Testimony on Congressional Veto legislation.
Subcommittee on Rules and Reorganization
Congressman Les AuCoin

Mr. Chairman:

I would like to thank you and the committee for allowing me the opportunity to testify in support of legislation to establish congressional review of agency rules and regulations.

Legislation of this sort is not new. Starting with the Legislative Appropriations Act of 1932, more than 190 Acts of Congress have contained various congressional review or consent provisions. Legislation of this type has spanned the spectrum of congressional affairs, dealing with subjects as diverse as education, wild and scenic rivers, presidential papers, and congressional and presidential war powers.

The consistent thread throughout these measures has been Congress' desire to ensure that laws are executed in a manner consistent with congressional intent.

The question often asked is: Why enact a general law of this type if Congress has been able to attach congressional review provisions to individual pieces of legislation ?

The answer lies in the need for Congress to formulate a uniform policy with regard to agency actions. The occasion still arises in which an agency, guided by a few zealous bureaucrats convinced they know better than Congress what is best for the country, issues rules and regulations contrary to congressional intent.

Short of enacting new legislation, Congress is powerless.

Much of the disillusionment and frustration with government in recent years can be traced to the inordinate amount of non-essential regulations that emerge from the federal bureaucracy.

Many are just plain nit-picking. An Occupational Safety and Health Administration regulation stating how many inches off of the ground fire extinguishers must be placed, (which, I am glad to say, recently was eliminated by OSHA as being unnecessary), is an excellent example.

These regulations, while in general accord with the intent of Congress, are narrowed to the point where they hinder, rather than help, enforcement of the law.

Other regulations are simply inconsistent with Congressional intent.

In either case, they are ripe targets for congressional review.

The Legislative Appropriations Act of 1932 was the first in a series of reorganization acts that provided for congressional review.

This Act authorized President Hoover to consolidate executive agencies and functions by executive order. His order was to be suspended for 60 days, during which period either House of Congress was empowered to pass a resolution disapproving the Executive Order.

President Hoover finally sent 11 reorganization proposals to the Congress. However, Congress felt none of the eleven were consistent with Congress' intent, and passed resolutions of disapproval for all eleven.

Beginning with this landmark piece of legislation, the number of bills containing congressional review provisions steadily increased. During the decade of the 1930's, 5 pieces of legislation were passed that were subject to congressional review.

However, during the first six years of the 1970's, this number had increased to 95.

Perhaps the best known example to occur in recent years was the Presidential Recordings and Materials Preservation Act of 1974.

Under this Act, the Administrator of the General Services Administration was directed to take possession of all Presidential recordings and materials from the Nixon Administration, and submit to Congress a proposal to make those papers and materials accessible to the public. The proposal would become effective 90 legislative days after submission, unless either House of Congress adopted a resolution of disapproval within that period.

In passing the Act, Congress had intended to provide the public with the full truth about the Watergate scandal as quickly as possible, while withholding any material affecting national security or unrelated to Watergate. However, the General Services Administration's interpretation led to the issuance of rules designed to continue the concealment of presidential materials.

In addition, the General Services Administration's argument for restricting public access to avoid deterring future presidents from keeping records, at the Senate hearings that followed, could hardly be said to be in accord with the wishes of Congress. Congress rejected this argument, and required the General Services Administration to promulgate new rules.

Without a congressional review provision, the General Services Administration's regulations presumably would have been allowed to stand, and the American public still might not know what was recorded on those presidential tapes.

Another example of an agency incorrectly judging Congressional intent occurred when the Department of Health, Education and Welfare begun implementation of Title IX of the Education Act amendments of 1972.

Although Congress had intended to prohibit discrimination on the basis of sex in educational programs and institutions receiving federal funds, HEW went far afield to read the law as prohibiting father-son and mother-daughter activities, and ruled accordingly.

Because no congressional review provision had been included in the original legislation, Congress was forced to pass legislation amending the original law. This amendment, which passed the House by voice vote, and the Senate by a vote of 88-0, left no doubt as to how Congress felt on the issue.

However, much time could have been saved if Congress had been able to register its disapproval of the rule when it originally was promulgated.

A third piece of legislation that points out the need for congressional review with which I am more familiar, because the Banking, Finance and Urban Affairs Committee of which I am a member has oversight responsibility, is the Interstate Lands Sales Full Disclosure Act.

The Act originally was passed to protect consumers against fraudulent sales practices used by certain land developers who sold land in the interstate market. As enacted in 1968, the act was intended to deal with fraudulent practices arising from the sale of undeveloped lots, usually to buyers who were purchasing property in anticipation of retirement. Buyers usually were unable to inspect the lot site because of their geographic separation from the lands' location, and often relied heavily on the representation of the seller.

Since the Act was designed to force registration of developers who sold undeveloped lots, an exemption was provided for persons who were engaged in the business of land development or building construction. Specifically exempted from the registration requirements were the sale or lease of any lots on which a building existed or was scheduled to be built within the next two years; and the sale or lease of any lots to a person who acquired the lots for the purpose of constructing a building or buildings on those lots. The Office of Interstate Land Sales Registration in the Department of Housing and Urban Development was created to conduct this registration.

However, the agency's regulations, without the counterbalancing force of a congressional review provision, took a 180 degree turn from the intent of the act.

The Act specified that land containing fewer than 50 lots was exempt from the registration requirements. However, the fifty

lot figure could be reached if several developers marketed their land under a common promotional plan. The Office of Interstate Land Sales Registration's interpretation of what it meant to promote land in common was stretched to an extreme. Scattered lots in two different subdivisions with different price ranges were counted together where the only common promotion was the same telephone number to call for information.

This provision is still in existence. When Congress passed the act, it did not provide for oversight hearings for ten years after passage. Meanwhile, the homebuilding industry has slowly become more and more entangled in red tape. In addition, the increased costs of registration have caused an unnecessary increase in housing costs.

Mr. Chairman, one of the complaints I hear most often in my district is--"can't you do something about these burdensome and unnecessary regulations? Their only effect is to add to our operating costs."

I submit that with enactment of legislation providing for congressional review of agency rules, these complaints, as well as a burden on our economy, would diminish.