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PAPERWORK INFLATION—PAST FAILURES AND FUTURE PLANS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

APRIL 24, 2001

Serial No. 107–68

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpo.gov/congress/house
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

79–868 PDF WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
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CONTENTS

	Page
Hearing held on April 24, 2001	1
Statement of:	
LaGrande, Ken, vice president, Sun Valley Rice, Colusa, CA; James M. Knott, president and CEO, Riverdale Mills Corp., Northbridge, MA; John Nicholson, owner, Company Flowers, Arlington, VA; and John L. Bobis, director of regulatory affairs, Aerojet, Rancho Murieta, CA	75
Rossotti, Charles O., Commissioner, Internal Revenue Service; J. Christopher Mihm, Governmentwide Management Issues Director, General Accounting Office; and Austin Smythe, Executive Associate Director, Office of Management and Budget	6
Letters, statements, etc., submitted for the record by:	
Bobis, John L., director of regulatory affairs, Aerojet, Rancho Murieta, CA, prepared statement of	104
Knott, James M., president and CEO, Riverdale Mills Corp., Northbridge, MA, prepared statement of	84
LaGrande, Ken, vice president, Sun Valley Rice, Colusa, CA, prepared statement of	78
Mihm, Christopher, Governmentwide Management Issues Director, General Accounting Office, prepared statement of	25
Nicholson, John, owner, Company Flowers, Arlington, VA, prepared statement of	95
O'Keefe, Sean, Deputy Director, Office of Management and Budget, prepared statement of	44
Ose, Hon. Doug, a Representative in Congress from the State of California, prepared statement of	3
Rossotti, Charles O., Commissioner, Internal Revenue Service:	
Information concerning alternative minimum tax	62
Information concerning labels	64
Prepared statement of	9
Smythe, Austin, Executive Associate Director, Office of Management and Budget:	
Information concerning complying with procedural guidelines	57
Information concerning expired collection requests	55
Information concerning the Paperwork Reduction Act	50

PAPERWORK INFLATION—PAST FAILURES AND FUTURE PLANS

TUESDAY, APRIL 24, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL
RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2154, Rayburn House Office Building, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose, Otter, and Shays.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Jonathan Tolman, professional staff member; Regina McAllister, clerk; Elizabeth Mundinger, minority counsel; and Jean Gosa, minority assistant clerk.

Mr. OSE. I will now call this meeting of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs to order.

Every year during tax season, this subcommittee turns its attention to paperwork, as does the rest of the country. Last week, as people all over the country prepared to file their tax returns, they again saw firsthand the kind of paperwork and red tape the government imposes on the public. The Office of Management and Budget estimates the Federal paperwork at nearly 7.6 billion hours. That means it would take 3.6 million people, working 40 hours a week, 52 weeks of the year to simply fill out all the forms the Federal Government requires each year. The price tag for all that paperwork, according to OMB, is $190 billion per year.

Now, much of the information that is gathered from this paperwork is important, sometimes even crucial, for the government to function. However, much is duplicative and unnecessary. In 1995, Congress passed amendments to the Paperwork Reduction Act [PRA]. The goal of the act was to reduce red tape each year. These annual reductions in paperwork, however, have not been achieved. Instead, paperwork burdens have increased in each of the last 5 years.

Under the PRA, the Office of Management and Budget is supposed to be the watchdog on paperwork. In the last administration, OMB failed to push the IRS and other Federal agencies to cut existing paperwork. Even worse, according to the GAO—and I apologize for all these acronyms—according to the General Accounting Office, OMB included some paperwork adjustments as paperwork reduction accomplishments. The point of the Paperwork Reduction

Act is to reduce the actual burden on the American public, not to simply make it look like the burden has gone down through accounting gimmicks.

As it relates to OMB's actions, instead of a watchdog it seems like we have a lapdog. Although many Federal agencies impose paperwork burdens, the IRS imposes by far the most, accounting for 82 percent of all paperwork. The IRS has had a dismal record during the last 8 years, showing few paperwork reduction initiatives and virtually no accomplishments. According to OMB data, the burden imposed by the IRS last year rose by nearly 250 million hours.

IRS Commissioner Rossotti testified before this subcommittee in April 1999 and April 2000, promising more initiatives this year. We do look forward to his testimony today.

In addition to increasing burdens by the IRS, numerous other Federal agencies promulgated major regulations that increased the paperwork burden on the American public. Some of these regulations were finalized in the waning hours of the Clinton administration. For example, on the very last day of the previous administration, the Department of Labor finalized a rule changing occupational injury and illness reporting requirements. This rule added over 1 million paperwork hours. Two days prior to that, the EPA lowered the reporting threshold for lead under its toxic release inventory program, increasing paperwork by 9 million hours. And, late last December, the three principal procurement agencies changed their rules on contract responsibility, increasing paperwork by over one-half million hours.

In the 1999 and 2000 hearings, administration witnesses testified that much of the paperwork burden was not able to be reduced because it was statutorily required; that is, not discretionary. As a result, discretionary paperwork requires special review by OMB. On January 19, 2001, the Department of Labor issued a final rule entitled Occupational Injury and Illness Recordkeeping and Reporting Requirements. It added over 1 million discretionary paperwork hours. It added requirements for reporting injuries and illnesses that have no, or insufficient, relationships to the workplace, including those occurring in home work offices.

In addition, this rule removed protections for the privacy of individual employees by requiring disclosure of the names of employees and their injuries. Much of the new paperwork has no practical utility, since Department of Labor is precluded from regulating home offices.

These are but a few examples of the new discretionary paperwork. Such burdens should necessitate close scrutiny by OMB before they are imposed on the public. Federal agencies must be forced to find less burdensome ways to collect their information. Reducing government red tape and paperwork is not a partisan issue. With the technology available today, there is no reason why the burden on the American public cannot be decreased.

I am going to recognize Mr. Otter now for purposes of an opening statement.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
Paperwork Inflation - Past Failures and Future Plans
April 24, 2001

Every year during tax season, the Subcommittee turns its attention to paperwork. Last week, as people all over the country prepared and filed their tax returns, they again saw first hand the kind of paperwork and red tape that the government imposes upon the public.

The Office of Management and Budget (OMB) estimates the Federal paperwork burden at nearly 7.6 billion hours. That means it would take an army of 3.6 million workers, working 40 hours a week, 52 weeks of the year to simply fill out all of the forms that the Federal government requires each year. The price tag for all that paperwork? According to OMB, $190 billion a year.

Much of the information that is gathered in this paperwork is important, sometimes even crucial for the government to function. However, much is duplicative and unnecessary.

In 1995, Congress passed amendments to the Paperwork Reduction Act (PRA) of 1980. The goal of the Act was to reduce red tape each year. These annual reductions in paperwork, however, have not been achieved. Instead, paperwork burdens have increased in each of the last five years.

Under the PRA, OMB is supposed to be the watchdog on paperwork. In the last Administration, OMB failed to push the Internal Revenue Service (IRS) and other Federal agencies to cut existing paperwork. Even worse, according to the General Accounting Office (GAO), OMB included some paperwork "adjustments" as paperwork reduction accomplishments. The point of the PRA was to reduce the actual burden on the American public, not to simply make it look like the burden has gone down through accounting gimmicks. Instead of a watchdog, it seems we have had a lapdog. Additionally, agencies levied unauthorized paperwork burdens on the American people - 872 information collections in 1998 and 710 in 1999.

The PRA set government-wide paperwork reduction goals of 10 or 5 percent per year from Fiscal Year (FY) 1996 to 2001. In 1998, Congress included a paperwork provision in the FY 1999 Treasury and General Government Appropriations Act. It required identification of specific paperwork reduction accomplishments expected in FY 1999 and FY 2000. In 2000, Congress included a paperwork provision in the FY 2001 appropriations Act. It requires an OMB report to Congress by July 1, 2001, which: (a) evaluates the extent to which the PRA reduced burden imposed in agency rules, (b) evaluates the burden imposed by each major rule with more than 10 million hours of paperwork burden, and (c) identifies specific expected reductions in FY 2001 and FY 2002 in agency rules imposing such substantial paperwork burden.

Although many Federal agencies impose paperwork burdens, the IRS imposes by far the most -- accounting for 82 percent of all paperwork. The IRS has had a dismal record during the last Administration, showing few paperwork reduction initiatives and virtually no accomplishments.

According to OMB data, the burden imposed by the IRS last year rose by nearly 250 million hours. IRS Commissioner Rossotti testified before this Subcommittee in April 1999 and in April 2000, promising more initiatives this year. We look forward to his testimony today.

In addition to increasing burdens by the IRS, numerous other Federal agencies promulgated major regulations that increased the paperwork burden on the American public. Some of these regulations were finalized in the waning hours of the Clinton Administration. For example, on the very last day of the previous Administration, the Department of Labor (DOL) finalized a rule changing occupational injury and illness reporting requirements. This rule added over 1 million paperwork hours. Two days before that, the Environmental Protection Agency (EPA) lowered the reporting threshold for lead under its toxic release inventory (TRI) program, increasing paperwork by 9 million hours. And, late last December, the three principal procurement agencies changed their rules on contractor responsibility, increasing paperwork by half a million hours.

In the 1999 and 2000 hearings, Administration witnesses testified that much of the paperwork burden was not able to be reduced because it was statutorily-required, i.e., not discretionary. As a result, discretionary paperwork requires special review by OMB for "practical utility," which is the PRA's statutory test for OMB approval of agency proposed paperwork burden (44 U.S.C. §3508).

On January 19, 2001, DOL issued a final rule entitled "Occupational Injury and Illness Recording and Reporting Requirements." It added over 1 million discretionary paperwork hours. It added requirements for reporting injuries and illnesses that have no or insufficient relationship to the workplace, including those occurring in home work offices. In addition, this rule removed protections for the privacy of individual employees by requiring disclosure of the name of employees and their injuries. Early last year, Congress forced the prior Administration to revoke its new guidance for employers governing work-at-home employees since the Occupational Safety and Health Act does not apply to an employee's home. At that time, DOL promised that it will not hold employers liable for work activities in employees' home offices. The bottom line is that much of the new paperwork has no "practical utility" since DOL is precluded from regulating home offices. This rule is currently being litigated.

On January 17th, EPA issued a final rule entitled "Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting" (commonly called the "TRI lead" rule). It added almost 9 million discretionary paperwork hours. In violation of the Small Business Regulatory Enforcement Act (SBREFA), EPA engaged in virtually no small business consultation and inadequate analysis of small business impacts before publishing its proposed rule and, consequently, inaccurately certified that the rule "will not have a significant economic impact on a substantial number of small entities." In fact, the rule requires thousands of new facilities, the majority of which are small entities, to prepare and file annual TRI reports. Today, Senator Bond is chairing a Senate Small Business Committee hearing about this noncompliance problem. While we all agree that clean water is important for

public health, agencies must comply with applicable laws in promulgating new rules or else we stand to lose the baby with the bath-water in litigation.

Last July, both the Chairman and Ranking Member of the House Committee on Science wrote EPA urging it to seek independent peer review before finalizing its TRI lead rule. In response, in its final rule, EPA stated, "it would be appropriate to seek external scientific peer review from its Science Advisory Board, and EPA intends to do so" - but only after the TRI lead rule was scheduled to take effect. Rules should be based on sound science, i.e., deciding on the scientific merits of a regulatory approach after-the-fact makes little sense. This rule is being litigated.

On December 28, 2000, the Department of Health and Human Services (HHS) issued a final rule establishing standards for the privacy of individually identifiable health information. HHS's proposed rule estimated that it would impose 14 million paperwork hours; HHS has not yet submitted its final rule's paperwork for OMB's review.

On December 20th, the three principal procurement agencies - the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration - issued an amendment to the existing rules governing "present responsibility" to clarify what constitutes a "satisfactory record of integrity and business ethics" for contracting with the government (commonly called the "blacklisting" rule). This change requires the contracting officer to determine whether a potential contractor's record is satisfactory on issues, such as their labor, environmental and consumer protection records, including unproven allegations. This rule, scheduled to become effective on January 19, 2001, added over half a million discretionary paperwork hours. At our March 27th hearing, I discussed the various procedural flaws in this rulemaking. This rule is being litigated.

These are but four examples of new discretionary paperwork. Such burdens should necessitate close scrutiny by OMB before they are imposed on the public. Federal agencies must be forced to find less burdensome ways to collect their information. Reducing government red tape and paperwork should be a non-partisan issue. With the technology available today, there is no reason why the burden on the American public cannot be decreased.

I want to welcome our witnesses today. Panel I includes IRS Commissioner Charles O. Rossotti and J.C. (Chris) Mihm, Governmentwide Management Issues Director, GAO. Panel II includes Ken LaGrande, Vice President, Sun Valley Rice, Colusa, California; James Knott, President and CEO, Riverdale Mills Corporation, Northbridge, Massachusetts; John Nicholson, owner, Company Flowers, Arlington, Virginia; and Dr. John Bobis, Director of Regulatory Affairs, Aerojet, Rancho Murieta, California. Panel III includes Sean O'Keefe, Deputy Director, OMB.

Mr. OTTER. Thank you, Mr. Chairman. I really do not have an opening statement, but I did notice that throughout your opening statement one of the areas that we have neglected in paying some attention to is the suffering that States and State governments and State agencies go through in reporting to Federal agencies as well. That has always been one of the areas I have been the most concerned about, along with business and industry, having been a graduate of both. So I look forward to our panel and their statements and their responses to some of our questions.

Thank you, Mr. Chairman.

Mr. OSE. Thank you, Congressman Otter. If and when other members show up, we will enter their statements in the record. This committee requires all testimony to be under oath, and so I will swear in our witnesses now.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses all answered in the affirmative.

Mr. OSE. On our first panel today we are joined by three individuals: We have Commissioner Charles Rossotti from the Internal Revenue Service; J. Christopher Mihm, Governmentwide Management Issues Director from the General Accounting Office; and Mr. Austin Smythe, Executive Associate Director, Office of Management and Budget.

Gentlemen, we have a lot of questions. I am going to hold you to the 5-minute rule, so, Mr. Rossotti, you are first for 5 minutes with an opening statement.

STATEMENTS OF CHARLES O. ROSSOTTI, COMMISSIONER, INTERNAL REVENUE SERVICE; J. CHRISTOPHER MIHM, GOVERNMENTWIDE MANAGEMENT ISSUES DIRECTOR, GENERAL ACCOUNTING OFFICE; AND AUSTIN SMYTHE, EXECUTIVE ASSOCIATE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. ROSSOTTI. Thank you, Mr. Chairman.

Mr. Chairman and Mr. Otter, I am pleased to report on the Internal Revenue Service's efforts and initiatives to reduce the paperwork and administrative burdens faced by America's taxpayers.

Through a dual approach of both short-term and longer-term improvements, we are working to provide taxpayers both immediate and longer far-reaching burden relief. Our short-term efforts include reducing the number of taxpayers required to file specific forms, simplifying or eliminating forms and notices altogether, and making it easier through electronic means to file and pay. So let me provide some examples of this approach.

Through our efforts, millions of taxpayers are no longer required to file the 54-line Schedule D, Capital Gains and Losses. They can now use the short and simpler form, which greatly reduces their burden in this area. And, by next filing season, only 650,000 taxpayers will have to use the long form.

Last year, I announced the IRS had increased the threshold from $500 to $1,000 for required tax deposits. That change meant that about one-third of the Nation's 6.2 million small business employers would not have to deposit employment taxes. This year, to go even further in this area, we have raised the threshold yet again

from $1,000 to $2,499 in quarterly employment taxes. This affects the payment requirements for about 1 million small businesses. Through this effort, we are estimating now that 78 percent of small businesses can be relieved of the burden of making as many as 12 deposits annually. This is the most frequent transaction small businesses have with the IRS.

Further, with respect to small business, in April 2000, the IRS and the Treasury Department issued a revenue procedure that permits qualifying small business taxpayers, with average annual gross receipts of $1 million or less to use the cash method of accounting. The new procedure has tremendous impact on lessening the recordkeeping and tax-cutting burden for small businesses. We estimate now that the overwhelming majority of small business taxpayers who otherwise would have been required to use the accrual method are now allowed to use the much simpler and easier to understand cash method.

Another area reflecting individual taxpayers, due to an agreement between the IRS and the Postal Service, as well as some internal systems improvements, taxpayers who move after filing their tax returns will now have their addresses automatically updated, even if they don't notify us. We estimate that this initiative will substantially reduce about 5 million pieces of undelivered mail we get back each year.

Again, in terms of saving trips to the post office, we are estimating that 100 million taxpayers will be downloading forms this year from our Web site, saving them trips to the post office. I mentioned that another fruitful area is providing electronic options, including the Internet to conduct transactions with the IRS rather than the more time-consuming process of filling out and mailing in forms, letters and payments. We, this year and next year, are eliminating the paper signature requirement for e-filing and are adding more schedules to our 1040 programs. So next year, 99.1 percent of all taxpayers will be able to file electronically with no paper. And, for the first time ever, even taxpayers who need an extension this season can do so with just a simple phone call, no paper.

Still another area we are testing are electronic tax payment systems. So for those small businesses that do have to make tax deposits, they will be able to do that again over the Internet with no paper.

I think these are significant short-term steps, but there is obviously more work to be done. And, through our long-term modernization efforts, we are working through our business systems improvements and our work with customer groups in figuring out how to reduce burden for all types of taxpayers beyond what we have so far accomplished. As a matter of fact, we recently completed our strategic plan that was approved by the IRS Oversight Board, and one of the key strategies in that plan, in fact, is reducing taxpayer burden. This can be done in a variety of ways, such as the ones I have mentioned, which includes not only redesigning of forms but most especially eliminating them completely, using electronic approaches where possible, and even where filings are required reducing the amount of errors that exist in these forms and filings so that they will not have further burdens after they file.

While we continue to focus aggressively on reducing burdens both in the short term and long term, I do want to note for the committee that our efforts at paperwork and burden reduction are limited by the requirements of the tax code and its inherent complexity. We are issuing a report, as required by law, we issued one last year and will be issuing another one this year, on key sources of complexity in the tax code, and that will identify some areas that we believe are fruitful for simplification.

In addition, we have a whole new model that we are developing on how to measure burdens which we think will be helpful in identifying future areas.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rossotti follows:]

TESTIMONY OF
COMMISSIONER OF INTERNAL REVENUE
CHARLES O. ROSSOTTI
BEFORE THE
HOUSE GOVERNMENT REFORM
SUBCOMMITTEE ON
ENERGY POLICY, NATURAL RESOURCES
AND REGULATORY AFFAIRS
PAPERWORK AND BURDEN REDUCTION
APRIL 24, 2001

INTRODUCTION

Mr. Chairman and distinguished Members of the Subcommittee, I am pleased to report on the Internal Revenue Service's efforts and initiatives to reduce the paperwork and administrative burdens faced by America's taxpayers. I would like to note that the initiatives that I will be discussing in my testimony are reflected in our Information Collection Budget (ICB) submission to OMB for FY 2001.

Through its dual approach of short- and long-term improvements, the IRS hopes to provide taxpayers with both immediate and far-reaching burden relief. Our short-term efforts include reducing the number of taxpayers required to file specific forms as well as simplifying or eliminating forms and notices altogether. We are also providing taxpayers electronic options, from the phone to the Internet, to communicate and conduct transactions with the IRS, rather than the time-consuming process of obtaining, filling out and mailing in forms, letters and payments.

I believe that we agree that the potential for greater paperwork and burden reduction is enormous. The IRS has barely scratched the surface. Through our longer-term modernization efforts that pivot on business systems modernization and a new customer-focused organization, we can provide truly meaningful burden reduction for all types of taxpayers – far beyond what is available today.

In contrast to past practices, the modernized IRS will place a far greater emphasis on pre-filing activities, such as helping taxpayers to understand their filing and payment requirements. Although the burden-reduction benefits that will flow from these up-front activities are less quantifiable and may not be included in the traditional paperwork and burden reduction calculus, their benefits and value to taxpayers and the IRS are vast.

Indeed, one of the ten major strategies included in the IRS Strategic Plan that was approved earlier this year by the IRS Oversight Board was "reduce taxpayer burden." To do this, we must shift from addressing taxpayer problems well after returns are filed to addressing them as early in the process as possible and in fact, preventing problems wherever possible.

If we can eliminate confusion, errors and mistakes before a return or form is ever filed, America's taxpayers will be spared countless numbers of notices and communications with the IRS. This approach promises to be particularly helpful for America's small businesses, especially start-up businesses, which find themselves confronted with a dizzying array of new tax and filing requirements. I would caution, however, that our efforts at both paperwork and burden reduction are often hindered by a very complex and changing tax code.

Before I discuss our efforts, let me thank you, Mr. Chairman, for your interest and leadership in this area. I look forward to working with you and the Members of the Subcommittee to reduce the burden on America's taxpayers while at the same time raise the level of service that the IRS provides them.

Changing the Threshold for Form 941(Federal Tax Deposits)

Mr. Chairman, last year when I appeared before Subcommittee, I was pleased to announce that the IRS had increased the threshold from $500 to $1,000 for required tax deposits. The change meant that almost one-third of the nation's 6.2 million small business employers would not have to deposit employment taxes.

And this year, in an effort to provide even more burden relief to this important taxpayer segment, the IRS has raised the threshold yet again, from $1,000 to less than $2,499 in quarterly employment taxes. This affects the payment requirements for about one million small businesses. Through our continued efforts, we estimate that between 70-80 percent of small businesses can be relieved of the burden of making as many as 12 deposits annually. These initiatives will save 350,000 burden hours per year starting January 1, 2001.

The change also reduces paperwork burden because most of these taxpayers use paper coupons to make their deposits. And because this change will reduce the frequency of payments, there is less chance for mistakes and fewer penalties. IRS notices to small businesses are also expected to decrease by about 70 percent because there will be fewer deposits.

Relieving Burden of Reporting Capital Gains Distributions

Last filing season, most taxpayers whose only capital gains were from mutual fund distribution did not have to file the 54-line Schedule D (Form 1040), "Capital Gains and Losses." Instead, qualified taxpayers could report these gains directly on Form 1040, line 13. The IRS developed a new 15-line worksheet in the 1040 instructions to assist taxpayers in calculating their taxes. The change to the reporting of capital gains distributions through the worksheet represented a dramatic burden reduction of 23.76 million hours for approximately six million taxpayers.

For the 2001 filing season, a line was added to Form 1040A to allow at least two million taxpayers with capital gain distributions from mutual funds to use the simpler form. Although the additional lines and the worksheet these taxpayers use to calculate their tax increases the quantified burden for Form 1040A, the reduction to the number of taxpayers required to file Form 1040 results in net decrease in overall burden of 2.39 million hours.

For the 2002 filing season, we will provide even more paperwork burden reduction for millions of taxpayers who now file the 54-line Schedule D. Rather than adding four more lines to an already crowded form to accommodate the new 8 percent capital gains rate, we looked for creative ways to shorten the form. When filing their taxes next year, more than 21 million Schedule D filers will discover that they have a form that is 40 lines long – 18 lines shorter than what we originally anticipated. Only 650,000 filers will have to use a longer worksheet. The resulting net burden reduction for 2001 Schedule D filers is estimated to be 6.31 million hours.

Change of Address

Due to a licensing agreement between the IRS and the U.S. Postal Service, taxpayers who move after filing their tax returns will have their addresses automatically updated, even if they do not notify us by filing Form 8822, Change of Address. In addition, taxpayers should receive future correspondence from the IRS on a more timely basis.

The "Change of Address" was on the National Taxpayer Advocate's "20 Most Serious Problems List" for FY 1999. Due to our action, I am pleased to report it has been removed from the FY 2000 list.

Under this arrangement, the IRS will use the Postal Service's National Change of Address (NCOA) database to update the addresses in its own Master File of taxpayer data. This address updating process should also provide quicker resolution of undelivered refund checks.

The IRS will check the names and old addresses in the NCOA weekly update files against the names and addresses in the IRS database. Where there is an exact match, the IRS will update its file with the taxpayer's new address. According to the Postal Service, there are about 800,000 address changes each week.

In addition to helping IRS get refunds to taxpayers, this new program will permit the IRS to make earlier contacts with them to resolve issues such as delivery of a returned refund, possible unreported income, examination of a return, or collection of unpaid tax.

Mr. Chairman, due to the unique circumstances of this initiative, i.e., we are helping taxpayers who do not file a change of address form with the IRS, it is difficult to come up with a burden reduction figure.

Combining of Mail: Math Error Notices and Refund Checks

Taxpayers who have made a math error on their tax returns receive either a larger or smaller refund checks than they anticipated. They also receive a notice from the IRS explaining the reason for the change. However, under the current processes, the notice is not included with the refund check that Federal Management Service sends the taxpayer because IRS issues the notice and FMS issues the check.

It is quite understandable that taxpayers may become confused or have questions and call the IRS about their refund because the notice and refund are not in the same envelope. This is one of the top problems for taxpayers, as reported annually by the Taxpayer Advocate Service to Congress.

To address this problem, the IRS is working with FMS to combine into one envelope the refund check and the explanatory notice sent to taxpayers when they have a math error on their return. Three IRS service campuses, Philadelphia, Brookhaven, and Andover, participated in this successful pilot in 1999. Plans are underway to implement this nationwide. We are currently working on final programming, and will be testing the programs later this year. We expect to implement it fully in the 2002 filing season.

Redesigned Notices

As part of its continuing effort to improve its correspondence to taxpayers, the IRS began sending out this year six redesigned notices, including those dealing with math errors, balance due, overpayments and offsets. These notices affect both individual and business taxpayers. The new notices should: (1) reduce the number of times taxpayers need to contact the IRS; (2) be easier to understand; and (3) facilitate resolution of inquiries. The combined yearly volume of these six notices is about 10.5 million.

Following the IRS Restructuring and Reform Act of 1998's directions, the new notices also contain more information, including: (1) the formula for how the IRS computes the penalty or interest; (2) the section of law on which the penalty or interest is based; and (3) a table that details account information under each penalty or interest section to specific periods that the charges apply. Members of the Citizens Advocacy Panel reviewed the notices before we released them in October 2000.

Despite extensive testing, some of the first notices sent out were missing information. The IRS has since corrected errors in the programming for these notices and mailed explanations to taxpayers as appropriate.

We are continuing our redesign efforts on 23 additional notices. We plan to release four of the notices in 2002 and the remaining 19 in 2003.

Checkbox Initiative

Beginning this filing season, taxpayers with Paid Return Preparers can use the Paid Preparer Authorization Checkbox on all Form 1040 series returns with the exception of TeleFile. This checkbox indicates the taxpayer's desire to allow the IRS to discuss the tax return and attachments with the preparer while the return is being processed. This provides for a significant reduction in paperwork for millions of taxpayers.

Including a checkbox on the family of 1040 returns was a direct response to requests from our external stakeholders, such as the South Florida Citizen Advocacy Panel (CAP), National Society of Accountants, National Association of Tax Practitioners and National Association of Enrolled Agents.

The checkbox designation should enable practitioners quickly to resolve questions concerning the processing of the taxpayer's return. It should also reduce the number of contacts necessary to resolve processing questions and eliminate the need for the submission of paperwork for a Power of Attorney, which is not required to resolve simple problems with a taxpayer's account. Our initiative also addresses the practitioner groups' concern that this designee not be afforded post-assessment correspondence or representation.

Mr. Chairman, we believe that this initiative will provide significant burden reduction for many taxpayers who would otherwise have to obtain and fill out Form 2848 (Power of Attorney and Declaration of Representative) and Form 8821 (Third Party Authorization Disclosure).

After we announced the initiative in April 2000, we expanded the check box authorization on the tax year 2001 Form 1040 series of returns to allow the designation of any third party, such as an elderly taxpayer's son or daughter, not just the paid preparer, to discuss processing problems. This action will allow more expeditious handling of processing and refund problems.

We are also revising most business income tax returns with a paid preparer block to allow the designation of the paid preparer. For the major employment and excise tax returns, which do not have a paid preparer block, we are adding a section to allow taxpayers to designate either their paid preparer or an employee.

Initial results have been most encouraging. Statistical data indicates that 35.6 percent of all individual income tax returns filed with paid preparer information have checked the authorization box.

Extensions to File by Phone or Computer

Taxpayers who need more time to complete their returns will find it easy to extend their filing deadlines. Rather than filling out and mailing paper Form 4868, automatic four-month extensions are now also available by phone or by computer.

Those getting extensions may also pay any projected tax due electronically. Taxpayers must make their requests by the normal filing deadline. The IRS expects eight million extension requests this year.

The IRS opened a special toll-free phone line for extension requests on April 1, 2001. The number is 1-888-796-1074. Callers were asked to use Form 4868 as a worksheet to prepare for the call and have a copy of their 1999 tax return. They enter the adjusted gross income and total tax amounts from that return to verify their identity. The system gives the caller a confirmation number to signify that the extension request has been accepted. Users put this confirmation number on their copy of Form 4868 and keep it for their records. They do not need to send the form to the IRS.

Taxpayers calling the extension line can also choose to pay any expected balance due by authorizing an automatic withdrawal from a checking or savings account. Taxpayers may also *e*-file an extension request using their own tax preparation software or by going to a tax preparer. As with the phone system, computer filers must provide two figures from the previous year's tax return to verify their identity.

The IRS has authorized two companies to process credit card charges for Federal taxes. These processors offer the option of extension-related payments through their phone and Web site systems. They also accept credit card charges for the taxes due for 2000 and for estimated taxes for 2001. There is no IRS fee for credit card payments, but the processors charge a convenience fee.

Cash Versus Accrual Methods of Accounting

In April 2000, the IRS issued Revenue Procedure 2000-22 (later modified and clarified by Revenue Procedure 2001-10) which permits qualifying business taxpayers with average annual gross receipts of $1,000,000 or less to use the cash receipts and disbursements methods of accounting. This action also provides the procedures by which a taxpayer may obtain automatic consent to change to the cash method.

The new procedure has an enormous impact on lessening burden for small businesses who could use the much simpler, easier to understand and usually advantageous cash method. By our calculations, we have exempted the vast majority of the small business taxpayers who otherwise would have been required to use an accrual method.

According to a May 23, 2000, *Tax Action Memo* entitled, "No Kidding-IRS Reduces Compliance Burden On Small Businesses," Practitioners Publishing Company stated, "Although the implementation provisions of Rev. Proc. 2000-22 are complex, the IRS should be commended for taking a big step towards easing compliance for small business taxpayers. According to the most recent data available (and ignoring the effect of any commonly owned businesses), 78% of all C corporations, 85% of all S corporations, 95% of all partnerships, and approximately 94% of all sole proprietorships should be able to satisfy the $1-million average gross receipts test."

I hope that this is the first of many actions that the IRS can take to reduce the burden on small businesses in meeting their tax obligations.

Installment Agreement Requests On-Line

Until this year, the IRS was unable to accept an electronic Form 9465 (Installment Agreement Request) with a direct debit payment request. For these types of requests, the IRS would send to the taxpayer a hard copy of form 9465 for signature, authorizing the direct debit.

The taxpayer can now submit these requests electronically and simultaneously authorize a direct debit installment agreement. The IRS is no longer sending a hard copy of Form 9465 to the taxpayer for signature. Additional benefit includes quicker processing of the Installment Agreement request.

Taking the Paper Out of Business Taxpayer Burden in 2001

In 2001, the IRS continues to make progress serving the electronic tax administration needs of the business sector, and thereby reducing their paperwork burden.

For example, beginning last April, employers could file their Form 941's on line, saving time and paperwork. And for the first time, companies and payroll service providers will be able to file both the Quarterly 941 and Annual 940 *(Employer's Annual Federal Unemployment Tax Return)* electronically. A direct debit payment was also made available through Form 941 TeleFile.

Another major Electronic Tax Administration initiative eases the information-reporting burden for employers. Providers of certain information statements, including W-2s, now have the option of giving employees the information electronically, instead of on paper.

These new rules were a direct response to requests we received from lenders, educational institutions, employers and stakeholders who wanted the option to deliver these statements in an electronic format. Under the new option, providers will save the cost of processing, printing and mailing paper statements. And recipients will receive the information faster and more efficiently and without the worry of mailing delays or lost statements.

The Electronic Federal Tax Payment System (EFTPS) also continues to be a runaway success. In 2000, EFTPS topped all of its 1999 numbers for new enrollments, dollars and transactions. It processed more than 63 million Federal tax payments – a 14 percent increase over the previous year. And EFTPS also received a staggering $1.5 trillion in payments – a 15 percent increase over the previous year. Payroll companies, tax practitioners and financial institutions have been instrumental in helping us grow this program.

Why has EFTPS been so successful? Over the years, EFTPS has delivered a high level of service and accuracy. It consistently exceeds industry standards, and applies 99.9 percent of payments precisely as the taxpayers direct.

We developed the system with a focus on being able to handle significant volume with accuracy, integrating checks and balances to make sure information is correct and verified at each step of the process. EFTPS delivers a level of precision that can be compared to the stringent accuracy standards applicable to banking and financial transactions.

This year, we are conducting an exciting new pilot program to test our new Internet-based application for businesses to pay Federal taxes on line. This new feature, EFTPS-OnLine, allows businesses to enroll in the system, securely make Federal tax payments and check their electronic payment history over the Internet. Using EFTPS-OnLine, businesses will be able to schedule future payments through the Internet and cancel payments if necessary. They will also have access to on-line help and "how-to" pages with step-by-step instructions.

One of our primary EFTPS priorities is security and it continues with our new Internet feature. EFTPS-OnLine uses the strongest available security and encryption technology to ensure taxpayer privacy and protection. After evaluating the pilot results, we plan to make EFTPS-OnLine available to all business taxpayers and to individual taxpayers who are required to make estimated quarterly payments.

There are currently more than 3.3.million taxpayers enrolled in EFTPS and with the addition of the new Internet feature, we expect that number to continue to grow.

Forms W-2 and W-3

In collaboration with the Social Security Administration, the IRS redesigned the tax year 2001 Forms W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, to increase processing efficiency. The revisions will also enhance the accuracy of data captured from paper forms. Revisions were made to accommodate the one-stop filing program under the Simplified Tax and Wage Reporting System (STAWRS) project. The project is exploring the elimination of the requirement for employers to file wage information with electing states.

TeleFile Tax Package

The IRS reduced the size of the 2000 TeleFile package from 20 pages to 12 pages. Taxpayers have a more compact tax package to assist them in the TeleFile process.

Ongoing Research Activities

The IRS is continuing its research to identify where simplification and burden reduction initiatives will reap the most benefits. The Simplifying Filing Research

Strategy provides the analysis needed to improve our products. This year we undertook projects for simplifying Form 1120, U.S. Corporation Income Tax Return, Form 1120S, U.S. Income Tax Return for an S Corporation, and Form 941, Employer's Quarterly Federal Tax Return.

The results from the Form 1120S project showed that no further analysis is needed because taxpayers are not having significant problems with the form. The Form 1120 project is proceeding: we expect to complete our data collection activities by this quarter; and the analysis and report will then be prepared. The report on evaluating Form 941 is still in the draft stage and we will share it once it is complete.

We also conducted focus groups to test a variety of new and redesigned products including Publication 596, *Earned Income Credit*, new Publication 15-B, *Employer's Tax Guide for Fringe Benefits*, and Form 8857, *Request for Innocent Spouse Relief*. We also had assistance from the Brooklyn Citizens Advocacy Panel in reviewing Publication 596. The Nashville Chapter of the American Payroll Association assisted by participating in focus groups on revised Forms W-2, W-3, and the instructions. Helpful comments we received from these focus groups helped guide our redesign efforts for the wage and tax statements received by millions of taxpayers.

We will conduct follow up focus groups for Publication 970, *Tax Benefits for Higher Education*, and continue rewrite and redesign efforts. The focus groups are scheduled to be conducted during Summer 2001.

We are also continuing our efforts to develop a better measure of paperwork burden that will be more accurate than our current methodology and will allow us to evaluate the impact that changes in the tax system have on taxpayer burden.

TAXPAYER ADVOCATE'S REPORT TO CONGRESS

Mr. Chairman, although the Taxpayer Advocate Service is best known for helping taxpayers to resolve long-standing problems with the IRS, it has another equally critical mission: to identify systemic problems that taxpayers face and make recommendations to Congress and the IRS to address them.

In the latest annual report (FY 2000) to the Congress, the National Taxpayer Advocate identified the "20 Most Serious Problems List" encountered by taxpayers. The list was compiled by analyzing Taxpayer Advocate Service casework data along with input from three other sources – Citizen Advocacy Panels and external and internal stakeholders.

Complexity of the tax law remains the number one problem facing taxpayers and is the root cause of many of the other problems on the Top 20 list that create taxpayer burden. Indeed the respondents reported so many issues related to complexity that the National Taxpayer Advocate decided to list it as two problems – those related to individual taxpayers and those confronted by business taxpayers.

In the case of individuals, the report states, " Despite IRS restructuring to target services to taxpayer needs, the fact remains that the Internal Revenue Code is riddled with complexities that often defy explanation. Again this year, we suggest Congress take actions to simplify the Internal Revenue Code and make it easier to understand and implement."

And on the complexity of business tax laws, the National Taxpayer Advocate observes that "the complexity of the Tax Code can drive some small businesses into technical non-compliance. . . .not only are businesses challenged by the Internal Revenue Code, they must deal with numerous, often competing, laws, regulations and ordinances enacted by state and local governments."

However, complexity of the Code is not the only hurdle taxpayers must surmount. Number 3 on the Top 20 list was the clarity and tone of IRS communications. The report found that our written communications are often not responsive to taxpayer needs: the notices are not clear and often not timely; the tone of IRS letters and notices is sometimes perceived as threatening; and taxpayers often receive multiple notices rather than one notice encompassing all accounts.

As previously discussed, we have made some progress to address this problem through the ongoing notice redesign effort. However, our long-term goal is to improve all of our written communications, including the hundreds of pre-printed and computer-generated letters. Some of the remaining problems will be addressed as new technology becomes available.

On a broader scale, we believe that we can best address burden reduction and indeed, many of the Top 20 problems though our new customer-focused organization supported by new technology and proven best business practices.

IRS COMPLEXITY REPORT

In the FY 2000 Annual Report, the National Taxpayer Advocate also points to the IRS' Annual Report on Tax Complexity that was released on June 5, 2000; the next report is due out later this year. The Restructuring Act requires the Commissioner of Internal Revenue to report annually to Congress on areas of complexity in the Code and to make recommendations for reducing complexity. For example in the 2000 report, the three areas we selected for in-depth review were filing definitions, individual alternative minimum tax and estimated taxes.

Our report came to conclusions similar to those reached by the National Taxpayer Advocate. Complexity must be addressed to effectively reduce taxpayer burden and improve taxpayer compliance – two key components of the IRS' mission.

Reducing complexity can reduce taxpayer burden by cutting the time and costs taxpayers face in meeting their tax obligations. It can also boost compliance by making those obligations easier to understand and meet.

The Complexity Report looks to burden's causes. Simply put, burden results from taxpayers spending time and money trying to understand and meet their filing, reporting and payment responsibilities. And complexity adds to burden by forcing taxpayers to spending more time and more money attempting to figure out how specific provisions apply to them. Individual taxpayers cope with complexity as best they can. Some struggle with it themselves, while others rely on tax preparation software or paid preparers. Indeed, noncompliance can result from taxpayers' frustrations with the complexity faced when trying to obey the law.

And when tax laws change, individuals often face uncertainty as to how to comply with the changes, especially if they are frequent, or if the individuals and IRS are given little time to prepare before the changes become effective.

Situations such as these challenge both the IRS and taxpayers. The IRS needs to issue clear guidance and forms covering the changes in time for the next filing season. Taxpayers face the uncertainty that late changes pose to their current and future tax obligations. With short lead times, both the IRS and taxpayers have little time to become knowledgeable about the changes. This creates additional chances for error as well as heightened frustration.

Many taxpayers, tax practitioners, scholars, and stakeholders emphasize that even the simplest of changes to the Tax Code can have complex consequences if change is frequent and/or has a retroactive or short lead time for the effective date.

Frequent change increases the uncertainty that taxpayers face in tax planning, record keeping, and the filing of their returns. The inability to stay current has been cited by small business owners and individuals as a primary reason for their use of paid preparers.

In this regard, the IRS faces its own challenges in making sure its systems, training, and other employee tools are current and reflect the most recent legislation. In addition, because the time between when a return is filed and when it is audited may be one to two years, taxpayers and IRS employees must not only understand the current rules, but remember the old rules in order to deal with audit issues.

The enactment of provisions with retroactive or short effective lead times also increases complexity. Both taxpayers and the IRS frequently must act quickly to accommodate these changes. For the IRS, especially problematic are changes that come late in the calendar year when the forms and publications for the next filing season are ready to go or have gone to the printers. Short time frames frequently do not allow the IRS to consult with taxpayers and other stakeholders in developing new forms. This can

result in the forms being more difficult for taxpayers to understand or complete than they would be under normal circumstances.

Time limitations also may affect our ability to make the computer systems changes necessary to support statutory change. The Taxpayer Relief Act of 1997 and RRA 98 are good examples of statutes with many tax-related changes and short effective date lead times.

A MODERNIZED IRS: SHORT- AND LONG-TERM STRATEGIES FOR REDUCING BURDEN

As I mentioned in the introduction to my testimony, one of the overriding themes in improving IRS' business practices, and our Strategic Plan, is to shift from addressing taxpayer problems well after returns are filed to addressing them as early in the process as possible, and in fact preventing problems wherever possible.

This approach follows the well-established principle that it is far better for the customer and far less expensive to eliminate defects than to fix them. In making cars, for instance, it is very expensive to issue a recall because of a defect; it is less expensive to fix a defect before the car leaves the factory; and it is best of all to improve the design and manufacturing process so no defect occurs.

It is the same with tax returns. As a rule, if a taxpayer files a correct return, the taxpayer or the IRS incurs no further costs. If the taxpayer makes an error, it is highly beneficial for both taxpayers and the IRS to find and fix the error as soon as possible. If the taxpayer fails to pay the correct amount due, the sooner the issue is addressed, the lighter the burden on the taxpayer and the greater the likelihood that the IRS will receive payment.

A major part of this strategy will be accomplished through partnerships with state governments, practitioners, and many other industry and local groups who are in regular contact with taxpayers. We will make substantial progress in reducing burden on taxpayers over the next two years, although much more will be possible through our longer-term business system modernization efforts.

The New Operating Divisions Will Provide Tailored Burden Relief

Using our four customer focused operating divisions – Wage and Investment, Small Business and Self Employed, Large and Mid-Size Business and Tax Exempt and Government Entities – we will develop specialized education and assistance programs for specific groups of taxpayers. Let me focus today on what we will do for business taxpayers.

One effort includes the use of outreach, education, and assistance to prevent noncompliance among start-up businesses. We will expand our business partnerships with industry groups, state and local governments, small business administration, and practitioners to provide specialized education programs, and assess current successful business programs for start-up businesses to promote compliance with the tax laws.

For example, earlier this year, we launched the Small Business/Self-Employed Community web page on our web site. It provides one-stop shopping for IRS products, information, calendars of important filing dates, frequently asked questions, hyper-links to other organizations and points of contact. We are in the process of redesigning our entire award-winning web site, *the Digital Daily*, to make it even better and more responsive to the needs of all types of taxpayers. We also distributed 500,000 copies of the Small Business Resource Guide CD-ROM and produced and distributed the video, "The ABCs of FTDs" that explains the Federal Tax Deposit rules.

We will also expand our Voluntary Compliance Agreement Program to reduce the uncertainty that taxpayers experience in meeting their reporting requirements. Actions include expanding existing programs such as the Tip Rate Determination and Education Program (TRD/EP). We created this program to ensure the proper reporting of tip income. The IRS originally offered the program to the food and beverage industry and subsequently to the cosmetology, barber, and gaming industries. We have now extended it to all other industries where tipping is customary. The IRS will also inventory all voluntary agreement and similar programs, and develop interim measurements for voluntary agreement programs.

Tailored service is key to reducing taxpayer burden; one size never fits all. For example, our Small Business and Self-Employed Operating Division will work with small businesses to offer simpler, less cumbersome ways for them to report and pay employment and other required taxes by providing more electronic payment and filing options and working with state governments to combine federal and state reporting requirements.

And for large and mid-size businesses, we will develop a comprehensive issue management strategy, including a pre-filing agreement program, fast track emerging issue process, an industry issues resolution process, enhanced alternative dispute resolution tools, the promotion of electronic filing of business returns, and the development of research databases.

Attacking complexity and helping taxpayers understand their obligations will not only reduce their burden but also improve voluntary compliance. In addition to responding to the recommendations contained in the National Taxpayer Advocate's annual report, we will provide more effective pre-filing guidance to taxpayers to improve voluntary compliance with the tax laws. The development and publication of guidance directly supports the full range of pre-filing activities and remains the most efficient means to promote a uniform understanding and consistent application of the tax laws by taxpayers and IRS.

We will also develop proactive strategies to reduce the number of audit reconsideration cases that become problems due to poor communications with taxpayers. Outreach projects will be planned and implemented to educate taxpayers on the reconsideration process, which is the review of an IRS assessment, and the role that they play in providing appropriate documentation.

However, if a case reaches the Appeals process, we will reduce the length of time it takes for a case to go through Appeals by improving case development, expediting case movement to and from Appeals, reducing case backlogs, and developing a new staffing model in response to changing customer requirements.

CONCLUSION

Mr. Chairman, using our dual approach of short- and long-term improvements, I believe that the IRS can make meaningful reductions in paperwork and the other burdens associated with filing and paying taxes. However, it is a fact that a very complex and changing Tax Code often limits our options and opportunities as to where and how we can redesign, reduce or eliminate tax forms.

The most meaningful reductions in taxpayer burden will occur as more and more of the benefits of modernization become available, and we begin to provide service to taxpayers on a par with the private sector. However, the IRS is saddled with a collection of computer systems developed over a 35-year period. The most important systems that maintain all taxpayer records were developed in the 1960s and 1970s. To accomplish our major strategies, such as burden reduction, will require the replacement of our antiquated computer systems.

Mr. Chairman, in conclusion, I believe that the IRS is on the right track. We have demonstrated both the ability to make some short-term improvements in burden reduction, and more importantly, the ability to produce a viable and cogent strategic plan that will guide our efforts to make changes in the entire way we do business and provide service to taxpayers. With your continued support and support of the American people, I am convinced more than ever that we can succeed.

Mr. OSE. Thank you, Mr. Rossotti. Next will be Director Mihm from the GAO. Mr. Mihm for 5 minutes.

Mr. MIHM. It is a pleasure and honor to be here today, and, Mr. Chairman, I will take your guidance and just hit the highlights.

Obviously, Federal data information collection is one of the ways that will help Federal agencies carry out their missions. Notwithstanding the importance of information to Federal efforts, however, under the Paperwork Reduction Act, Federal agencies are required to minimize the burden that they impose upon the public. In this regard, the Paperwork Reduction Act set ambitious goals to help minimize the burden.

As shown in figure 1 on page 4 of my written statement, and on the screens in front of you, these goals are far from being met. As you can see, if we had reduced Federal paperwork at the schedule anticipated in the Paperwork Reduction Act, the current level would be about 4.9 billion burden-hours per year. However, we have not met that goal and are now up to 7.4 billion burden-hours per year.

As you mentioned in your opening statement, Mr. Ose, the increase over the last year is largely attributable to the IRS. In fact, for the rest of the government, they actually decreased its burden estimate by about 70 million burden-hours during the last fiscal year.

As you also mentioned, Mr. Ose, the IRS accounted for the lion's share of the governmentwide burden estimate. In fact, about 95 percent of the Department of the Treasury's estimated burden increase during fiscal year 2000 was attributable to two IRS forms, the 1040 and the 1040A, and the accompanying schedules with those forms.

Therefore, although all agencies must ensure that their information collections impose the least amount of burden possible, it is clear the key to controlling Federal paperwork governmentwide lies in understanding and controlling the increases at the Internal Revenue Service. As Commissioner Rossotti detailed, IRS has a large number of initiatives under way to help reduce the taxpayers' burden, and many of these initiatives appear to be quite favorable.

In terms of other Federal agencies, on table 1 of my prepared statement, it is actually on pages 6 and 7, the situation is far more mixed. Some were successful in reducing their paperwork burden estimates, while others increased their estimates. Also, and that is a point I would underscore, some of the reported reductions in agencies' estimates were not attributable to specific agency actions to reduce those burdens. Rather, they were, for example, reestimates, in this case obviously reduced estimates, of the burden associated with the particular data collection. In other cases the reported reduction was the result of actions outside of the agency, such as a reduction in the number of individuals applying for a particular benefit.

In regards to violations of the Paperwork Reduction Act, another topic you asked us to cover, the agencies identified for OMB a total of 487 violations of the act during fiscal year 2000. Now, this is a significant reduction over the 710 violations that they identified during fiscal year 1999, and in that sense that is good news. However, even though the number of violations went down, we do not

think there is cause for celebration when there are still 487 violations of the Paperwork Reduction Act over a 1-year period. Some of these violations have been going on for years and they collectively represent substantial opportunity costs, as detailed in my prepared statement.

OMB has taken some steps to encourage agencies to comply with the Paperwork Reduction Act, and those steps appear to be paying off in terms of the fewer reported violations. For example, OMB has added information about recently expired approvals to its Internet homepage. This allows the potential respondents to be informed about those data collection efforts that may be in violation.

Nonetheless, as we have said for the last 2 years, we believe that OMB can do more to ensure that agencies are not conducting information collections without proper clearance. For example, OMB could better identify information collections for which authorizations are about to expire, contact the collecting agency to see if the collection is still needed and, if so, work with that agency to get collection reauthorized promptly.

In cases where data collections are found to be in violation, OMB could take any of a number of actions, which we have outlined, such as placing a notice in the Federal Register notifying the public it does not need to provide the agency with information requested in the expired collection.

In summary, Mr. Chairman and Mr. Otter, the need for agencies to collect information to accomplish their missions and protect and enhance the well-being of the American people does not need to be inconsistent with the Paperwork Reduction Act's requirements that all data collections be authorized. In fact, we believe the more clearly agencies can demonstrate the value of those collections, the easier it should be for them to obtain OMB approval and public support.

This concludes my statement. I am happy to respond to any questions you may have.

[The prepared statement of Mr. Mihm follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, Committee on Government Reform, House of Representatives

For Release on Delivery
10:00 a.m. EDT
Tuesday
April 24, 2001

PAPERWORK REDUCTION ACT

Burden Estimates Continue to Increase

Statement of J. Christopher Mihm, Director, Strategic Issues

GAO-01-648T

I am pleased to be here today to discuss the implementation of the Paperwork Reduction Act of 1995 (PRA). As you requested, I will discuss changes in federal paperwork burden during the past year, with a particular focus on the Internal Revenue Service (IRS) and its small business initiatives. I will also revisit an issue that we have discussed during previous hearings—violations of the PRA in which information collection authorizations from the Office of Management and Budget (OMB) either expired or were otherwise inconsistent with the act's provisions.

In brief, the data indicate that federal paperwork increased by nearly 180 million burden hours during fiscal year 2000—the second-largest 1-year increase since the act was passed. This increase is largely attributable to IRS, which raised its paperwork estimate by about 240 million burden hours. The rest of the government decreased its burden estimate by about 70 million burden hours during the fiscal year. Within that non-IRS grouping, some agencies were more successful than others in reducing their paperwork estimates and some increased their estimates. Also, some of the reductions in agencies' estimates were not attributable to proactive agency actions to reduce burden.

Federal agencies identified a total of 487 violations of the PRA during fiscal year 2000–fewer than the 710 that they identified during fiscal year 1999. However, even though the number of violations appears to be going down, 487 PRA violations in a 1-year period is hardly a cause for celebration. Also, some of these PRA violations have been going on for years, and they collectively represent substantial opportunity costs. As we have said for the past 2 years, we believe that OMB can do more to ensure that agencies do not use information collections without proper clearance.

Background

Before discussing these issues in detail, it is important to recognize that some federal paperwork is necessary and serves a useful purpose. Information collection is one way that agencies carry out their missions. For example, IRS needs to collect information from taxpayers and their employers to know the amount of taxes owed. Last year, the Bureau of the Census distributed census forms to millions of Americans, yielding data that will be used to reapportion congressional representation and for a myriad of other purposes. On several occasions, we have recommended that agencies collect certain data to improve operations and evaluate their effectiveness.[1]

However, under the PRA, federal agencies are required to minimize the paperwork burden they impose. The original PRA of 1980 established the Office of Information and Regulatory Affairs (OIRA) within OMB to provide central agency leadership and oversight of governmentwide efforts to reduce unnecessary paperwork and improve the management of information resources. OIRA has overall responsibility for determining whether agencies' proposals for collecting information comply with the act.[2] Agencies must receive OIRA approval for each information collection request before it is implemented. OIRA is also required to keep Congress "fully and currently informed" of the major activities under the act, and must report to Congress on agencies' progress toward reducing paperwork. To do so, OIRA develops an Information Collection Budget (ICB) by gathering data from executive branch agencies on the total number of "burden hours" OIRA approved for collections of information at the end of the fiscal year and agency estimates of the burden for the coming fiscal year. OIRA published its ICB for fiscal year 2000 (showing changes in agencies' burden-hour estimates during fiscal year 1999) on April 12, 2000—the date of last year's hearing. OIRA officials told us that they did not expect to publish the ICB for fiscal year 2001 until after today's hearing. Therefore, we obtained unpublished data from OIRA to identify changes in

[1]See, for example, *Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards* (GAO/T-HEHS-98-23, Oct. 23, 1997) and *Managing for Results: Opportunities for Continued Improvements in Agencies' Performance Plans* (GAO/GGD/AIMD-99-215, July 20, 1999).

[2]The act requires the Director of OMB to delegate the authority to administer all functions under the act to the Administrator of OIRA but does not relieve the OMB Director of responsibility for the administration of those functions. Approvals are made on behalf of the OMB Director. In this testimony, we generally refer to OIRA or the OIRA Administrator wherever the act assigns responsibilities to OMB or the Director.

governmentwide and agency-specific burden-hour estimates during the last fiscal year. We also compared those data to agency estimates in previous ICBs.

"Burden hours" has been the principal unit of measure of paperwork burden for more than 50 years, and has been accepted by agencies and the public because it is a clear, easy-to-understand concept. However, it is important to recognize that these estimates have limitations. Estimating the amount of time it will take for an individual to collect and provide information or how many individuals an information collection will affect is not a simple matter.[3] Therefore, the degree to which agency burden-hour estimates reflect real burden is unclear. Nevertheless, these are the best indicators of paperwork burden available, and we believe they can be useful as long as their limitations are kept in mind.

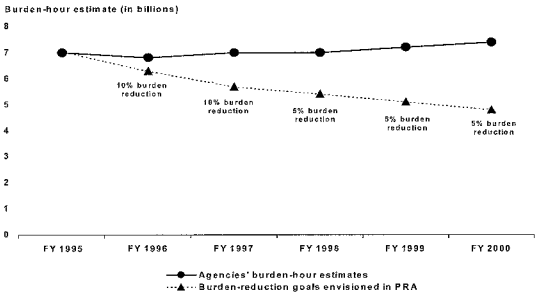
Governmentwide Paperwork Burden Estimate Has Increased

Federal agencies estimated that their information collections imposed about 7 billion burden hours on the public at the end of fiscal year 1995—just before the PRA of 1995 took effect. The PRA made several changes in federal paperwork reduction requirements. One such change required OIRA to set a goal of at least a 10-percent reduction in the governmentwide burden-hour estimate for each of fiscal years 1996 and 1997, a 5 percent governmentwide burden reduction goal in each of the next 4 fiscal years, and annual agency goals that reduce burden to the "maximum practicable opportunity." Therefore, if federal agencies had been able to meet these goals, the 7 billion burden-hour estimate in 1995 would have fallen 35 percent, or to about 4.9 billion hours, by September 30, 2000.

However, as figure 1 shows, this 35-percent reduction in paperwork burden did not occur. In fact, the data we obtained from OIRA shows that the governmentwide burden-hour estimate has increased by about 5 percent during this period, and stood at nearly 7.4 billion hours as of September 30, 2000. During fiscal year 2000 alone, the governmentwide estimate increased by nearly 180 million hours—the second largest increase in any year since 1995.

[3]See *EPA Paperwork: Burden Estimate Increasing Despite Reduction Claims* (GAO/GGD-00-59, Mar. 16, 2000) for how one agency estimates paperwork burden.

Figure 1: Governmentwide Burden-Reduction Goals Are Not Being Met

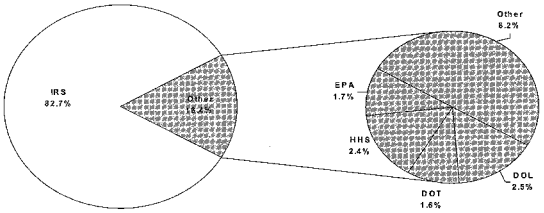


Note: Data are as of the end of each fiscal year.

Source: OIRA and agencies' ICB submissions.

As figure 2 shows, as of September 30, 2000, IRS accounted for about 83 percent of the governmentwide burden-hour estimate (up from about 75 percent in September 1995). Other agencies with burden-hour estimates of 100 million hours or more as of that date were the Departments of Labor (DOL), Transportation (DOT), and Health and Human Services (HHS); and the Environmental Protection Agency (EPA). Because IRS constitutes such a significant portion of the governmentwide burden-hour estimate, changes in IRS' estimate can have a significant—and even determinative—effect on the governmentwide estimate.

Figure 2: IRS Accounted for Most of the Federal Paperwork Burden-Hour Estimate as of September 30, 2000



Legend:

IRS - Internal Revenue Service
DOL - Department of Labor
DOT - Department of Transportation
EPA - Environmental Protection Agency
HHS - Department of Health and Human Services

Notes: Preliminary data indicate that the governmentwide burden-hour estimate was about 7.4 billion hours as of September 30, 2000. Totals for IRS and Other do not add to precisely100 percent due to rounding.

Source: OIRA and the Department of the Treasury.

Changes in Agencies' Estimates During Fiscal Year 2000

As table 1 shows, some agencies' paperwork burden estimates decreased sharply during fiscal year 2000, including the Federal Trade Commission (FTC), the Department of Defense (DOD), and DOT. However, other agencies (e.g., the Department of Commerce and EPA) indicated that their paperwork burden had increased. The reasons behind some of these changes are clear. For example, the sharp increase in the Department of Commerce's estimate (from about 14 million hours to more than 38 million hours) appears to be almost entirely attributable to the decennial census.

Table 1: Changes in Federal Agencies' Burden-Hour Estimates From Fiscal Years 1999 to 2000

Burden hours (in millions)

		Program changes						
	FY 1999 Estimate	New Statutes	Reinstated/ expired	Agency actions	Total	Adjust-ments	Total change	FY 2000 estimate
Governmentwide	7,183.8	73.1	26.2	88.7	188	(10.1)	177.9	7,361.7
Non-Treasury	1,274.8	21.5	26.2	17.1	64.7	(134.5)	(69.8)	1,204.9
Departments								
Agriculture	67.7	0.1	5.1	0.8	6.0	1.5	7.5	75.2
Commerce	14.3	0.3	0.0	23.8	24.1	0.2	24.3	38.6
Defense	111.7	0.0	(0.8)	0.3	(0.5)	(17.7)	(18.1)	93.6
Education	42.1	10.5	0.0	(11.3)	(0.8)	(0.4)	(1.2)	40.9
Energy	4.5	-	(1.5)	0.1	(1.4)	(0.2)	(1.6)	2.9
Health and Human Services	164.4	10.4	(0.3)	1.6	11.7	(1.8)	9.9	174.3
Housing and Urban Development	19.8	-	(6.7)	(0.3)	(6.9)	0.4	(6.6)	13
Interior	4.4	0.1	1.0	0.5	1.5	(0.3)	1.3	5.6
Justice	36.6	0.3	(0.1)	(0.4)	(0.2)	0.1	(0.1)	36.5
Labor	196.0	2.0	0.6	(0.4)	2.2	(16.5)	(14.4)	181.6
State	28.9	0.0	0.1	0.2	0.3	0.0	0.3	29.2
Transportation	140.0	0.1	28.3	(0.1)	28.3	(50.7)	(22.4)	117.6
Treasury	5,909.1	51.7	-	71.6	123.3	124.5	247.7	6,156.8
Veterans Affairs	5.3	0.8	0.5	(0.2)	1.0	(0.3)	0.7	6.0
Agencies								
Environmental Protection Agency	118.9	1.0	(0.0)	1.9	2.9	7.0	9.8	128.8
Federal Acquisition Regulations	23.4	-	-	(0.1)	(0.1)	-	(0.1)	23.3
Federal Communication Commission	32.5	0.5	0.1	(5.6)	(5.1)	1.5	(3.6)	28.9
Federal Deposit Insurance Corporation	8.0	0.3	-	0.0	0.3	0.0	0.3	8.3
Federal Emergency Management Agency	5.0	0.5	(0.3)	0.0	0.2	0.0	0.2	5.1
Federal Energy Regulatory Commission	4.0	-	(0.1)	(1.6)	(1.8)	1.5	(0.3)	3.7
Federal Trade Commission	126.6	4.0	0.0	(4.9)	(0.9)	(51.9)	(52.8)	73.8
National Aeronautic and Space Administration	7.3	-	-	0.2	0.2	(0.4)	(0.2)	7.2
National Science Foundation	4.7	-	(0.0)	0.0	-	0.0	0.0	4

(Continued From Previous Page)

Burden hours (in millions)

		Program changes						
	FY 1999 Estimate	New Statutes	Reinstated/ expired	Agency actions	Total	Adjust-ments	Total change	FY 2000 estimate
Nuclear Regulatory Commission	9.5	-	-	0.1	0.1	(0.1)	-	9.5
Securities and Exchange Commission	76.6	0.7	-	0.3	1.0	(5.8)	(4.8)	71.8
Small Business Administration	1.7	-	(0.8)	1.3	0.4	0.0	0.5	2.1
Social Security Administration	21.2	0.0	0.2	0.6	0.8	0.3	1.1	22.4

Note: These data are preliminary figures and have not been approved by OIRA. Data on the Federal Acquisition Regulations were submitted by the General Services Administration. Data from the 27 departments and agencies listed may not equal the governmentwide figure because some smaller agencies' requirements are also included. Cells with "0.0" values were non-zero values rounded to zero. Cells with "-" entries were zero values. Addition of individual elements may not equal totals due to rounding.

Source: OIRA.

These changes in agencies' bottom-line burden-hour estimates do not tell the whole story, and can be misleading. It is also important to understand how the agencies accomplished these results. OIRA classifies modifications in agencies' burden-hour estimates as either "program changes" or "adjustments." Program changes are the result of deliberate federal government action (e.g., the addition or deletion of questions on a form), and can occur as a result of new statutory requirements, agency-initiated actions, or through the expiration or reinstatement of OIRA-approved approved collections. Adjustments are not the result of deliberate federal government action, but rather are caused by factors such as changes in the population responding to a requirement or agency reestimates of the burden associated with a collection of information. For example, if the economy declines and more people complete applications for food stamps, the increase in the Department of Agriculture's (USDA) paperwork estimate is considered an adjustment because it is not the result of deliberate federal action.

Last year was the first time that OIRA indicated in the ICB whether fluctuations in agencies' burden-hour estimates were caused by program changes or adjustments. The data that we obtained from OIRA for the 2001 ICB and that are presented in table 1 also contains those categories, as well as the disaggregation of the program change dimension into its three component parts—new statutes, agency actions, and reinstated or expired collections. Analysis of the data in all of these categories helps explain what drove the changes in agencies' bottom-line burden-hour estimates. For example, almost all of the marked declines in the FTC, DOD, and DOT

estimates during fiscal year 2000 that I mentioned previously were due to adjustments. In fact, DOT's estimate would have increased by more than 28 million hours (due to reinstated collections) without more than 50 million hours in adjustments. Therefore, although all of these agencies' bottom-line burden-hour estimates went down substantially during fiscal year 2000, the agencies cannot claim credit for having proactively reduced the paperwork burden that they impose on the public.

Similarly, some of the increases in the burden-hour estimates do not appear to have been within the agencies' control. For example, the Department of the Treasury said that nearly 40 percent of the 123-million burden-hour increase due to program changes was a function of new statutes enacted by Congress. Also, closer examination of the modest decline in the Department of Education's burden-hour estimate during fiscal year 2000 reveals that the agency would have achieved a nearly 30-percent decline in its paperwork burden due to agency actions (11.3 million burden hours) were it not for an almost totally offsetting increase in burden that the Department said was caused by new statutes.

The table also indicates that although nine of the agencies were able to meet the 5-percent burden-reduction goal for fiscal year 2000 that was envisioned in the PRA, only one—the Federal Communications Commission—did so through program changes that were initiated by the agency. All of the other agencies met the goal either through adjustments or through expirations of collections.

Reasons for Changes in IRS Burden Estimates

Although changes in non-IRS departments and agencies are notable and important, they pale in comparison to the size of the changes at IRS. IRS' burden-hour estimate increased nearly four times as much during fiscal year 2000 as the net decrease from all of the other departments and agencies combined. Therefore, although all agencies must ensure that their information collections impose the least amount of burden possible, it is clear that the key to controlling federal paperwork governmentwide lies in understanding and controlling the increases at IRS.

Almost 95 percent of the nearly 250-million burden-hour increase in the Department of the Treasury's estimate during fiscal year 2000 was attributable to two IRS information collections—Form 1040 and Form 1040A. The agency's estimated burden associated with Form 1040 increased by more than 180 million hours during this period, and the Form 1040A estimate increased by more than 50 million hours. Therefore, it

appears that efforts to control increases in the IRS burden-hour estimate (and, therefore, increases in the governmentwide estimate) should focus on these two collections that appear to be driving the increase.

In the past, IRS said that statutory changes primarily caused the increases in its burden-hour estimates. In the Department of the Treasury's ICB submission for fiscal year 2000, IRS again identified a number of increases that it said were a function of the underlying statutes. For example, IRS said that it added nearly 13 million burden hours to its estimate because of changes to section 132(f) of the Tax Code, implementing provisions of the Taxpayer Relief Act of 1997 (P.L. 105-34) and the Transportation Equity Act for the 21st Century (P.L. 105-178).[4] However, most of the increases that IRS identified in the ICB submission involved changes made at the initiation of the agency. For example, IRS indicated that it modified Form 1040, along with accompanying worksheets and instructions, and corrected errors in how it was computing the burden of this form. IRS attributed all of the 46 million-hour increase in estimated burden to agency actions.

IRS also indicated in the ICB submission that it had taken a number of actions that are ultimately intended to reduce paperwork burden. For example, IRS said it (1) had developed and led three burden-reduction roundtable discussions during the spring of 2000 focusing on self-employed taxpayers and employment tax burden; (2) had requested and received funding for training employees in customer service, focusing on employees who have face-to-face interaction with taxpayers; and (3) was attempting to simplify commonly used tax forms and instructions, and to develop new taxpayer education materials. Several initiatives were specifically targeted to small businesses. For example, IRS noted that the agency's new divisions would focus on education and communication with small businesses and the self employed—groups that the agency said face some of the most complex tax law requirements and file more than twice as many forms and schedules as individual taxpayers. The agency also said that it was working with the Senate Committee on Small Business to survey small business owners to identify the most complex IRS forms, instructions, and other products, and to develop a strategy for review and revision of these products. However, IRS did not indicate that any of these initiatives had resulted in substantive reductions in the agency's burden-hour estimate.

[4]The proposed regulation requires employers to keep documentation with regard to employees who receive qualified transportation fringe benefits.

Finally, IRS noted in the ICB submission that it was developing a new model for estimating taxpayer burden, and that the first burden estimates from the new methodology would be available in 2001. IRS said the new model would, among other things, estimate the impact of a number of factors on taxpayer compliance burden (e.g., tax preparation software and electronic filing); measure the amount of burden on each taxpayer throughout the tax administration process; and measure burden separately for taxpayers who used paid preparers and tax preparation software. Of course, reestimation of burden hours does not affect the actual burden felt by the public.[5]

Agencies Identified Hundreds of Violations

I would now like to turn to the other main topic you asked us to address—PRA violations. The PRA prohibits an agency from conducting or sponsoring a collection of information unless (1) the agency has submitted the proposed collection and other documents to OIRA, (2) OIRA has approved the proposed collection, and (3) the agency displays an OIRA control number on the collection. The act also requires agencies to establish a process to ensure that each information collection is in compliance with these clearance requirements. OIRA is required to submit an annual report to Congress that includes a list of all violations. The PRA says no one can be penalized for failing to comply with a collection of information subject to the act if the collection does not display a valid OMB control number. OIRA may not approve a collection of information for more than 3 years, and there are about 7,000 approved collections at any one point in time.

In the ICB for fiscal year 1999, OIRA listed a total of 872 violations of the PRA. In our testimony before this Committee 2 years ago, we noted that some agencies—USDA, HHS, and the Department of Veterans Affairs (DVA)—had each identified more than 100 violations.[6] We also noted that OIRA had taken little action to address those violations, and suggested a number of ways that OIRA could improve its performance. For example, we said that OIRA could use its database to identify information collections for which authorizations had expired, contact the collecting agency, and

[5]See, for example, *Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Changes* (GAO/PEMD-94-3, Dec. 6, 1993).

[6]*Paperwork Reduction Act: Burden Increases and Unauthorized Information Collections* (GAO/T-GGD-99-78, Apr. 15, 1999).

determine whether the agency was continuing to collect the information. We also said that OIRA could publicly announce that the agency is out of compliance with the PRA in meetings of the Chief Information Officer's Council and the President's Management Council.

The ICB for fiscal year 2000 that was published last year listed a total of 710 PRA violations—down from the 872 in the previous ICB. As we noted in our testimony before the Subcommittee last year, even if the number of violations was going down, 710 violations of the PRA in 1 year is far too many.[7] USDA and DVA again identified more than 100 violations each, but other agencies such as the Departments of Justice (DOJ) (98 violations) and Housing and Urban Development (HUD) (80 violations) were not far behind. We again concluded that, although OIRA had taken a number of actions to address PRA violations, the Office and the agencies responsible for the collections could do more to ensure compliance.

The preliminary data that OIRA provided for fiscal year 2000 again indicates that the number of PRA violations is declining but is still a serious problem. Table 2 presents the number of information collections in each agency for which OIRA authorizations had expired (and the agencies appear to have continued to collect the information beyond the dates of expiration), other violations (e.g., collections that never received OIRA authorization), and the total number of PRA violations in each agency. Taken together, the 27 department and agencies that OIRA includes in the ICB indicated that 487 of their information collections violated the PRA at some point during fiscal year 2000—again, far too many for 1 year.

[7] *Paperwork Reduction Act: Burden Increases at IRS and Other Agencies* (GAO/T-GGD-00-114, Apr. 12, 2000).

Table 2: Reported Violations of the PRA During Fiscal Year 2000

	Expired information collections	Other violations	Total
Departments			
Agriculture	89	7	96
Commerce	14	2	16
Defense	11	0	11
Education	6	1	7
Energy	6	0	6
Health and Human Services	23	5	28
Housing and Urban Development	99	0	99
Interior	14	11	25
Justice	44	0	44
Labor	16	5	21
State	17	0	1
Transportation	1	4	5
Treasury	5	0	5
Veterans Affairs	40	0	40
Agencies			
Environmental Protection Agency	1	2	3
Federal Acquisition Regulations	0	0	0
Federal Communications Corporation	3	0	3
Federal Deposit Insurance Corporation	1	1	2
Federal Emergency Management Agency	16	4	20
Federal Energy Regulatory Commission	6	0	6
Federal Trade Commission	0	0	0
National Aeronautic and Space Administration	0	0	0
National Science Foundation	0	0	0
Nuclear Regulatory Commission	0	0	0
Securities and Exchange Commission	0	0	0
Small Business Administration	28	0	28
Social Security Administration	0	5	5
Total	**440**	**47**	**487**

Note: The General Services Administration administers the Federal Acquisition Regulations.

Source: OIRA.

HUD and USDA reported the most violations during fiscal year 2000—99 and 96, respectively. The number of violations at HUD increased between fiscal years 1999 and 2000 (from 80 to 99), but the number at USDA went down (from 116 to 96). Other agencies had even more notable reductions in the number of PRA violations. For example, DVA went from 115 violations during fiscal year 1999 to 40 during fiscal year 2000. DOJ went from 98 violations to 44, and violations at HHS dropped from 60 to 28. Overall, the number of violations went down in 15 of the 27 agencies, increased in 6 agencies, and stayed the same in 6 others.

Many of the violations that occurred during fiscal year 2000 had been resolved by the end of the fiscal year. However, many others had been occurring for years and no action had been taken to reinstate those authorizations or discontinue the collections. For example, at the end of fiscal year 2000, six of USDA's collections had been in violation for more than 2 years, and four had been in violation for 3 years. The Department of the Interior indicated that four collections had been in violation for more than 5 years, but no action had been taken to correct them.

Violations and Opportunity Costs

In our testimony 2 years ago, we provided an estimate of the monetary costs associated with 28 PRA violations that had been the subject of correspondence between OIRA and the Subcommittee. To estimate that cost, we multiplied the number of burden hours associated with the violations by an OMB estimate of the "opportunity costs" associated with each our of IRS paperwork. As a result, we estimated that the 28 violations imposed nearly $3 billion in unauthorized burden on the public. However, we were unable to estimate the opportunity costs of all PRA violations this year or the previous 2 years because the ICBs did not provide information on the number of burden hours associated with each of the violations.

After last year's hearing, OIRA provided the Subcommittee with burden-hour estimates for most of the 710 violations reported in the ICB for fiscal year 2000. Using that information, we developed opportunity cost estimates for the 69 largest collections (those estimated to impose 100,000 burden hours per year) that were in violation of the PRA as of September 30, 1999. We estimated that those 69 violations involved almost 130 million burden hours of paperwork, or about $3.4 billion in opportunity costs.

Many of the information collections that were in violation of the PRA were being administered for regulatory purposes, so if the respondents knew the collections were not valid they might not have completed the required

forms. However, other violations involved collections in which individuals or businesses were applying for benefits such as loans or subsidies. Therefore, it is not clear whether these individuals and businesses would have refused to complete the required forms if they knew that the collections were being conducted in violation of the PRA.

OIRA Can Do More to Address Violations

As I indicated earlier, OIRA has taken some steps to encourage agencies to comply with the PRA, and those steps appear to be paying off in terms of fewer reported violations overall and within particular agencies. However, we still believe that OIRA can do more. For example, OIRA has added information about recently expired approvals to its Internet home page. As a result, potential respondents are able to inform the collecting agency, OIRA, and Congress of the need for the agency to either obtain reinstatement of OIRA approval or discontinue the collection.

Although notifying the public about unauthorized information collections is a step in the right direction, OIRA's approach places the burden of responsibility to detect unauthorized collections on the public. It is OIRA, not the public, which has the statutory responsibility to review and approve agencies' collections of information and identify all PRA violations. Therefore, we believe that OIRA should not simply rely on the public to identify these violations. For example, OIRA desk officers could use the agency's database to identify information collections for which authorizations had expired, contact the collecting agency, and determine whether the agency is continuing to collect the information. The desk officers could also use the database to identify information collection authorizations that are about to expire, and therefore perhaps prevent violations of the act.

OIRA officials and staff told us that they have no authority to do much more than publish the list of violations and inform the agencies directly that they are out of compliance with the act. We do not agree that OIRA is as powerless as this explanation would suggest. If an agency does not respond to an OIRA notice that one of its information collections is out of compliance with the PRA, the Acting Administrator could take any number of actions to encourage compliance, including any or all of the following:

- Publicly announce that the agency is out of compliance with the PRA in meetings of the Chief Information Officer's Council.
- Notify the "budget" side of OMB that the agency is collecting information in violation of the PRA and encourage the appropriate

resource management office to use its influence to bring the agency into compliance.

- Notify the Vice President of the agency's violation. (The Vice President is charged under Executive Order 12866 with coordinating the development and presentation of recommendations concerning regulatory policy, planning, and review.)
- Place a notice in the *Federal Register* notifying the affected public that they need not provide the agency with the information requested in the expired collection.

OIRA could also notify agencies that the PRA requires them to establish a process to ensure that each information collection complies with the act's clearance requirements. Agencies that continue to collect information without OIRA approval or after the approval has expired are clearly not complying with this requirement. Some agencies do not appear to have established sound clearance processes. Just two agencies—USDA and HUD—accounted 40 percent of all violations.

We recognize that some, and perhaps many, of the information collections that violate the PRA's requirements represent important agency data gathering efforts. As I indicated previously, information collection is one way that agencies accomplish their missions and protect public health and safety. Nevertheless, we do not believe that the goals of information collection and compliance with the PRA's requirements are inconsistent. In fact, the more clearly agencies can demonstrate the value of those collections, the easier it should be for them to obtain OIRA approval. Also, the vast majority of PRA violations are ultimately reauthorized by OIRA, therefore indicating that this is more of a management problem than a substantive issue of rogue information collections.

We also recognize the limitations that OIRA faces, with an ever-increasing workload and limited resources. However, we do not believe that the kinds of actions we are suggesting would require significant additional resources. Primarily, the actions require a commitment to improve the operation of the current paperwork clearance process. Also, OIRA cannot eliminate PRA violations by itself. Federal agencies committing these violations need to evidence a similar level of resolve.

Mr. Chairman, this completes my prepared statement. I would be pleased to answer any questions.

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Mr. OSE. Thank you, Mr. Mihm. Our third witness on the first panel is Mr. Austin Smythe, who is the Executive Associate Director for the Office of Management and Budget, recognized for 5 minutes.

Mr. SMYTHE. Mr. Chairman, Sean O'Keefe was originally scheduled to testify. He cannot be here because he has been asked to meet with the President.

Our past practice is that only Senate-confirmed officials appear. I am not a Senate-confirmed official, I am a political appointee in the Bush administration, but the Director and the Deputy Director wanted to be responsive to the subcommittee's need to hear from OMB, so they asked me to appear on OMB's behalf.

Mr. OSE. We welcome you.

Mr. SMYTHE. Thank you. We still have four more Senate-confirmed positions at OMB to fill. Two of those in this area that are particularly important are John Graham, the OIRA Administrator. We hope to get him confirmed in the Senate shortly. The other is the Deputy Director for Management. The President has not nominated anyone yet for that position, but we hope to find an individual for that spot and to get that slot filled.

While we are a bit shorthanded now, we hope to have a quality team in place to meet all of OMB's responsibilities, including a vigorous effort to minimize the paperwork burden. I am not an expert on the Paperwork Reduction Act, but I have had a chance to study up on it and I just want to sort of provide an overview today.

I would start by saying we very much applaud the objectives of the act, and that is to minimize the paperwork burden on the public and to maximize the usefulness of data that is collected. Actual experience with paperwork reduction shows that both Republican and Democratic administrations have struggled on trying to meet the paperwork reduction goals called for in the Paperwork Reduction Act.

If you look at the overall experience of the past 2 decades, the Congress has set a reduction of 5 to 10 percent in paperwork. If you look at that total period, it works out to be an 85 percent reduction between 1981 and 2001. We estimate that the total annual burden of Federal information collections actually went up by over 50 percent during this period.

In our minds, unless Congress and the administration are willing to make some dramatic changes to the laws and administrative procedures that generate a lot of these requirements, these goals are going to be very difficult, if not impossible, to achieve. But, we feel that we should reduce the paperwork burden in a responsible manner, form by form, regulatory requirement by regulatory requirement. However, making blanket reductions under these requirements that we currently face does not make sense to us at this stage.

Since 1981, looking at past experience, Americans answering Federal questionnaires went up by roughly 24 percent, national economic activity tripled, Federal agencies issued nearly 100,000 regulations, and Congress enacted over 5,000 laws. Based on statutory direction given by Congress, Federal agencies provide the American people with an array of protections and services, from health and safety to collecting taxes necessary to finance all these

activities. To carry out these and other responsibilities, the Federal Government collects information, lots of information, from grant applications to tax forms, from medical reports to monitoring job opportunities for foreign nationals.

Whenever Congress enacts new legislation, it frequently expands upon this burden. I could go through a number of statutes. I will not do that, but Gramm-Leach-Bliley expanded on this burden, the Taxpayer Relief Act expanded on this burden, and so forth.

In addition to passing laws increasing the level of paperwork burden, Congress also imposes its own reporting requirements on the Federal agencies. Last year's omnibus appropriations bill included requirements for 75 reports to Congress. It had 25 separate provisions calling for information to be collected from the public. Even when Congress seeks to eliminate reporting requirements, there is a tendency to restore certain reports. Congress should be applauded that in 1995 it passed a statute calling for the elimination of a number of reports. But, since then, Congress has reimposed over 250 of those reports.

The Federal agencies and OMB can do a lot more in reducing the paperwork burden and recordkeeping requirements. The Paperwork Reduction Act requires agency CIOs to certify the need for information collection and the burden it imposes. OMB must review information collection activities to assure that CIOs are meeting their responsibilities. But the Bush administration and OMB and OIRA cannot solve this problem alone. Congress must be part of the solution.

In the case of budget legislation, I am familiar with the budget process, the law requires an assessment of the budget cost of legislation. Something Congress may want to consider is to assess more thoroughly the paperwork burdens for legislation as it is enacted. We ought to minimize reports that agencies must send to Congress, and I think we ought to work together to identify and correct provisions of existing laws and proposals in new legislation to correct burdensome paperwork requirements.

While I am not an expert on the Paperwork Reduction Act, I urge that we work together to assure the Federal Government minimizes the burden on the public as it collects needed information. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. O'Keefe, as delivered by Mr. Smythe follows:]

STATEMENT OF SEAN O'KEEFE
DEPUTY DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
SUBCOMMITTEE ON
ENERGY POLICY, NATURAL RESOURCES AND
REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
April 24, 2001

Good morning, Mr. Chairmen and members of the Subcommittee. Thank you for your invitation to testify today. You invited me to testify about the specific reductions in reporting and recordkeeping requirements accomplished last year, and in the paperwork reduction candidates expected for the next year. I am pleased to have this opportunity to appear before you.

While two of the four remaining Presidential appointments at OMB have been nominated, neither have been confirmed by the Senate. Director Daniels and I are confident that we have found first rate talent in Angela Styles, who was just nominated to head the Office of Federal Procurement Policy, and John Graham, who will get to know and love this Subcommittee as the Office of Information and Regulatory Affairs Administrator. The most senior management appointment -- the Deputy Director for Management -- remains unfilled. We have very specific requirements and expectations for that individual, and will take the time necessary to find the right person. We want someone with broad management experience in running an organization, someone who can help us deliver on the President's management agenda. In summary, we hope to have the most qualified team to deliver on our management goals; streamlining the regulatory process, improving the usage and accuracy of financial statements, developing a more efficient procurement process, and, of course, minimizing the paperwork burden imposed on the taxpayer.

I must admit that I did not expect to be testifying before you, discussing the Paperwork Reduction Act. I am not an expert in this Act, and have not tried to become one.

I do remember when this Act became law in 1981. I applauded its basic objectives – the minimization of paperwork burden on the public and of the cost of collecting information, and the maximization of the usefulness of the information that the Federal government does collect. These underlying policy objectives are sound, and appropriate for the Federal government – both for Executive branch agencies and the Congress. I still support these goals.

One provision in the Paperwork Reduction Act, however, puzzles me -- namely, the statutory goals for government-wide paperwork burden reductions. In 1980, 1986, and 1995, Congress enacted laws that set annual government-wide 5% or 10% paperwork burden reduction goals – calling for a total burden reduction of 85% between 1981 and 2001. During the same time period, OMB's inventory indicates, as a rough estimate, that the total annual burden of Federal information collections went up by over 50%.[1] A 5% burden reduction from the 7.44 billion hours expected in 2001 would require a decline of 372 million hours -- this is twice the burden now imposed by the Department of Health and Human Services, or 18 times that imposed by the Department of Housing and Urban Development. In our judgement, these goals are clearly unobtainable.

Continued effort to reduce paperwork burden responsibly -- form by form, regulatory requirement by regulatory requirement -- is very important. But making blanket cuts to meet

[1] The total annual burden of Federal information went from 1.53 billion hours in 1981 to an expected 7.44 billion hours in 2001. In 1988, the Department of the Treasury reviewed all of its burden estimates and adjusted them upward by approximately 3.4 billion hours. We calculated the 50% increase by dividing 7.44 by 1.53 plus 3.4.

arbitrary and, as history has demonstrated,[2] unrealistic, statutory goals does not make sense. These statutory percentage reductions have not happened, nor can they happen through the work of the Executive Branch alone.

Based on the statutory direction given by Congress, Federal agencies provide the American people with an enormous array of protections and services. These include investing in education and training, strengthening health care, protecting the environment, providing a sound financial system, enforcing safety requirements, promoting useful research, and collecting the money to provide these and all other government services. To carry out all of these responsibilities carefully and effectively, the Federal government collects information -- lots of information. This information varies from grant applications to tax forms, from having people report how medical symptoms affect their ability to work to the monitoring of job opportunities for foreign nationals.

Congress enacts new legislation, which requires agencies to collect even more information than they are collecting now.[3] In FY 2001, agencies anticipate they will impose 34.7 million new burden hours due to the passage of new statutes. For example, the Gramm-Leach-Bliley Act (calling for disclosure of information by and to various financial and business

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[2] In the same time period, the number of Americans answering Federal questionnaires went up roughly 24%. National economic activity increased nearly three times. Federal agencies issued nearly 100,000 regulations, of which roughly 30,000 were new regulatory requirements or revisions to existing regulatory requirements.

[3] Since 1981, Congress has passed 5313 public laws.

institutions) will require 12.1 million hours of reporting burden, the Wireless Communications and Public Safety Act of 1999, 11.0 million hours, and the Safe Drinking Water Act (1996), 2.0 million hours.

In FY 2000, changes to new statutes increased the Federal reporting burden by 1.0% (73.14 million hours), and in FY 1999, burden increased by 2.4% (163.84 million hours). The Taxpayer Relief Act of 1997 helped taxpayers financially, but is estimated to have increased reporting burden by 64 million hours in FY 1998, by 97 million hours in FY 1999, and 13 million hours in FY 2000. The Small Business Job Protection Act of 1996 increased reporting burden by 4.3 million hours in FY 1998. The Family Medical Leave Act has imposed over 645 thousand hours of reporting burden each year since it passed, in 1993.

In addition to passing laws that increase the level of Federal paperwork burden, Congress imposes its own reporting requirements on Federal agencies as well. The Consolidated Appropriations Act of 2001, for example, requires agencies to prepare and submit over 75 reports to Congress. This Act also included over 25 provisions requiring that private citizens and entities report information to Federal agencies.

Even when Congress seeks to eliminate reporting requirements on Federal agencies, there has been a tendency to restore certain reporting requirements. The Federal Reports Elimination and Sunset Act of 1995 provided for the elimination of many statutory reporting requirements on May 15, 2000. But, during the 106th Congress, Congress reimposed over 250 of these reporting requirements.

To be sure, federal agencies and OMB can do more to try to reduce reporting and recordkeeping burdens. The Paperwork Reduction Act requires agency Chief Information Officers to certify the need for the information collection, and the burden it imposes. OMB is obligated to review each draft information collection to assure that the Chief Information Officer is meeting his or her responsibilities.

But, Congress is part of the problem too, and has to be part of the solution. For some legislation, Congress considers the financial burdens of compliance that will be imposed before taking Floor action. Perhaps Congress should also – more systematically – consider reporting and recordkeeping burdens that new legislation will impose. Reports that agencies must send to Congress (in preparation of which agencies must often collect information from the public) are often viewed casually, of imposing no or little cost in preparation. These too must be kept to a minimum. And we need, together, to identify existing legislation that can be changed, in constructive ways, to improve the quality of the data collected while reducing unnecessary burdens on respondents – and then develop workable strategies to pass the legislative amendments needed.

As I said at the beginning, I am no expert in the Paperwork Reduction Act, and will – with great pleasure – leave that task to the OIRA Administrator-designate, John Graham. But I would like to urge that we work together, with agency Chief Information Officers and the other Committees in Congress, to assure that the Federal government collects needed information with the imposition of the least burden feasible.

Thank you.

Mr. OSE. Thank you, Mr. Smythe. I thank the witnesses for the brevity of their remarks. We will go to questions now on this first panel. I will start. I see Mr. Shays has joined us. He will be back.

I want to ask Mr. Smythe, at OMB, as it relates to the Paperwork Reduction Act, does the administration support or not support the Paperwork Reduction Act?

Mr. SMYTHE. It supports the Paperwork Reduction Act.

Mr. OSE. So there are requirements within that act for OMB to look at, if you will, requests for discretionary information; the difference between statutory and discretionary? OMB is required to look at agency requests for discretionary information. Am I correct on that?

Mr. SMYTHE. That's correct.

Mr. OSE. In terms of submittals, is OMB receiving any such submittals that you are aware of, and what is OMB doing with those submittals?

Mr. SMYTHE. I would have to go back and get back to you on the specifics of that. I have only had a chance to review it generally.

I think one of the problems we face is that we get requests on a piecemeal basis. We don't look at an entire program. We get a form or a reporting requirement that we are asked to approve and it puts us in a situation where we could reject on a piecemeal fashion some of these discretionary requests. On the other hand, it may make sense for us to sort of step back and look at the overall requirement to try to see how this fits into the overall demands.

But I want to stress, I think if there has not been a strenuous effort on paperwork reduction, we want to do more. We want to scale back on these reports where they are not necessary. We need to get the agencies more involved. The statute calls for the agencies to be more involved. We want to get them more involved in reducing these burdens instead of landing them at OMB. They ought to start in their houses in reducing this. But, Mr. Chairman, we want to work with you all to address this problem.

[The information referred to follows:]

Page 23

Question: Is OMB receiving any [discretionary] submittals that you are aware of, and what is OMB doing with those submittals?

Answer: Under the Paperwork Reduction Act of 1995, OMB reviews all agency requests to collect information, regardless of whether the request is mandated by statute or carried out at the discretion of the agency. In the context of its review, OMB makes a determination as to whether the agency does in fact need the information, whether the information has practical utility, and whether the chosen collection method minimizes burden on the public.

OMB gives great deference to agency requests specifically mandated by law. OMB considers all statutorily-mandated collections to be needed by the agency. If the statute provides the agency discretion with regards to its implementation of the collection, OMB must still determine whether the information has practical utility, and whether the chosen collection method minimizes burden on the public.

For collections within the discretionary authority of the agency, the PRA authorizes OMB to disapprove an agency request on the basis that it is not needed for the proper performance of the agency's function.

Mr. OSE. In terms of the different agencies, like Agriculture or Defense, or HHS, or any of that, and I actually read Mr. O'Keefe's prepared testimony, but I didn't see any specific suggestions. I saw some generalities that Congress is passing laws that require reporting of information, but how about some specifics in terms of how we go about reducing paperwork within some of these agencies?

Mr. SMYTHE. I think it is a bit premature for us to try to get into those specifics. I think we are not equipped at this stage. I think we need to get the OIRA Administrator confirmed and get him involved in this process. I do not want to make it sound like we are trying to shirk our duties here. We are not trying to do that. We have been a little busy. We have been in office now for 3 months. There are a lot of things on our desks we are trying to deal with.

So what I would like to suggest is that we get back to you with some proposals in terms of areas where we can make some improvements.

[NOTE.—The information referred to was not provided.]

Mr. OSE. Actually, Mr. Smythe, I am on your side here. I want to be clear about that. But there are some issues here that trouble me, and one is that we were supposed to have the 2001 ICB, the information collection budget and we did not get that. When can we expect that?

Mr. SMYTHE. Well, I think we have two reports in the works. We did not want to just simply take what we had, put a cover on it, and send it up to Congress. We have tried to take a look at those things.

My recollection is there is a regulatory budget that's normally required to be submitted with the President's budget and it usually comes up with the President's budget. My understanding is that should have been sent to the Federal Register, or should shortly be submitted to the Federal Register for comment.

The separate report you talked about, the ICB, is still under OMB review. I cannot give you an exact date, but we are going to deliver that report to the Congress.

Mr. OSE. There is a report due on July 1st from OMB regarding the extent to which the PRA has reduced burden. It is supposed to evaluate the extent by which the PRA has reduced the burden imposed by each major rule with more than 10 million hours of paperwork burden, and it is supposed to identify specific expected reductions in fiscal year 2001 and fiscal year 2002.

Is that report that is supposed to be here by July 1 going to be here by July 1?

Mr. SMYTHE. Yes.

Mr. OSE. I want to recognize Mr. Otter for 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman. I am going to begin with Mr. Rossotti, if I might. And this is sort of a three-phase question, so bear with me, if you will, Commissioner.

Does the Internet application of your reporting responsibilities actually reduce the amount of paperwork that is required, and paperwork here let us say is synonymous with time spent in front of the machine clicking on various options; and are the forms the same, will they appear the same on the screen for the computer;

and, finally, is the only difference really that I have got to put a stamp on it and go to the mailbox instead of clicking on send?

Mr. ROSSOTTI. Let me try to explain a little bit because there is more than one way to do this.

In terms of the Internet, the Web site that the IRS has right now, the thing that you can do that is most directly related to forms is simply get the forms. That is just downloading a form, and we had 100 million of those. So the time that is saved with that has nothing to do with filling out the form, it has to do with getting the form.

That is not an insignificant point, because people often find they need a certain schedule or a certain form that they did not have, and you hear stories about I had to go to the post office to try to find that or write in. So the time saved on just that one kind of thing is simply getting a form. It does not change the form.

The other big part, though, the actual preparation of, say, the 1040 form is done in today's world primarily by taxpayers either buying software from private vendors that prepare their, say their 1040 form and then filing it with us, or signing onto a private sector Web site that provides this service. That is not software that is provided by the IRS. In fact, the IRS is precluded from being in that business based on provisions that have been attached to various appropriation bills and through the Restructuring Act. So the role of the IRS is to work with the private software industry to provide those various products that allow taxpayers to prepare their software on their home computers through the Internet.

This is a rapidly growing part of the population, where we are estimating that about 13 million to 15 million taxpayers this year actually did their returns that way, at home, through that software.

Mr. OTTER. Do you have an estimate of the time saved?

Mr. ROSSOTTI. Well, we do not have the estimate for the time saved yet.

Mr. OTTER. How many did you have last year?

Mr. ROSSOTTI. What's that?

Mr. OTTER. How many did you have last year?

Mr. ROSSOTTI. I do not have the numbers that we had. We had about a 35 percent increase this year in the number that were filed. There are some people that prepare them and then send them in by paper, so there is another variety of options there.

But I think the reason this is growing so fast is that it makes the whole process easier for the taxpayer. Whether it actually saves time is something we are getting measurements on. And it may be that it does not actually save the amount of time that it takes to do the whole process in terms of preparing it, but what it does——

Mr. OTTER. You have hit on the essence of my question, because I know before I can click on go there is probably an awful lot of paperwork that I do not have on the computer screen. But eventually what I am clicking to you is the answers that may have taken hours and hours and hours to ascertain.

I do not want to beg the question, but on the other hand, it seems to me that simply shifting the venue by which I use, in order to send the master copy to the IRS, if ultimately the paperwork reduction has not been achieved according to the request of the PRA,

then we really have not, I think as has been testified to by both Mr. Smythe and Mr. Mihm, we really have not achieved the goal of the PRA. So subsequently we are still filling out paperwork and we are not plowing the fields. We are not doing the work.

Mr. ROSSOTTI. There is no question that the requirements to provide the information are the driving factor, whether you do it through a computer or you do it through paper, although there are some significant benefits in terms of use of the computer. But I do not disagree with your point.

The underlying driver is the need to collect the information, and the use of the computer has certain benefits in terms of doing that. But the underlying requirement is the requirement that is imposed by the statutes and then as interpreted by us through these different forms.

Mr. OTTER. Thank you, sir. Mr. Smythe and Mr. Mihm, I will ask you both this question because I am running out of time. It seems to me that rather than within the bureaucracies you both operate within, you only 90 days, and I do not know how long you have been here.

Mr. MIHM. Substantially more than 90 days.

Mr. OTTER. All right, substantially more than 90 days. Other than operating within those agencies themselves, and perhaps going through a certain amount of bureaucratic incest in the process of trying to reach goals for the PRA, have you ever sought to go out into the marketplace itself and say, geez, here you, small businesses, like the small independent business group, where is the burden? You tell us. Here is the mission; here is what we need to know for OSHA, for EPA, for IRS, for the whole alphabetic group. Here is what we need to know. Now, why do you folks not sit down together and design a simple form that will do that?

Have you ever done that with farmers, with small business groups, with anybody that has these reporting responsibilities? And if not, why not?

Mr. MIHM. I can go first. Do you want to?

Mr. SMYTHE. Well, I have not done it in the 90 days I have been there. The President has an Interagency Working Group on federalism and feels very strongly about working with States and localities. In my mind, that would be one area we might want to look at, to try to find out how they might view some of these burdens and get their feedback there.

Again, I would want to defer to the OIRA Administrator, when we get somebody confirmed in that spot, to really pursue that, but I think it is an excellent suggestion.

Mr. MIHM. At the request of Congress, we have attempted to look at the cumulative burden that is put on businesses and local governments, this is in a study a number of years ago, and found, as I think Mr. Smythe was alluding to in his opening statement, that a lot of these burdens are just put on, as you put it, sir, by individual agency incest; each agency is putting on its own burdens unaware of how that may interact or how that may be duplicative of other burdens imposed by agencies.

We did not go, and we were not asked to go to the next step to see concretely what sort of opportunities were there to start with business and then work back into the Federal regulatory process.

Mr. OTTER. Thank you.

Mr. OSE. Mr. Mihm, on page 13 of your written testimony, you have an example of violations that would probably fall in the egregious category. Six of USDA's collections have been in violation for over 2 years of OMB approval, four have been in violation for 3 years. The Department of the Interior indicated that four of their collections have been in violation for more than 5 years, but no action has been taken to correct.

I want to make sure I understand what you are driving at there. As I understand your point, the agency has put out a request or a form to provide certain information. It has not gone to OMB and had the procedural sign-off accordingly.

Mr. MIHM. Yes, sir. Most typically these are where they had gotten an initial authorization, and OMB under the Paperwork Reduction Act can give a 3-year authorization for data collection. That authorization has expired and then the agency has not returned to OMB for this extended period of time.

What makes this particularly troublesome from our perspective is that the vast majority of cases where there is a violation it is for a relatively short term, weeks or even a few months. These types of cases that go on for years and years are ones that need to be attacked, or looked at rather.

Mr. OSE. Mr. Smythe, what about that? If OMB does not track the expired collection requests, how do we know when they have expired and how do we know when they're applicable? My point being is that before asking our citizens for something that we can't procedurally ask for, it seems to me like we are creating a culture of almost disrespect.

I am just trying to strike at that. If we are asking for something, we at least ought to have the procedural "I's" dotted and the procedural "T's" crossed.

Mr. SMYTHE. I am not aware of the specifics on the Agriculture example or the Department of the Interior example. What we can do is look into it for you, Mr. Chairman, and find out what the past experience has been and get back to you in terms of how we would propose to address it. But I just can't speak to the individual cases that GAO has just referred to.

[The information referred to follows:]

Page 33

Question: If OMB does not track expired collection requests, how do we know when they have expired and how do we know when they're applicable?

Answer: OMB maintains a permanent record of the expiration of all previously granted approvals. This record helps OMB and the agencies identify collections that have inadvertently expired yet continue to be collected. These violations are reported each year in the ICB. In addition, OMB reports each month's expirations on its web site, as suggested by this Subcommittee's previous Chairman.

OMB considers any collection not currently approved by OMB to be a violation and the public protection clause of the PRA (44 U.S.C. 3512) becomes applicable. Under the PRA, OMB would so inform any inquiring member of the public.

OMB does not have the means to gather information on collections that an agency does not submit to us, but we are exploring the ability to distinguish more explicitly between discontinued collections and expired but continuing collections.

Mr. OSE. Well, again on Mr. Mihm's testimony, on page 12, there is a table that shows the 487 reported violations that he referenced, and I imagine we could get an item-by-item list from GAO and perhaps we could send you a letter and ask you for a response.

I just have a hard time understanding when we set up the law that says we will have these procedural hurdles met before we put this burden on our citizenry, why it is that we aren't complying with the procedural guidelines.

Mr. SMYTHE. Well, we will review it and get back to you, Mr. Chairman.

[The information referred to follows:]

Page 34

Question: I just have a hard time understanding when we set up the law that says we will have these procedural hurdles met before we put this burden on our citizenry, why it is that we aren't complying with the procedural guidelines.

Answer: The vast majority of the collections listed as violations are the result of procedural lapses within the agencies and, for the most part, represent previously approved information collections that would be conducted anyway in some form. This, of course, does not prevent it from being a violation. OMB will further discuss PRA violations in the FY 2001 ICB, and will, in the meantime, endeavor to remind agencies of their responsibilities under the Act.

Mr. OSE. All right. I appreciate that.

In terms of OMB's actual latitude in dealing with this, do you have any sense of what options exist for you? I mean, obviously, you can put something in abeyance, you can reject it, you can approve it, you can take it under advisement. As it relates to these 487, in general what options exist at OMB for dealing with this?

Mr. SMYTHE. Again, I am not going to try to get into each of the agencies' violations and how we respond to this particular matter. I think in general the President has a great desire for better management of Federal agencies. If we have a situation where agencies are not complying with the law, that is something we want to change, and we are going to look into that.

I would go back to the beginning of my testimony, that we need to get the DDM confirmed. He's a key official on the issue of chief information officers. The OIRA Administrator, in terms of the day-to-day activities, will be a key official. But, I can make the statement if there are these violations, we want to address them.

Mr. OSE. I do recall the first time I met Mr. Daniels, I had the opportunity to ask them who is your OIRA person, and at that time Graham had not been identified. I guess that was 45 days ago. So I know your comments earlier that you had not been Senate confirmed, perhaps we have found some of the impediment here.

I do want to go back to Mr. Rossotti. Mr. Otter was talking about the preparatory paperwork before you click through on your submittal. One of the issues that comes to mind in that regard has to do with the alternative minimum tax. I'd be curious what the IRS is doing or considering relative to easing the paperwork burden of that particular calculation.

Mr. ROSSOTTI. Well, first let me just say that the alternative minimum tax is a significant complex portion of the tax code, and it is going to get a lot worse if it continues in place because more people will be affected by the alternative minimum tax. And, of course, there frankly is limited—we are looking at this, but there is relatively limited flexibility that we have to simplify this by redesigning forms. I mean, unfortunately, the complexity is largely built into the statutory requirements.

I will give you some numbers, though, because I think you are pointing in a direction where if you want to really talk about increasing burdens, this could be measured. In tax year 1997, which was filed in 1998, we have very complete statistics, and we had about 618,000 taxpayers who filed Form 6251, which was the particular form for the alternative mimimum tax. But what is interesting is about seven times that many that actually paid, about seven times that many taxpayers had to fill out the form to calculate whether they needed to pay. So you have almost a worst case here, seven times as many people have to go through this exercise in order to find out if they have to pay.

But, what is I think more alarming is that our estimates are that this number is going up over 1 million during the past year, actual payers, not the ones that calculate, and it could go up to, in 5 years, as high as 6 million that would actually be paying. If you multiply that by how many would have to be completing the form, you could be talking about tens of millions of taxpayers that would have to be completing this item.

So, I think in terms of burden and the issues of going through the process of calculating your tax forms, this is definitely a significant item. I am not going to say there's nothing the IRS can do about it. We are certainly looking at it. But, frankly, up until now we have not found any highly fruitful area to simplify just the forms process. You get back to the underlying statute.

I will say that in the complexity report that the IRS is required to produce each year for the Congress, this is one area that we are going to be reporting on in more detail. This report will be coming out with the support of the Treasury Department in the next couple of months, and it will lay out even more some additional data in this area.

Mr. OSE. My time has expired. I will come back to this question on the second round. Mr. Otter.

Mr. OTTER. Thank you very much, Mr. Chairman. Mr. Rossotti, in the first round I asked the GAO and OMB if they had gone to the victims, so to speak, and said here is our mission, this is what we need to achieve. Has the IRS done that?

Mr. ROSSOTTI. As a matter of fact, we not only have, we do it every year.

Mr. OTTER. Which groups have you gone to?

Mr. ROSSOTTI. I have a list of nine groups here we go to on a regular basis. Most of these are practitioner groups that represent business, like the National Association of Enrolled Agents, the National Farm Income Tax Extension Committee. These are committees who are representatives of people that generally are involved in tax preparation services. We also had a special conference last year in conjunction with OMB with small business representatives.

We meet with these groups on a regular basis and go over specific items with them for the very purpose that you are talking about. We also vet all of our draft forms, our new forms, by sending them to these groups, posting them on our Web site, getting comments back and so forth.

So, we have a regular process we use to try to solicit comments from interested groups that are involved with tax paying.

Mr. OTTER. Let me ask this question in a different way. I do not mean to cut you off, but I think I already got the gist of your answer. I am not interested in going to the accountants and saying, how much more work do you want or how much of the work you now do for me do you want me to cut out. What I am interested in doing is going directly to the farmer. Now, if he has an intermediary that converts what he's done into your language, I am not interested in getting a response from that person, because it would seem to me it would be in their best interest to keep those rules and regulations coming.

I want to know if you have actually gone to the payor and said to the farmer, how much of this stuff is really necessary in order to arrive at the information that I need to assess the level of taxes that your government has sought to inflict on you? To the small businessperson. To the large businessperson.

Mr. ROSSOTTI. We have to work with their representatives in some form. We have no way of going—except through the Web site, where we do get individual comments from taxpayers, but generally speaking we work through various associations and industry

groups. They are not all accountants. There are various industry groups. For example, this Farm Income Extension Committee is a group of people that are, I think, based out of the University of Oklahoma that involve various farmers, actually. In fact, I spoke to one of them in Oklahoma last week.

Last year we did have this open house where we invited not only these practitioners groups, but also people from different small business associations to participate. So, I think we have tried as best we can. We are actually going to be doing more of this. We have beefed up our partnership outreach, as we call it, to actually go out to talk to particular small business groups.

I will say to you, though, that some of these practitioners, especially people like the enrolled agents that represent a lot of small business groups, if you were to meet with them, they're very vocal about trying to reduce the complexity of the forms that they file. They take the position of trying to represent their clients, I think.

Mr. OTTER. The nine groups which you met with last year, what was the total reduction they came up with, and did you affect that?

Mr. ROSSOTTI. I think the No. 1 thing they recommended we work on was the capital gains form. We have had 3 years where we have done some improvements to the capital gains forms.

Mr. OTTER. How much have you reduced it? What are the actual hours?

Mr. ROSSOTTI. I can tell you that.

Mr. OTTER. Sheets of paper.

Mr. ROSSOTTI. I can give you that in a second here. We have reduced capital gains. We have done three things. The first thing we did was to eliminate the need for people with mutual funds to fill out the capital gains form and put it directly on the 1040. That was 23 million hours reduced for 6 million taxpayers. In the 2001 filing season, we did the same thing for 1040A filers. That's about 2.2 million hours. In the next season what we are doing is, actually for the remaining people who still have to fill out Schedule D, we are reducing it from 54 lines to 40 lines, which we estimate is going to save about 6 million hours and means that basically only about 650 filers will have to fill out the full form.

So that is one, that was viewed as the No. 1 problem area or complaint area, so we focused on that one.

Mr. OTTER. Mr. Mihm, 31 million hours, Mr. Rossotti said that they have reduced. Do you agree with that?

Mr. MIHM. Well, we have not looked exactly at what the IRS has done in terms of Schedule D. I would note, though, that overall for IRS that was a sizable increase last year. So notwithstanding any reductions in streamlining and real ones they took on for the Schedule D that we all benefited from, overall there was a 180 million or so hour increase in regards to IRS.

Mr. OSE. Mr. Rossotti, I want to go back on the AMT issue. If we have a million people now who actually have to file that form and you are expecting it, I think your testimony was possibly seven times that many in the near future.

Mr. ROSSOTTI. Up to six times, yes.

Mr. OSE. OK, 6 million people. Does the Service have any sense of the amount of time required in preparing that form per person?

Mr. ROSSOTTI. I do not have that with me this morning, but that is a number I could get for you and get back to you on. We just need to take these numbers—I just did not have it available this morning, but we could make that estimate for you.

[The information referred to follows:]

Alternative Minimum Tax
Form 6251
Preparation Time

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping .....2hr., 31 min.

Learning about the law or the
form .....1hr., 11 min.

Preparing the form.....1 hr., 50 min.

Copying, assembling, and
Sending the form to the IRS..... 28 min.

Mr. OSE. What generically is it? Is it an hour, or is it 5 hours? Do you have any recollection?

Mr. ROSSOTTI. I don't have a personal recollection. I might have some staff that can give me that during the hearing.

Mr. OSE. If you will provide that, that will be very helpful.

Second item, on the actual forms, and I am looking at this on a comparative basis, between someone who files a paper-based return versus someone who files an electronic return. When you file an electronic return, I presume you fill in your basic personal data once, whereas on a paper return, depending on what forms you have to use, you end up inserting your name and the personal data over and over and over.

I am curious whether or not the Service has looked at, for instance, when I receive my personal form every year in the mail, it has the little peel-on, stick-on label, but the interior is not filled out. It does not have any of the personal information. Is it possible when you send, for instance, to Doug Ose in Sacramento, his return, to take that basic information and embed it in the forms?

Mr. ROSSOTTI. I don't know. I could find out. I could check into that and get back to you. That is a thought.

Mr. OSE. I mean, to put your name and address and Social Security number over and over and over.

Mr. ROSSOTTI. Just, really, your Social Security number and your name is generally enough to repeat the address. But the question is could we put the name and Social Security number, which are really the two pieces of identifying information that you need, and I do not know the answer to that. But it's an interesting thought, and I'd like to be able to investigate that and get back to you.

[The information referred to follows:]

ANSWER FOR CHAIRMAN OSE
INQUIRY

Taxpayers are delivered with their 1040 packets a label to apply on the top of their form. The label is for the 1040 form only. As taxpayers use various schedules to complete their filing, they simply must add their name and their Taxpayer Identification Number (TIN) to each additional form. On most forms it is not necessary to write your address.

The IRS has studied other methods of adding this information to forms, such as ink jet application, in each case we have found that the cost of printing forms would at least double. Current publications type printing and binding methods do not allow the imaging of more than a few pages in a completed pamphlet. Although other production methods could be utilized, they would be more expensive, more difficult to produce and require longer lead times. Since these methods would employ the imaging of numerous separate or individualized pieces or signatures for the same taxpayer, bar coding or other "smart" quality control methods would have to be utilized to insure that taxpayer data were not mismatched during the production.

Mr. OSE. It would seem to me that, based on prior-year returns, at whatever point you can get the current data from a final basis, the Service technologically ought to be able to embed in the new returns being mailed out for a future submittal of that base data.

Mr. ROSSOTTI. Let me look into that for the attachments and see if that is a possibility.

[NOTE.—The information referred to was not provided.]

Mr. OSE. I would appreciate that. The other question I have relates to the incentives that IRS uses in its Senior Executive Service in terms of identifying paperwork reduction as a measurable performance standard.

Does the current SES performance standard include paperwork reduction thresholds or objectives? If it does, is there a way to improve them or increase their importance, what have you?

Mr. ROSSOTTI. What we have been moving to, and I think there is a possibility of going in that direction, because what we have been doing is with our new reorganization of the IRS we have identified, for both individual taxpayers and small business taxpayers, which is where most of the paperwork problem is, and not just the paperwork, but the overall burden of complying with the tax system, individuals within those units that are responsible for the taxpayer education, communication, basically the forms and everything that has to do with the filing and prefiling area. I think what we have done with those people is basically make them the accountable executives, if you will, for trying to make the whole process of complying with the tax system easier.

That includes more than just the paperwork, but it does include all the burden that is involved with applying the system. So, I think it would be possible to take your concept and embed that as part of the goals and objectives for those particular executives.

Mr. OSE. I do not know quite the structure it would take, but I certainly understand the cause and effect of making a specific performance standard be a reduction of paperwork burden.

Mr. ROSSOTTI. Yes. I would only want to make sure that it was considered broadly enough, because as we know, the current methodology for strictly dealing with forms is a bit limited. But let me take that concept under advisement. I think there is a good concept there.

Mr. OSE. I am tempted to ask you what the manager's performance standards are, but I really don't want to put that in the public domain, because then we will have the internal code completely gamed, but I would appreciate your review of that. And I want to make sure that I understand that—is that a commitment on your part to look at it?

Mr. ROSSOTTI. Yes, I will.

Mr. OSE. I like to use that word, "commitment."

Mr. ROSSOTTI. Well, actually, we call them commitments internally. So I will. As long as we can interpret it broadly enough, I think it is a good concept.

Mr. OSE. All right. Mr. Smythe, if I might, one of my favorite—I say that somewhat facetiously. Not entirely, but somewhat. One of my most interesting agencies in my district is the Bureau of Reclamation, and we are going to hear testimony from one of my con-

stituents later today about, if you will, the statutory versus the discretionary information requests.

I would commend to you his testimony for review. Because having represented this district now for more than one term, actually more than 3 days, if you are the member from the Third District of California it takes you 3 days to get a clear understanding of this, the overwhelming requests for information absolutely unrelated to bureau operation or need is ridiculous. It is Mr. LeGrande's testimony.

I just think OMB needs to look at this stuff. These requests for information are imposing a huge burden on my farmers. We would all be far better off if they were out in the field working than in the office filing paperwork for which there is no statutorily approved basis for the collection of the information therein.

So I just offer that to you for your evening reading, if you will.

Mr. SMYTHE. I will review it.

Mr. OSE. Mr. Otter, for 5 minutes.

Mr. OTTER. Thank you, Mr. Chairman.

Mr. Mihm, is Congress part of the—I'm the new kid on the block here. I'm 90 days, too, Mr. Smythe, 90-day wonders. Are we part of the problem?

Mr. MIHM. Well, it depends on how you define "problem." Clearly there are statutes that Congress passes, and many of these—or more recent ones are detailed in Mr. Smythe's testimony, which entail in their implementation additional paperwork burdens put on the American people. The question in each case, though, has to be a careful balancing as to, is that additional burden that's placed on the people worth the value that we're getting from that information. So, in that sense, Congress is the source of a lot of this paperwork burden.

It's also agency actions, though, that are also the source. I would underscore what Mr. Smythe said. There's plenty in the sense of blame to go around, or I guess in a more positive way, there's a lot that all of us can do to attack the paperwork problem.

Mr. OTTER. Let me ask both the General Accounting Office and the Office of Management and Budget. At the same time, then, how do we red-flag this? How do we say—you see, because we can't have it both ways, really. I mean, if we think the risk—the labor that has to go through is worth the benefit that we're going to receive so that we can, "plan the economy," make adjustments for the future where we need to in order to be the leaders—provide the leadership that we're supposed to for this country, how do we red-flag that?

Do we say, look, we want this great, marvelous idea. How many hours is that going to take for each citizen to comply with this? How do we red-flag this? Give me an idea.

Mr. SMYTHE. I think there are two ways. One is I think we ought to look at existing law and existing programs, an inventory of what's going on. I know the President has made—in working on the budget, one of our priorities was to eliminate duplication in Federal programs. Well, if there's duplication in paperwork, that's an area we ought to look at, make sure people aren't producing the same report to a multitude of agencies.

So I would—the one thing would be to look at existing programs and what's going on. The other would be to review—to review legislation that comes along. My impression is legislation is developed—is it's developed without a sense of what's going on in other programs. Committees tend to have a fairly narrow jurisdiction when you look at the entire government as an enterprise, and there ought to be a better assessment of what the burden is going to be on—when you add it to everything else the government is doing.

Mr. OTTER. Have you thought, Mr. Smythe, about——

Mr. OSE. Will the gentleman yield?

Mr. OTTER. The gentleman yields.

Mr. OSE. Mr. Smythe, your comment about having the government look at duplicative requests for information, isn't that within OMB's jurisdiction right now, and if it is, why—I mean, just do it.

Mr. SMYTHE. We plan on looking at those things. We've started on that in terms of—I'm more familiar initially with what we did with the budget. One of the areas we did when we went through the budget is try to identify cases of duplicative programs.

Mr. OSE. Have you found any?

Mr. SMYTHE. Yes, we found some, and we've tried to consolidate—in education we tried to consolidate a number of programs. We've proposed that in the President's budget. We've looked in other areas where you have programs trying to address the same problem. We found cases where more than one program does the same thing. We looked at the one that didn't work as well. There's a drug treatment program for public housing that we felt didn't work as well, that the government had other efforts going on, and we should steer resources to where programs work better.

Mr. OSE. How about on the—you're talking about actually the program and the implementation. Have those investigative efforts extended to the paperwork side of any program?

Mr. SMYTHE. I think that's an area where we need to do some more work on.

Mr. OSE. I thank the gentleman for yielding.

Mr. OTTER. Thank you, Mr. Chairman. Getting back to that question, has either OMB or GAO ever thought about putting a solicitor general for paperwork reduction in these agencies?

Mr. MIHM. I guess in—from our perspective, that would be the responsibility of the chief information officer, which was established under previous legislation. In fact, what made that decision wise, in our view, is it brings together responsibilities for paperwork reduction and technology. And, in response to your earlier question about how we red-flag these things, that would be—one of the points that I would make is that when we look at Federal technology programs, we find that the transformational aspects of technology are not being nearly as exploited as they could. I mean, the jargon here is e-government. We need to do a much better job at the Federal and at all levels of government in using technology not just to do things differently and a little bit faster, but to fundamentally do things in a completely different way.

If you saw the chart earlier, sir, that's where we will begin to have a hope of beginning to close that gap between goals and where we actually are. Other than that, we really—using current

procedures, we may be able to get some incremental improvements, but we're not going to be able to fundamentally close the gap.

Mr. OTTER. Let me just ask all three of you in general, this question, and it would have to do with the people who are filling out these forms. Do you make an appreciable assessment of what is the original information given, and that's worth so many hours, and then the secondary information that's asked for, and that's worth so many hours? And perhaps the IRS is best suited to answer that question, and I hate—I don't want to pick on any one person here, but I'm familiar with phase 1, phase 2 and phase 3.

When the information originally comes in, they say, no, we need more information than that. So another form goes back out saying—or the same form saying, no. You didn't sufficiently answer this information. The initial information that comes in, it seems to me, is probably required. It is probably something in the mission which Congress gave you, whether it's to gather the information or collect taxes or submit to the rules and regulations by an agency. But if the form is sufficiently nondescriptive in the information that it wants, then simplification would help us. Then, it seems to me, by the amount of secondary information that's asked for, we should be able to assess to ourselves, geez, our form maybe isn't asking the right information in the first place. So do we break this information down phase 1, phase 2, phase 3?

Mr. ROSSOTTI. Well, just speaking for the IRS, I mean, essentially for any given tax filing, we—our goal, and it's, I think, achieved in almost all cases, is that if the particular form—take the 1040 form, with the schedules that are required—is completed accurately, there will be no followup requirement. The only time there would be a followup requirement would be if there was an audit initiated in which the IRS had a reason to question a particular item, and then there might be, for example, additional documentation submitted to substantiate, say, a particular item on a return, a particular deduction or a particular dependent that might be claimed and so forth. And those are a very small percentage of the returns that are filed. I mean, most of them are just accepted as filed. So at least——

Mr. OTTER. Is that the occasion, believe everybody else, or is that just because you suspect one or two?

Mr. ROSSOTTI. Well, I think it's basically—it's a question of—well, first of all, I think most people actually do file, quite accurately. Fortunately in this country, it's remarkable, but people do the best job that they can. We do send out a lot of notices to people for potential small errors, like, their Social Security number might not match, and then we, send them a notice back, and then if they have a problem, they correct it. That we could do with computers, but in terms of audits, it's a fairly small percentage. One of the problems is it's basically limited by resources and the number of audits that have been going down over the past 10 years, but even when it was higher, it was still a relatively small percentage.

Mr. OTTER. Mr. Smythe, in your case, do you think it's a good idea for your agency to break this down between phase 1 and phase 2; then we'll understand the clarity of the initial request for information?

Mr. SMYTHE. The only comment I would make is my understanding is that OIRA is put into a situation where it never has a chance to look back and look at the whole thing. It's asked to approve this form or this report, sort of in isolation. I think what you're getting at is maybe a sense of staging these things, get a better idea where we want to end up.

Mr. OTTER. Well, I'm concerned. But I'm really concerned, because, for instance, in the little State of Idaho, we get roughly 6 percent of our entire budget in education comes through the Department of Education on the Federal level, and yet the head of our education system in the State of Idaho, which is an elected position, superintendent of public instruction, tells me it accounts for 67 percent of her paperwork at the State level. So we get 67 percent of the money. We get to a point finally where we say, we can't afford to take the money. We can't afford to take the money. Of course, then we don't have all the rules and regulations that I guess we'd have to put up with.

But, my question still comes back to, there's got to be something wrong, and it's got to be pretty obvious that there's something wrong when you have those kind of differences between the actual benefit received and the reporting that's necessary to receive the benefit.

Mr. SMYTHE. Well, I think the President's budget, attempts to address the issue you raise. You can't just come in and change the reporting requirements if you don't change the programs. In the education area we have a number of categorical grants that generate a lot of this. The President has proposed to consolidate a number of those programs to loosen up some of the strings. Those strings end up generating a great deal of reporting requirements on localities, and I think the whole thrust of his education proposal is to give the States more latitude, to demand some accountability, and to demand some results. I would hope that in terms of implementing it, we can also reduce that 67 percent burden that you mentioned. It seems to me that goes hand in hand.

Mr. OTTER. In pursuit of the objectives of this committee, it would really be a help to this committee if a lot more expression of the consolidation of these—and I'd like to see that, Mr. Smythe, I really would. We're going to consolidate these five agencies, and it's going to require a 31-million-hour reduction in paperwork. I think that would be very beneficial, not only to the work of this committee and its intent in this meeting today and your being here today, but I think it would also be a benefit to the American people and whoever has to fill out these papers.

What concerns me as much as filling out these papers is think how many people we've got to have to read them. That's what's really scary.

Thank you, Mr. Chairman.

Mr. OSE. Thank you, Congressman Otter.

Mr. Mihm, I want to explore something with you. Your statement on page 7 talks about program changes versus adjustments in terms of the calculation on the paperwork burden.

Mr. MIHM. Yes, sir.

Mr. OSE. I think I understand. I just want to hear from you the difference between program changes and/or adjustments.

Mr. MIHM. The program changes are those changes that result in a different estimate of burden that are the result of direct government action, and so it would be things that—we would break it out by three categories; for example, new statutes, reinstatement of expired authorizations or agency actions that lead to streamlining.

Adjustments are generally those things that are outside—are still changes in the estimated burden, but those things that are outside the control of the agency. In some cases, it can be just a reestimate, and often downward—I shouldn't say often—downward or upward of what the original burden is, in which case there's no change to the people that are filling out the forms. It's just the government is getting a better idea of what that burden was.

Or it could be just—an adjustment—another example of an adjustment would be more or fewer beneficiaries applying for a benefit, filling out forms, and that then would influence the total burden hours.

Mr. OSE. Let me just explore something in table 1, then, with you.

Mr. MIHM. Yes, sir.

Mr. OSE. Let me find one that offers interest. On the transportation line item, there's an adjustment of 50 million hours and a total change of 22 million hours; a downward adjustment in the burden of 50 million hours and total change of 22 million hours.

Mr. MIHM. Yes, sir.

Mr. OSE. Which indicates to me that somehow or another, the formulation—or the algorithm that generated the number in the first place, the basic structure was changed. How do you get to an adjustment of 50 million hours downward, but a total change of only 22 million?

Mr. MIHM. Well, this is the—in the case of IRS—I'm sorry, in the case of DOT, you're exactly on the right issue there, is that DOT's estimated burden would have increased by more than 28 million hours due to the reinstated collections, without the more than 50 million hours in adjustments downward. And so, I mean, this is—and the precise nature of those adjustments is something that at least to us was—we're working off of the—the collection budget that has come in from the agencies that OMB will be rolling up from their budget that we could get behind, but I don't have that readily available for me right now.

But, the point there is—or at least the point that we use in breaking this out for the table is to show it's important to get behind each individual agency's claimed reductions or increases to better understand the sources of those.

In some cases it can just be an agency action. In other cases it can just be merely the agency recalculating or reestimating an existing burden that's already felt by the people and saying, hey, we now have a better handle on what that burden actually is.

I should state, sir—and this gets back, if I may, just to Mr. Otter's question right before it turned. You were asking about the different phases. Mr. Otter, it wasn't until last year as a result of the bipartisan urging of this subcommittee over several years that this type of breakout was even available. Before then it was all rolled up as to changes, and we didn't have a handle—or the collective

"we" didn't have a handle on whether or not these changes were due to adjustments or program changes or new statutes. That's something that this subcommittee had to work—on a bipartisan basis, had to work with OMB over a couple of years in order to get them to make that change.

Last year was the first year, and we're happy to see that they're obviously continuing it this year. So we're quite a ways from the three-phased approach that you were talking about.

Mr. OSE. On your Defense line item, you have a total change of 18 million hours.

Mr. MIHM. Yes, sir.

Mr. OSE. Now, how do you—I guess my question is, where does the intersection between OMB's analysis and, say, DOD come in terms of calculating those hours? Maybe that's a question for Mr. Smythe.

Mr. MIHM. Well, I can take the first shot at it. I mean, all of the information that we have here is information that we received from OIRA over at OMB. These are from the individual agency submissions that go into OMB, and then OMB, therefore, rolls up into this summary document that becomes the executive—the Federal Government's information collection budget.

The important thing to note here, sir, is that obviously you're dealing with a huge executive branch. OMB only has 20, 22 people, I think, in the entire OIRA office that are taking a look at this stuff. In fact, there's one—if I understand correctly, person responsible for IRS on a part-time basis, and even accounting for the normal heroic abilities of our colleagues over at OMB, that does seem like a substantial workload. So there is two—the point I'm making is that there isn't an awful lot of opportunity for OMB to step back and really get in a very serious way behind these numbers. They'd really have to pick targets of opportunity and prioritize where they want to get behind the numbers.

Mr. OSE. Mr. Mihm, you beat me to my question.

Mr. MIHM. Sorry, sir.

Mr. OSE. That's OK. Pleased to see somebody ahead of me.

Mr. Smythe, that brings me to my basic question, is that if we have most of the change in the burden of hours for paperwork placed—or coming or originating from one agency, Mr. Mihm cited a part—or a half-time—full-time equivalent of a half a position being committed to IRS review of paperwork, why wouldn't we take some of our resources that we might be spending somewhere where there's little, if any, expected or actual change in paperwork burden and shifting it over where we're getting a whole bunch of change in paperwork burden?

Mr. SMYTHE. I'd like to defer to the OIRA Administrator on that. I think you raise a good point, but that's something for John Graham if he gets confirmed, that's something that he needs to look at and figure out how he best wants to deploy the people under him to address his responsibilities.

We've not made any changes yet. What we have is the structure and the way people are deployed or the way they were deployed when we arrived.

Mr. OSE. You understand my point, though.

Mr. SMYTHE. Yes, sir.

Mr. OSE. Put your resources where you can get the big bang for the buck, so to speak?

Mr. SMYTHE. Yes, sir.

Mr. OSE. It's your understanding that OMB has no current plans to change staffing in terms of the 22 or 25 people on staff right now as to whether they're going to be focusing, as they have historically, or refocused to where the problems seem to be?

Mr. SMYTHE. I think it's something that's going to involve, first of all, getting the various positions filled, getting the OIRA Administrator confirmed. I think it would be inappropriate for us to start moving around people within OIRA before he's confirmed. The DDM is another issue. In all of this, the Director needs to make an assessment of where resources can be best deployed for OMB's mission.

Mr. OSE. I think that's the basic thrust of my question here, so I appreciate your recognizing that.

I want to come back to Mr. Rossotti. In your opening remarks, you talked about the strategic plan, having identified key strategies, one of which was reducing taxpayer burden. I can't help but think that whether we're talking about the AMT filings that are on—at present a million, projected to go to 6 million, or small business tax submittals, or have you—I can't help but think asking the senior managers—or requiring the senior managers to factor into their performance evaluations some means of paperwork reduction to a greater degree than we have, whether it's in a narrow sense or a broader sense, as you suggested, I can't help but think that redounds to the benefit of every taxpayer who's otherwise got this burden.

Mr. ROSSOTTI. I would agree with that.

Mr. OSE. My tax return was this big this year, and I'm just—I find that an amazing consequence, and I'd really love to reduce it.

I understand your point about Congress changing the law every 6 months. I think it's valid. I would commend it to every single Member of Congress. I mean, we have to have some stability here. Stability will lead to simplicity, but somehow or another we've got to get the managers recognizing it's in their best interest, not only in the taxpayers' best interest, but in the managers' best interest, to work toward reducing the paperwork burden.

Mr. ROSSOTTI. Well, I agree with that. That's why we've identified it as one of our key strategies. We now have with our new structure, some people positioned to exercise responsibility on that. I do have to point out that the IRS does not have much of a role with respect to the tax code.

Mr. OSE. That I understand. I understand that. I'm not quibbling over that. I mean, I'll take that responsibility as a Member of Congress.

Mr. ROSSOTTI. We do what we can to point out things like the alternative minimum tax, the capital gains. They're very consistent in terms of complexity, but in the end all we can do is point them out. We can't change the world.

Mr. OSE. I understand, and I don't quibble over that. Mr. Otter, I don't have anything else.

Mr. OTTER. I just have a couple of questions, if I might, Mr. Chairman.

No. 1, Mr. Rossotti, have you held field hearings on this, gone out and had people come in and testify as to the complexity and perhaps some simplification efforts?

Mr. ROSSOTTI. We don't actually have hearings, but we have meetings.

Mr. OTTER. Do you have the power? Do you have the authority to have hearings?

Mr. ROSSOTTI. You know, I've never thought—I don't know. I mean, we can certainly hold open meetings. I mean, I don't know whether they would be considered hearings, but we do have meetings, and we have a variety of adviser groups that meet with us regularly on these kinds of things.

Mr. OTTER. Let me put it a little bit differently. If you had the authority, would you have hearings and I happen to believe that you do have the authority.

Mr. ROSSOTTI. Yeah.

Mr. OTTER. Don't you think that kind of input would be useful? And if you find out that you do have the authority to have hearings, would you hold them?

Mr. ROSSOTTI. Well, I guess the—I don't know what exactly the difference is between hearings and meetings. I mean, we do have a lot of meetings with different kinds of groups, and we intend to have more of them, and they focus on topics like this. And, we had a whole series of them last year in conjunction with OMB, specifically with self-employed and small business taxpayers. So I'm not sure whether there's something specific about a hearing that's different than a meeting, but we do have a great number of those. And, actually, we—part of our strategy is to hold more of them, to get more input, especially on the small business side, because actually a lot of the—a lot of the burden actually that is some of the more significant is actually on small businesses.

Mr. OTTER. Well, as a matter of fact, you and I probably could have had a cup of coffee this morning and exchanged all the information that we have right here, but the fact that it is a public forum, the fact that you are on record, the fact that there is an expectation at the end of the hearing that something is going to happen, sometimes good, sometimes bad, I think that when the IRS would go out and hold a hearing, or any government agency would go out and hold a hearing, it sends a very clear and precise message to the public who submit all this information to you that we do care, and how can we lessen your burden. I think that's important, not only from the political aspects, but as you said so clearly earlier, it's amazing to you how much information people voluntarily give to the Internal Revenue Service. I've never quite felt that mine was voluntarily, because I suspected there was going to be an action taken if I didn't. So I hardly consider that voluntarily.

Let me commend a name in Idaho to you. The name is Dewey Hammond. Dewey Hammond happens to be the head of the Idaho Tax Commission. Mr. Hammond, I charged him when I was Lieutenant Governor with responsibility—I became familiar, after working for a large manufacturing company for 30 years, with a form that was 14 pages long and said, Dewey, I'd like you to see what you can do in order to reduce this down. He now has a 1½-page form that four agencies of the State use. I recognize the tax sen-

sitivity, the number sensitivity and that sort of thing, but the general information that's given on that is now used by four agencies. It took him 2 years to do it. But he took that and he reduced it down to 15 percent—less than 15 percent of what it was.

Mr. ROSSOTTI. We'll get in touch with him.

Mr. OTTER. And I think that sort of action is really important.

Mr. Mihm, I would wonder if under the PRA, the Paper Reduction Act, did Congress put themselves on notice as well?

Mr. MIHM. Not—in a statutory sense, I don't think so, sir, that Congress usually exempts itself from those types of requirements. Clearly, the language surrounding the act in the floor debate, without being intimately familiar with it, I'm sure that there was a recognition, as we have expressed here today, that it's joint responsibilities if we want to attack the paperwork problem. It's not all on the agencies. It's not all OMB, and it's not all Congress. There's plenty of work for everyone to do.

Mr. OTTER. I understand that, but a few years ago we decided we were going to walk the walk. Well, Congress then decided it was going to walk the walk and talk the talk, and so we subjected ourselves, I thought, to all of those other burdens and responsibilities that we put on the agencies and business and the general public. So we now have all the ADA requirements, all the OSHA requirements, all the affirmative action requirements, all the other rules and regulations that we force on the IRS and the OMB and the GAO and all the businesses and industries.

I would like to know how to do that. I would like to know how we could submit to Congress and say to them, look, if you're going to insist on this—we should add an assessment, for instance, in the last tax bill that we passed in the House. The $1.6 trillion, we should add an assessment and say, how much paperwork is this going to add to the burden and then decide for ourselves—well, take a look in that mirror and say to ourselves, do we really want to do this, or do we want to simplify it in the process as well?

Mr. MIHM. I agree—or rather, sir, I think that's the point that Mr. Smythe was making in his opening statement, is that there needs to be more of a consideration in the part where we're considering legislation upfront on what's going to be the end-stream paperwork burden that's associated with this.

Mr. OTTER. Mr. Smythe, this fellow is going to seem like the second coming to us for all the expectation that you've given me this morning on what he's going to do to the paperwork in government. Thank you.

Mr. OSE. Thank you, Mr. Otter.

I do want to—I want to end on somewhat of a positive note, recognizing—not meaning to lessen the importance of all we've talked about, but, Mr. Rossotti, I do want to compliment the Service on the change they've made for qualifying small business corporations in terms of allowing them to go to a cash method as opposed to previously requiring an accrual method. I think that's a marvelous step forward, and small business in America appreciates that. That's a great first building block, if you catch the drift of my comments.

Mr. ROSSOTTI. Thank you.

Mr. OSE Mr. Mihm, I appreciate what GAO does in terms of analyzing these things for the benefit of Congress and the agencies throughout the Federal Government.

And, Mr. Smythe, I have to applaud your courage in coming here today. It's impressive.

I do think we have some work to do. I want you to understand that this committee is ready, willing and able to work with OMB, with Mr. Daniels, yourself, Mr. O'Keefe, the fellow who's coming on at OIRA to try and bring these things to a head and make some progress on this. I just think that's something that you're interested in. I know we are, and I look forward to doing it. So I want to thank you all for coming today. We have work to do. We need to get on with it.

Mr. SMYTHE. Thank you, Mr. Chairman.

Mr. MIHM. Thank you, Mr. Chairman.

Mr. ROSSOTTI. Thank you, Mr. Chairman.

Mr. OSE. I want to call the second panel up at this point. That would be Mr. LaGrande, Mr. Knott, Mr. Nicholson and Mr. Bobis—excuse me, Dr. Bobis.

OK. Before we start, I want to make sure we've got—it's Mr. LaGrande, Mr. Knott, Mr. Nicholson, and is it Dr. Bobis, Bobis or Bobis?

Mr. BOBIS. B-O-B-I——

Mr. OSE. Bobis, long O. Right?

Mr. BOBIS. Yes.

Mr. OSE. Gentlemen, we do swear in our witnesses here. If you'll rise.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative.

Mr. Otter and I have already provided our opening statements. We're going to provide each of you with 5 minutes for your opening statements. We have a heavy hammer here on the clock, so please be brief.

We're going to first go to Mr. Ken LaGrande, who's the vice president of Sun Valley Rice in Colusa, CA. Mr. LaGrande, you're recognized for 5 minutes.

STATEMENTS OF KEN LaGRANDE, VICE PRESIDENT, SUN VALLEY RICE, COLUSA, CA; JAMES M. KNOTT, PRESIDENT AND CEO, RIVERDALE MILLS CORP., NORTHBRIDGE, MA; JOHN NICHOLSON, OWNER, COMPANY FLOWERS, ARLINGTON, VA; AND JOHN L. BOBIS, DIRECTOR OF REGULATORY AFFAIRS, AEROJET, RANCHO MURIETA, CA

Mr. LAGRANDE. Chairman Ose and members of the subcommittee, thank you for the opportunity to testify on behalf of my fellow farmers on the Paperwork Reduction Act and the nearly unbearable burden that paperwork and recordkeeping requirements place on us. My name is Ken LaGrande, and I farm about 900 acres of rice in Colusa County, CA. When I came home to begin farming with my father several years ago, I quickly discovered that knowing about cropping patterns, fertilizer rates, and seed germination were neither more important nor time-consuming than having a

desk and an adding machine and a full supply of U.S. Government forms.

My days were spent managing operations on the ranch; my evenings, weekends and, literally, my rainy days were spent at the computer and at the filing cabinet. I had to buy a copy machine and a second filing cabinet. Almost immediately I was forced to hire a professional accountant to prepare my taxes, as I couldn't afford to take the chance of inadvertently missing some calculation and, thus, invoking the wrath and the penalties of the Internal Revenue Service.

The forms that I file with the IRS each year have a little box on them that indicates, pursuant to the Paperwork Reduction Act, the estimated average time of preparation. I added these little boxes up the other day, and I discovered with no great surprise, that the IRS estimates that I spend 542 hours and 38 minutes each year on their behalf.

So I hired a part-time bookkeeper. I burdened my bookkeeper with OSHA compliance regulations, Federal payroll tax reporting, bookkeeping and tax preparation, filing, recordkeeping, W–2s, I–9s, 1099s, the Employer's Annual Tax Return for Agricultural Employees, the Employer's Annual Federal Unemployment Tax Return, forms for the U.S. Department of Agriculture, the Commodity Credit Corporation, the Farm Services Agency, Reclamation Reform Act reporting for the Bureau of Reclamation and the like.

After we think we're in compliance with all of the Federal mandates, we start in with the State and then the county. It was not long before 2 days a week—the 2 days a week that I employ my bookkeeper became insufficient, and so I was forced to hire a second part-time employee to deal with the overflow, and I had to rent a self-storage unit in town to store the dozens and dozens of boxes of records that I'm required to keep by Federal law in physical form, and I have on hand for years on end.

Each spring I find myself at the local office of the FSA completing new and yet usually unchanged versions of exactly the same paperwork that I completed the year before. Especially problematic is that there is no published handbook or set of rules or regulations available to producers with respect to FSA rules.

In terms of redundant bureaucratic paperwork, however, the worst of them seems to be when we arrived for our appointments at the water district. The U.S. Bureau of Reclamation requires that each farmer submit paperwork under the Reclamation Reform Act as part of his or her water application. These forms fly in the face of the notion of paperwork reduction and seem to serve the sole purpose of ensuring the continued employment of Federal employees.

This debacle has been compounded tenfold, however, by the promulgation just this year of a new set of rules that require farm operators to file reporting forms. Farm operators are not farmers. They're independent contractors that we hire to perform certain tasks on our farms, such as crop dusters, truck haulers or custom harvesters. Why the Bureau of Reclamation has any need to know who is applying my fertilizer or who is hauling my harvested rice to the elevator is beyond my comprehension. It seems to be an invasion of privacy, and it is as yet unjustified by Bureau staff.

So far as I know, the Bureau has provided no information or instructions to any of these potential operators, and they have not amended the instructions on the farmers' forms to indicate the existence of the new rules. So unless you retain the services of an attorney to follow unpublicized rule changes, you must depend on word of mouth at the coffee shop to continue to be able to receive Federal water.

More galling is this: Anyone I hire as a contractor must ensure his or her own compliance with the Bureau's river of regulatory muck, and I am required to police their compliance.

Mr. Chairman, farmers across our Nation fight costs every day, and we are faced with the specter of having to hire professional accountants, consultants and attorneys to ensure our compliance with Federal regulations and paperwork requirements. The cost of farmers to comply is enormous, both in time and real dollars.

In light of depressed markets, low commodity prices and an overall increased cost of doing business, an excellent manner by which Congress could provide immediate assistance to our Nation's farmers would be to reduce the paperwork burden and simplify the compliance requirements imposed upon them. This assistance would add little or no cost to the Federal budget, I would imagine.

Mr. Chairman and members of the committee, I urge you to provide critical relief to your farmers. We are drowning under the sea of paperwork promulgated by the Federal Government.

I'd be happy to answer any of your questions. Thank you.

Mr. OSE. Thank you, Mr. LaGrande.

[The prepared statement of Mr. LaGrande follows:]

TESTIMONY FOR

Committee on Government Reform

Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

April 24, 2001

Kenneth M. LaGrande

Chairman Ose and Members of the Subcommittee, thank you for the opportunity to testify on behalf of my fellow farmers on the Paperwork Reduction Act and the burden that paperwork and recordkeeping requirements place on us.

My name is Ken LaGrande, and I farm about 900 acres of rice in Colusa County, California. The burden of paperwork and recordkeeping imposed upon me by the federal government has become unbearable. While I consider myself to be relatively capable, it has become essential for me to enlist and pay for the assistance of professionals in dealing with the mountains of onerous governmental paperwork required of me. This burden seriously infringes on the time I need to farm and conduct business. I simply lack the resources necessary to read, comprehend, and comply with thousands of federal rules and regulations. The nation's farmers are drowning under a flood of red tape and the federal regulatory ocean, and I am one of them.

I came home to begin farming with my father several years ago, and I quickly discovered that knowing about cropping patterns, fertilizer rates, and seed germination was neither more important nor time consuming than having a desk and an adding machine and a full supply of U.S. government forms. My days were spent managing operations on the ranch; my evenings, weekends and, literally, my rainy days at the computer...and at the filing cabinet. Reading through the instructions on my schedule F and determining exactly what the requirements were to cross reference with form 4136 consumed my hours. I had to buy a copy machine...and a second filing cabinet. Almost immediately, I was forced to hire a professional accountant to prepare my taxes, as I couldn't afford to take the chance of inadvertently missing some calculation and thus invoking the wrath and the penalties of the Internal Revenue Service. Even with my accountant's assistance, preparing for him was and remains more of a job than for which I have time.

The forms that I file with the Internal Revenue Service each year have a little box on them that indicates, pursuant to the Paperwork Reduction Act, the estimated average time of preparation. I added these little boxes up the other day, and I discovered with no great surprise that the IRS estimates that I spend 542 hours and 38 minutes each year on their behalf. That is thirteen and a half "forty-hour" weeks, which in turn is 27% of a "normal" 2,000-hour work year.

So I hired a part-time bookkeeper.

I burdened my bookkeeper with OSHA compliance regulations, federal payroll tax reporting and regulations, bookkeeping and tax preparation, filing, record keeping, W-2's, I-9's, 1099's, the Employer's Annual tax return for Agricultural employees, the employer's annual federal unemployment tax return, forms for the USDA, CCC, FSA, RRA reporting for the Bureau of Reclamation, and the like. After we think we are in compliance with all of the above federal mandates, we start in on the state's list, and then continue with the county's. It wasn't long

before the two days a week that I employ my bookkeeper became insufficient, and so I was forced to hire a second part-time employee to deal with the overflow. I had to rent a self-storage unit in town to store the dozens and dozens of boxes of records I am required by law to keep in physical form and have on hand for years on end. Mr. Chairman, I find it difficult to imagine what a large operation must endure if my small farm creates all this.

After I prepare the basic information, and see that it gets processed and stored correctly, there still remain several visits to make to federal agencies or their representatives. These are visits I have to make in person.

Each spring I find myself at the local offices of the USDA and the Commodity Credit Corporation, completing new (yet usually unchanged) versions of the exact same paperwork I completed the year prior. Eligibility to farm (form 502), compliance with Soil Conservation rules (form AD-1026), contract to produce (form 478), your payment request, acreage certification, crop insurance information, copies of any and all leases…these are but a few of the issues for which we farmers fill out paperwork.

Especially problematic is that there is no published handbook, set of rules, or regulations available to producers with respect to Farm Services Agency rules. Farmers have no method of accessing the rules and regulations that govern their paperwork or participation. While I suppose this decreases the amount of time estimated to complete the forms, as there are no instructions to read, it creates obvious problems.

For example, the cash tenant provision…if you have lease your farm ground, and your lease calls for a crop share with a cash minimum, it was considered a cash rent until 1998. The next year, 1999, the rule was reversed and called a share rent. The rule change was not publicized, causing hundreds of farmers to erroneously consider and report their situation.

I will say that I feel the local staff of the Farm Services Agency in my district has tried to streamline the paperwork and the paperwork process for farmers, and thus I implore Congress to maintain adequate staffing levels in our local FSA offices.

In terms of redundant bureaucratic paperwork, the grand-daddy of them all comes when we arrive for our appointments at the water district. Each year my neighbors and I apply for and purchase water from the local water district. The United States Bureau of Reclamation requires that each farmer submit paperwork under the Reclamation Reporting Act (RRA) as part of his/her water application. These forms fly in the face of the notion of paperwork reduction, and seem to serve the sole purpose of ensuring the continued employment of federal employees.

The rules began by requiring that each farmer complete two to three forms, indicating who owns the property he/she is farming, how much other land the landowner owns, who farms any other acreage owned by the same landowner, his/her spouse, dependents, trusts and/or estates. The forms require cross referencing with all other water districts. Since a separate form must be completed for each individual involved, the process is cumbersome.

This debacle has been compounded ten-fold, however, by the promulgation of a new set of rules that require "farm operators" to file reporting form. What is a farm operator? We asked the same question.

We must start by defining a custom service provider, someone who provides a service to farmers, such as crop dusters, custom harvesters, fertilizer applicators, haulers, processors, etcetera. Such a person is essentially an independent consultant hired by a farmer. (A farmer is clearly defined as being neither a provider nor an operator.)

If an individual provider performs more than one service to a farmer, such as fertilizer application and custom harvesting, the provider is now considered an operator, and as such is required to fill out and file RRA forms with the Bureau of Reclamation. Why the Bureau of Reclamation has any need to know who is applying my fertilizer or who is hauling my harvested rice to the elevator is beyond comprehension, and is as yet unjustified by Bureau staff. Moreover, the Bureau has provided no information to any potential farm operators, and has not amended the farmers' instruction to indicate the existence of the new rules. Unless you retain the services of an attorney to follow unpublicized rule changes, you must depend on word of mouth at the coffee shop.

It is important to note that these new rules arise out of an effort by the Clinton Interior Department to placate a few environmentalists who have made a virtual career out of attempting to expand the definition of "lease" as it is applied to determine the extent of landholdings that are entitled to receive Reclamation Project water. For years, these people have asserted that Congress intended to limit the size of "farms," when, in fact, Congress debated and rejected just such a concept more than twenty years ago. Nevertheless, Reclamation drafted and is now implementing a fractured and bizarre set of rules that have little point at this time other than the identification of people who provide farm services to more than 960 acres Westwide. There is no change in the eligibility or water costs as a result of this onerous information gathering exercise, so long as the proper forms are filed on time. Failure to file, however, will make the land served by these "operators" ineligible for Project water until the forms are filed.

More galling is this: anyone I hire as a contractor must ensure his or her own compliance with the Bureau's river of regulatory muck, and I am required to ensure that he or she ensures his own compliance. The time my crop-duster, Jones Aviation, spends on this issue is added to my bill; the time my liquid fertilizer applicator, David Olds, spends is added to my bill; the time I spend double checking that Jones Aviation and David Olds are aware of and in compliance with these rules is added to…, well, I can't seem to find anyone to bill. This is paperwork that serves little if any purpose, by the Bureau's own admission, has an almost incalculable cost to farm economy, and which finds no basis in law. The Reclamation Reporting Act, which is the authority under which these reports originate, has not been amended since 1987 and does not authorize or specify the need for any such reporting.

As the final straw, although the forms are rarely altered in format, we are not permitted to simply file a statement of "no change," if that is the case, but instead are forced to fill out an entirely new set of forms every single year, adding to the time and expense of printing, filling out, filing, and storing more unnecessary paperwork.

Mr. Chairman, farmers across the nation fight costs everyday, and are faced with the specter of having to hire professional accountants, consultants and attorneys to ensure their own compliance with federal regulations and paperwork requirements. The cost to farmers to comply is enormous, both in real dollars (my own cost I estimate at around $6,000/year) and in time. In light of depressed markets, low commodity prices, and an overall increased cost of doing business, reducing the paperwork burden and simplifying the compliance requirements imposed upon our nation's farmers by our federal government would be an excellent manner by which to provide immediate assistance to our nation's farmers – assistance which would add little or no cost to the federal budget.

Mr. Chairman and members of the Committee, I urge you to provide critical relief to your farmers. We are drowning under the sea of paperwork promulgated by the federal government. Thank you.

Mr. OSE. Now I recognize Mr. James Knott, who's president and chief executive officer of Riverdale Mills Corp. in Northbridge, MA. You're recognized for 5 minutes.

Mr. KNOTT. Good morning, Mr. Chairman, and good morning, Mr. Otter.

I started my first business in 1956 immediately after getting out of the Army, and I have been familiar with OSHA since 1970 when they came into being. I bought its book, which was the Federal Register, and it was about the size of a city of Boston white pages. Now it's many, many times thicker.

The business that I started in 1956 was in an abandoned mill building, and, because there were no employees except myself in the very beginning, I had to do every single job in that business, and I did the same thing again in 1978 when I started my second career out in Northbridge, MA.

What I do in that business is I make a plastic-coated welded wire mesh that was originally intended to be used for lobster traps in the New England fishery. Today, that product is used for many, many other things, and we're shipping it all over the world.

This business of OSHA reaching out beyond the occupational area, which I consider to be the four walls of the factory, and becoming interested in pain that people might bring to work, to me, is an overreaching of its authority. OSHA really shouldn't be going out that far.

The first—or the second business, rather, that I started, as I said, we make the wire for lobster traps, but it's also going all over the world. The building was a 20,000-square-foot building. Today it's 265,000 square feet, and we've set up a program to achieve zero accidents in the business. We have a safety committee, consisting of about 30 people, and those 30 people rotate regularly. Thirty people is approximately 25 percent of the total employment. They meet, and they come up with suggestions for making things safer, and we have no budget limitations on what it takes to make things safer in that business because people are the base of the business.

In the first quarter of this year, we had a zero accident rate with one minor exception. We're members of the National Association of Manufacturers that I joined about 3 years ago, and I'm now serving on its board of directors, and I never realized before I met them how important they are to this manufacturing business in the United States of America. We spend—last year we spent about $41,000 working on OSHA problems, and we, as I say, have the committee that works on this all the time.

One of the interesting things in talking about overburdening not only with respect to paperwork, but also with time spent dealing with agencies such as OSHA, was an event that took place 1 day in 1996. We had a flood at the Riverdale Mill, which is on the Blackstone River, and a hole had opened up in the street. One of my maintenance men, who's been with me for many years, had put a ladder down into the hole, and he stepped down a few rungs to measure the hole to see what it would take to fill it.

Well, there were some OSHA people there that day on an entirely unrelated matter, and one of them happened to walk out into the street. And he said to the man, "get out of that trench." Well, my maintenance man, who is a year older than I am and has had

a lot of experience, said, "this isn't a trench." "This is a hole, and I'm going to fill it." So the OSHA man said, "get out of that trench right now."

Well, my maintenance man felt that there wasn't any sense in talking to him, so he did his calculations and left. I got a thing in the mail a few weeks later, and what it said was that I had endangered a man's life by putting him into a trench and that I should pay a fine. Well, a trench does not have a poured concrete wall, and it's more than 5 feet deep, and this was neither of those things. So I called the OSHA office. I went through the procedure, and the procedure, of course, is to call a local office. I told them I wanted to appeal, and the fellow who I spoke to, said, look, this is going to cost you a lot of time and money. I can cut the fine in half. I said, well, the time and money isn't what bothers me. What bothers me is that you have people out here like this damaging the economy of the United States. They're taking a lot of my time, and I just want this sort of thing exposed. So he said, very well. I'll see you in court.

Well, next call I got was from an OSHA attorney in Boston. I had filed my appeal, which was about a half an inch thick, and he said, Mr. Knott, I've read your appeal, and I can understand where you're coming from. Look, I can cut the fine in half again. I said, that's not what I'm interested in. What I'm interested in is exposing these people. I'd like to get this young man up on a stand in front of the media and let him explain why he thinks a hole is a trench and why I should pay fines for it. Well, the attorney said, I'll see you in court.

The next thing I got was a letter in the mail, and the letter was from the court. What it said was the joint motion to dismiss has been granted. I called my attorney. I said, what is this business about a joint motion? He said, well, that's what they said the—that's what they told the court. And, I said, I don't want this case to be dismissed.

My attorney said, Jim, there's nothing we can do. The judge has made his ruling.

So that's been some of my other experiences with OSHA, and——

Mr. OSE. Mr. Knott, we'll enter your statement in the record, but you're over your 5 minutes.

Mr. KNOTT. Oh, I'm sorry.

Mr. OSE. That's OK. I appreciated the story. I wanted to get to the end of it before I cut you off. But we'll enter your statement in the record. I need to go on to Mr. Nicholson at this point.

[The prepared statement of Mr. Knott follows:]

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TESTIMONY OF JAMES M. KNOTT, SR.

PRESIDENT AND CEO

of

RIVERDALE MILLS CORPORATION

regarding

PAPERWORK INFLATION — PAST FAILURES AND FUTURE PLANS

before the

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

of the

COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

April 24, 2001

RIVERDALE MILLS CORPORATION

Good morning. My name is James M. Knott, Sr., and I am the president and chief operating officer of Riverdale Mills Corporation. Riverdale Mills is in the business of manufacturing steel-welded wire mesh that is galvanized and coated with thick polyvinyl chloride (PVC) to protect the steel from corroding in hostile environments like the oceans.

The first market to use our product was the lobster fishing industry in New England. I put the first wire lobster trap in the Atlantic Ocean in 1957.

For more than 300 years, lobster traps and other crustacea traps, fished all around the world, had been made of wood and twine.

There was much resistance to change from wood to wire, and it took about 20 years to significantly penetrate the market here in New England, but today, almost 90 percent of the lobster traps in New England are made of wire.

In 1978, when I saw the acceptance of my wire traps growing, I decided it was time to build a piece of equipment to plastic coat the welded wire mesh by a new process unlike any other in the world.

My first need was an inexpensive building. I found an abandoned 1852 New England mill building, located in the Town of Northbridge, 13 miles southeast of Worcester, Massachusetts, on the Blackstone River.

Ninety percent of the windows had been smashed; the roofs were full of holes; and the building had been slated for demolition, mechanically; or, as the fire chief said to me, "If you hadn't bought it, we wouldn't have put a fire out."

The only habitable space was a 20,000 square foot section of the mill, and that is where, on the first of May 1979, I began by taking boards off the windows and building the equipment to plastic coat welded wire mesh by my new process.

Today, the mill has been expanded to 265,000 square feet; the office walls are covered with commendations for restoring a historic mill building; and I have applied for a permit to build a 104,000 square foot addition.

An interesting aspect of my interactions with the Occupational Safety and Health Administration (OSHA) is the fact that I enjoy "hands-on" involvement in manufacturing.

I studied science and engineering in junior high school, high school and one year in college in pursuit of a degree in Mechanical Engineering, but I changed my mind, switched to Liberal Arts and earned a degree in Economics with a minor in Government.

RIVERDALE MILLS CORPORATION

Because I enjoy "hands-on" involvement in manufacturing, and started the business without any employees, I have personally — "hands-on" — done every job in the mill and I personally know about safety.

Riverdale ships its products all over the Western, and much of the Eastern, Hemisphere, and more than 100 people are on the payroll.

Our greatest assets are the people on the payroll and, to protect those assets, ever since the beginning, safety has been our most important objective.

Our goal has always been ZERO accidents.

In the first quarter of this year, with one minor exception, we have had zero accidents.

One of the most important contributions to Riverdale safety is a plantwide safety committee that meets regularly to discuss and suggest opportunities to ensure that we will have a safe and healthful work environment.

Riverdale Mills is a member of the National Association of Manufacturers (NAM) — 18 million people who make things in America. I also serve on the NAM Board of Directors. The NAM is the nation's largest and oldest multi-industry trade association, representing 14,000 members — including 10,000 small and mid-sized companies — and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states.

As a small business owner, I have been asked to provide Subcommittee members my perspective on the issue of keeping government records, namely for OSHA and the Environmental Protection Agency (EPA).

My testimony will focus primarily on OSHA's recordkeeping rule that was finalized and published on January 19, 2001 — the last full day of the previous Administration — and that was clearly coordinated with a far more controversial rule governing ergonomics.

Let me reiterate that, at Riverdale Mills, we are committed to providing a safe and healthful workplace for each and every one of our employees.

In the last four years, by making safety a primary goal of everyone at Riverdale Mills, we have reduced our lost-time injury accidents by 75 percent. This year, we will spend more than $41,000 on safety training, education and compliance in our ongoing effort to create a strong safety culture; and, as the Safety Committee members know, there are no budget limitations on what can be spent improving safety.

RIVERDALE MILLS CORPORATION

At Riverdale Mills, we believe in a partnership with our employees that is built on personal accountability and corporate responsibility, and that is how we are able to compete all over the world.

I also know firsthand that the NAM is committed to working with employers, employees and OSHA to identify and eliminate workplace hazards, thereby maintaining a safe and healthful workplace.

Unfortunately, manufacturers — particularly smaller ones like Riverdale — seeking advice on how to further enhance workplace safety and health are reluctant to call on OSHA, due to a, more often than not, "gotcha" encounter with the agency.

A perfect example of a "gotcha" encounter was one day when two OSHA inspectors were visiting Riverdale to investigate a complaint they had received from an employee who had resigned because he didn't like his job; or, for that matter, didn't like any job.

The Blackstone River had recently overflowed its banks and opened up a hole in the street that needed filling. One of our experienced maintenance men had put a ladder into the hole and gone down a few rungs to measure the hole. One side of the hole was a poured concrete wall and the other was dirt at its natural angle of repose.

The OSHA inspector shouted at the maintenance man, "Get out of that trench!" The maintenance man said, "This isn't a trench, this is a hole and I'm going to fill it!" The OSHA inspector said, "It's a trench!" Having completed his objective of measuring the hole, the maintenance man didn't argue with the inspector, whom he later referred to as a "nut. "

A short time later, I received a note in the mail telling me "I had endangered a man's life" and would have to pay a fine!

I called the OSHA office and said, "I am going to appeal this notice of non-compliance."

The OSHA person said, "It's going to cost you a lot of time and money; I can cut the fine in half."

I said, "The fine is not what concerns me. What concerns me is that your inspectors don't know the difference between a hole and a trench! This hole was less than five feet deep, one wall was poured concrete, and my maintenance man wasn't at the bottom; he was standing on a ladder in no danger whatsoever!"

The OSHA person said, "Very well. I'll see you in court!"

I filed an appeal and got a telephone call from an OSHA attorney in Boston.

He said, "Mr. Knott, I've read your appeal and I can see where you're coming from. I can cut the fine in half again!"

I said, "I want to put the OSHA inspector on a witness stand in a courtroom and record the fact that he was lying. I have lots of pictures of the hole and my maintenance man very much wants to testify about the inspector's lie."

The OSHA attorney said, "Very well. I'll see you in court!"

What happened next was I received a letter from the court notifying me that the "joint motion to dismiss had been granted!"

Furious, I called my attorney and said, "I want to bring this case to court!"

He said, "Jim, there's nothing we can do. The judge has dismissed the case."

I could tell you about many other cases where OSHA inspectors lied about non-compliances and levied fines. In each of the cases, I appealed, and the cases never were heard except for one that is in the appeal process right now.

However, although these cases are very overburdening, which is exactly what we are here to talk about today, I want you to know that — as I've just described — compliance with regulatory policies, directives, interpretations or other agency decisions, in whatever form, is very expensive and time-consuming.

People who make things in America have to divert their attention from productivity and quality goals to deal with bureaucracies, inspectors, complainants, lawyers and courts — a diversion with which I have had to deal time and again.

Unfortunately, many bureaucrats, inspectors, complainants, lawyers and courts do not understand business.

What they do not understand is that businesses here in the United Sates, and all over the rest of the planet Earth, cannot be successful if the business is unsafe.

If a business is unsafe, people who value themselves will not want to work.

Manufacturers, like us, support a reasonable system that provides common-sense guidance regarding which occupational injuries and illnesses to record and how to record them; not one that would impose excessive paperwork burdens or create more confusion among employers, with no added benefit or efficiency.

In particular, as a Director of the NAM, I am concerned that the Clinton Administration issued a rule that was supposed to be an improvement over current

recordkeeping requirements, but which, in many respects, substantially and inappropriately expands the number of situations that will be called recordable injuries and illnesses.

Further, I am concerned that an injury will be recordable even when it is only a symptom, and even when an event in the workplace merely "contributed to" the resulting condition or significantly aggravated a pre-existing injury or illness.

The next several paragraphs will describe in greater detail my concerns with OSHA's final recordkeeping regulation. The agency, in crafting the regulation, is expanding recordability for injuries that are predominantly caused outside the workplace and artificially increasing the number of musculoskeletal disorders that will be deemed work-related. These specific provisions are of particular concern, given that Congress, recognizing the redundancy of OSHA's activity in the workplace, rescinded the ergonomics rule just last month; now, injuries and illnesses must be work-related.

In my view, OSHA's final recordkeeping regulation exceeds the department's statutory authority to collect workplace injury and illness information, because it requires the recordation of injuries and illnesses that have no or insufficient relationship to the workplace. This will result in a substantial increase in the number of recordable injuries and illnesses because the definition of an injury or illness includes "symptoms" that are not objective or quantifiable. An injury or illness is defined as "an abnormal condition or disorder, " 66 *Fed. Reg.* 6135 (1904.46), encompassing within its broad scope "[p]ain and other symptoms that are wholly subjective." *Id.* at 6080. OSHA explains further that "[t]here is no need for the abnormal condition to include objective signs to be considered an injury or illness." *Id.*

Under this authority, the Secretary is permitted to adopt two forms of recordkeeping regulations: (1) "regulations requiring employers to maintain accurate records of, and to make periodic reports on, *work-related deaths, injuries and illnesses* other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restrictions of work or motion, or transfer to another job" and (2) "regulations requiring employers to keep and maintain records regarding the causes and prevention of *occupational injuries and illnesses*." *See* 66 *Fed. Reg.* 5916 [emphasis added and internal quotations omitted]; 29 U.S.C. §§ 657 & 673.

Despite this lack of authority, the final rule will compel employers to record many injuries and illnesses on Form 300 that are either in whole or in part unrelated to employee activities in the workplace. Further, the rule expands the definitions of "work-relatedness," and "injury or illness" where these definitions will encompass *both* work-related injuries and illnesses *and* injuries and illnesses that are neither attributable to workplace activities nor to events in the work environment. *See* 29 C.F.R. §1904.5; 66 *Fed. Reg.* 6080.

Even more troubling, OSHA's final rule requires employers to "consider an injury or illness to be work-related if an event or exposure in the work environment either caused *or contributed to* the resulting condition or *significantly aggravated a pre-existing injury or illness*." 29 C.F.R. § 1904.5(a) (emphasis added). The "caused or contributed" standard amounts to a scintilla rule, mandating that "if work contributes to the illness in some way, then it is work-related and must be evaluated for its recordability." 66 *Fed. Reg.* 5958. In other words, if pain or another symptom of a non-work-related injury or illness is experienced at the workplace as a result of normal job duties that would not cause the employee's pain but for the non-work-related injury or illness, it is nevertheless the fault of the workplace, and the employer must record the injury or illness.

Additionally, the rule will also attribute many other non-work-related injuries to the workplace by amending the definition of "preexisting condition." 29 C.F.R. § 1904.5(b)(4) and (5). The rule unjustifiably limits the types of injuries and illnesses that are considered preexisting only to those injuries and illnesses that "resulted *solely* from a non-work-related event or exposure that occurred [sic] outside the work environment." 29 C.F.R. § 1904.5(b)(5) (emphasis added). This "solely" standard would force employers to record many non-work-related injuries and illnesses because of the impossibility of proving the negative — that employment did not contribute whatsoever to the employee's symptoms. Consequently, the final rule will require employers to record most, if not all, preexisting employee conditions as work-related injuries or illnesses, despite the lack of nexus between the preexisting condition and the workplace.

By OSHA dictating that employers record injury and illness claims that arise from "[p]ain and other symptoms that are wholly subjective," employers will be compelled to record injuries that are not only unrelated to work, but also that may not exist at all. 66 *Fed. Reg.* 6080. This requirement will encompass unverifiable, nonobjectively diagnosed ailments, which are poorly defined, subjective, often not serious, often of unknown cause, and more often than not, due to non-work-related causes.

The final rule also creates a geographic presumption that will require employers to assume work-relatedness for all injuries or illnesses that first manifest themselves in the workplace. This presumption, coupled with other standards that require findings of work-relatedness if there is a scintilla of causation with, or aggravation by, work, will force employers to err on the side of recordation for every injury or illness that is conceivably work-related in some minuscule way.

Further, the rule unnecessarily complicates the determination of whether an injury is work-related by confusing the definition of work environment. An injury or illness is presumed to be work-related if it results from an exposure in the work environment. 29 C.F.R. § 1904.5(a). According to the rule, the work environment includes, not only the physical plant in which employees work, but also off-premises locations where employees "are working or conducting other tasks in the interest of their employer." 66 *Fed. Reg.* 5960.

Moreover, the "work environment" also includes "equipment or materials used by the employee during the course of his or her work." 66 *Fed. Reg.* 6124. These provisions further confuse the determination of work-relatedness that employers must make under the final rule.

Also, OSHA's hearing loss threshold of 10 dB(A) is too extreme. OSHA has exceeded its statutory authority by providing that all hearing loss Standard Threshold Shifts (STS) of 10 dB(A) must be regarded as illnesses and classified as serious, and also by providing that, absent other evidence, such hearing shifts may be presumed to be occupational in origin simply because the ambient noise level is 85 dB(A) or higher (8-hour time-weighted average). OSHA's recording trigger under this section is not considered a material impairment by the medical community, by state workers' compensation systems, or in applicable OSHA standards. Consequently, the STS of 10 or more dB(A) in either ear that triggers recordability under the final rule is not a disabling, serious, or significant injury or illness — a mandatory threshold criterion for recording it on Form 300 under Sections 8 and 24 of the act.

Additionally, OSHA's insistence that home office injuries should be recorded is another example of overreaching its authority. OSHA has no authority to compel the recordation of injuries or illnesses occurring in an employee's home office. The final rule requires the recordation of "[i]njuries and illnesses that occur while an employee is working at home, including in a home office, . . . if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting." 29 C.F.R. § 1904.5(b)(7).

But, as OSHA has recognized, "the OSH Act does not apply to an employee's house" and, accordingly, OSHA will "not hold employers liable for work activities in employees' home offices." Statement of Charles Jeffress, Assistant Secretary for Occupational Safety and Health, Department of Labor, before the Subcommittee on Employment, Safety, and Training, Senate Committee on Health, Education, Labor and Pensions (January 25, 2000) (emphasis in original). *See also*, OSHA Directive, CPL 2-0.125 — Home Based Worksites (February 25, 2000). If, as OSHA has stipulated, the act neither applies to an employee's house, nor to a home office, the provisions in the final rule that require the recordation of injuries and illnesses occurring in an employee's home office — where the employer has no control over the office's layout or the equipment used — exceed OSHA's statutory authority.

In closing, I would like to reiterate that, at Riverdale Mills, we are committed to, and have made great forward progress in, our goal of providing a safe and healthful workplace for each and every one of our employees. While OSHA's final recordkeeping rule may be an improvement over current recordkeeping requirements in some respects, I remain concerned that it exceeds the department's statutory authority to collect workplace injury and illness information and will unnecessarily, inappropriately and substantially increase the paperwork burden of employers.

As a member and Director of the NAM, I remain committed to working on solutions that simplify and lessen the paperwork burden of recording occupational injuries and illnesses for manufacturers. Yet the reality remains that many small business owners — like me — find it difficult to trust OSHA for guidance when it comes to workplace safety and health. For too many of us, our encounters with OSHA have been confrontational and intimidating rather than helpful and cooperative, resulting in frivolous and unfounded citations, fines and an excessive paperwork burden.

We therefore applaud the Committee for bringing this issue to light, and for attempting to remind our Executive Branch enforcement agents of their obligation to undertake their responsibilities with care, with due consideration for the limits imposed by law and the Constitution, and with a decent respect for fairness in the use of their power against the people who make things in America.

Thank you, Mr. Chairman. I will be glad to answer any questions you might have.

Mr. OSE. Mr. Nicholson for 5 minutes joins us. I appreciate your taking the time. Mr. Nicholson is the owner of a company called Company Flowers in Arlington, VA. You're recognized for 5 minutes.

Mr. NICHOLSON. I'm honored to appear before you today to talk about some of the problems posed to small business by the Internal Revenue Service. My wife and I operate a small flower shop in Arlington, VA, sometimes described as the "best 'lil' flower shop in all of Washington." I can't afford national promotions—I need advertising—so thank you!

I have joined the Government Relations Committees of NFIB and the FTD because I feel strongly that we should try to do something about some of the problems, not just complain about them. So, I am pleased to appear before you today as a representative of both organizations.

Let me—in an effort to cut down on the amount of time here, let me turn to page 2 and point out that there are really three things I'd like to suggest that we focus on. Let's one, simplify the tax code; two, make it as equitable as possible across the board; and, three, perhaps give taxpayers a method to right the balance so that the IRS auditors don't always have the upper hand.

First, we need to simplify the code, but simplicity will have a cost. Those who are engaged in arcane or unusual endeavors may very well lose their special, if perhaps valid arguments. Simplicity will encourage most of us to abide by the law, because then we'll understand it. Right now I cannot grasp what the tax code wants from me, other than money. I must hire an expert, a CPA or a tax lawyer. Other than fear of arrest, I have no incentive to abide by the code, because I don't understand it.

Some of my equals know better how to work the tax code than I do. Equality of treatment under the code doesn't seem to be taking place, and while, comparisons are difficult because of direct concerns about privacy, nonetheless there are enough anecdotal instances to certainly raise strong suspicion that only the clever get rewarded. And, of course, those who are wealthy have both the reason and the wherewithal to hire the experts to improve their position under the code. That is hardly fair, but maybe life is not supposed to be fair.

Those first two solutions, the request for a simplification and for an equitable treatment, are really going to require legislation, and that's at your doorstep more than at the agency's.

The third idea that I'm suggesting is that there might be a way to improve the administration. Several years ago when I was audited, I approached the IRS with much fear and trembling, for I didn't know what to expect. I found an auditor who was each time concerned mostly with finding enough additional revenue to check off the box labeled "get more money for his or her work."

There ought to be a well-recognized way to reassure the average taxpayer that upon audit, there is a method by which to balance the discussion. Fortunately, I've been able to hire a CPA who would accompany me today, but for small business owners who cannot afford or do not want to hire a CPA or a tax lawyer, perhaps there could be some sort of a preliminary step undertaken with an advocate, maybe a retired auditor, someone who can be available to

help the taxpayer before they meet with the auditor. Why must the average Joe or Josephine be made to feel helpless when sitting across the table from a skilled, knowledgable IRS auditor? What we need is a conference before meeting the auditor and an "assemble of records" session so that the conference with the IRS auditor can be expedited, as well as more balanced.

In sum, it's clear to me, and I hope to you, that we need to simplify our tax code, and we need to make it more equitable. We cannot do just that by patchwork. We have to resume the national debate over a major revision of the entire tax concept such as a flat tax and the other ideas. The debate seems to have gone off the front pages. I'd like to see it return, because I think that the time is now for change while we have a White House dominated by concern for reducing the tax burden. So that's one of our major compelling reasons to revise the code. Let's get to it. Thank you.

Mr. OSE. Thank you, Mr. Nicholson.

[The prepared statement of Mr. Nicholson follows:]

Mr. John Nicholson
Proprietor
Company Flowers!
Before the
Committee on Government Reform
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
On
April 24, 2001

I am honored to appear before you today to talk about the problems posed to small businesses by the Internal Revenue Service and the confusion provoked by our national tax laws.

My wife and I operate a small flower shop in Arlington, Virginia, sometimes described as "the best 'lil' flower shop in all of Washington." We employ 8-15 persons, depending upon the season, and we sell giftware, candy, and greeting cards as well as flowers, floral designs, and well-known "English Country Garden" assortments of specialty flowers.

I have joined the government relations committees of the National Federation of Independent Businesses (NFIB) and the FTD Association of independent florists because I feel strongly that I should try to do something about the problems, not just complain about them. I am pleased to appear before you as a member of both organizations.

Every four years the NFIB Education Foundation reviews and ranks the top 75 problems facing small business owners. Federal paperwork, sadly, ranks 8 on the list. Paperwork is a perennial problem and a constant complaint of small business owners. Most federal paperwork is tax related, so IRS becomes the primary focus of attention, and of course its rules affect all kinds of businesses, large and small. Few other agencies have such a broad reach.

There are plenty of problems for a small business arising from the tax laws. Example: For free, I collect State sales tax at considerable cost to our business, and then I must pay an additional state/local tax based on our sales volume -- even if I were to lose money and declare bankruptcy. Example: Again for free for the Federal Government, I collect the all-too-substantial payroll taxes -- so substantial that Medicare was

split off from FICA so as to avoid alarming employees about how much is being taken out of their paychecks to be sent to Washington. And like other businesses (and most home-owners) I pay taxes on electricity used, on freight costs, and the list of taxes can go on and on. I feel certain one of the Washington "think tanks" can spell out the tax burden in greater detail and precision than I could attempt to do, as a florist.

Does this plethora of different taxes create undue burdens, generate paperwork problems, and cause the hiring of tax professionals at considerable cost (which is of no benefit to our customers, unlike most of the other costs of our business)? The answer is yes, of course. However, in all candor, I must acknowledge that if I have properly captured financial activity so I can accurately manage my business, then reassembling it for determining Federal income tax liability is not much of a burden. Only when we "fly by the seat of our pants" -- not capturing the numbers to control our business – that the task of collecting the numbers solely for tax purposes results in placing the burden at the feet of the tax collectors.

Rather than reciting horror stories about too much taxation, however, I want to devote my limited time before you today to ask you to focus on three issues:

[a] Simplify the tax code.
[b] Make it as equitable as possible, across the board.
[c] Give taxpayers a method to "right the balance" so IRS auditors don't always have the upper hand.

First, and foremost, we need to simplify the Code.

To do so, I recognize, will mean the Congress -- you who represent the people -- must avoid responding to the vested interests who plead their cases (often validly).

Simplicity will have a cost. Those who are engaged in arcane or unusual endeavors may very well lose their special, if perhaps valid, arguments. But simplicity will encourage the most of us to try to abide by the law, because then we can understand it. Right now, I cannot grasp what the Tax Code wants from me (other than more money!). I must hire an expert, a CPA or a tax lawyer. Other than fear of arrest, I have no incentive to abide by the Code because I do not understand it!

Secondly, it's clear to me that some of my "equals" know better how to work the Tax Code than do I. Equality of treatment under the Code doesn't seem to be taking place. While comparisons are difficult, because of correct concerns about privacy, nonetheless there are enough anecdotal instances to certainly raise strong suspicion that only the clever get rewarded. And of course, those who are wealthy have both the reason and the wherewithal to hire experts to improve their position under the Code -- hardly fair, although maybe life's not supposed to be fair!

The legislative solutions to the first two points would require substantial change. Maybe you should resurrect the "flat tax" or other more draconian measures that were discussed several years ago but which seem to have dropped from the public's eye. Too bad those debates have slid off the front pages. I thought the public debate about the several proposals did much to improve our general understanding of what income taxation is all about.

I might add that the objectives of equality and simplicity through major revisions of the Tax Code are precisely what the

NFIB espouses. My fellow small business leaders are just about evenly divided on which approach to take -- either the flat tax or a national sale tax -- which is probably one reason why the Congress is not rushing to enact one system or the other. But delay is harmful; prompt revision is needed.

Finally, I raise an issue of administration. Several years ago, when I was audited, I approached the IRS with much fear and trembling for I knew not what to expect. I found an auditor each time who was concerned mostly with finding enough additional revenue to check off the box labeled "got more tax" for his or her work record.

There ought to be a well-recognized way to reassure the average taxpayer that upon audit, there is a method by which to balance the discussion. Fortunately, I have been able to hire a CPA who would accompany me should I be audited today. But for those small business owners who cannot afford or do not want to hire a CPA or tax lawyer, perhaps there could be some preliminary step undertaken with an "advocate" (maybe a retired auditor), someone to be made available to help the taxpayer before meeting the auditor? Why must the "average Joe or Josephine" be made to feel helpless when sitting across the table from a skilled, knowledgeable IRS auditor?

Maybe what's needed is a preliminary step, an "assemble the records" session, so that the conference with the IRS auditor can be expedited as well as made more balanced.

Sure, I recognize there are many who try to trick their way past an IRS audit. But would a pre-audit assembly session hinder the IRS pursuit of those who are not trying to abide by the law? I think not. Anyway, it's an idea for you to consider.

In summary, it's clear to me, and I hope to you, that we need to simplify our Federal tax Code. We need to make it equitable. We cannot do so by more patchwork. We should resume the national debate over major revision of the entire concept. The time for major change is now, while we have a White House dominated by concern for reducing the tax burden, for that's one of the major compelling reasons to revise the Code. Let's get at it!

Mr. OSE. Finally, our fourth witness on this panel is Dr. John Bobis, who's the director of regulatory affairs for Aerojet, from Rancho Murieta, CA. Welcome. You're recognized for 5 minutes.

Mr. BOBIS. Good morning, Mr. Chairman, Honorable subcommittee members. I am employed by Aerojet General Corp., which is wholly owned by GenCorp. I am the director of regulatory affairs, among other things, and I am delighted to have the opportunity to testify in front of you today. Due to the short time that I had to prepare for this hearing, I am only going to attack—or, rather, address one governmental agency. That's the Occupational Safety and Health Administration [OSHA].

I am not here to talk about—I am not going to, rather, talk about the general duty clause that OSHA uses in the enforcement toward—specifically in areas where appropriate occupational safety and health regulations have not been promulgated. Also, I am not going to talk about OSHA's egregious penalty assessment policy, nor am I going to discuss OSHA's multiemployer citation policy. All of these are not only unreasonably burdensome and costly, but, in my opinion, may even be unconstitutional.

My company manufactures rockets, and we are heavily regulated by all the regulatory agencies that you can think of. Focusing on OSHA, its authority is granted by the Occupational Safety and Health Act of 1970. The act, in itself, intended by Congress was to assure safe and healthy working conditions for working men and women. The act itself does not state that Congress intended OSHA and its enforcement mechanism to be used as a revenue-generating scheme.

Now I'm going to focus on two particular interests at hand. One is about paperwork burden and the other being the recordkeeping requirements imposed on businesses by many of the regulations promulgated by OSHA. The regulatory burden that OSHA standards impose upon the regulated community can be attributed largely to OSHA's rulemaking process. Since the enactment of the act, Federal OSHA has undertaken the concept of adopting general standards and vertical standards for certain industries, such as construction, agriculture, what have you.

The general industry safety standards contain hazard-specific requirements, and they do not apply to construction, agriculture or other exempted industries unless they are reprinted specifically for that industry. Adoption of vertical standards results in an absolute standard duplication or the use of the general duty clause. The duplication causes potential conflicts and misunderstandings and an increased compliance burden upon the regulated industry. Many of these regulations have numerous recordkeeping requirements.

Other areas of concern in the general industry standard promulgation pertains to occupational health standards. OSHA over the years has promulgated 22 substance-specific standards. The practice of adopting substance-specific standards is an enormous duplication of the voluminous, almost identical requirements. Many of the requirements deal with definitions, exposure monitoring, recordkeeping, what have you. All of these could be simplified by developing one standard or a generic set of regulations with appropriate, charts and references.

As long as I have this opportunity to address you, I would also like to address another important area of the rulemaking process that directly affects the quality of the standards OSHA adopts. This process is called negotiated rulemaking, or the advisory committee consensus approach, that has been used in California successfully for decades. In fact, this process has been so successful in California that none of the safety standards have ever been challenged in court. This method permits labor, management, technical experts and other interested parties to deliberate in an informal forum and agree upon a consensus performance standard. The result of this process is having industry and labor, the regulated community, writing its own regulations, improving the quality and intent of the regulations and thereby enhancing compliance. Once a consensus standard has been developed, then it is ready for the agency to go through the normal rulemaking process, pursuant to the procedures of the Administrative Procedure Act.

Now, I want to spend a little time on the recordkeeping requirement of Federal OSHA. It has not been an unusual occurrence during the last couple of decades to read the morning headline news that a company has been cited by OSHA and received well-publicized egregious penalties amounting to millions of dollars. A closer look at these alleged violations disclosed that the employers were accused of improper recordkeeping practices particularly involving ergonomic-related issues, such as cumulative trauma disorders, muscular skeletal disorders, what have you.

As you may recall, Congress in its wisdom recently voided the new ergonomic regulations promulgated in the last hour by the previous administration. This may be, however, a double-edged sword, because, in the absence of specific regulations, OSHA will continue to enforce the provision of the so-called general duty clause to cite employers in situations where standards have not been promulgated. Each alleged violation of the general duty clause carries a maximum fine, and under the egregious penalty policy, the penalties are assessed on a violation-by-violation basis, which can result in enormous fines.

The obvious question one can raise with respect to assessment of these large fines due to recordkeeping violations is how the requirements and associated fines enhance work safety. In my opinion, recordkeeping requirements and their associated fines for improper recordkeeping provide nothing more than a revenue-generating means for the agency. It has absolutely no effect on the quality or the safety in the workplace. Its sole purpose is to provide means for the agency to get the data for the alleged purpose of establishing trends and allocating resources.

About 27 years ago, I was the first technical person that Cal OSHA Standards Board hired in 1974 at the beginning of the Cal OSHA program. I was intimately involved in the standard development process for many years before moving to the private sector. Based on my knowledge and experience, I think a change at the Federal level is way overdue. The health regulation recordkeeping requirements are especially a maze. I feel very sorry for small employers. I urge OSHA and all of the agencies to make every effort to simplify.

My written comments contain suggested remedial solutions for OSHA, and that concludes my testimony. I will be happy to answer any questions you may have.

Mr. OSE. Thank you, Dr. Bobis.

[The prepared statement of Mr. Bobis follows:]

P O Box 13222
Sacramento CA 95813-6000

April 20, 2001

Congress of the United States
House of Representatives
Committee on Government Reform,
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs,
2157 Rayburn House Office Building
Washington D.C., 20515-6143

Subject: Public Hearing on Paper Reduction Act, April 24, 2001

Honorable Committee Members:

Thank you for inviting me and I appreciate the opportunity to provide testimony relative to the subject hearing on paperwork burden andrecordkeeping requirements imposed on businesses by the regulatory agencies.

By way of background, Aerojet General Corporation (Aerojet) is a defense contractor in the business of research and development, manufacturing, testing, assembly, etc. of liquid rocket engines and solid rocket motors from laboratory to production scale. In this unique and specialized activity, Aerojet employs about 1500 employees at its Sacramento facility and uses hazardous chemicals, flammable liquids, gases and various types of explosives and explosive related devices. All of the work is under strict surveillance of the United States government in accordance with the requirements of the various contracts and pursuant to provisions of the Contractor's Safety Manual for Ammunition and Explosives, promulgated by the Department of Defense. Aerojet is very heavily regulated not only by the Department of Defensebut by the Federal Occupational Safety and Health Administration, California Occupational Safety and Health Administration, Federal Environmental Protection Agency, California Environmental Protection Agency, etc. All of these agencies require, inter alia, enormous record keeping requirements. Failure to properly and precisely maintaining the required records subjects Aerojet to potential loss of contracts, citations and/or financial sanctions.

Because of the short lead-time to prepare for this hearing, I am going to direct my attention only to one of the many regulatory agencies that oversee our operations. That agency is the Occupational Safety and Health Administration also known as OSHA. OSHA's authority is granted by the Occupational Safety and Health Act (Act)

of 1970. The Act and its intent by Congress was to "...assure safe and healthful working conditions for working men and women; by authorizing the enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes..." The Act itself does not state that Congress intended OSHA and its enforcement mechanism to be used as a revenue generating scheme.

Before I go any further, I wanted to clarify that I come before you with multiple hats. During my over 35 years of professional life, I have been in the field of engineering design and heavy construction, a Compliance Officer enforcing the OSHA regulations in California; for over 14 years, I was the Chief Engineer in charge of the standards setting agency for the Cal OSHA program, and for the last 14 years I have been in the private sector, particularly in the aerospace and defense industry with Aerojet. Additionally, I wear a hat of a small employer; that is, I maintain a small engineering and consulting firm specializing in providing forensic engineering services to the legal community and occupational safety and health services for the private sector. I also come before you as a private citizen.

Now I want to focus on two particular interests at hand, one is about the paperwork burden and the other being the recordkeeping requirements imposed on businesses by many of the regulations promulgated by OSHA. The regulatory and paperwork burden that the OSHA standards impose upon the regulated community in part can be attributed to OSHA's rulemaking process. Since the enactment of the Act, Federal OSHA has undertaken the concept of adopting "general industry" standards and "vertical" standards for certain select industries such as construction, agriculture, maritime, etc. The general safety standards contain hazard specific requirements and they to not apply at construction, agriculture, maritime and other exempted industries unless they are reprinted specifically for that industry in whole or in part. Adoption of "vertical" standards results in an absolute standard duplication or the use of the "General Duty Clause". Duplication causes potential conflicts and misunderstandings and increased compliance burden upon the regulated industry. The question is raised if certain industry such as construction for example is exempted from the general standard, then what standard would apply? Oh, but OSHA has an answer for that, this is where the so-called "General Duty Clause" may be enforced. Of course, many of these regulations have specific recordkeeping requirements, which again impose additional burden on business.

Another area of concern in the general industry standard promulgation pertains to occupational health standards. OSHA over the years has promulgated 22 substance specific standards. The practice of adopting substance specific regulations or standards again is an enormous duplication of the voluminous, almost identical, requirements. Many of the requirements deal with definitions, exposure monitoring, regulated areas, method of compliance, hazard communication, protective equipment, recordkeeping, etc. All of these could be simplified by developing one standard or a "generic" set of regulations with appropriate charts and references.

As long as I have this opportunity to address you, I would also like to address another important area which directly effects the quality of the standards OSHA adopts and reduces the paperwork burden upon the regulated community. The OSHA regulations with a few exceptions are developed by special interest groups or by inhouse "experts" and then published in the Federal Register. The rulemaking is a very formal process and proper deliberation of all relative issues does not take place. The rulemaking process I would like to talk about is called negotiated rule making or the advisory committee consensus approach that has been used in California successfully for decades. In fact, this practice has been so successful in California that none of the safety standards have ever been challenged in court. This rulemaking method permits labor, management, technical experts, associations with other interested parties to deliberate in an informal forum and agree upon a consensus standard. The result of this process is having industry and labor, the regulated community or the true affected parties, writing their own regulations, thereby improving the quality, understanding and intent of the regulations, and consequently enhancing workplace safety and compliance. Once a consensus standard has been agreed upon, the standard is then ready for the agency to proceed through the rulemaking process pursuant to the provisions of the Administrative Procedure Act.

Now I want to spend some time on recordkeeping requirements by Federal OSHA. It has not been an unusual occurrence during the last couple of decades to supplement our consumption of cereal at breakfast by reading the morning headline news that a major employer such as Ford, Chrysler, Con-Agri Turkey, Kosher Foods, Lockheed, etc. has been cited by OSHA and received well publicized, "egregious" penalties amounting to millions of dollars. Some might even agree that it is about time not only to slap the hands of these employers but really reach deep into their pocketbooks for willfully failing to correct hazardous conditions at the workplace. To be considered as a "willful" act, OSHA thinks that the employer either knew that a condition constituted a violation or was aware that a hazardous condition existed and made no reasonable effort to correct it. A closer look at these alleged violations disclosed that

the employers were accused of improper recordkeeping practices particularly involving ergonomic related issues, such as cumulative trauma disorders, muscular skeletal disorders, and a like. As you may recall, Congress in its wisdom recently voided the purposed ergonomics regulations adopted by the previous administration at the end of last year.

There is, however, a double edge sword because since there are no regulations on ergonomics, OSHA routinely enforces the provisions of the so called "General Duty Clause" to cite employers in situations where standards have not been promulgated pursuant to the provision of section 6 of the Act. The "General Duty Clause" or Section 5(a)(1) of the Occupational Safety and Health Act requires that each employer: "...shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees..." Each alleged violation of the "General Duty Clause" carries a maximum fine and under the egregious policy, the penalty is assessed on a violation by violation basis, which can result in enormous fines.

The obvious question one can raise with respect to the assessment of these large fines for recordkeeping violations is how the recordkeeping requirement in itself enhances safety in the workplace. In my opinion, recordkeeping requirements and particularly the automatic fines assessed provide nothing more than a revenue generating means for the agency. It has absolutely no positive effect on worker safety. Its sole purpose is to provide means for the agency to gather data for the alleged purposes of establishing trends and to allocate its resources.

Also, just before the end of last year, the previous administration promulgated another 11th hour regulation along with ergonomics, the revised recordkeeping requirements. The US Department of Labor, Bureau of Labor Statistics in September 1986 published the recordkeeping guidelines for occupational injuries and illnesses in a booklet compassionately referred to as the "Blue Book". For about ten years, the agency has been working on revising the present recordkeeping requirements. In my opinion, the new regulations on recordkeeping are not that significant and its implementation will result in retraining all the affected personnel in the regulated community including changing the forms which will result in nothing more than unnecessary additional regulatory burden. Additionally, as I just described, recordkeeping requirements and fines do not result in safer workplaces.

As a reminder, sometimes regulators forget in their exuberance of enforcing the regulations they adopted the simple fact that when a company is fined for example $50,000 dollars, at a 2% profit margin, the Company must make 2.5 million dollars in sales in order to recover the cost of the fine. Likewise, in the event of a $200,000 dollar fine and at a 2% profit margin, a company would need to generate at least 5 million dollars in sales to pay for the fine. The same cost factors also apply if a company experiences a loss via either by an injury and/or property loss. Therefore, there is already a substantial incentive for a company to work safely and provide a safe and healthful workplace for all of its employees.

About 27 years ago, I was the first technical person that the Cal OSHA Standards Board hired in 1974 at the beginning of the Cal OSHA program. I was intimately involved in the standard development process for many years before moving to Aerojet as Director of Safety, Health and Risk Management and eventually as Director of Regulatory Affairs. Based on my knowledge and experience, I think a change at the Federal level is way overdue. The health regulations andrecordkeeping requirements are especially a maze. I feel very sorry for small employers. We at Aerojet have a large and capable safety and industrial hygiene staff but what does a small employer do? I urge OSHA and all other agencies to make every effort to simplify.

Another area of paperwork burden relates to Federal OSHA's progressive inflexibility over the last decade when it comes to approving existing State regulations subsequent to the adoption of new Federal standards. The Act "...encourages states in their efforts to assure safe and healthful working conditions..." Part of this effort has been over the years in California to adopt "consensus" regulations, usually "performance oriented" written by the folks who are directly affected by them. Section 18 of the Act requires the approval of these standards if they are"...at least as effective...as the standard promulgated..." by Federal OSHA. This provision of the Act today is interpreted to mean that the State must adopt standard that are almost "identical to" the Federal standard with only minor editorial revisions permitted. This results in the proliferation of simple requirements into voluminous sets of technical jargon and paperwork requirements. Examples include regulations for confined spaces, forklift operator training, trenching and excavation, roofing operations, fall protection, substance specific standards, etc.

It should also be pointed out that the regulatory burden upon industry caused by voluminous, duplicative, hard-to-understand, forced-to-keep-records, etc. standards results in substantial costs to the regulated community. The costs are derived by staff

augmentation necessary to understand the standard, implement the provisions of the standard, train all the affected employees, monitor the workplace for compliance, fill out forms, recordkeeping etc.

I respectfully offer the following potential remedial solutions to reduce the paperwork and recordkeeping burden on industry by OSHA:

1. Discontinue the present "vertical standard" promulgation concept.

2. Adopt performance-oriented hazard specific safety standards with minimal specificity.
3. Discontinue the "substance specific" health standard promulgation policy.

4. Adopt a "generic occupational health" standard.

5. Establish and implement an "informal negotiated rulemaking policy".

6. Always use representative ad hoc occupational safety and health advisory committees via the negotiated rulemaking process for the purpose of developing consensus occupational safety and health regulations.

7. Permit State Plan States to participate as a member of the advisory committees

8. Discontinue the practice of enforcing defacto standards by enforcing OSHA policies and procedures as if they were truly promulgated regulations pursuant to the provisions of the administrative procedure act. Examples ofdefacto standards include egregious penalties, multi-employer worksites, etc.

Thank you for the opportunity to address the Committee and my comments are intended to be constructive in nature and are offered in the interest of improving government regulations and reducing the regulatory burden on industry without scarifying safety in the workplace or endangering our environment.

Very truly yours,

John L. Bobis, P.E. Ph.D
Director
Regulatory Affairs

Mr. OSE. I'm going to recognize Congressman Otter for 5 minutes.

Mr. OTTER. Thank you very much, Mr. Chairman. And I thank the panel for being here.

I have shared, in one form or another, most of your horror stories. I worked for a food processing, fertilizer processing and large cattle feeding operation for 30 years before I retired in 1993, and I went through all those from 1971 on with OSHA and many of the others. And, so I can see now that, since my retirement, nothing has gotten better.

So, I am particularly interested. Mr. LaGrande, have you ever broken down your cost of regulation per acre? Water is going to be probably in your area, $120 an acre; fertilizer, $80; plowing, $14. What is—have you ever broken it down? You farm, 900 acres, as I understand.

Mr. LAGRANDE. I do.

Mr. OTTER. If you were to put a cost per acre on that, could you give me a swag or some kind of an idea?

Mr. LAGRANDE. I would say it's probably in the neighborhood of approaching $20 an acre.

Mr. OTTER. So $20 an acre, which would be $18,000——

Mr. LAGRANDE. Yes.

Mr. OTTER [continuing]. Wouldn't that be right?

Mr. LAGRANDE. Yes.

Mr. OTTER. That would be $18,000 a year?

Mr. LAGRANDE. Yes.

Mr. OTTER. Would you say that would be the same for all folks in the California area? Are you in the San Joaquin Valley?

Mr. LAGRANDE. I'm in the Sacramento Valley.

Mr. OTTER. I see.

Mr. LAGRANDE. I would guess that would be an average. I'm guessing that is my cost of compliance with all the recordkeeping types of paperwork, and I would say I'm fairly average in that respect.

Mr. OTTER. Do you belong to any—in fact, I think you did say in your testimony, and I apologize, sir, that you did belong to a couple of national organizations, farm organizations?

Mr. LAGRANDE. Yes. That's right. The Farm Bureau.

Mr. OTTER. The National Farm Bureau—is that one of them?

Mr. LAGRANDE. Yes, sir.

Mr. OTTER. I apologize. I don't know if you were here earlier when we had——

Mr. LAGRANDE. I was.

Mr. OTTER [continuing]. The IRS, the OMB and the GAO. But during the inquiries to that panel, they were asked if they would hold—or had held field hearings to get the input from the victim—or from the folks that were required to fill out all this information and everything. Do you think that the Farm Bureau would be interested in providing information to those folks?

Mr. LAGRANDE. I would suppose that they would be very interested in testifying before such a hearing.

Mr. OTTER. Now, there was just three agencies, as I recall, that most of your testimony spoke to. How many other agencies—how

many total agencies, in one way or another, require a report or demand information or input from your 900 acres?

Mr. LAGRANDE. Well, I would suppose on the Federal level, there are probably 8 to 12, and then you have to start in with the State, and you probably have as many there.

Mr. OTTER. And is it true that the State reports are different than the Federal reports?

Mr. LAGRANDE. Oh, absolutely.

Mr. OTTER. Is it a different language?

Mr. LAGRANDE. Absolutely.

Mr. OTTER. I see.

Mr. Knott, I'm interested in a couple of things in your situation with OSHA. Do you have any idea what the cost, your legal costs, your costs involved in administrative time and that sort of thing with OSHA, which was eventually, I guess, dismissed?

Mr. KNOTT. Well, actually, they requested that it be dismissed, but I had another interesting one recently involving a young man who fractured three fingers by putting them up against some rolls, and the penalty for that was $4,500. What had happened was the inspector from the OSHA said that his arm had gone between the rolls up to the elbow. Well, interestingly enough, the space between the rolls was 15/16ths of an inch. So had his arm gone in there, it would have been 18 inches wide. And when we asked the inspector under oath during depositions how she knew, she said, I saw it right after the accident. Well, she apparently didn't notice it was 18 inches wide. So the—as I say, the fine was $4,500, and the——

Mr. OSE. Did you pay that?

Mr. KNOTT. No, I probably spent $45,000, not paying $4,500.

The OSHA prosecuting attorney said to me, "Mr. Knott, why do you let a minuscule little thing like this bother you? Just pay the fine." I said, "I don't want to do that. I can't live with these people inventing and making up noncompliant systems and saying things happened when they didn't happen. I want to take this thing to court." He said, "Well, I'll tell you, it's going to cost you a lot of time and money."

And, he made good on his word. He deposed 10 people. We went to trial for 2 days, and he took 10 people up there sitting in the courtroom for 2 days. So, as I say, probably around $45,000. But I don't think it's right to let these things get away.

We had another experience with OSHA in a place called the Whiten Community Center, which is a community center in this town I live in, and they were remodeling the place. The building was built in 1923. OSHA came in and fined them $9,000 for having receptacles in the wall without three-pronged receptacles. Well, in 1923, they didn't have three-pronged receptacles. It was $9,000.

And they had another interesting one. They fined $750 for having an IBM typewriter without a three-pronged plug. There's never been an IBM typewriter with a three-prong plug. Some of the directors of the community center went up to Springfield and made an arrangement with OSHA without my knowledge, I didn't know this was even going on, and OSHA cut the fine in half. It was only $4,500. And the director said, "Well, we don't have any money," so OSHA let them pay it for over three payments of $1,500.

When I learned about this, I said, "Why in the world did you pay that fine? You don't have to have three-pronged plugs. You are not required to have three-hole receptacles any more than I have to have a catalytic converter on my Model A. Why did you do that?" They said, "Well, we knew if we didn't, they'd come back and do it to us again."

Mr. OTTER. Mr. Chairman—excuse me, Mr. Knott—I realize my time is up. It's too bad perhaps OSHA isn't as grounded as they would like all our electricity to be, no matter when it was invented.

Thank you very much, Mr. Knott.

Are we going to have another round?

Mr. OSE. Yes.

Mr. OTTER. Thank you, Mr. Chairman.

Thank you, Mr. Knott.

Mr. OSE. Thank you, Congressman Otter.

Dr. Bobis, I want to turn first to you. Mr. LaGrande, Mr. Knott, Mr. Nicholson are business owners, and they do not have nearly the experience that you have, I presume, from the procedural side of the regulatory world.

I read your written statement carefully. One of the things that jumps off the pages is the many of the rules that are promulgated, particularly with respect to OSHA, have not been through the Administrative Procedure Act. I'm curious, from the concept of certainty versus uncertainty or enforceability versus lack thereof, if something hasn't been through the Administrative Procedure Act, in other words it has not been lawfully promulgated, what are the consequences to businesses? For instance, Aerojet, in this case, in terms of an agency coming out and attempting to enforce such regulatory rulings?

Mr. BOBIS. A good example, of course, are the two major ones I mentioned. One is the egregious penalty citation policy. Basically what that does, if you have an ungrounded plug, for example, and it is a $4,000 fine and you have 10 of those, it automatically becomes a $40,000 fine. You just multiply it by the number of instances, which is ludicrous, as far as I'm concerned.

The egregious penalty policy has not gone through the Administrative Procedure Act as far as a rulemaking is concerned. It is strictly nothing more than a policy.

Mr. OSE. Before you leave that, there is an issue of significant rules versus nonsignificant rules versus guidance documents.

Mr. BOBIS. Yes.

Mr. OSE. Is the egregious penalty a guidance document?

Mr. BOBIS. It is a guidance document for OSHA to assess their penalties.

Mr. OSE. So it has not been through the formal rulemaking process?

Mr. BOBIS. Absolutely not.

Mr. OSE. And the reason that we require a formal rulemaking process—and I'm trying to think back to my civics class—is that, without a formal rulemaking process those who might be affected in the future prospectively by a rule are not given any opportunity to comment on the rule itself. In effect, it becomes almost a star chamber proceeding, if you will.

Mr. BOBIS. Basically—simply put, we were denied due process.

Mr. OSE. You are far more eloquent than I am on that. So these guidance documents have no basis in procedural applicability because they have no basis in law.

Mr. BOBIS. That's right.

Another example, of course, is a multi-employee work site citation policy, that's very, very bothersome to me especially. On a daily basis, we have hundreds of contractors or subcontractors at our facility. Basically what it does, it puts us on notice that a subcontractor, or the sub of a sub, if they make a mistake, we can be held responsible and liable and co-cited for unsafe acts that they may perform. This particular policy also has not gone through the Administrative Procedure Act.

But, let me tell you the real horror story of what happened in California. Labor filed a CASP, which is a Complaint Against State Plan, and Federal OSHA made a determination that the State program, the State plan, was not at least as effective as the Federal program. Therefore, it was deficient, and it was forced to adopt a particular policy. In California, however, you cannot enforce a policy unless you go through the Administrative Procedure Act.

So, the enforcement agency, which is the Division of Occupational Safety and Health, in fact held a public hearing and adopted the regulations effecting a policy, regardless of my testimony against it, indicating that in fact it is not a standard pursuant to the provision of section 6 of the act and it should not be construed to be considered as such. My comments were absolutely disregarded, and the regulation went into effect.

Now, in 2000, the legislature in California, basically what it did was it revised the labor code and by operation of law they adopted into the statutes the regulations that CAL OSHA adopted, because it was already law, and they didn't have to take any testimony on it. So now it's in the statutes.

Mr. OSE. My time is about to expire.

Mr. Otter for 5 minutes. Thank you, Mr. Bobis.

Mr. OTTER. Yes, thank you, Mr. Chairman.

Mr. Bobis, is it?

Mr. BOBIS. Yes.

Mr. OTTER. Mr. Bobis, you heard Mr. Knott's testimony on the OSHA regulation and the process that he went through. Have you gone through that process of taking an OSHA fine through the court system?

Mr. BOBIS. Yes, we have. We have been quite successful, and for a very simple reason. We have a very complex manufacturing facility. We deal with explosives, and when OSHA people show up, they don't know anything about explosives, so they usually cite the wrong section and we usually go and fight them and win every one of them.

Mr. OTTER. Too bad French fries weren't that difficult. I want you to take us through the process. The first level is, you're cited by a field agent; is that right?

Mr. BOBIS. Yes.

Mr. OTTER. Somebody cites you and says you did this wrong.

Mr. BOBIS. Yes.

Mr. OTTER. Then, what's the first level of appeal?

Mr. BOBIS. First level of appeal is usually to call up the district manager and appeal the citation, basically have an informal conference with them. All you are doing is asking a supervisor to overrule one of his lieutenants, and basically that's a waste of money; a waste of effort.

Mr. OTTER. Is this a judicial proceeding?

Mr. BOBIS. Yes. It's an informal proceeding. It's not a judicial proceeding.

Mr. OTTER. What is the next level?

Mr. BOBIS. The next level is you formally appeal within 15 working days.

Mr. OTTER. To whom?

Mr. BOBIS. To the CAL OSHA appeals board, which is an independent agency.

Mr. OTTER. All right. So now let's go to the third level. And, they say, no, you're still guilty. What is the third level?

Mr. BOBIS. The third level, they have a telephone conference with an assigned administrative law judge.

Mr. OTTER. Who appoints the administrative law judge?

Mr. BOBIS. The appeals board.

Mr. OTTER. OSHA.

Mr. BOBIS. Yes.

Mr. OTTER. OK.

Mr. BOBIS. Then, if you don't settle that, you actually go through a formal hearing and another administrative law judge presides over that.

Mr. OTTER. Who appoints that administrative law judge?

Mr. BOBIS. Same appeals board.

Mr. OTTER. OK, so we have four strata here so far, and we're not out of OSHA yet.

Mr. BOBIS. Oh, no, you're not yet.

Mr. OTTER. OK, keep going.

Mr. BOBIS. Then, of course, you'll want to get legal counsel to assist you throughout the process, and you can go through the—just like the gentleman said, you can take depositions of the compliance officers, and then you try to impeach them and whatever, and eventually you present your case and hope to win it.

Mr. OTTER. OK. How many hearings and administrative rulings and appeals do you go through before you finally get out of OSHA and into the criminal or civil proceedings of the judicial system?

Mr. BOBIS. If the appeal is granted, then the proceeding stops.

Mr. OTTER. But let's——

Mr. BOBIS. Or they may not stop, however, because the enforcement agency——

Mr. OTTER. Let's say this is one rule that they understood.

Mr. BOBIS. OK.

Mr. OTTER. What I want to know is how many appeals and how much time and how many legal fees and how much testimony is given before you finally get to an independent party that isn't hired by OSHA?

Mr. BOBIS. That would be the Superior Court.

Mr. OTTER. What level is that? How many times have you gone through the hearings and the processes and appeals and everything?

Mr. BOBIS. That would be—the next step after the administrative law judge's decision would be appealed to the CAL OSHA appeals board, and then you go to Superior Court.

Mr. OTTER. So it is no different than EPA?

Mr. BOBIS. Oh, no.

Mr. OTTER. Or Army Corps of Engineers?

Mr. BOBIS. Oh, no.

Mr. OTTER. Or IRS?

Mr. BOBIS. No.

Mr. OTTER. Or almost any other government agency?

Mr. BOBIS. No.

Mr. OTTER. King George III never had it so good, did he?

Mr. BOBIS. That's right.

Mr. OTTER. That's what I thought. Seems to me we resisted that once before.

OK. Let's say when you get to the Superior Court and you finally won—let's say you won. You were found innocent. The rule that was permitted or the rules that were cited were wrong. What happens to that agent that brought that charge against you?

Mr. BOBIS. In California, we do have some recovery. We can recover up to $5,000 in damages and legal fees.

Mr. OTTER. Seven levels.

Mr. BOBIS. Yes.

Mr. OTTER. Seven levels, and if Mr. Knott's even close, $45,000 for two levels before he finally got his remedy. So if we go to seven levels, that's a pretty expensive $5,000; isn't it?

Mr. BOBIS. Yes. I think the gentleman is on the light side, on the conservative side when we talk about legal fees.

Mr. OTTER. If you were writing the law—let's say you went from Aerojet, or you ran for Congress.

Mr. OSE. Someone else's district, Dr. Bobis.

Mr. OTTER. If you ran for Congress, would you be interested in a law which actually pursued—allowed you, as a private individual, to pursue civil penalties against a government agent that brought wrong charges against you?

Mr. BOBIS. Oh, absolutely. Absolutely. Not only that, I would be very much in favor of also issuing citations to employees who willfully disregard company laws and rules.

Mr. OTTER. Or overstepped their boundaries?

Mr. BOBIS. Absolutely.

Mr. OTTER. Or exceeded their authority?

Mr. BOBIS. You bet.

Mr. OTTER. You see, I'm reminded that if you, as the compliance officer for Aerojet, disobeyed any of those rules, and you told somebody, no, don't do that; don't do that safety thing; no, don't hire that person because I don't like them; for whatever reason, so you went against affirmative action, any of those Federal laws, that you personally could be held criminally and civilly liable, isn't that right?

Mr. BOBIS. That's right.

Mr. OTTER. Don't you think it would be fair if the regulators operated under the same rules and regulations and constraints, constraining themselves to the rule of law?

Mr. BOBIS. You bet. Equal protection under the law.

Mr. OTTER. So you would introduce that law?

Mr. BOBIS. I would have done it yesterday.

Mr. OTTER. Thank you, Mr. Chairman. I appreciate your patience.

Mr. OSE. Thank you, Mr. Otter.

I want to go back to something. Dr. Bobis, you are a wealth of information. Don't worry, I have questions for the other three, but I want to make sure I get through with Dr. Bobis.

The vertical standard concept. I'm not quite sure I understand that. Could you just take us through that one more time?

Mr. BOBIS. Oh, very simply, Federal OSHA has exempted some special interest groups, such as agriculture, such as construction, such as telecommunications, and basically only one set of regulations apply in that industry. But, that's really a misnomer because what happens, for example, if you dig a trench on a farm, even though there are no trenching regulations and if there's an injury, they are going to come in and cite you under the general duty clause, and it carries an automatic $70,000 fine for every one of those.

So, what we have here is we basically have no regulation, written regulation. It is kind of like driving on the freeway and there are no speed limits posted, but they pull you over to the side and issue you a ticket for violating the speed limit which has not been posted. That is what is wrong with that.

Now, on the other hand, if they elect to adopt, for example, lead, there's regulations for lead in the general industry, and there's identical regulation in construction. Absolutely duplicated. There's no reason for that.

Mr. OSE. Now your point is that these unposted mileage markers, or whatever, these have been issued actually not in compliance with the Administrative Procedure Act. They are guidance documents.

Mr. BOBIS. That's right.

Mr. OSE. Now, it's my understanding—and I want to be sure I'm clear on it. It is my understanding that case law is that guidance documents are unenforceable, is that correct?

Mr. BOBIS. The State law?

Mr. OSE. No, Federal guidance documents are unenforceable.

Mr. BOBIS. They should be unenforceable.

Mr. OSE. Again, getting back to the due process issue.

Mr. BOBIS. That's right.

Mr. OSE. All right. Thank you, Dr. Bobis. I am very appreciative of your input.

Mr. BOBIS. Thank you for inviting me.

Mr. OSE. I want to go on to a couple other questions I have.

Mr. Knott, in your written testimony you cite the example of OSHA's attempt to enter our homes in terms of an employee working at home. Now, it's my understanding that—and I can't remember what it was, he was secretary of something or other—this guy Charles Jeffress, he's the Administrator of OSHA, now he stated very specifically in front of a Senate committee that OSHA will not hold employers liable for work activities in employee home offices. That was about a year and 3 months ago.

Now, the question I have is that the new rule that has been promulgated by OSHA, in effect, says that OSHA can go into people's homes to analyze in-home injuries. I'm trying to understand, when was the rule put through the Administrative Procedure Act that allows that?

Mr. KNOTT. That allows them not to go into homes?

Mr. OSE. No, that allows OSHA to go into homes.

Mr. KNOTT. Well, they can't do it now. They can't go into homes now. But an employee can bring something from home to the business. If he has been hurt at home and he comes in to work and that hurt is aggravated, then it becomes reportable and documentable as a business-related injury. This is the problem. They have reached out far beyond the workplace.

Mr. OSE. I think the phrase you used was "the reporting trigger has been greatly expanded."

Mr. KNOTT. Exactly.

Mr. OSE. Now, what is the basis under which OSHA has expanded that recording trigger?

Mr. KNOTT. What is the basis?

Mr. OSE. Yes.

Mr. KNOTT. Merely expansion of their empire. They are looking for more business.

Mr. OSE. Is there a statutory underpinning to their expansion of the recording trigger?

Mr. KNOTT. Of the recording—yes, that was the ergonomics thing. Ergonomics, of course, was defeated.

Mr. OSE. We defeated that.

Mr. KNOTT. Right, but the reporting paperwork burden remains in place, and that, too, needs to be erased.

Mr. OSE. Well, I'm suffering from confusion. Either I'm confused or you're confused. If there is no rule, how can you have a reporting trigger?

Mr. KNOTT. Oh no, they do have that rule. If there's a problem with the employee at home and that problem creates a problem for him or her at work, then it must be reported.

Mr. OSE. But I'm not aware of any statutory basis for OSHA's requirement to report.

Mr. KNOTT. No, OSHA doesn't report. We have to report.

Mr. OSE. For OSHA to require that employers report that situation, what is the statutory basis by which OSHA puts that burden on you to report that?

Mr. KNOTT. That was what was left over from the ergonomics statute. That reporting requirement was part of that.

Mr. OSE. Well, this is where I got confused. Because Mr. Jeffress' comment last January was very clear——

Mr. KNOTT. Yes.

Mr. OSE [continuing]. That OSHA would not be holding employers liable for work activities in the employees' home offices. So there's a logical disconnection here. Because, if OSHA's authority does not extend to the home office, and the injury does not occur onsite at the business, how can the business be held accountable for the injury?

Mr. KNOTT. Because they say that it was aggravated by the business. In other words, if the person was hurt at home, say he slid

into third base and hurt his leg and now he's got to walk around the plant, the plant is aggravating a problem that happened outside. So, therefore, it has to be reported, and the employer becomes responsible.

Mr. OSE. Even though the action causing the injury did not occur——

Mr. KNOTT. Exactly.

Mr. OSE [continuing]. Under your control?

Mr. KNOTT. Exactly.

Mr. OSE. So what's the purpose of that?

Mr. KNOTT. I can't tell you. I don't know. It's just, as I said earlier——

Mr. OSE. You can't tell me or you don't know? That's two different answers.

Mr. KNOTT. Both. As I said earlier, to me it is merely an expansion of the OSHA empire, the reach beyond the workplace to have some more paperwork.

Mr. OSE. Well, it seems to me that OSHA has clearly—I'm going to put this in the record—OSHA Directive CPL 2–0.125—home-based work sites, published February 25, 2000, stipulates—OSHA stipulates, the OSHA act, the Occupational Safety and Health Act, neither applies to an employee's house nor to a home office. The provisions in the final rule that require the recordation of injuries and illnesses occurring in an employee's home office where an employer has no control over the office's layout or the equipment used exceed OSHA's statutory authority. I'm trying to get the connection between that particular stipulation and this rule that—it just seems like they are going this way.

Mr. KNOTT. Well, it certainly does, but that is what OSHA is still hanging on to, is that if someone has a problem at home or outside of the workplace and that problem is aggravated by work in the workplace, then it becomes the responsibility of the employer. You're perfectly correct in saying it is illogical, but it exists.

Mr. OSE. Is that the standard used by any State workers' compensation plan?

Mr. KNOTT. No, it is not, not in any State that I know, at least.

Mr. OSE. I'm not aware—I think that's something we ought to followup in California in terms of—I mean, Massachusetts doesn't have it, California doesn't. We don't know if California has it. But, again, what is the basis for the recording trigger is what I'm trying to get at and what are the related requirements at the State level. What I hear you saying is Massachusetts recognizes that this is not something the workers' compensation would compensate for.

Mr. KNOTT. Correct. Massachusetts Department of Labor will, if you request, perform an OSHA inspection on your facility. I requested the Commonwealth of Massachusetts Department of Labor to do that, and they spent several days going through the place. I'm always looking for suggestions and ideas.

When the OSHA inspector came in to do a wall-to-wall, as he said, I said, well, we just had one from the Commonwealth of Massachusetts, would you like to see that? He said, "They don't know what they're doing."

Mr. OSE. My time is way over. I apologize.

Mr. Otter, for 5 minutes.

Mr. OTTER. Mr. Chairman, I apologize to not only you but also the panel, because I think this could go on a long time and we could find out a great deal more, but I have a 12:30 p.m. appointment that I am going to have to get to.

But I don't want to leave Mr. Nicholson out. I think he deserves an opportunity to respond. Does Virginia have an OSHA—a State correspondent to OSHA?

Mr. NICHOLSON. Yes, sir.

Mr. OTTER. Do you think they care any less about the accident and health rate in the workplace than, say, does the Federal OSHA?

Mr. NICHOLSON. I don't think so. I think they do a fine job.

Mr. OTTER. In your estimation, is the Federal Government any more qualified than your State OSHA to guide the responsibilities of employment to less accidents and better health?

Mr. NICHOLSON. It is my belief that most of the Federal OSHA enforcement is left to the Virginia group because the State is so effective in what they're doing.

Mr. OTTER. Do you find that when you are dealing with the State you are kind of dealing with a neighbor and when you are dealing with the Federal OSHA you are dealing with an enforcement policeman?

Mr. NICHOLSON. Absolutely. I think the Federal personnel have a quite different perspective. They don't understand that there are local conditions that can have a significance.

Mr. OTTER. How many bouquets do you sell a year?

Mr. NICHOLSON. Gee, I've never counted the number of bouquets.

Mr. OTTER. Well, I like to be able to always reflect on these things, so that I can tell the next girlfriend that I give a bouquet to, or my mother, that $2 of this bouquet is government regulation. That what I wanted to get down to, because I want to know what it costs you in your business to comply with the reporting responsibilities, whether it's the IRS, OSHA, or anybody else, probably USDA, because you are dealing with live flowers in some cases.

Mr. NICHOLSON. Actually, we are a significantly small business, so we are exempt from Federal regulation on purpose.

Mr. OTTER. I see. In other words, hoof and mouth is only for the big guys?

Mr. NICHOLSON. That's right. But, we figure I pay probably $100 a week for outside contractors, CPA, and bookkeeping and that kind of thing; and then I also have about 10 to 15 hours per week of my time devoted to a whole series of bookkeeping stuff. Although, as I pointed out, in order to do a good job in managing my business, I ought to be doing most of that bookkeeping already anyway.

Mr. OTTER. I see.

Well, Mr. Chairman, members of the panel, as I began, I apologize once again for having to rush, but I would like each of you to consider whenever you express in terms of government reporting and government regulation, to do it in unit cost terms. Because I found out—and I sold McDonald's a lot of French fries; and when people started complaining about $1.35 for an order of French fries, I said I just want you to know that 38 cents of that is government regulation.

We care about our customers, because we know the first time we sell them a French fry is not where we make the profit. It is when they come back and buy it again and again and again. So, we really care about them—where the government would have you think that we don't care about them.

I would hope that, no matter what your product is, no matter how many acres you have, no matter how many pieces of netting you sell for crab traps, that if you could express that in a per-unit cost and when your customers come in you could say, you know, I'm sorry it could be a lot cheaper, the only thing is it is your government cost.

Not only that, but the national organizations that you belong to, have them break it down to per-unit cost, and pretty soon we are getting somewhere with the real cost of government, the hidden costs, the hidden taxes that we have.

Thank you, Mr. Chairman.

Mr. OSE. Thank you.

Mr. Otter, I want to tell you, if it's 38 cents per $1.35 of French fires, over the spring break I think I spent $217 on government regulation for French fries. They were good, though.

Mr. OTTER. Would the gentleman yield? I would just have you know that I one time figured out how many taxes and regulations there were on two all-beef patties, special sauce, onions, lettuce, pickles, cheese on a sesame seed bun, and it's $2.54.

Mr. OSE. Wow.

I need to ask a couple other questions. I want to thank Mr. Otter for coming.

This hearing is about paperwork, and every time we get back to what is the required paperwork under the results from these statutory, discretionary or guidance document requests. Dr. Bobis, on the guidance document requests, things that are not binding, relative to your overall expense for paperwork, how much do you think you are spending? Twenty percent? Fifty percent?

Mr. BOBIS. It's very difficult to quantify, and I—just a wild guess, between 10 and 20 percent.

Mr. OSE. For guidance document compliance?

Mr. BOBIS. Yes.

Mr. OSE. Mr. Nicholson, you said you were exempted from most of the provisions. Any feedback here?

Mr. NICHOLSON. Well, I don't know exactly what you mean by feedback. It certainly has crossed my mind that the expansion and growth of our business might reach a level where I'm not sure I want to grow much longer because I'll go beyond all the limits, the thresholds. As a result, I am sort of looking at if I can continue to expand and use the same number of employees, I might continue, but I'm not sure I want to hire a bunch of additional people. Because right then and there I'm off into a whole different realm than I am as a mom and pop.

Mr. OSE. As a mom and pop, how much do you think you spend in complying with IRS reporting requirements each year?

Mr. NICHOLSON. Well, I've got probably $100 a week, as I say, for outside bookkeeping-type, combination CPA and the bookkeeper and that sort of thing. I'd say for Federal income tax purposes,

probably more than half of that is used to compile the Federal income tax, the 940's and all the rest of the Federal reporting.

Mr. OSE. So you are somewhere around $5,000 to $7,000 a year in your business?

Mr. NICHOLSON. Yes.

Mr. OSE. Mr. Knott, on the requirement to comply with what appears to be a reporting requirement that has not followed the Administrative Procedure Act, that being the home-based occupational and safety health issue, and I'm characterizing this in my words, how much do you spend or expect to spend complying with that requirement?

Mr. KNOTT. My human relations manager estimates that it's going to take about 25 percent of an assistant's time, which is about, say, $10,000.

Mr. OSE. OK. And you have about 125 employees?

Mr. KNOTT. Yes. I estimate that I spend about 80 percent of my time dealing with OSHA, the EPA and the FAA. Having started the business with my own two hands and worked out in the plant, that's quite a switch, to spend 80 percent of my time dealing with bureaucracies.

Mr. OSE. You bring me back to one of the points. I was reading your written statement last night, and I just want to—if I can find it—you have a comment in here that I thought was particularly telling. Here it is, on page 4. This is your statement, which I thought was very, very good. "People who make things in America have to divert their attention from productivity and quality goals to deal with bureaucracies, inspectors, complainants, lawyers and courts, a diversion with which people who make things in America have had to deal with time and again."

And your point, if I understand the prefacing comments in your testimony, is that you are a producer; you make things. You are not interested in the paperwork. It is not your reason for being. Your reason for being is that you want to produce something, to create jobs and revenue and all the different things that result.

Mr. KNOTT. Make those profits to send those tax dollars down to Washington.

Mr. OSE. I understand. I almost slipped there and said the same thing. But my point is, you are a producer; you're not a consumer here.

Mr. KNOTT. That's right.

Mr. OSE. I don't understand why we are promulgating upon you guidance documents ad infinitum, or ad nauseam, which takes you away from your productive time. That's the thing that just strikes me here. So I want to thank you for coming. I appreciate that.

Mr. LaGrande, I want to go through your testimony somewhat at length, so if the other witnesses will be patient. I am particularly interested in the impact on agricultural production from Bureau of Reclamation efforts to collect this, that or the other piece of information, which your testimony indicates—I think your phrase was "finds no basis in law," on page 3.

One of your suggestions is that when your operating entities file on a new year or annual basis, if you could have a spot on the forms that you file that says "no change from previous year," that would save you an enormous amount of time and effort. You've got

900 acres. How many of those 900 acres from year to year change in terms of operator or operating entity or crop or water use?

Mr. LAGRANDE. None of them.

Mr. OSE. Zero.

Mr. LAGRANDE. Yes, that's correct.

Mr. OSE. So, in effect, you could take almost a Xerox of a previous year's filing, in terms of the basic data. You would have to change the date, of course, but——

Mr. LAGRANDE. You could, but the forms they provide you have on the top of them the year. So this is a form for 2000, and you can't turn in the 2001 form. You can't turn this in in place of the 2001 form, although the form hasn't changed nor has any of the information or the data that I'm going to fill in.

Mr. OSE. Are you able to file that information electronically with the Bureau?

Mr. LAGRANDE. No.

Mr. OSE. They cannot take it electronically or they will not take it electronically?

Mr. LAGRANDE. I'm not sure if they cannot, but they will not.

Mr. OSE. All right. So maybe one of the things we need to do legislatively is at least discuss with the Interior Department and the Bureau of Reclamation, if the circumstances of any one person's water use have not changed from year to year, for what purpose are we requiring a whole new set of documents? We should put that little line item in there.

Mr. LAGRANDE. I think that would be appreciated.

Mr. OSE. If that option were available to you on that particular form, how much time would it save you?

Mr. LAGRANDE. Oh, it would save hours. I don't have a good sense of how many hours, but probably 20 to 25 hours in the spring each year.

Mr. OSE. And, that's on your 900 acres?

Mr. LAGRANDE. Yes, something like that.

Mr. OSE. In my district, and I'm just talking about rice, there are 550,000 acres of rice grown in my district. So, if all 900 acres of yours is rice, that's 1/600th of the total, so it would be 600 times whatever time you would be saving, and then we could just replicate that for every programmed crop throughout the State.

Mr. LAGRANDE. That's right.

Mr. OSE. Just by putting a box that says "no change from previous year."

Mr. LAGRANDE. For those that have no changes.

Mr. OSE. I understand.

Mr. LAGRANDE. Absolutely.

Mr. OSE. As far as the information that the Bureau requests for who your fertilizer applicator is, who hauls your product to market, who drives your rice, who provides natural gas to dry your rice, who works in your field with your custom harvester, what possible purpose could the Bureau have for asking for that information?

Mr. LAGRANDE. Well, it seems to find its origins in efforts that were made under the Clinton Interior Department to placate a few environmentalists, namely the NRDC, who really tried to stretch the rules as they applied to the word lease.

When the Reclamation Reform Act was originally considered by Congress in the early 1980's, they wanted to limit the size of farms that could be the recipient of Federal water. So the basis on which that limitation was derived was on ownership. Because everyone could clearly agree on who owned the land, and then you had the case of lease, and that was not quite so clear, but there are relatively clear definitions available. So the one they decided on is someone who has an economic interest in the crop. If you have control of the property and you have an economic interest in the crop, you are a lessor.

But, then there were objections raised by environmental organizations that, hey, there are a few organizations that try to get around that by leasing out their property and then, in fact, they're farming different people's entities and acreage for them and charging a fee for that, and so we should go after them.

Well, that died out in the late 1980's. They made those arguments to Congress, Congress overruled that, and so 12 years later the Bureau of Reclamation put forth rules chasing down that lead as a result of a settlement that the Department of the Interior made with the NRDC under the Department of Justice. And one of the terms of the settlement was that they would put forth rules that would cause farmers to identify their farm operators and notify the Bureau of Reclamation as to the identity of their farm operators.

Mr. OSE. Are those rules being promulgated now?

Mr. LAGRANDE. Yes, this year.

Mr. OSE. They have been issued?

Mr. LAGRANDE. Yes, but not publicized. None of us have received any notification.

Mr. OSE. Have they been through the Administrative Procedure Act?

Mr. LAGRANDE. I have no idea.

Mr. OSE. I think that's something we will inquire about.

Now, the Reclamation Reporting Act has not changed since 1987.

Mr. LAGRANDE. That's correct.

Mr. OSE. If I understand correctly, the Reclamation Reporting Act does not require the reporting of all these people who work for a farmer.

Mr. LAGRANDE. That's correct. It's also public information. So someone who, say, is a crop duster and wants to go and, under a Freedom of Information Act request, look at who their competitor's customers are, they can do that. So suddenly there are confidential customer lists, and information such as that is public information.

Mr. OSE. Now, one of the things, if I might expand this a little bit from, say, the Bureau. I want to go over to the Farm Service Agency. The FSA each year meets with the growers in an area, collects data as they relate to program crops and the like, your base acres, all the stuff. Do the reports at FSA allow a farmer to check a box that says he or she is just going to do what they did last year?

Mr. LAGRANDE. Yes.

Mr. OSE. They do?

Mr. LAGRANDE. The FSA's process is quite a bit more streamlined. They don't actually——

Mr. OSE. Wait. Wait a minute. So one agency says that—the agency at the top of the food chain, so to speak, the FSA, says you can check off a box that says no change from last year, but an agency lower down on the food chain doesn't?

Mr. LAGRANDE. Correct.

Mr. OSE. Why?

Mr. LAGRANDE. I don't know.

Mr. OSE. Actually, why not?

Mr. LAGRANDE. That's a good question, and it is a source of frustration for all of us.

Mr. OSE. So on a comparative basis you can turn in your forms to FSA literally with the flick of a wrist. Whereas over here at Bureau, where you are using what they provide as an input to which you report to FSA, it requires a rather onerous drill, if you will?

Mr. LAGRANDE. That's right.

Mr. OSE. Is the information you're reporting to the Bureau any different than the information you're reporting to the FSA? Excuse me, is the information being required to be reported to the Bureau different from the information you're required to report to the FSA?

Mr. LAGRANDE. Slightly, particularly under these new rules. The FSA doesn't require any information about who your providers are of any services and that sort of thing. The FSA does require—they both have in common the requirement that you have to indicate the land, identify the land that you are farming and identify whether you own that land or you lease that land. They both require that, and they both require evidence of the lease. So the majority of the information is common.

Mr. OSE. Duplicative in nature.

Mr. LAGRANDE. Correct.

Mr. OSE. Why? I mean, I understand why it's duplicative. I don't understand why it's being asked for twice. I don't understand that.

Mr. LAGRANDE. I would imagine that the Farm Service Agency and the Bureau of Reclamation staffs have not found a way to get together and utilize a common form.

Mr. OSE. But, again, it gets back to your point under the Reclamation Act this information is not required anyway, from the Bureau of Reclamation standpoint.

Mr. LAGRANDE. That's right.

Mr. OSE. So the differences between FSA's form and the Bureau's form boils down to that which the Bureau requests is not being authorized to collect under law?

Mr. LAGRANDE. In substance, I would say that's the difference. The forms are, of course, set up differently, and you get to a little bit different arrangement of the data.

Mr. OSE. How many boxes per year of paperwork do you end up having to accumulate for this stuff?

Mr. LAGRANDE. You can accumulate more boxes than for which you have storage capability in your office very quickly.

Mr. OSE. So you end up renting a mini-storage unit to put your paperwork in.

Mr. LAGRANDE. Yes.

Mr. OSE. And, then you have to hold it for 7 years?

Mr. LAGRANDE. Some of it 3, some of it 5, some of it 7, some of it indefinitely.

Mr. OSE. Have you ever had anybody come back and look at your paperwork?

Mr. LAGRANDE. Never.

Mr. OSE. Your family has been farming out there for how long?

Mr. LAGRANDE. I'm the fifth generation.

Mr. OSE. So, what, 1875? Early 1900's?

Mr. LAGRANDE. That's right, late 1800's, early 1900's.

Mr. OSE. And, no one has ever been in your storage unit to look at your files? No one from the Bureau?

Mr. LAGRANDE. Not in mine.

Mr. OSE. I want to thank the witnesses for coming. You have given us significant input in terms of the paperwork burdens that you bear. I am particularly concerned about the manner in which information is requested for which there is no statutory authority to ask for in the first place; and it clearly ranges from corporate America, where Dr. Bobis works, to where Mr. Nicholson, Mr. Knott, and Mr. LaGrande work. It is across all industries and in all States and, clearly, in virtually every possible nook or cranny where such information might exist.

It is all-encompassing and, clearly, some of the information is statutory. To the extent that it's statutory information, I don't think any of us object to its collection. But when it's discretionary, and there is no clear understanding or reason or basis for the collection, I have to admit to some confusion as to why we burden our people with that.

I want to thank our witnesses for coming today. I appreciate it. This committee will be following up on these items, and your testimony today has been very helpful.

We are adjourned.

[Whereupon, at 12:48 p.m., the subcommittee was adjourned.]

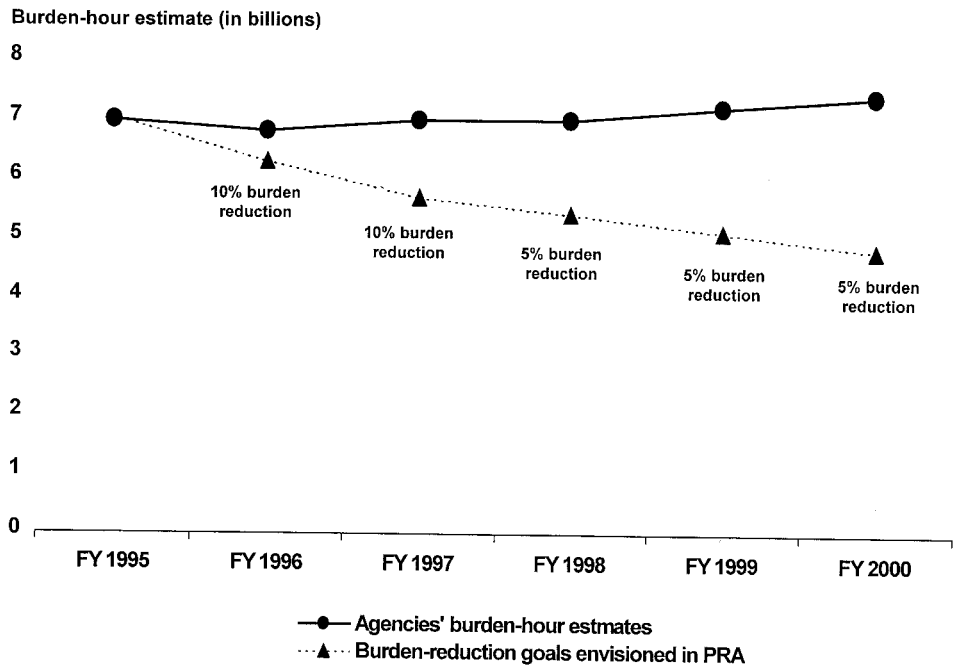
[Additional information submitted for the hearing record follows:]

PAPERWORK REDUCTION "ACCOMPLISHMENTS" BY THE CLINTON ADMINISTRATION

Fiscal Year	Statutory Paperwork Reduction Goal Set by Congress	Percent of Actual or Expected Increases
1996	- 10%	+ 2.3% *
1997	- 10%	+ 1.0% *
1998	- 5%	+ 0.4%
1999	- 5%	+ 2.7%
2000	- 5%	+ 2.5%

* Not adjusted to reflect violations of the Paperwork Reduction Act incorrectly counted as program reductions.

Prepared for Congressman David M. McIntosh



Note: Data are as of the end of each fiscal year.
Source: OIRA and agencies' ICB submissions.

Prepared by GAO

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BERNARD SANDERS, VERMONT,
INDEPENDENT

April 25, 2001

BY FACSIMILE
The Honorable Mitch Daniels
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Director Daniels:

This letter is in response to testimony submitted by the Office of Management and Budget (OMB) for yesterday's hearing of the Energy Policy, Natural Resources and Regulatory Affairs Subcommittee on the Paperwork Reduction Act (PRA).

Under the Clinton Administration, OMB stood aside while agencies dramatically increased the paperwork burden on American taxpayers. Under your leadership, we hoped that OMB would pursue a new direction with respect to its central role in controlling paperwork. To that end, the Subcommittee invited Sean O'Keefe, OMB's Deputy Director, to testify about specific changes and paperwork reductions since last year's hearing, and to testify about its future plans for reducing paperwork in the coming year.

Rather than sending Mr. O'Keefe, OMB decided to send a witness to our hearing that has no background in paperwork reduction. Furthermore, OMB's testimony yesterday blamed Congress for the paperwork burden. Although some of the increase is due to statutory changes made by Congress, as the General Accounting Office testified yesterday, much of the increase is due to discretionary paperwork imposed by Federal agencies without specific statutory requirements. Additionally, OMB provided no specific paperwork reductions since last year's hearing and no specific actions to reduce paperwork in the year ahead.

As Chairman of the Subcommittee that has oversight jurisdiction over OMB and authorizing jurisdiction over the PRA, I expect this Administration's OMB to pay increased attention to paperwork reduction generally and to devote more staff attention to reviewing discretionary paperwork that imposes significant burdens. Moreover, as the Internal Revenue Service (IRS) accounts for 82 percent of all government-wide paperwork, I expect OMB to devote at least two full-time staff (i.e., substantially more than the current one part-time equivalent employee) to reviewing and reducing IRS paperwork burden.

In the paperwork area, OMB needs to be a watchdog, not a lapdog as it was during the prior Administration.

If you have any questions about this request, please contact Deputy Staff Director Barbara Kahlow at 226-3058. Thank you in advance for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Attachment

cc: The Honorable Dan Burton
The Honorable John Tierney
The Honorable Ernest Istook

Q1. Staffing to Improve OMB Management of IRS Paperwork. The Internal Revenue Service (IRS) accounts for 82 percent of all government-wide paperwork burden. In the last few years, its paperwork reduction initiatives have barely made a dent in this burden. Currently, OMB has only one person working part-time on IRS paperwork. After the Subcommittee's April 2000 PRA hearing and subsequently, the Subcommittee asked OMB to increase its staffing devoted to IRS paperwork reduction. The prior Administration's OMB refused to do so.

To improve results, will you increase OMB staffing devoted to IRS paperwork reduction? If so, to how many full-time equivalents? If not, how will you assure this Subcommittee that next year will shows sizeable paperwork reduction results by IRS?

Q2. Plans to Reduce Paperwork. OMB's testimony says, "You invited me to testify about the **specific** reductions in reporting and recordkeeping requirements accomplished last year, and in the paperwork reduction candidates expected for the next year" (emphasis added). However, OMB's testimony mentions **no** specific reductions accomplished last year and **no** specific reductions expected this year.

a. What specific paperwork reduction initiatives are planned in 2001 for the following six (non-IRS) agencies which each levy over 65 million paperwork hours of burden on the public? Agriculture? Defense? HHS, including HCFA? Labor, including OSHA? Transportation? EPA?

b. What specific paperwork reduction initiatives are planned in 2001 to reduce burden on the following key groups?

- Farmers? *[OMB-83 #11d]*
- Small businesses? *[OMB-83 #5]*
- State and local governments? *[OMB-83 #11f]*
- Regulatory or compliance? *[OMB-83 #15g]*

c. Did OMB add any additional burden reduction candidates or make any other changes in the proposed Information Collection Budget (ICB) submitted by IRS last Fall? If so, what are they? If not, why not?

Q3. Plans for Agency Violations of Law. In the General Accounting Office's (GAO's) discussion of agency violations of law, GAO says, "six of USDA's [paperwork] collections had been in violation for more than 2 years, and four had been in violation for 3 years. The Department of the Interior indicated that four collections had been in violation for more than 5 years, but no action had been taken to correct them" (p. 9). What are OMB's plans for the 4 agencies (Agriculture, HUD, Justice, Veterans Affairs) which each had 40 or more violations of the PRA last year -- by allowing OMB paperwork approval to expire but continuing to impose illegally paperwork burden on the public?

Q4. Public Disclosure. The Subcommittee asked the prior Administration to publish a monthly OMB Notice in the Federal Register identifying: (a) all expirations of OMB PRA approval and (b) information describing action by the executive branch to achieve each major program reduction. The prior Administration's OMB refused to do so. Such a Notice could be widely circulated by interest groups to the affected public and will more fully actualize the PRA "Public Protection" provision. Will you publish such a Notice? If not, why not?

Q5. Recordkeeping to Improve OMB Management of Paperwork. Since 1993, the Office of Management and Budget (OMB) has been required by executive order to disclose changes made during the course of its review of agency **regulatory** proposals. The Paperwork Reduction Act (PRA) requires OMB to keep the Congress "fully informed" (44 U.S.C. §3514). After the Subcommittee's April 1999 PRA hearing and subsequently, the Subcommittee asked OMB to keep similar, basic information about its review of agency **paperwork** proposals. The prior Administration's OMB refused to do so.

As a result, to understand OMB's performance, in December 1999, the Subcommittee surveyed 28 departments and agencies to identify any substantive changes in agency paperwork submissions made by OMB and any paperwork reduction candidates added by OMB. The results revealed that OMB's effect on paperwork in the prior Administration was barely visible. To hold OMB accountable to Congress and the public, will you begin to keep such basic information as of July 1, 2001? If not, why not?

Q6. Regulatory Accounting. The FY 2001 Treasury and General Government Appropriations Act requires an OMB report to Congress - due on the same day as the Budget is submitted to Congress (i.e., April 9th this year) - on regulatory accounting. The law calls for an accounting statement and an associated report on the costs and benefits of Federal rules and paperwork, including analyses of the impact of Federal rules on small businesses and on State and local governments.

When will this key report be submitted? Also, please describe any OMB consultation with small business and with State and local governments and OMB's analytical approach to prepare these required impact analyses.

Q7. Major Rules with Huge Paperwork. The FY 2001 Treasury and General Government Appropriations Act requires an OMB report to Congress by July 1, 2001, which: (a) evaluates the extent to which the PRA reduced burden imposed in agency rules, (b) evaluates the burden imposed by each major rule with more than 10 million hours of paperwork burden, and (c) identifies specific expected reductions in FY 2001 and FY 2002 in agency rules imposing such substantial paperwork burden.

Please: (1) discuss OMB's progress on this evaluation effort, (2) indicate the number of such major rules identified to date, and (3) identify which agencies impose this paperwork.

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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

OCT 12 2001

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Director Daniels asked that I respond to your letter of April 25, 2001, enclosing additional questions as a follow-up to your April 24, 2001, hearing on the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) appreciated the opportunity to testify before the Subcommittee and present our views on how OMB, Congress, and the agencies can work together to advance the goals of the PRA in a constructive and practical manner.

I share your strong interest in PRA implementation and look forward to working with you and your Subcommittee.

If you would like any additional information, please contact us at your convenience.

Sincerely,

John D. Graham, Ph.D.
Administrator

Enclosure

cc: The Honorable Dan Burton
The Honorable Henry A. Waxman

FOLLOW-UP QUESTIONS AND ANSWERS FOR
PAPERWORK REDUCTION ACT HEARING
April 24, 2001

Q1. *Staffing to Improve OMB Management of IRS Paperwork. The Internal Revenue Service (IRS) accounts for 82 percent of all government-wide paperwork burden. In the last few years, its paperwork reduction initiatives have barely made a dent in this burden. Currently, OMB has only one person working part-time on IRS paperwork. After the Subcommittee's April 2000 PRA hearing and subsequently, the Subcommittee asked OMB to increase its staffing devoted to IRS paperwork reduction. The prior Administration's OMB refused to do so.*

To improve results, will you increase OMB staffing devoted to IRS paperwork reduction? If so, to how many full-time equivalents? If not, how will you assure this Subcommittee that next year will shows sizeable paperwork reduction results by IRS?

Answer: At the Subcommittee's April 24th hearing, IRS Commissioner Rossotti testified that, "the potential for greater paperwork and burden reduction is enormous. The IRS has barely scratched the surface. Through our longer-term modernization efforts that pivot on business systems modernization and a new customer-focused organization, we can provide truly meaningful burden reduction for all types of taxpayers." OMB supports IRS' modernization goals, and will be meeting with IRS to discuss ongoing efforts to improve IRS' measurement of burden and opportunities to reduce paperwork. Administrator Graham does not intend to make staffing decisions on IRS until he better understands IRS' initiatives in this area.

Q2. *Plans to Reduce Paperwork. OMB's testimony says, "You invited me to testify about the **specific** reductions in reporting and recordkeeping requirements accomplished last year, and in the paperwork reduction candidates expected for the next year" (emphasis added). However, OMB's testimony mentions **no** specific reductions accomplished last year and **no** specific reductions expected this year.*

a. What specific paperwork reduction initiatives are planned in 2001 for the following six (non-IRS) agencies which each levy over 65 million paperwork hours of burden on the public? Agriculture? Defense? HHS, including HCFA? Labor, including OSHA? Transportation? EPA?

Answer: The FY 2001 Information Collection Budget identifies a number of specific paperwork reduction initiatives planned by the Departments of Agriculture, Defense, Health and Human Services, Labor, and Transportation, and the EPA. Specifically, Chapter 4, "Significant Paperwork Reductions and Increases – FY 2000 and FY 2001," provides

information on paperwork reduction initiatives. Enclosed for your reference is a copy of the FY 2001 Information Collection Budget.

b. What specific paperwork reduction initiatives are planned in 2001 to reduce burden on the following key groups?

- *Farmers? [OMB-83 #11d]*
- *Small businesses? [OMB-83 #5]*
- *State and local governments? [OMB-83 #11f]*
- *Regulatory or compliance? [OMB-83 #15g]*

Answer: The FY 2001 Information Collection Budget identifies a number of paperwork reduction initiatives that would affect these key groups. Specifically, Chapter 4, "Significant Paperwork Reductions and Increases – FY 2000 and FY 2001," provides information on paperwork reduction initiatives. As noted in our response to Question 2.a above, enclosed for your reference is a copy of the FY 2001 Information Collection Budget. At your staff's request, we will be discussing the paperwork issue with the American Farm Bureau. Administrator Graham also met with the National Federation of Independent Businesses on September 5th, and has invited practical suggestions from affected communities about how paperwork burdens can be curtailed without compromising program utility. As discussed in our response to Question 6 below, OMB has also received related comments from interested parties responding to OMB's "Draft Report to Congress on the Costs and Benefits of Federal Regulations."

c. Did OMB add any additional burden reduction candidates or make any other changes in the proposed Information Collection Budget (ICB) submitted by IRS last Fall? If so, what are they? If not, why not?

Answer: No. However, as mentioned above, OMB will be meeting with IRS, and we will work with IRS to identify opportunities for burden reduction.

Q3. *Plans for Agency Violations of Law. In the General Accounting Office's (GAO's) discussion of agency violations of law, GAO says, "six of USDA's [paperwork] collections had been in violation for more than 2 years, and four had been in violation for 3 years. The Department of the Interior indicated that four collections had been in violation for more than 5 years, but no action had been taken to correct them" (p. 9). What are OMB's plans for the 4 agencies (Agriculture, HUD, Justice, Veterans Affairs) which each had 40 or more violations of the PRA last year -- by allowing OMB paperwork approval to expire but continuing to impose illegally paperwork burden on the public?*

Answer: We appreciate and share your concerns about the number and duration of agency violations of the PRA in recent years. We plan to work with the Subcommittee and all agencies, including the Departments of Agriculture, Housing and Urban Development, Justice, and Veterans Affairs, to minimize future PRA violations.

As you may know, OMB has already taken steps to address this problem. On May 4, 1999, OIRA sent agency CIOs a memorandum requesting that they (1) provide a timetable for resolving reported violations, (2) confirm that recently expired collections were not to be used without OMB approval, and (3) describe their procedures for avoiding future violations. This memorandum was sent in response to the high number of violations that OMB reported in the FY 99 ICB. In addition, OMB's deputy director sent the members of the President's Management Council a copy of the FY 1999 ICB – alerting them to the problem of violations – and a copy of the May 1999 memorandum.

On August 4, 2000, OMB sent agencies its Bulletin on the FY 2001 ICB, in which OMB instructed agencies to provide information that allowed OIRA to determine if agencies were adhering to the timetables and implementation plans that they submitted in response to OMB's May 1999 memorandum to the CIOs.

These efforts have resulted in some progress. As the General Accounting Office noted in its April 24th testimony, last year agencies were responsible for 487 PRA violations, which was down from the 710 violations listed in the FY 2000 ICB and the 872 violations listed in the FY 1999 ICB. This represents a 44 percent reduction in violations since FY 1999. With roughly 7,000 active information collections, however, the current number of violations is still too high, and we intend to keep working to reduce them in the future.

Q4. *Public Disclosure. The Subcommittee asked the prior Administration to publish a monthly OMB Notice in the Federal Register identifying: (a) all expirations of OMB PRA approval and (b) information describing action by the executive branch to achieve each major program reduction. The prior Administration's OMB refused to do so. Such a Notice could be widely circulated by interest groups to the affected public and will more fully actualize the PRA "Public Protection" provision. Will you publish such a Notice? If not, why not?*

Answer: OIRA already makes available to the public a substantial amount of information about paperwork approvals, disapprovals, and expiration of approvals. Using this information, which is on OMB's Internet website, the public can determine whether a particular agency collection has a currently valid OMB approval or if its annual burden has changed.

For the past several years, OIRA has maintained on the OMB website a publicly available inventory of the collections of information that agencies have submitted to OIRA for review and that are either presently pending or recently approved (or disapproved).

In 1999, in response to a request from the Subcommittee, OIRA added to this Internet inventory a list of those collections of information for which OMB approval has expired with the last 30 days. For each collection, the inventory identifies the estimated annual burden hours and burden costs, and the number of annual responses. OIRA also added information about changes that OIRA approves in a collection's annual estimated burden hours and burden costs and whether burden changes are a "program change" or an "adjustment." This inventory can be found at <www.whitehouse.gov/library/omb/OMBPPRWK.html>.

In addition, last year OIRA added to OMB's website an "Inventory of Active Information Collections," which we update on a monthly basis. This inventory identifies, by agency, each approved information collection. Each entry includes the OMB Number, title, form number (if any), and the expiration date. If a member of the public interested in a particular form cannot find the form in this inventory, then he or she will know that it has expired. This inventory can be found at <www.whitehouse.gov/library/omb/OMBINV.html>.

Q5. *Recordkeeping to Improve OMB Management of Paperwork. Since 1993, the Office of Management and Budget (OMB) has been required by executive order to disclose changes made during the course of its review of agency* ***regulatory*** *proposals. The Paperwork Reduction Act (PRA) requires OMB to keep the Congress "fully informed" (44 U.S.C. §3514). After the Subcommittee's April 1999 PRA hearing and subsequently, the Subcommittee asked OMB to keep similar, basic information about its review of agency* ***paperwork*** *proposals. The prior Administration's OMB refused to do so.*

As a result, to understand OMB's performance, in December 1999, the Subcommittee surveyed 28 departments and agencies to identify any substantive changes in agency paperwork submissions made by OMB and any paperwork reduction candidates added by OMB. The results revealed that OMB's effect on paperwork in the prior Administration was barely visible. To hold OMB accountable to Congress and the public, will you begin to keep such basic information as of July 1, 2001? If not, why not?

Answer: As the Subcommittee's question noted, since 1993, OMB has disclosed the changes it makes in agency regulatory proposals during the course of OMB's review. In the past,

the Subcommittee made specific suggestions for recording basic information about the changes OMB makes in agency paperwork proposals during the course of OMB's review. Administrator Graham is actively exploring ways to develop a capacity to maintain a record of changes made to agency information collections during OMB's review of agency information collection requests.

Q6. *Regulatory Accounting. The FY 2001 Treasury and General Government Appropriations Act requires an OMB report to Congress - due on the same day as the Budget is submitted to Congress (i.e., April 9th this year) - on regulatory accounting. The law calls for an accounting statement and an associated report on the costs and benefits of Federal rules and paperwork, including analyses of the impact of Federal rules on small businesses and on State and local governments.*

When will this key report be submitted? Also, please describe any OMB consultation with small business and with State and local governments and OMB's analytical approach to prepare these required impact analyses.

Answer: On May 2, 2001, OMB issued a notice in the *Federal Register* that included the "Draft Report to Congress on the Costs and Benefits of Federal Regulations" (66 FR 22041) as required by the FY 2000 Treasury and General Government Appropriations Act. The notice asked for comments on OMB's 2000 final report and for information that would help OMB prepare its 2001 report, including suggestions for improving OMB's analytical approach. The comment period closed on August 15, 2001. The 2000 report contained analyses of the costs and benefits of Federal rules and paperwork, including analyses of the impact of Federal rules on small business and on State, local, and tribal governments. We received comments from all interested parties, including small business and State, local, and tribal governments, which will improve our analyses of these impacts. After review of this input, OMB intends to submit a complete draft report for public comment and peer review, as required by law. Administrator Graham is concerned about OIRA's delay in completing this report and is personally working with staff to incorporate public comments and complete the final report. Administrator Graham is also concerned about expectations that an "accounting statement" is distinct from information on costs and benefits. OIRA staff are not aware of any data to support an accounting statement on rules other than benefit and cost data.

Q7. *Major Rules with Huge Paperwork. The FY 2001 Treasury and General Government Appropriations Act requires an OMB report to Congress by July 1, 2001, which: (a) evaluates the extent to which the PRA reduced burden imposed in agency rules, (b) evaluates the burden imposed by each major rule with more*

than 10 million hours of paperwork burden, and (c) identifies specific expected reductions in FY 2001 and FY 2002 in agency rules imposing such substantial paperwork burden.

Please: (1) discuss OMB's progress on this evaluation effort, (2) indicate the number of such major rules identified to date, and (3) identify which agencies impose this paperwork.

Answer: OMB's report responding to Section 518 of the Consolidated Appropriations Act, 2001, (P.L. 106-554) was submitted to Congress as Chapter 3, "Report on Paperwork Burden Imposed by Agency Regulations," of the FY 2001 Information Collection Budget. The Consolidated Appropriations Act required OMB to prepare a report that, among other things, "evaluates the burden imposed by each major rule that imposes more than 10,000,000 hours of burden, and identifies specific reductions expected to be achieved in each of fiscal years 2001 and 2002 in the burden imposed by all rules issued by each agency that issued such a major rule."

To evaluate the extent to which the PRA reduced burden imposed in agency rules, OMB requested agency chief information officers to send OMB a statement of how implementation of the PRA "has reduced burden imposed by rules issued by [your] agency." Chapter 3 of the ICB presents the information provided by agencies in response to this request.

OMB also directed agencies to gather information on final rules that (1) were issued since the Congressional Review Act's (CRA) enactment on March 29, 1996, (2) were designated by the OIRA Administrator as "major" (the term "major" is currently used only under the CRA), and (3) imposed a PRA burden of over 10,000,000 hours.

The Department of Labor (DOL) is the only agency to have issued a rule that was both "major" (as defined by the CRA) and that imposed a PRA burden of over 10,000,000 hours. DOL issued two such rules: a final rule on Government Contractors, Affirmative Action Requirements (issued on November 13, 2000) and a final rule for OSHA's Ergonomic Program Standard (issued on November 14, 2000). On March 20, 2001, however, Congress enacted legislation (P.L. 107-005) overturning the ergonomics standard under the authority of the CRA. For information on specific reductions DOL expects to achieve in fiscal years 2001 and 2002, please refer to Chapters 3 and 4 of the FY 2001 Information Collection Budget.

James M. Knott Sr., has improved the lives of many Cape Ann lobstermen

Entrepreneur and inventor James M. Knott Sr.'s, working philosophy of "to first select a goal, and then put one foot in front of the other and keep marching," has not only resulted in his career's ongoing success, but has also helped save the backs of many inshore and offshore Cape Ann lobstermen and at the same time putting more money into their pockets -- never mind the thousands of others throughout New England and Canada.

"I like engines, cars and mechanical things. I love building things," said the 71-year-old Knott, who was only 12 when he had his own car to tinker with.

This man is one of those rare individuals who is willing to work, isn't afraid to get his hands dirty, has mechanical and business know-how, and has the ability to combine these talents and traits in creative ways to get things done.

Forty years ago, Knott, also a licensed general contractor whose carpentry work helped pay his college tuition, first dreamt of and later built an all-wire lobster trap.

Such a trap is now in vogue -- but that didn't happen overnight.

Knott, who resides with his wife Betty Davis Knott in Northbridge, also has a longtime vacation home in Gloucester, where he has often fished a handful of lobster traps in the summers.

He has the distinction of putting "the very first all-wire plastic-coated wire trap in the Atlantic Ocean ... in 1957."

"The first traps I built were nothing like those you can buy or build today. But, they worked," said this Harvard College grad and Army veteran, who comes from a strong engineering family background.

Before establishing the Riverdale Mills Corporation in 1979, Knott first made some similar plastic-coated steel wire mesh at his former factory in South Natick. He later sold this factory, which moved to Sudbury. Here he was the manager of the company's plastic coating operations.

He is currently president and CEO of the Riverdale Mills Corporation of Northbridge -- the manufacturer of the very popular Aquamesh wire trap mesh. Knott, the father of four grown children (Janet, Jim, Ed "Jeffrey" and Andy) has also held a commercial lobster license since 1942. Andy is vice president of sales and marketing.

Betty Davis Knott, who met her husband at a Rockport Art Association dance, remembers him often struggling with heavy wooden lobster traps.

"'There has to be a lighter and better trap than those heavy wooden traps,' he told me," Betty said. She had formerly worked on Bearskin Neck with pewter while summering in Rockport.

Using some general physics knowledge and his first-hand lobstering experience, Knott already knew by 1957 that wire traps would be better than the traditional wooden lobster trap.

"I found I was getting more lobsters per haul than I was with wood. Most of my traps stayed on the bottom during some pretty heavy weather; water flows through the wire trap better than through a wooden one. Those that didn't (if I could find them) were easily repaired," he said.

Knott also discovered that the wire trap is lighter out of the water and heavier in the water than a wooden trap, "about five times as heavy as the wooden trap (in the water)," he said.

But how was Knott to convince the traditional wooden trap lobstermen to switch to wire? Wood was cheap and available, and most lobstermen reasoned, "if it ain't broke, don't fix it."

In the early 60s, complete wooden traps on Cape Ann sold for approximately $5, while a wooden oak trap kit went for about $1.80. Most lobstermen seasonally fished from spring through fall while off-seasonally repairing old traps and building new ones.

At the season's start they had to add extra weights (usually bricks or stones) to get their bone-dry wooden traps to sink. Storms snarling and either partially or completely destroying very vulnerable traps was common then.

Ship worms honeycombed the wooden traps, too. And, if all that wasn't bad enough, lobstermen also had to regularly haul the heavy water-logged traps onto their boats (a 30-inch-long trap weighs about 125 pounds according to Knott) and stack these shore-side into piles at season's end.

Knott began his wire trap crusade by giving samples of the 1 by two inch, 14-gauge mesh to local lobstermen and to his first retailer, the late Paul Woodbury, through his Rockport Twine and Rope Co. Woodbury revolutionized the rope industry by replacing natural-fiber ropes with synthetic dacron. He also invented the dacron rope-making machinery. While a few lobstermen did use Knott's wire for the ends and sides of wooden traps, a handful of others, including the late Lane's Cove lobsterman Arthur Gaudreau, later made small-sized (under 30 inches) complete wire traps for themselves.

"But, acceptance was slow. For many years sales were often less than a truck-load a year," said Knott. I can remember other Lane's Cove lobstermen telling Gaudreau, "He's wasting his time with those wire traps."

Knott still remembers a couple of similar negative comments, too. While exhibiting at the first Fish Expo in Boston, an old lobsterman told him: "It looks good, but it ain't gonna catch no lobsta."

Also, after trying some of Knott's completed wire traps offshore in the deep water, the late fishing legend Bob Brown told him, "They don't work. I never caught a lobster with them."

Little did Brown realize then, those traps would have worked if they had landed upright. This balancing problem has been corrected by lobstermen tying the traps' rope bridles to their upper corners and readjusting the traps' weights.

But Knott kept marching on, and by the late 1970s, J. Pike Bartlett Jr., of Maine, who later formed the Friendship Trap Company of Friendship, Maine, "really got it going. He opened the doors," said Knott. Bartlett was then instrumental in getting Maine lobstermen to use wire traps. Today, Friendship Traps is one of the largest wire trap manufacturers, dealing exclusively with Aquamesh.

From Maine, wire trap use gradually spread, including to Cape Ann where they replaced the popular wrap-around (netting) -- bear trap. Now Knott estimates 80 percent of New England and 60 percent of Canadian lobstermen use wire traps, "and the number grows every year."

Lobstermen have discovered the difference between fishing wire versus wood is like night and day, translating to more fishing time with less maintenance and storm damage, fewer hang-downs, ease of repairs and handling, and a longer gear lifespan.

Today's wire trap prices can range from just over $30 for the smaller ones, to more than $50 apiece for the four-footers. Yellow-colored wire traps have become recently popular after many lobstermen found these appeal to fish more than the dark colors in the deeper water.

Local veteran lobstermen such as Tom Bartlett and Bob Morris like Aquamesh for its longevity. "It's excellent. It couldn't be better," said Bartlett.

In 1979 Knott responded to this long-time-in-coming acceptance of wire traps by going on his own again and buying and refurbishing an old 100,000-square foot brick and wood paper mill in the Riverdale section of Northbridge.

"I got back in my fatigues," said Knott, who did much of the rebuilding himself. Here he would concentrate "on making a better-quality, plastic-coated wire mesh that would meet the demands of lobster fishermen, crab fishermen, people in aquaculture, or anybody else who needed high-quality, plastic-coated welded wire mesh that would combine the strength of steel with the corrosion resistance of plastics. The first shipment was made in December, 1980."

Throughout the years the 150-employee-strong Riverdale Mills Corporation has both expanded the operation's square footage to 260,000 square feet with plans to expand another 100,000 square feet, and has improved its four-step production of wire mesh by drawing out steel rods into wire, welding the wire into mesh, galvanizing the welded mesh, and coating the mesh with PVC, by acquiring, inventing and constructing state-of-the-art equipment.

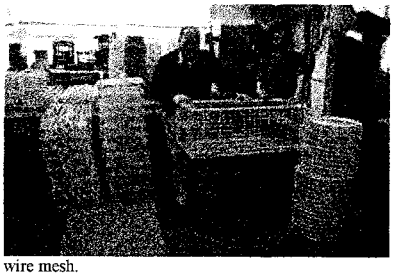
"I designed and built the coating line. It's the only one like it in the world," explained Knott.

Riverdale Mills is known for its "galvanized after welding" or GAW process. This makes for a much more durable mesh. Besides lobster trap mesh, Riverdale Mills makes about 200 wire products, producing

about 12,000 tons annually. These include security fencing, plastic-coated poultry wire and flooring, land reinforcing wire mesh gabions, and even salmon farm pens. The demand for their products only grows. "Riverdale Mills cares about its product and the people they deal with. Its service and people are excellent. I remember one fairly-recent incident when Knott and his wife delivered a wire order of mine one weekend towing a trailer behind their truck. Did they have to do that?," said Dick Winchester, owner of Winchester Trap Co. in Gloucester.

Riverdale Mills Corporation CEO and President James M. Knott Sr. stands in front of a pile of rolls of galvanized wire mesh.

Riverdale Mills Corporation CEO and President James M. Knott Sr. stands in front of a pile of rolls of galvanized



wire mesh.

Here at his Winchester Trap Company, owner Dick Winchester (left) and foreman Doug Clodgo, display one of their completed wire traps made from "Aquamesh" wire.

Pigeon Cove Harbor lobsterman Bob Morris, who has just finished off a new trap made from "Aquamesh" wire, prepares to add it to his new-trap pile.
Peter K. Prybot photos

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ENVIRONMENTAL INJUSTICE GOVERNMENT AS POLLUTER

EPA agents accused of going too far

By David Armstrong, Globe Staff, 11/17/99

Last of four parts

JAMES KNOTT, owner of Riverdale Mills, said the indictment against him has not only damaged his reputation, but threatened his business. (Globe Staff Photo / Tom Herde)

NORTHBRIDGE -- One day two years ago, James Knott was in his office talking on the telephone when he noticed something unusual happening in the lobby of Riverdale Mills, his wire-mesh manufacturing plant here.

As he walked out, Knott saw nearly two dozen people, including several men wearing dark jackets with bold "US AGENT" lettering on their backs. Over the next seven hours, the agents, armed with semiautomatic pistols, seized boxes of documents from file cabinets and desks.

The 69-year-old Knott was incredulous as he watched the scene unfold. In 1979, he'd bought this forgotten mill on the Blackstone River, 13 miles southeast of Worcester, pumped his own money into it, and over the next 20 years turned the granite and red-brick complex into the town's largest employer. The plastic-coated wire mesh that Knott invented is used to make lobster traps all over the world.

As he watched the agents question his employees, Knott wondered what he could have done to invite a raid of his company. Nearly a year later, on Aug. 12, 1998, he had his answer. Knott was indicted on two counts of violating the Clean Water Act for allegedly pumping highly acidic water into the town sewerage system.

In separate press releases, US Attorney Donald K. Stern and the Boston office of the Environmental Protection Agency condemned Knott, warning that a conviction could result in up to six years in prison and a $1.5 million fine.

But Knott fought back and has turned the tables on his accusers. The charges against him were later dropped, and today it is the federal government that sits in court as a defendant, forced to explain its pursuit of Knott, and allegations that some agents manufactured and withheld evidence.

The Knott case shines a light on the relatively unknown work of 200 EPA criminal agents who pursue polluters nationwide. The group has been responsible for some high-profile prosecutions, and the work of several agents has been praised both in New

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England and nationally. But there are also accusations that some agents have bullied targets of their investigations, padding enforcement statistics on the backs of small business owners accused of minor offenses.

"Protecting the environment is obviously one of the most important jobs our government can do," said Judson Starr, a Washington lawyer who defends companies accused of environmental crimes and once served as chief environmental prosecutor in the Justice Department. "But for some, extremism is no vice in protecting the environment."

TO CRITICS, this photo from a brochure touting the criminal investigation unit of the EPA sets the wrong tone.

An aggressive tone

The brochure touting the criminal investigation division of the EPA features three photographs of agents holding semiautomatic handguns in the firing position. To those critical of the division, the brochure sets the tone for a level of enforcement that is disproportionate to the crimes alleged.

Environmental crimes are different: They almost never involve defendants with histories of violence or prior criminal activity. The polluters are frequently corporations and search warrants are sometimes executed in company offices.

Yet the EPA often sends in large numbers of armed agents to serve the warrants. "It's ridiculous," said one EPA agent, who asked not to be identified. "Everyone stands around and talks about why so many of us are needed."

The EPA criminal unit is reviewing its search warrant procedures, having established an advisory group earlier this year to make recommendations. The agency withheld records relating to the work of the advisory group when the Globe requested them under the Freedom of Information Act. The EPA said producing the records "could reasonably be expected to interfere with law enforcement proceedings."

Knott complained that his employees were repeatedly videotaped and photographed during the execution of the search warrant. One agent, according to court papers, allegedly told an employee, "Answer my questions or you will be obstructing justice. If you refuse to answer, you will be taken to court and you will have to pay your own legal fees."

The files of the EPA criminal investigation unit also contain complaints of inappropriate behavior, according to records the agency did release under the Freedom of Information Act.

Sylvia Lowrance, the EPA's deputy administrator for enforcement, said it is not unusual for those targeted by investigators to complain they were mistreated or that agents acted inappropriately. "I have been involved in the investigation of some of those allegations and the vast majority have proven absolutely false," she said.

The mayor of Pineville, La., last year complained that EPA agents were threatening employees of the city sewer department with indictments and jail time. "They are asking our employees who they are voting for in the mayor's election and using a strong-arm approach that if they `come clean´ they will not be prosecuted," Mayor Fred Baden said.

US Representative Maurice Hinchey, a New York Democrat, said he was disappointed with both the level of competence and professionalism of EPA criminal agents when

he turned to the agency for assistance in investigating the contamination of drinking wells in Beekman, N.Y. Hinchey said he had credible evidence that illegal hazardous-waste dumping was fouling the ground water. The EPA, he said, mishandled the case.

"It was the carelessness, the unprofessionalism, the lack of attention to detail, lack of communication. The way they carried out their work was absolutely astonishing in their ineptitude," he said in an interview with the Globe. "There ought to be more uniformity in approaches...adhering to a high level of professional standards. This is important police work."

Plant owner defends record

Knott has never been bashful about taking on the government. For many years he had questioned the regulators who showed up at his mill, and disputed government interpretations of various laws. In 1993, he was cited for failing to get a town permit for a private well at the plant, and in 1995 for failing to properly mark and cover barrels of waste oil. But Knott also insists he is both serious and sensitive to environmental concerns at his plant.

As evidence, he points to an award his company received in September from Governor Paul Cellucci for outstanding achievement in reducing the use of toxins. The state lauded Riverdale Mills for inventing and designing a system to eliminate solvents in the manufacturing process.

The EPA became interested in Knott two years ago, when it said it received an anonymous tip from a mill employee that the plant wastewater treatment system was inoperable and the facility was sending acidic water into the town sewerage system -- a violation of the Clean Water Act.

When agents searched the mill, they said they found that wastewater was being diverted past the plant's treatment system and that key parts of the system had been dismantled. Knott denied the charge.

Inspectors tested the wastewater at the mill in October 1997 and again in November of that year. They focused their efforts on what they called "Manhole 1," which was located on the street just outside the plant. They did additional testing at "Manhole 2," which was 303 feet away. Both manholes are located on property owned by Knott. The second manhole is located next to where the wastewater from Riverdale Mills enters the town sewerage system.

According to the EPA, dozens of tests at Manhole 1 revealed highly acidic wastewater that violated clean-water standards. But the investigators performed only a handful of tests at Manhole 2.

As Knott and his attorney analyzed the EPA's test data, they were troubled by the way investigators recorded the only result at the second manhole that violated the law. The number "7" looked as if it had been changed to "4." The change was significant because a 7 indicated a pH range within legal limits (PH measures the acid level of water). A reading below 5 indicates the water is too acidic and could threaten plants and fish. So a reading of 4 was illegal.

In February, Knott hired a former FBI handwriting expert. As EPA agents watched, David P. Grimes examined the original test results. He said his examination of the documents "revealed alterations, overwriting of numerals and letters, and strikeovers without proper initials for correction." He noted "a numeral having a formation similar to the sevens in the notes was changed to a numeral four."

Two weeks later, US District Court Judge Nathaniel Gorton threw out the test results

without ruling on the allegation the results were changed. Gorton said the EPA took samples on the Riverdale Mills property without informing Knott, even after agreeing to do the work in the company of a mill employee.

The government's case largely hinged on those two days of pH testing in 1997. The judge's ruling eliminated one day of testing as evidence, weakening the case.

Then, on April 23, the government withdrew its case against Knott before trial. Knott's attorney, Warren Miller of Boston, received a fax saying: "The United States submits that it has determined, in preparing for trial, that the evidence to support the counts of the indictment is insufficient to sustain the government's burden of proof."

But the dismissal did not end the Knott case. On June 3, 1999, Assistant US Attorney Jeanne M. Kempthorne, now chief of the corruption unit, sent a letter to Judge Gorton revealing that crucial information was withheld from the affidavit supporting a second search warrant at the mill in July 1998. EPA agent Stephen Creavin, she wrote, "omitted certain facts" from his affidavit. What Creavin failed to disclose was information that Knott says exonerates him. The affidavit did not include test results from November 1997 showing that wastewater at the second manhole -- the one closest to where the mill wastewater entered the town system -- met all standards.

Knott said the indictment against him has not only damaged his reputation, but threatened his business. A BankBoston loan officer threatened to cancel a $2 million loan agreement because of concern about the potential $1.5 million fine, said Knott. He said he has spent $225,000 on legal fees and expert witnesses.

In June, Knott filed a Hyde Amendment complaint, which allows the subject of a criminal case to collect attorney's fees and other expenses if the government action is "vexatious, frivolous, and in bad faith." The case is pending. Knott has also filed a separate claim for $2.51 million in damages under the Federal Tort Claims Act, alleging Creavin withheld evidence and falsely accused him of fouling local waters.

In his complaint, Knott alleges that there was never any credible evidence to support the charges against him. An engineering professor he hired from Worcester Polytechnic Institute, James O'Shaugnessy, re-created the plant conditions on the days the EPA agents tested. Even assuming the plant's internal treatment system wasn't working, the tests performed by the professor indicate that the lowest possible pH level of the wastewater produced at the plant was 6.5, still within legal limits.

"How, then, could the EPA agents have recorded pH of less than 5.0 at manhole No. 1?," Knott's complaint against the government states. "Only by the use of inaccurate equipment, incompetent testing, or deliberate falsification."

Even though it dismissed the case against Knott, the EPA and US attorney's office in Boston insist Knott did violate the Clean Water Act. "James Knott disconnected a pretreatment system," said Sam Silverman, an enforcement lawyer with the Boston EPA.

In a filing last month in response to Knott's complaint against the government, David M. Uhlman, the assistant chief of the Environmental Crimes Section at the Department of Justice in Washington, wrote "there was at the time of the indictment and there remains today a substantial basis for the government's contention that [Knott] committed the crimes."

Furthermore, the government has denied that any of its agents acted inappropriately or falsified documents in the case against Knott. The decision to dismiss the case was simply a matter of prosecutorial discretion, the government said, and not the result of "malicious or wanton" conduct.

Knott, however, suspects the case against him was a bit of bureaucratic payback. As the government provided Knott with files related to the case during the discovery process, his lawyer came across a copy of a letter written by Knott to state environmental officials in 1990. There was no explanation for why the letter, which involved a dispute over permitting for electric generators, was in the files of the EPA investigators.

At the bottom of Knott's letter is a handwritten message from an unidentified environmental official asking a colleague, "Do we just drop this?" Just below that note, the official makes another comment, one that Knott believes may explain why his case was so vigorously pursued.

"I wouldn't mind making his life miserable for awhile," the official wrote.

Cases questioned

Inside the EPA, some criminal staff members wonder how the Knott case ever became a criminal matter in the first place. Both locally, and in Washington, some EPA officials say there is debate about the selection of cases, and assertions that some smaller criminal cases would have been better handled as civil complaints.

There are other small business owners like Knott asking how their cases became criminal matters. Several EPA agents pointed to examples of prosecuting "minnows" while ignoring the "whales."

One such case is that of Dino Cervantes, a New Mexico farmer who pleaded guilty to fouling local waters with runoff from water used to wash his plants. Cervantes was indicted even though he paid to have the runoff hauled to a safe location after he was notified that tests showed a problem. "It was a PR stunt," says Cervantes. "Now they can tell Congress, `Hey, look at what we are doing."

Gary Clinch of Longview, Wash., had charges dropped against him in May after a jury refused to convict him of charges he illegally removed asbestos. Clinch was repairing six carports at a building complex he owns when he said he unknowingly removed sprayed-on asbestos. After learning it was asbestos, Clinch said he paid an expert to haul it away. The EPA, however, considered it a criminal offense and Clinch was indicted last December, a year and a half after the asbestos was removed.

Gary H. Baise, a Washington lawyer who served as chief of staff to the first administrator of the EPA in 1970, said Knott and defendants in the other cases have legitimate complaints.

"The cases...are ones that would appear to be normal civil cases, traffic tickets," he said. "These cases seem to be going criminal. They have to make the numbers and make themselves relevant."

But Lowrance, the EPA's deputy administrator for enforcement, said the agency is blind to the size of a company, considering only what a person or corporation is accused of doing. "We target criminal misconduct," she said.

Recognizing the significant impact of a criminal charge, the EPA's criminal investigation division has guidelines to evaluate the relative severity of violations.

"There is universal consensus that less flagrant violations with lesser environmental consequences should be addressed through administrative or civil monetary penalties and remedial orders, while the most serious environmental violations ought to be investigated criminally," according to the guidelines. "The challenge in practice is to correctly distinguish the latter cases from the former."

In the case of Knott, whatever wastewater flows out of his plant ends up at the Town

of Northbridge sewerage treatment plant about two miles away. The sewage is treated and sent into the Blackstone River. The town's plant superintendent, James Madigan, said he regularly monitors the pH level of the discharge he sends into the river. The pH level has always been within acceptable limits, he said.

Asked about the effect on the environment if Knott was violating the law as charged, Madigan said there was none.

"That was one of the concerns investigators had," Madigan said in a recent interview. "With flow time, [the Riverdale Mills wastewater] would be so diluted you wouldn't even notice it here. It would have no impact at all on us. I definitely told the investigators. That is one of the questions they asked me. They were concerned about that."

When asked if he testified before the grand jury that investigated Riverdale Mills, Madigan said no. "I was supposed to testify before the grand jury, but they called me and canceled," Madigan said. "They said it wasn't necessary."

What's your favorite season?

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September 04, 2000 Cite this Page: 2000 LWUSA 797

Verdicts & Settlements

Business Owner Wins Judgment Against EPA for Overzealous Prosecution

By Diana Digges

In its zeal to crack down on alleged polluters, the EPA shot itself in the foot, handing a defendant ammunition to bring a case against the government.

After being exonerated in a pollution suit, James Knott, owner of Riverdale Mills Corporation (RMC) in Northbridge, Mass., filed suit against the EPA saying that its case against him was "vexatious, frivolous and in bad faith." Last month, a federal judge agreed, awarding Knott's company more than $68,000 in attorneys' fees. Knott has also filed a separate suit against the feds claiming violations of his constitutional rights.

The 150-employee RMC makes steel mesh for lobster traps. The company's manufacturing process includes two production lines that produce wastewater that is ultimately discharged into the town's public sewer.

The first phase of Knott's legal tangle began on Aug. 12, 1998, when a federal grand jury indicted him and his company on two felony counts of violating the Clean Water Act. The government alleged that RMC was discharging highly acidic wastewater into the town's sewer system. If convicted, Knott faced a possible six-year jail term and up to $1.5 million in fines. Both the EPA and the Department of Justice widely publicized the indictment as evidence of their campaign against criminal polluters.

But eight months later, the EPA dismissed all charges – after a federal prosecutor discovered that critical information that would have cleared Knott had been omitted from a search warrant application.

That wasn't good enough for Knott.

Arguing that the indictment damaged his reputation and threatened his 20-year-old business, Knott sued the government in June 1999 under the Hyde Amendment. The amendment allows exonerated defendants to recover legal costs if they can prove that the government has brought a case against them in bad faith.

Successful complaints under the Hyde Amendment are rare. Out of dozens of complaints filed since the amendment was passed in 1997, only a handful of people have recovered legal fees. The burden of proof rests on the exonerated defendant-turned-plaintiff, and "it's a very heavy burden to prove a bad faith, vexatious suit on the part of the government," says Boston attorney Warren

Miller, co-counsel for Knott's Hyde Amendment complaint.

But U.S. District Judge Nathaniel Gorton ruled in Knott's favor, in the first application of the Hyde Amendment in New England. He stated on July 27 that the government's case against the mill owner was "vexatious," or without probable cause and calculated to harass. Knott had alleged that the EPA targeted him because he was well known for resisting what he considered excessive government regulation.

Miller says that Knott's case rested on exhibits demonstrating that the EPA indictment included some altered evidence from pH samplings taken at his plant on Oct. 21, 1997 and omitted other evidence from samplings taken on Nov. 7. The exhibits also showed that that EPA agents harassed and intimidated employees, according to Miller.

On Oct. 21, EPA agents, tipped off by an RMC employee that the company's wastewater treatment system was inoperable, arrived unannounced at the plant. With Knott's agreement, they took samples to record the acidity of wastewater in a manhole just outside the Riverdale plant. The agency's logbooks recorded some readings were within legal limits, some were not, says Miller.

Later that day, the agents took additional samples from the same manhole and from one 300 feet farther away, where the plant's wastewater enters the town sewer system. However, the agents took the samples in the absence of any RMC personnel, contrary to the agreement they had made with Knott during the consensual search warrant execution and thereby violating his Fourth Amendment rights, the plaintiff alleged.

The plaintiff's attorney hired former FBI handwriting expert David Grimes, who found that the afternoon records from Oct. 21 included "alterations, overwriting of numerals and letters, and strikeovers without proper initials for correction." Grimes also noted that "a numeral having a formation similar to the sevens in the notes was changed to a numeral four." A reading of five or above indicates compliance with the law. Grimes' assessment persuaded Judge Gorton that at least one recorded reading was altered.

However, Judge Gorton threw out *all* the afternoon readings, since they were taken in the absence of an RMC employee, in violation of the agreement the agency had made with Knott. By throwing out what he called "surreptitiously obtained samples," the judge considerably weakened the government's case.

Seven readings taken on Nov. 7 at the manhole close to the town's sewer system all showed acidity levels within the legal limits, the plaintiff argued.

It was those readings, omitted from a search warrant application the following year, that would have exonerated Knott, says Miller, who argues that the government "withheld exculpatory evidence."

The government appears to have admitted as much.

In a June 3, 1999 letter, Assistant U.S. Attorney Jeanne M. Kempthorne, head of the corruption unit, stated that the affidavit in support of the search warrant "omitted certain facts," including readings that showed the pH levels were within the legal limit. This admission came months after a

statement by the government during discovery that "the United States is unaware of the existence of any exculpatory evidence."

The plaintiff also argued that the EPA search of his property on Nov. 7 constituted harassment. Judge Gorton agreed, describing the raid as "a virtual 'SWAT team' consisting of twenty-one EPA law enforcement officers and agents, many of whom were armed, [who] stormed the RMC facility to conduct pH samplings. They vigorously interrogated and videotaped employees causing them great distress and discomfort."

Although the litigation expenses for Knott amounted to $230,000, Judge Gorton reduced the award in accordance with limits imposed by the Hyde Amendment. Knott himself has a net worth of $2 million and was therefore excluded from recovery, explains Miller.

"But RMC was entitled to recover because the net worth of the company was not more than $7 million and the number of employees is not more than 500," he says.

Gorton ordered the government to pay RMC $68,726. But the ruling wasn't good enough for Knott.

He has filed a complaint against the government under the Federal Tort Claims Act for malicious prosecution and against three EPA agents for violating his constitutional rights. The complaint seeks damages of $12.85 million for RMC and $2.5 million for Knott for all the claims, and an additional $1 million in punitive damages against the EPA agents for each of the constitutional claims.

The Washington Legal Foundation has taken Knott's second case against the government. The conservative WLF describes itself as a "pro-free enterprise" organization that "provides legal assistance to small businesses challenging excessive and unwarranted regulatory actions." The organization took Knott's case, says WLF chief counsel Richard Samp, because "the EPA is trying to create environmental criminals where they don't exist. [They're] trying to expand the scope of criminal law and we think that needs to be countered."

Plaintiff's attorney: Warren Miller, of Boston; Henry T. Dunker, of Weymouth, Mass., and Jamy B. Buchanan, of Boston.

Defense attorney: Stephen Solow and David Uhlmann, U.S. Attorney's Office, Environmental Crimes Section, Washington, D.C.

The case: U.S. District Court, District of Massachusetts, *United States of America v. James M. Knott, Sr., and Riverdale Mills Corporation,* CA No: 98-40022-NMG; Judge Nathaniel M. Gorton.

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