOPE OF DOT'S CURRENT REGULATORY ACTIVITY, INCLUDING THOSE EXISTING REGULATIONS UNDER REVIEW, IS DESCRIBED IN THE SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST THAT I GAVE YOU BEFORE THIS HEARING. MY OFFICE PROVIDES GUIDANCE TO THE ENTIRE DEPARTMENT CONCERNING THIS REGULATORY ACTIVITY. WE ALSO MONITOR THAT ACTIVITY TO ENSURE CONFORMANCE WITH APPLICABLE OBJECTIVES AND LEGAL REQUIREMENTS. THIS GUIDANCE AND MONITORING INCLUDES COMPLIANCE WITH THE REGULATORY FLEXIBILITY ACT. I'D LIKE TO HIGHLIGHT WHAT WE HAVE BEEN DOING TO IMPLEMENT THE ACT.

REGULATORY DEVELOPMENT

AGENDA AND RFA REVIEW PLANS

FOR MANY YEARS, DOT HAS RECOGNIZED THE IMPORTANCE OF GATHERING COMPLETE AND ACCURATE INFORMATION WHILE WE ARE DEVELOPING A REGULATION. THIS INCLUDES HELPING SMALL ENTITIES VOICE THEIR OPINIONS -- AND BE HEARD. THE AGENDA THAT I MENTIONED EARLIER IS ONE OF THE BEST TOOLS WE HAVE DEVELOPED FOR INFORMING EVERYONE -- INCLUDING SMALL ENTITIES -- ABOUT DOT'S REGULATORY ACTIVITY.

AN EXTREMELY IMPORTANT AND DISTINGUISHING CHARACTERISTIC OF OUR AGENDA IS THAT IT IDENTIFIES ALL DOT REGULATORY ACTIVITY. IT IS NOT LIMITED TO THOSE REGULATIONS THAT WE BELIEVE ARE MAJOR (UNDER EXECUTIVE ORDER 12291) OR THAT WILL REQUIRE A REGULATORY FLEXIBILITY ANALYSIS OR A REVIEW (UNDER THE RFA). THIS APPROACH HAS A NUMBER OF ADVANTAGES. IT HELPS THE PUBLIC, AS WELL AS THOSE OF US WITHIN THE GOVERNMENT, TO COMPARE MAJOR AND NON-MAJOR REGULATIONS, AND IT FACILITATES COMPARISONS OF REGULATIONS REQUIRING A REGULATORY FLEXIBILITY ANALYSIS WITH THOSE THAT DO NOT. CONSEQUENTLY, OTHERS HAVE A CHANCE TO IDENTIFY FOR US THOSE REGULATIONS THEY BELIEVE WE HAVE MISCLASSIFIED; THEY CAN ALSO REVIEW AN ENTRY FOR A REGULATION NOT REQUIRED TO BE ON THE AGENDA AND TELL US THAT THEY BELIEVE IT WILL NEED A REGULATORY FLEXIBILITY ANALYSIS. IT ALSO HELPS PEOPLE SEE THE SCOPE OF DOT'S REGULATORY ACTIVITY AND DISCERN GENERAL TRENDS. FOR EXAMPLE, IN THE CURRENT AGENDA, MANY RULEMAKINGS IDENTIFIED AS REQUIRING A REGULATORY FLEXIBILITY ANALYSIS HAVE EITHER BEEN "TERMINATED" OR FURTHER ACTION ON THEM IS STILL BEING DETERMINED.

AND THERE ARE OTHER WAYS WE KEEP THE PUBLIC INFORMED. BESIDES PUBLISHING THE AGENDA IN THE FEDERAL REGISTER, WE MAIL IT DIRECTLY TO NUMEROUS INDIVIDUALS, BUSINESSES, STATE AND LOCAL GOVERNMENTS AND ORGANIZATIONS.

IN ADDITION, THE AGENDA CONTAINS INSTRUCTIONS TELLING PEOPLE HOW TO GET ON OUR MAILING LISTS TO RECEIVE FUTURE COPIES OF IT AS WELL AS ANY PARTICULAR REGULATORY DOCUMENT IN WHICH THEY ARE INTERESTED. ONCE PEOPLE ARE ON THE LISTS, IT ISN'T NECESSARY TO READ THE FEDERAL REGISTER TO KEEP ABREAST OF DOT'S REGULATORY ACTIVITY. YOU SIMPLY IDENTIFY REGULATIONS YOU ARE INTERESTED IN, FOLLOW THE INSTRUCTIONS, AND YOU WILL RECEIVE COPIES OF THE REGULATORY DOCUMENTS.

WE HAVE MADE A SPECIAL EFFORT TO ALERT SMALL ENTITIES TO OUR AGENDA. BEFORE PUBLISHING OUR APRIL 1981 AGENDA, FOR EXAMPLE, WE WORKED WITH SBA'S OFFICE OF ADVOCACY TO DEVELOP A LENGTHY LIST OF PUBLICATIONS AND ORGANIZATIONS INVOLVED WITH SMALL ENTITIES THAT MIGHT BE INTERESTED IN DOT'S REGULATIONS. WE ALSO USED SEVERAL OTHER DEPARTMENTAL PUBLICATIONS THAT ARE MAILED DIRECTLY TO SMALL ENTITIES TO ADVERTISE THE EXISTENCE OF THE AGENDA MAILING LIST. WE ADDED THE NEW NAMES WE RECEIVED TO OUR EXISTING LIST, AND NOW MAIL THE AGENDA TO OVER 250 ADDRESSES, MORE THAN HALF OF WHICH WE BELIEVE ARE SMALL ENTITIES OR ORGANIZATIONS REPRESENTING THEM.

I WOULD ALSO LIKE TO MENTION THE STEPS WE TOOK WITH RESPECT TO OUR AGENDA AND OUR REGULATORY REVIEWS SPECIFICALLY TO COMPLY WITH THE RFA. FIRST, IN OUR APRIL AGENDA WE BEGAN IDENTIFYING ALL REGULATIONS WITHIN THE DEPARTMENT THAT WOULD REQUIRE A REGULATORY FLEXIBILITY ANALYSIS. OUR RFA REVIEW PLANS WERE PUBLISHED, IN ACCORDANCE WITH THE STATUTORY DEADLINE, ON JUNE 29 AND JUNE 30, 1981. OUR OCTOBER AGENDA THEN INCORPORATED THESE PLANS BY ADDING TO OUR REVIEW LIST THE LARGE NUMBER OF REGULATIONS THAT WOULD UNDERGO REVIEW IN ACCORDANCE WITH THE RFA.

OTHER ACTION

WE DO A NUMBER OF OTHER THINGS, DURING THE DEVELOPMENT OF A REGULATION, THAT I BELIEVE ARE WORTH MENTIONING BECAUSE OF THE ASSISTANCE THEY PROVIDE TO SMALL ENTITIES. FOR EXAMPLE, THE DEPARTMENT DOES A REGULATORY EVALUATION (AN ECONOMIC ANALYSIS) FOR ALL OF ITS REGULATIONS. WE DON'T CONFINE OURSELVES TO THOSE THAT ARE MAJOR (AND REQUIRE A REGULATORY IMPACT ANALYSIS) OR THOSE THAT HAVE A SIGNIFICANT IMPACT ON A SUBSTANTIAL NUMBER OF SMALL ENTITIES (AND REQUIRE A REGULATORY FLEXIBILITY ANALYSIS). THIS REGULATORY EVALUATION IS MADE PUBLICLY AVAILABLE. IT ENABLES EVERYONE TO REVIEW THE ECONOMIC DATA WE HAVE. (FOR VERY MINOR REGULATIONS, WE MAY SIMPLY STATE THAT THE IMPACT IS MINIMAL.)

WE HAVE ALSO TRIED TO MAKE THINGS EASIER FOR PEOPLE WHO USE THE FEDERAL REGISTER BY PUBLISHING ALL DOT DOCUMENTS ON EITHER MONDAY OR THURSDAY, UNLESS THERE IS AN EMERGENCY. AND WE HAVE ATTEMPTED TO EXTEND THE USE OF SUCH THINGS AS ADVANCE NOTICES OF PROPOSED RULEMAKING TO ENABLE THE PUBLIC TO GIVE US GENERAL COMMENTS BEFORE WE START WORKING OUT THE DETAILS OF A PROPOSED RULE. RECOGNIZING THAT SMALL ENTITIES FREQUENTLY NEED MORE TIME THAN OTHERS TO PREPARE THEIR COMMENTS, WE GENERALLY PROVIDE MORE TIME THAN REQUIRED FOR COMMENT PERIODS ON PROPOSED REGULATIONS (AT LEAST 60 DAYS FOR SIGNIFICANT REGULATIONS AND GENERALLY 45 DAYS FOR NONSIGNIFICANT REGULATIONS). WE ALSO GRANT EXTENSIONS UNDER APPROPRIATE CIRCUMSTANCES. IN ADDITION, IT IS THE DEPARTMENT'S GENERAL POLICY THAT "TO THE MAXIMUM EXTENT POSSIBLE, NOTICE AND AN OPPORTUNITY TO COMMENT ON REGULATIONS SHOULD BE PROVIDED TO THE PUBLIC, EVEN WHEN NOT REQUIRED BY STATUTE, IF SUCH ACTION COULD REASONABLY BE ANTICIPATED TO RESULT IN THE RECEIPT OF USEFUL INFORMATION."

WE ALSO TRY TO USE PUBLIC HEARINGS AS OFTEN AS POSSIBLE. ON OCCASION, WE TRY TO PROVIDE EXPERT ASSISTANCE TO THE PUBLIC. FOR EXAMPLE, WE MAY PROVIDE EXPERTS ON THE SUBJECT AREA BEFORE A PUBLIC HEARING BEGINS TO EXPLAIN OR DISCUSS VARIOUS ASPECTS OF THE RULEMAKING WITH INTERESTED PEOPLE. SOMETIMES WE PROVIDE REBUTTAL PERIODS AT THE END OF A COMMENT PERIOD OR DURING A HEARING. FINALLY, BECAUSE WE RECOGNIZE THAT SOME SMALL ENTITIES AND INDIVIDUALS CANNOT ATTEND HEARINGS DURING NORMAL BUSINESS HOURS, WE HOLD SOME OF OUR HEARINGS IN THE EVENINGS. ALTHOUGH EACH OF THESE EFFORTS SHOULD HELP EVERYONE, WE THINK THEY ARE ESPECIALLY BENEFICIAL TO SMALL ENTITIES BECAUSE OF THEIR SIZE AND THE DIFFICULTY SOME HAVE IN BEING HEARD.

#### REGULATORY FLEXIBILITY ANALYSES

I WOULD LIKE TO MENTION OUR ACTIVITY WITH RESPECT TO ONE OF THE MORE IMPORTANT REQUIREMENTS OF THE RFA -- THE NEED TO PREPARE A REGULATORY FLEXIBILITY ANALYSIS. WE HAVE PREPARED ONE INITIAL AND ONE FINAL REGULATORY FLEXIBILITY ANALYSIS AT DOT. BOTH INVOLVED THE ISSUE OF MINIMUM STANDARDS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS (REQUIRED BY SECTION 30 OF THE MOTOR CARRIER ACT OF 1980).

WE HAVE ALSO CONSIDERED THE IMPACT OF OUR RULEMAKINGS ON SMALL ENTITIES WHEN THAT IMPACT IS LESS THAN "SIGNIFICANT" OR THE NUMBER AFFECTED IS LESS THAN SUBSTANTIAL. TWO RECENT NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA) RULEMAKINGS RELATING TO AUTOMOBILE AUTOMATIC OCCUPANT PROTECTION AND BUMPER STANDARDS ARE ILLUSTRATIVE. ALTHOUGH IT WAS FOUND THAT A REGULATORY FLEXIBILITY ANALYSIS WAS NOT REQUIRED

BY THE RFA, THE DEPARTMENT STILL EVALUATED THE POSSIBLE IMPACT ON SMALL ENTITIES. THE FAA HAS CONDUCTED SIMILAR EVALUATIONS.

#### ENABLING STATUTE LIMITATIONS

TURNING NOW TO ENABLING STATUTE LIMITATIONS, WHICH HAVE A BEARING ON THE RFA'S IMPLEMENTATION, LET ME STRESS THAT ONE OF THE DEPARTMENT'S PRIMARY FUNCTIONS IS THE DEVELOPMENT OF SAFETY REGULATIONS. FREQUENTLY, THE STATUTES UNDER WHICH WE OPERATE LEAVE US LITTLE LATITUDE TO ADDRESS THE SPECIAL PROBLEMS OF SMALL ENTITIES. WHEN A STATUTE, FOR EXAMPLE, REQUIRES US TO SET MINIMUM STANDARDS FOR EVERYONE OPERATING IN A PARTICULAR AREA, IT IS DIFFICULT FOR US TO ALLOW SMALL ENTITIES TO DO SOMETHING LESS. WE HAVE, HOWEVER, USED DIFFERENT REGULATORY APPROACHES THAT DO NOT CONFLICT WITH OUR STATUTORY OBJECTIVES AND THAT MINIMIZE THE ECONOMIC IMPACT OUR RULES HAVE ON SMALL ENTITIES. FOR INSTANCE, THE DEPARTMENT DOES PROVIDE FOR TIERING, OR DIFFERENT LEVELS OF RESPONSIBILITY FOR SMALL ENTITIES. LET ME GIVE YOU THREE SPECIFIC EXAMPLES:

THE FEDERAL AVIATION ADMINISTRATION TAILORS ITS AIRCRAFT OPERATING RULES TO THE PARTICULAR CONDITIONS OF SMALL AIRCRAFT OPERATORS. THE FEDERAL HIGHWAY ADMINISTRATION RELIEVES SMALL TRUCKING COMPANIES OF CERTAIN INSPECTION, REPORTING AND RECORDKEEPING REQUIREMENTS, AND THE URBAN MASS TRANSPORTATION ADMINISTRATION TIERS REGULATIONS FOR AWARDED GRANTS TO SMALL URBAN AREAS.

ANOTHER GOOD EXAMPLE OF OUR EFFORTS IN THIS AREA IS A NOTICE THE FEDERAL RAILROAD ADMINISTRATION (FRA) PUBLISHED IN THE FEDERAL REGISTER LAST

SUMMER. WE CAN PROVIDE YOU WITH COPIES OF THE NOTICE, BUT I'D LIKE TO READ A PART OF IT TO YOU TO ILLUSTRATE HOW WE ARE RESPONDING TO THE KINDS OF CONCERNS THE REGULATORY FLEXIBILITY ACT ADDRESSES. FRA'S ANALYSIS OF ACCIDENT DATA INDICATED "THAT THE SMALL RAILROADS ACCOUNT FOR A VERY SMALL PORTION OF THE TOTAL NUMBER OF PERSONS KILLED OR INJURED DURING" THE PERIOD OF THE STUDY. BASED ON THIS, THE AGENCY STATED THAT IT "BELIEVES THAT THIS FAVORABLE ACCIDENT RECORD OF SMALL RAILROADS IS THE RESULT OF SEVERAL FACTORS, INCLUDING THE RELATIVELY SLOW SPEED OF THE OPERATIONS, THE LOW VOLUME OF HAZARDOUS MATERIALS BEING HANDLED, AND THE FACT THAT MANY OF THESE RAILROADS OPERATE ALMOST EXCLUSIVELY DURING DAYLIGHT HOURS AND HAVE A DEGREE OF CONSISTENCY IN THEIR LIMITED OPERATIONS THAT IS NOT FOUND ON LARGE RAILROADS." FRA DID NOT WANT TO RELY ON THESE ABSOLUTE NUMBERS SINCE IT THOUGHT THIS COULD BE MISLEADING. THEREFORE, THE AGENCY ASKED FOR ADVICE AND COMMENT FROM THE PUBLIC ON WHETHER A SPECIFIC CATEGORY COULD BE CREATED FOR THESE SMALL RAILROADS AND WHETHER THEY SHOULD BE TREATED DIFFERENTLY UNDER FRA'S SAFETY REGULATIONS.

ANOTHER IMPORTANT WAY IN WHICH WE DEAL WITH SMALL ENTITIES INVOLVES OUR ACTION AFTER REGULATIONS ARE ISSUED. IN APPROPRIATE AND UNIQUE CIRCUMSTANCES, WE CAN GRANT EXEMPTIONS FROM EXISTING REGULATIONS. WHEN SAFETY IS A CONCERN, THE EXEMPTION CAN TAKE INTO ACCOUNT THE SIZE OF THE AFFECTED PARTY AND EXEMPT IT FROM THE SPECIFIC REQUIREMENTS OF THE REGULATION, OR THE EXEMPTION CAN REQUIRE THE PARTY TO ACT IN A SPECIFIED MANNER THAT PROVIDES AN EQUIVALENT LEVEL OF SAFETY BUT MAKES COMPLIANCE EASIER FOR SMALL ENTITIES. LET ME GIVE YOU SOME EXAMPLES OF EXEMPTIONS WE HAVE ISSUED WITHIN THE DEPARTMENT:

THE FEDERAL AVIATION ADMINISTRATION HAS ISSUED EXEMPTIONS TO SMALL BUSINESSES TO ALLOW THEM TO PERFORM THEIR OWN PREVENTIVE MAINTENANCE ON THEIR AIRCRAFT, THEREBY REDUCING THEIR COSTS. THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HAS ISSUED SEVERAL TEMPORARY EXEMPTIONS FROM FEDERAL MOTOR VEHICLE SAFETY STANDARDS FOR A SMALL BUSINESS MANUFACTURING REPRODUCTION CARS. IT WAS FOUND THAT REQUIRING STRICT COMPLIANCE WOULD CAUSE SUBSTANTIAL ECONOMIC HARDSHIP FOR THE COMPANY.

WE HAVE ALSO TRIED TO ENSURE THAT OUR REGULATIONS ARE WRITTEN AS PERFORMANCE RATHER THAN AS DESIGN STANDARDS. AT THE SAME TIME, WE RECOGNIZE THAT SMALL ENTITIES OFTEN WANT OUR HELP BECAUSE, FOR EXAMPLE, THEY MAY NOT HAVE THE EXPERTISE TO DETERMINE HOW TO BUILD A PARTICULAR ITEM. SO, WHEN IT IS APPROPRIATE, WE PROVIDE GUIDANCE OR ADVISORY INFORMATION TO THE PUBLIC ON ALTERNATE ACCEPTABLE WAYS TO COMPLY WITH OUR REGULATIONS. OFTEN DOT FIELD PERSONNEL DEAL DIRECTLY WITH SMALL ENTITIES, ADVISING THEM OF THE LEAST BURDENSOME WAYS TO COMPLY WITH OUR REGULATIONS.

#### ACTION SUBSEQUENT TO ISSUANCE OF REGULATION

##### ENFORCEMENT

AS I JUST INDICATED, AFTER A REGULATION IS ISSUED WE CAN TAKE OTHER STEPS TO MAKE IT EASIER FOR SMALL ENTITIES. EVEN WHEN ENFORCEMENT ACTION IS NECESSARY, IT CAN RESPOND TO THE SPECIAL PROBLEMS OF SMALL ENTITIES. WE CAN AND DO, FOR EXAMPLE, CONSIDER A PARTY'S SIZE AND ABILITY TO PAY WHEN A VIOLATION OCCURS. AND IF OUR ENFORCEMENT EXPERIENCE INDICATES THAT SMALL ENTITIES ARE HAVING DIFFICULTY COMPLYING, WE CAN MAKE APPROPRIATE REGULATORY CHANGES.

REGULATORY REVIEWS

OUR MOST IMPORTANT ACTIVITY AFTER WE HAVE ISSUED A REGULATION IS ITS SUBSEQUENT REVIEW. THIS IS ONE AREA WHERE I AM PARTICULARLY PROUD OF DOT'S EFFORTS. AS INDICATED IN THE AGENDA I GAVE YOU, THE DEPARTMENT IS CURRENTLY REVIEWING NUMEROUS REGULATIONS. MANY OF THESE ARE BEING REVIEWED UNDER THE REGULATORY FLEXIBILITY ACT OR DOT'S OWN PRIORITY REVIEW PROGRAM OR BOTH. OUR PRIORITY REVIEW PROGRAM WAS INITIATED LAST FEBRUARY, WHEN WE IDENTIFIED MORE THAN 40 COSTLY OR CONTROVERSIAL REGULATIONS WITHIN THE DEPARTMENT THAT NEEDED TO BE REVIEWED ON A PRIORITY BASIS. WE HAVE COMPLETED MANY OF THESE REVIEWS, AND HAVE RECOMMENDED OR MADE CHANGES TO EXISTING REGULATIONS -- STEPS THAT WILL RESULT IN SUBSTANTIAL SAVINGS FOR THE AFFECTED PARTIES, INCLUDING SMALL ENTITIES. SOME GOOD EXAMPLES OF THESE ARE THE FOLLOWING:

BASED ON A REVIEW OF THE RULE THAT REQUIRES DOT FINANCIAL ASSISTANCE RECIPIENTS TO ESTABLISH AFFIRMATIVE ACTION PLANS TO INCREASE THE USE OF MINORITY AND WOMEN-OWNED BUSINESSES, AN INTERIM AMENDMENT WAS ISSUED ON APRIL 27, 1981. IT ELIMINATED A PERCENTAGE GOAL REQUIREMENT FROM THE RULE, WHICH MANY MEMBERS OF THE PUBLIC PERCEIVED AS THE MOST BURDENSOME PROVISION IN THE REGULATION. THE CONTINUING REVIEW IS AIMED, TO A GREAT EXTENT, AT REDUCING THE PAPERWORK BURDENS ASSOCIATED WITH THE CURRENT REGULATION, WHICH AFFECTS MANY SMALL ENTITIES.

AS A RESULT OF A REVIEW OF OUR RULE THAT REQUIRES ALL DOT-ASSISTED PROGRAMS TO BECOME ACCESSIBLE TO HANDICAPPED PERSONS, AN INTERIM AMENDMENT WAS ISSUED ON JULY 16, 1981. THIS AMENDMENT INCORPORATED A LOCAL OPTION

PROVISION INTO THE REGULATION, THEREBY SIGNIFICANTLY REDUCING THE BURDENS ON MANY TRANSIT OPERATORS INCLUDING SMALL ENTITIES. SAVINGS COULD AMOUNT TO BETWEEN \$213 AND \$273 MILLION PER YEAR.

AS A THIRD EXAMPLE, THE PRIORITY REVIEW OF THE COAST GUARD'S BURDENSOME DOCUMENTATION REGULATIONS HAS BEEN COMPLETED AND A NOTICE OF PROPOSED RULEMAKING IS BEING DEVELOPED. PRELIMINARY ESTIMATES INDICATE THAT A SUBSTANTIAL REDUCTION IN PAPERWORK REQUIREMENTS (NOW 300,000 PERSON-HOURS OF PAPERWORK PER YEAR) SHOULD RESULT FROM THE RULEMAKING (PERHAPS AS MUCH AS A ONE-THIRD TO TWO-THIRDS REDUCTION OF THE TOTAL PAPERWORK BURDEN).

BECAUSE OF OUR SUCCESS WITH THESE REVIEWS, AND TO KEEP UP OUR MOMENTUM, WE HAVE RECENTLY ASKED PERSONNEL IN EACH OF OUR OPERATING ADMINISTRATIONS AND THE OFFICE OF THE SECRETARY TO IDENTIFY OTHER ITEMS FOR OUR PRIORITY REVIEW.

#### PROBLEMS

DESPITE OUR SUCCESS IN COMPLYING WITH THE RFA, MR. CHAIRMAN, WE HAVE HAD TWO PROBLEMS THAT I BELIEVE WARRANT YOUR ATTENTION. THESE ARE RELATED TO DEFINITIONS IN THE ACT AND CERTIFICATIONS OF IMPACT, WHICH THE ACT REQUIRES.

CONCERNING THE DEFINITIONS USED IN THE ACT, YOU HAVE STATED, MR. CHAIRMAN, THAT THE SBA CRITERIA SHOULD BE ADEQUATE IN NEARLY EVERY SITUATION. ONLY IN "RARE CASES" SHOULD MORE STRINGENT CRITERIA BE NEEDED. OF THE THREE TERMS USED IN THE ACT TO DEFINE SMALL ENTITIES, WE HAVE HAD LITTLE

INVOLVEMENT WITH THE TERM "SMALL ORGANIZATION," AND WE HAVE HAD LITTLE DIFFICULTY WITH THE TERM "SMALL GOVERNMENTAL JURISDICTION" BECAUSE THE STATUTE DEFINES IT SO SPECIFICALLY. HOWEVER, THE DEFINITION OF THE TERM "SMALL BUSINESS" HAS CAUSED SOME CONFUSION. ALTHOUGH DOT IS USING THE ACT'S DEFINITION AND RELYING ON SBA'S REGULATORY CRITERIA FOR SMALL BUSINESSES, ONE OF OUR OPERATING ADMINISTRATIONS -- FRA -- HAS ALREADY PUT OUT A NOTICE REQUESTING PUBLIC COMMENT ON ITS OWN DEFINITION. AT LEAST THREE OTHER OPERATING ADMINISTRATIONS ARE CONSIDERING OR EXPECT THAT THEY MAY NEED THEIR OWN DEFINITIONS. A FOURTH MAY ALSO HAVE TO DEVELOP ITS OWN DEFINITION, ESPECIALLY WHEN IT GETS INVOLVED WITH BUSINESSES NOT COVERED BY THE CURRENT SBA REGULATIONS. WE WILL WORK CLOSELY WITH THE OFFICE OF ADVOCACY ON THIS MATTER AND WE SUGGEST THAT THIS SUBCOMMITTEE ALSO MIGHT WISH TO KEEP A CLOSE EYE ON IT.

OUR OTHER PROBLEM CONCERNS A LARGE CATEGORY OF REGULATIONS WITH WHICH DOT IS INVOLVED THAT WE DO NOT BELIEVE NEED THE CERTIFICATION ON IMPACT REQUIRED UNDER SECTION 605(b) OF THE ACT. THAT SECTION REQUIRES AGENCIES TO CERTIFY TO THE OFFICE OF ADVOCACY THAT REGULATIONS FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS WILL NOT BE PREPARED WILL NOT HAVE A SIGNIFICANT ECONOMIC IMPACT ON A SUBSTANTIAL NUMBER OF SMALL ENTITIES. AS OUR AGENDA INDICATES, DOT ISSUES THOUSANDS OF WHAT WE CALL ROUTINE AND FREQUENT REGULATIONS. THESE INVOLVE SUCH THINGS AS COAST GUARD DRAWBRIDGE REGULATIONS AND FEDERAL AVIATION ADMINISTRATION (FAA) AIRSPACE ACTIONS. THE FAA, FOR EXAMPLE, MAY HAVE TO ISSUE A NEW REGULATION ON AN INSTRUMENT APPROACH TO A PARTICULAR AIRPORT BECAUSE TREES ON THE APPROACH PATH HAVE GROWN TALLER OR A BUILDING HAS BEEN ERECTED. THE COAST GUARD MAY HAVE TO ISSUE A CHANGE IN A DRAWBRIDGE REGULATION BECAUSE A BRIDGE HAS BROKEN. THE

OFFICE OF ADVOCACY AGREES WITH US ON THIS PARTICULAR MATTER. IF IT WOULD BE HELPFUL, WE WOULD BE GLAD TO ASSIST YOU IN DRAFTING APPROPRIATE LANGUAGE TO GIVE THE OFFICE OF ADVOCACY AUTHORITY TO EXEMPT APPROPRIATE CLASSES OF REGULATIONS FROM THE SECTION 605(b) REQUIREMENT.

CONCLUSION

IN CONCLUSION, MR CHAIRMAN, I NOT ONLY BELIEVE THAT THE DEPARTMENT OF TRANSPORTATION IS IN FULL COMPLIANCE WITH THE REGULATORY FLEXIBILITY ACT, BUT THAT WE HAVE SUBSTANTIALLY EXCEEDED ITS REQUIREMENTS. I THANK YOU AND THE OTHER MEMBERS OF YOUR SUBCOMMITTEE FOR THIS OPPORTUNITY TO DISCUSS OUR ACTIVITY UNDER THE ACT. AT THIS TIME, MR. EISNER AND I ARE PREPARED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

