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WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

AND THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSNIESS

HOUSE OF REPRESENTATIVES

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WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?

WEDNESDAY, JANUARY 28, 2004

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS, COMMITTEE ON GOVERNMENT REFORM, JOINT WITH THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT, COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The subcommittees met, pursuant to notice, at 2:05 p.m., in room 2247, Rayburn House Office Building, Hon. Doug Ose (chairman of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs) presiding.

Present for the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs: Representatives Ose, Schrock, Shays, Cannon, Deal, and Tierney.

Present for the Subcommittee on Regulatory Reform and Oversight: Representatives Schrock, Bartlett, Kelly, King, Majette, and Velazquez.

Staff present: Barbara Kahlow, staff director; Melanie Tory, professional staff member; Anthony Grossi, legislative clerk; Megan Taormino, press secretary; Krista Boyd, minority counsel; and Jean Gosa, minority assistant clerk.

Mr. OSE. Good afternoon. Welcome to the joint meeting between the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight, chaired by the gentleman from Virginia, Mr. Schrock.

Here is what we're going to do. We could have votes here in short order or it could be quite some time. To the extent we have votes, I don't know, we'll just have to accommodate it. The way this subcommittee works is in each occasion where my subcommittee gathers, it being the Subcommittee of Government Reform, we always swear our witnesses in. Before we do that, we will have opening statements from myself and Mr. Schrock and any other Members who wish to make them, and we'll swear the witnesses in, and the first panel and the second panel.

The first panel, we'll go through the questions with them and the testimony. Then we'll have the second panel up. The way we'll alternate is we'll have someone from my subcommittee. Then we'll have someone from Mr. Schrock's subcommittee. Then we'll have someone from my subcommittee and Mr. Schrock's subcommittee and on and on and on.

Today the subcommittee will examine the administration's record in relieving burden on small business, with particular attention to its further implementation of the Small Business Paperwork Relief Act of 2002. This law required the Office of Management and Budget to take certain actions by June 28th of last year, and Federal agencies to take additional actions by December 31st. Both hours spent and penalties paid by small business affect productivity, jobs and economic growth. A special concern to small business are penalties levied by Federal agencies for innocent first-time violations of Federal paperwork and regulatory requirements.

Today, OMB will update the status, since our July 2003 hearing of the implementation actions for the complete listing of each of the agencies' single point of contact that will act as a liaison between small business and the agency, which was due on June 28th. They will update us on their actions for a complete listing of agency compliance, assistance resources available to small businesses, which was also due June 28th.

We'll get an update on the timely agency enforcement reports, which were due December 31st, an update on OMB's interagency task force report to Congress, and an update on further significant paperwork reduction accomplishments and plans to benefit small business.

In addition to the OMB, we have three key regulatory agencies joining us today. That would be the Departments of Labor and Transportation and the Environmental Protection Agency, and what they are joining us here to do is to discuss their track record in relieving enforcement burdens on small business and their significant paperwork reduction accomplishments and plans to benefit small business.

OMB estimates the Federal paperwork burden on the public of 8.2 billion hours. In April of last year, OMB estimated that the price tag for all paperwork imposed on the public was $320 billion per year.

In 1980, Congress passed the Paperwork Reduction Act and established an Office of Information Regulatory Affairs [OIRA] in OMB. OIRA's principal responsibility is paperwork reduction. In 1995 and 1998, the year 2000 and 2002, Congress enacted additional legislation with the objective of decreasing paperwork burden. Nonetheless, paperwork has increased in each of the last 7 years.

On June 27, 2003, OMB published two Small Business Paperwork Relief Act documents. The first was a listing of the agencies single point of contacts and compliance assistance resources. The first chart on display, that would be the one on my right as I'm facing them. The first chart on display that reveals that, as of this week, 14 agencies with OMB approved paperwork are still without a single point of contact, and OMB has still not indicated compliance assistance resources for 18 agencies.

OMB's second June 27th document was a notice of availability of its initial task force report. During our July 2003 hearing, we encouraged OMB to submit a final task force report by the June 28, 2004 statutory deadline.

In the June 2002 Small Business Paperwork Relief Act, Congress intentionally did not require the initial agency enforcement reports

until December 31, 2003 in order to allow agencies sufficient time to adjust their data systems.

Unfortunately, guidance was not provided to the agencies about the Small Business Paperwork Relief Act until late October 2003, and, as the first chart on display reveals, that would be the same one I pointed to earlier, as of this week, 42 of 69 applicable agencies have not yet submitted their enforcement reports. Twenty apparently were unaware of this statutory obligation, and that included the Small Business Administration.

The second chart on display presents an analysis of the regulatory enforcement reports of six Federal agencies, including the three with us today. That is the one on the left, the smaller one. The chart reveals that 46 percent of both Department of Labor's and Department of Transportation's enforcement actions were against small entities in contrast to only 11 percent of EPA's.

In addition, the Department of Labor reduced or waived only 21 percent of its enforcement fines and penalties levied on small business. In contrast, 44 percent were reduced or waived by EPA. The Internal Revenue Service and Department of Labor reduced or waived $1.9 billion and $16 million, respectively, in fines or penalties levied on small business.

The bottom line is that we could do better in complying with the letter and spirit of the Small Business Paperwork Relief Act.

As an owner of various small businesses, I am especially disappointed at our progress to date. I do not understand how we can pick and choose which laws to fully implement.

Congress has asked for small business results, which are fewer hours spent on government paperwork, lower compliance costs and resulting increase in productivity and profits and jobs.

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

Chairman Doug Ose
Opening Statement
What is the Administration's Record in Relieving Burden on Small Business?
January 28, 2004

Today, the Subcommittees will examine the Administration's record in relieving burden on small business, with particular attention to its further implementation of the Small Business Paperwork Relief Act of 2002 (SBPRA, P.L. 107-198). This law required the Office of Management and Budget (OMB) to take certain actions by June 28, 2003, and Federal agencies to take additional actions by December 31st. Both hours spent and penalties paid by small business affect productivity, jobs and economic growth. Of especial concern to small business are penalties levied by Federal agencies for innocent first-time violations of ever-changing Federal paperwork and regulatory requirements.

Today, OMB will update the status, since our July 2003 hearing, of its implementation actions for: (a) a complete listing of each agency's single point of contact (SPOC) to act as a liaison between small business and the agency (due June 28th), (b) a complete listing of agency compliance assistance resources available to small businesses (due June 28th), (c) timely agency enforcement reports (due December 31st), (d) a responsive OMB-led interagency task force report to Congress, and (e) further significant *(over 100,000 hours each, exclusive of electronic filing)* paperwork reduction accomplishments and plans to benefit small business.

In addition, the three key regulatory agencies – the Departments of Labor (DOL) and Transportation (DOT) and the Environmental Protection Agency (EPA) – will discuss their track record in relieving enforcement burdens on small business, and their significant paperwork reduction accomplishments and plans to benefit small business.

OMB estimates the Federal paperwork burden on the public at 8.2 billion hours. In April 2003, OMB estimated that the price tag for all paperwork imposed on the public is $320 billion a year. This is a huge burden, especially on small businesses.

In 1980, Congress passed the Paperwork Reduction Act and established an Office of Information and Regulatory Affairs (OIRA) in OMB. OIRA's principal responsibility is paperwork reduction. In 1995, 1998, 2000, and 2002, Congress enacted additional legislation with the objective of decreasing paperwork burden. Nonetheless, paperwork has increased in each of the last seven years.

On June 27, 2003, OMB published two SBPRA documents. The first was an incomplete listing of agency SPOCs and compliance assistance resources. The first chart on display reveals that, as of this week, 14 agencies with OMB-approved paperwork are still without a SPOC and OMB has still not indicated compliance assistance resources for 18 agencies. OMB's second June 27th document was a notice of availability of its initial task force report. This document was also flawed. During our July 2003 hearing, we encouraged OMB to submit a responsive final task force report by the June 28, 2004 statutory deadline.

In the June 2002 SBPRA, Congress intentionally did not require the initial agency enforcement reports until December 31, 2003, to allow agencies sufficient time to adjust their data systems. Unfortunately, OMB did not provide any guidance to the agencies about SBPRA until October 28, 2003. As the first chart on displays reveals, as of this week, 42 of the 69 applicable agencies have not yet submitted their enforcement reports. Incredibly, 20 were unaware of this statutory obligation. Notably, this included the Small Business Administration (SBA).

The second chart on display presents analysis of the regulatory enforcement reports of six Federal agencies, including the three with us today. The chart reveals that 46 percent of both DOL's and DOT's enforcement actions were against small entities in contrast to only 11 percent of EPA's. In addition, DOL reduced or waived only 21 percent of its enforcement fines and penalties levied on small business in contrast to 44 percent reduced or waived by EPA. The Internal Revenue Service (IRS) and DOL reduced or waived $1.9 billion and $16 million, respectively, in fines or penalties levied on small business.

The bottom line is that the Administration has not fully complied with the letter and spirit of SBPRA. As a former owner of various small businesses, I am especially disappointed. I do not understand how OMB can pick and choose which laws to fully implement. Congress wants and America's small businesses deserve results – fewer hours spent on government paperwork and lower compliance costs to increase productivity and job creation.

I want to welcome our witnesses today. They include: Dr. John D. Graham, Administrator, OIRA, OMB; Patrick Pizzella, Assistant Secretary for Administration and Management, DOL; Jeffrey Rosen, General Counsel, DOT; Kimberly Terese Nelson, Assistant Administrator for Environmental Information, EPA; Harold Igdaloff, President, Sungro Chemicals, Inc., California, on behalf of the National Small Business Association; and, Andrew Langer, Manager, Regulatory Policy, the National Federation of Independent Business.

STATUS OF AGENCY COMPLIANCE WITH SBPRA'S STATUTORY OBLIGATIONS: 1/21/04

Agency	SPOC	Compliance Assistance	Enforcement Report
Agriculture	Y	Y	Y
Commerce	Y	Y	Y
Defense	Y	Y	N
Education	Y	Y	N
Energy	Y	Y	Y
Health & Human Services	N	Y	N
Homeland Security	Y	Y	N
Housing & Urban Development	Y	Y	Y
Interior	Y	Y	Y
Justice	Y	Y	N
Labor	Y	Y	Y
State	Y	Y	Y
Transportation	Y	Y	Y
Treasury	N	Y	N
Veterans Affairs	Y	Y	Y
Independent Exec. Branch Agencies			
USAID	Y	N	unaware
CNS	Y	N	unaware - Y
EOP*	N	N/A	N
EPA	Y	Y	Y
EEOC	Y	Y	Y
Export-Import Bank of the US	Y	Y	unaware
FMCS	Y	N	N
GSA	Y	N	unaware
IMLS*	N	N/A	N
MSPB	Y	N/A	unaware
NARA	Y	Y	Y
NASA	Y	Y	N
NEA	Y	N/A	unaware
NEH	Y	N/A	unaware
NMB	Y	N	N
NSF	Y	N	unaware
NTSB*	N	Y	N
OGE*	Y	N/A	N
OMB*	N	N	N
ONDCP*	N	N/A	N
OPM	Y	N	N
Office of the Special Counsel*	N	N/A	N
OPIC	N	Y	N
Peace Corps	Y	Y	unaware
PBGC	Y	Y	unaware
RRB	Y	N	unaware - Y
SSS	Y	N	unaware
SBA	Y	Y	unaware

Agency	SPOC	Compliance Assistance	Enforcement Report
SSA	Y	Y	Y
Surface Transportation Board	Y	Y	unaware
TVA	Y	Y	N
USITC	Y	N	unaware
USTR	Y	N	N
Independent Regulatory & Banking			
CFTC	Y	Y	Y
CPSC	Y	Y	Y
FCC	Y	Y	Y
FDIC	Y	N/A	Y
FERC	Y	N	unaware
Fed. Housing Finance Board*	N	N	N
FMC	Y	Y	Y
Fed. Reserve Board	Y	Y	Y
FTC	Y	Y	Y
NCUA	Y	N/A	Y
NRC	Y	N	Y
SEC	Y	Y	Y
Small & Miscellaneous Organizations			
Appraisal Subcommittee of FFIEC	Y	N/A	unaware - Y
Comm. Purchase Blind/Hand.	Y	N/A	unaware
Emergency Oil & Gas Guar. Loan*	N/A	N/A	N/A
Emergency Steel Guar. Loan Board*	N	N	N
Federal Acquisition Regulation*	N/A	N/A	N/A
Harry S Truman Scholarship*	N	N/A	N
Interagency Council Homeless*	N	N/A	N
M.K. Udall Foundation for Environment	Y	N	unaware
Nat. Comm. on Libraries & Info	Y	N/A	unaware
Nat. Indian Gaming Comm.	Y	N	N
Nat. Institute for Literacy*	N	N/A	N
TOTAL – 71 AGENCIES	**14N**	**18N**	**26N, 20 unaware**

N/A = Not Applicable
* = 14 agencies not in OMB's SBPRA listing but in OMB's Paperwork Reduction Act inventory

NOTE. 24 agencies did not provide requested copies of all paperwork applicable to small business: USDA, DED, DHS, DOI, DOJ, DOL, DOT, Treasury, DVA, FMCS, GSA, NASA, NMB, NSF, OMB, OPIC, SSS, USITC, USTR, CFTC, Fed. Housing Finance Board, Emergency Steel Guar. Loan Board, & M.K. Udall Foundation for Environment.

Prepared for Congressman Doug Ose

ANALYSIS OF REGULATORY ENFORCEMENT REPORTS OF SELECTED FEDERAL AGENCIES

Agency	Affected Entities	# Enforcement Actions	% of Actions vs. Small Entities	# Reduced or Waived	% of Total Actions Reduced or Waived	Penalty $ Reduced or Waived
Treasury (IRS only)	Total	23,089,358	**65.8**	2,594,898	11.2	5,527,250,960
	Small Entities	15,203,663		1,780,792	**11.7**	1,879,415,680
Labor	Total	143,384	45.9	23,554	16.4	51,600,900
	Small Entities	65,819		13,761	**20.9**	16,470,657
Transportation	Total	8,778	45.6	3,674	41.9	19,941,082
	Small Entities	4,001		1,343	33.6	7,598,690
EPA	Total	1,902	**10.6**	617	32.4	77,406,305
	Small Entities	202		89	44.1	4,833,458
HHS	Total	2,177	79.7	427	19.6	4,899,904
	Small Entities	1,735		342	19.7	3,919,923
USDA	Total	536	94.4	387	72.2	2,939,290
	Small Entities	506		387	76.5	538,001
SEC	Total	352	4.5	3	0.8	1,500,000
	Small Entities	16		3	18.8	1,500,00

Prepared for Congressman Doug Ose

Congress of the United States

Washington, DC 20515

January 21, 2004

MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS AND THE SMALL BUSINESS SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

FROM: Doug Ose and Ed Schrock

SUBJECT: Briefing Memorandum for January 28, 2004 Hearing, "What is the Administration's Record in Relieving Burden on Small Business?"

On Wednesday, January 28, 2004, at 2:00 p.m., in Room 2247 Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a joint hearing with the Small Business Subcommittee on Regulatory Reform and Oversight on relieving burden for small businesses, especially enforcement fines and penalties that are sometimes levied for innocent first-time violations. The hearing is entitled, "What is the Administration's Record in Relieving Burden on Small Business?" It follows up on the Subcommittees' July 18, 2003 joint hearing entitled, "What is OMB's Record in Small Business Paperwork Relief?"

Congressional Action on Paperwork Reduction

In **1942**, to reduce paperwork imposed on the public, Congress established a centralized review function for proposed paperwork. The Federal Reports Act (FRA) required the Bureau of the Budget (which became the Office of Management and Budget (OMB)) to review and approve each agency paperwork proposal. In **1980**, the Paperwork Reduction Act (PRA) replaced the FRA and established an Office of Information and Regulatory Affairs (OIRA) in OMB, whose principal responsibility is paperwork reduction.

In **1995**, Congress reauthorized the PRA and set government-wide paperwork burden reduction goals for Fiscal Years (FYs) 1996 to 2001. In **1998**, after annual increases in paperwork, instead of decreases, Congress, in a provision in the 1999 Treasury-Postal Appropriations Act, required OMB to issue a report identifying specific expected paperwork reduction accomplishments in FYs 1999 and 2000. In **2000**, Congress, in a provision in the 2001 Treasury-Postal Appropriations Act, required OMB to issue a report evaluating paperwork imposed by agency regulations ("regulatory paperwork"), including each major rule imposing over 10 million hours of burden, and identifying specific expected reductions in regulatory paperwork in FYs 2001 and 2002. The Internal Revenue Service (IRS) accounts for over 80 percent of all paperwork burden imposed on the public. In July **2002**, after six years of increases in paperwork burden, the Appropriations Committee included a directive to OMB in House Report 107-575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

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OMB Attention to Small Business Paperwork Reduction

In its September 2003 final annual regulatory accounting report, OMB did not present an impacts analysis on small business, as required by law. At the Government Reform Subcommittee's March 2003 regulatory accounting hearing, OMB pointed out that its final 2002 annual regulatory accounting report included an impacts analysis on small business; in fact, this "analysis" was less than 1-page (pp. 43-4). In post-hearing questions after the Government Reform Subcommittee's April 2003 paperwork reduction hearing, OMB confirmed that it continues to devote less than 1 full-time equivalent (FTE) to IRS paperwork burden reduction. In addition, OMB only identified e-government initiatives to reduce burden on small businesses, i.e., instead of any paperwork reduction initiatives to reduce frequency of small business reporting, introduce thresholds below which reporting is not required, use sampling versus universe reporting, create short forms for small businesses, etc.

Congressional Action on Small Business Burden Relief

Both in March **1998** and February **1999**, the House passed small business burden relief bills (H.R. 3310 and H.R. 391, respectively) by wide margins (267-140 and 274-151, respectively). Among several provisions, both bills required agencies, in the case of first-time paperwork violations by a small business, to impose no civil fine unless the violation had the potential to cause serious harm to the public, would impede the detection of criminal activity, or if the violation concerned very delinquent tax collection.

In June **2002**, the President signed the "Small Business Paperwork Relief Act of 2002" (P.L. 107-198). This Congressional initiative required OMB to do the following by June 28, 2003: (a) publish the first annual list in the Federal Register and on OMB's website of all compliance assistance resources available to small businesses; (b) have each agency establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork; and, (c) report to Congress on the findings of an interagency task force, chaired by OMB.

The task force was charged with: (a) identifying ways to integrate the collection of information across Federal agencies and programs; (b) examining the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and with synchronized reporting; and, (c) examining the feasibility and benefits of publishing a list of paperwork applicable to small business. This list would be organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply."

The law also requires three more OMB reports to Congress by December 2003, June 2004, and December 2004. The two December reports relate to enforcement actions in which civil penalties were assessed for paperwork, regulatory or other violations. The first, due December 31, 2003, covers the 1-year period beginning on October 1, 2002. The reports must

include information on: (a) the number of enforcement actions in which a civil penalty is assessed; (b) the number of these actions against a small entity; (c) the number of these actions in toto and for small entities in which the civil penalty was reduced or waived; and (d) the total monetary amount of reductions or waivers in toto and for small entities.

Implementation of P.L. 107-198

On May 9, 2003, OMB published its draft task force report. On May 21st, four Chairmen – House Government Reform Subcommittee Chairman Doug Ose, Senate Governmental Affairs Subcommittee Chairman George Voinovich, House Small Business Committee Chairman Donald Manzullo, and House Small Business Subcommittee Chairman Edward Schrock - submitted a joint comment letter to OMB, citing numerous omissions and problems with its draft report.

On June 27th, OMB published two documents in the Federal Register. The first was a listing of compliance assistance resources and contact information for agency single points of contact (SPOCs). The document included only some of the Federal agencies that impose paperwork on small businesses; for example, the General Services Administration (GSA) was not included. And, the document included no SPOCs for some agencies, or multiple offices to contact for other agencies, like for the Federal Trade Commission (FTC). In total, 33 of the 71 agencies with federally-approved paperwork had not yet identified a SPOC. As of today, 14 agencies still are without a SPOC and OMB has not yet indicated compliance assistance resources for 18 agencies (see attached chart).

OMB's second June 27th document was a notice of availability of its final task force report. This document was also flawed. For example, the final report did not address the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system. And, it recommended against a list organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply." Instead, it recommended a new electronic system with the burden on each individual small business "to self-identify applicable criteria that profile their business" and "to self-identify a comprehensive list of applicable requirements."

In the June 2002 enactment of SBPRA, Congress intentionally delayed submission of initial agency enforcement reports until December 31, 2003, to allow agencies sufficient time to adjust their data systems to ensure that they could fully meet the Congressional reporting requirements. The legislative history, embodied in the Senate document entitled "H.R. 327 – Consensus Amendment, Purposes and Summary, Section-by-Section Description, and Legislative History," states, "the Consensus Amendment provides lead time by establishing the first due date on December 31, 2003" (148 CR S4736, May 22, 2002).

Unfortunately, OMB did not provide any guidance to the agencies until October 28, 2003. As a consequence, many agencies had not adjusted their data systems for their December 2003 reports, as Congress expected. In addition, since OIRA's guidance was only addressed to the President's Management Council, 20 agencies (including the Small Business Administration (SBA)) were unaware of this statutory reporting requirement until the Subcommittees, in January 2004, requested a copy from each agency of its enforcement report. As of today, 43 of the 69 applicable agencies (including SBA) have not yet submitted their enforcement reports (see attached table). The hearing will allow the three major regulatory agencies – the Departments of Labor (DOL) and Transportation (DOT) and the Environmental Protection Agency (EPA) – to discuss their enforcement reports.

Witnesses

The invited witnesses for the January 28, 2004 hearing are: Dr. John D. Graham, Administrator, OIRA, OMB; Patrick Pizzella, Assistant Secretary for Administration and Management, DOL; Jeffrey Rosen, General Counsel, DOT; Kimberly Terese Nelson, Assistant Administrator for Environmental Information, EPA; Harold Igdaloff, President, Sungro Chemicals, Inc., California, on behalf of the National Small Business Association; and, Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business.

Attachment

Mr. OSE. I am pleased to introduce Chairman Schrock for the purpose of an opening statement.

Mr. SCHROCK. Thank you, Chairman Ose, and good afternoon everyone. In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act. Part of the act required every single agency to develop a policy whereby they would reduce or waive civil penalties in enforcement actions against small businesses when appropriate.

One of the things we have learned from NFIB surveys is that a majority of small businesses learn about government regulations for the first time in the normal course of doing business or when an enforcement action has begun. Compliance assistance is not the same as playing "got-you" with small business. A typical small business person is worried about making payroll next week or renewing health insurance for her employees or problems with a shipment that is late. She is not sitting at home studying the Federal Register for possible new regulations that may affect her business. In fact, I hope no one sits at home reading the Federal Register.

She cannot afford to hire someone to handle regulatory compliance. Dealing with the government, once a penalty or fine is imposed, can be extremely onerous and can throw a typical small business's life and livelihood into utter chaos.

As part of our ongoing oversight of the Small Business Paperwork Relief Act, we are looking at agency enforcement reports, and we have with us today representatives from EPA, the Department of Labor and Transportation and OMB to help us figure out if the Federal Government is treating small business with the sensitivity that is required.

A small businessman or woman that is working hard providing jobs and growth to our economy, paying their taxes and trying to comply with the regulations of the Federal Government should be held harmless for their innocent mistakes. I hope that the enforcement attitude demonstrated by some regulatory agencies is changing for the better.

In addition, I have long been a crusader against the ever increasing regulatory and paperwork burden that is imposed upon our small businesses.

Our President again repeated his call in the State of the Union address when he said our agenda for jobs and growth must help small business owners and employees with relief from needless Federal regulation. That doesn't sound to me like the President thinks that there is just the right amount of regulation or just the right amount of paperwork imposed by the Federal Government. It is a call to action, and I look forward to working with all of you to implement the President's agenda for regulatory relief. Thank you.

[The prepared statement of Hon. Edward L. Schrock follows:]

Statement of Ed Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
January 28, 2004

Good afternoon, ladies and gentlemen. In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act. Part of the act required every agency to develop a policy whereby they would reduce or waive civil penalties in enforcement actions against small businesses, when appropriate. One of the things we have learned from NFIB's surveys is that a majority of small businesses learn about government regulations for the first time "in the normal course of doing business" or when an enforcement action is begun. Compliance assistance is not the same as playing "Gotcha" with a small business. A typical small businessperson is worried about making payroll next week, or renewing health insurance for her employees, or problems with a shipment that is late. She is not sitting at home studying the Federal Register for possible new regulations that may affect her business. She cannot afford to hire someone to handle regulatory compliance. Dealing with the government once a penalty or fine is imposed can be extremely onerous and can throw a typical small business owner's life and livelihood into chaos.

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Mr. OSE. If I might just interject, I do want to assure the gentleman that my subcommittee staff does, in fact, read, on a daily basis, the Federal Register.

Mr. SCHROCK. If mine did, I wouldn't keep them.

Mr. OSE. I'm pleased to welcome for the purpose of an opening statement Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Small businesses in the United States face many challenges that hinder their overall success. One of these obstacles is trying to understand and comply with the overwhelming array of Federal regulations. Many times, small business owners find themselves buried under a mountain of paperwork, when they could be helping their customer and expanding their enterprises. Evidence shows that paperwork requirements are on the rise. The Federal Register, the publication that lists all proposed and enacted regulations by agencies, increased to 75,606 pages in 2002, more than 1,000 pages of what the previous record was in 2000.

The Federal compliance price tag for small firms is high. It has reached nearly $7,000 per employee per year, which is 56 percent higher than large firms with 500 or more employees.

Today, we are holding the second hearing on OMB's implementation of the Small Business Paperwork Relief Act to address this issue. I am anxious to hear from Dr. Graham, who has testified before the Small Business Committee numerous times on the progress of Federal agencies in working to reduce the regulatory burden on small businesses.

I'm also interested in hearing the agency representatives testify about their 2003 enforcement reports. These reports are a critical tool in identifying the impact that rules and regulations have on small businesses.

I'm disappointed to hear that almost half of the agencies failed to submit their enforcement reports by the December 31st deadline. We cannot allow this to happen. Agencies cannot adopt the mindset that it is not necessary for these reports to be turned in.

Congress relies on these reports not only to identify problems but also to present solutions to these challenges and to move forward in combatting high regulatory costs. These agencies must be held accountable for their efforts in making this happen.

The Small Business Committee has looked at the regulatory challenges facing small businesses on many occasions in the past. We can probably all agree that Federal regulations are necessary. They serve an important purpose, such as protecting our workers and the environment.

In response to these concerns, this committee worked to draft the Regulatory Act and the Small Business Regulatory Enforcement Fairness Act, which were passed into law. This legislation requires agencies to examine how the rules impact small businesses and to consider alternatives that will reduce the imposed costs or increase the benefits to them.

The more clarity we can bring to this process, the better. Broad visions are always a good place to start, but, if we are going to change the environment, we cannot be afraid to propose bold solutions.

I do believe that, if undertaken in a constructive manner, we can make real improvements. Let's hope that, in this hearing today, we can better understand how to build off the OMB's work to improve the findings and ensure the future endeavors provide a more comprehensive product. And, let's hope that the 2004 task force report can determine better practices in order to enable agencies to comply with reducing one of the biggest burdens on small business, paperwork.

The design of the Small Business Paperwork Relief Act of 2002 was not to help small firms skirt regulations but merely to reduce the burden of compliance. OMB must take an active role in this process to make sure that agencies are involved in this process in order to ensure that our small businesses are treated fairly in the Federal rulemaking process. As the engine of the American economy, I believe we owe them that. Thank you, Mr. Chairman.

Mr. OSE. I thank the gentlelady.

We are joined by the gentleman from Georgia, Mr. Deal, who I understand does not have a statement.

Mr. DEAL. I do not.

Mr. OSE. You're certainly welcome to make one if you'd like.

And we are also joined by the gentlelady from Georgia, Ms. Majette. You're recognized for the purposes of an opening statement if you so choose.

Ms. MAJETTE. I do not. Thank you.

Mr. OSE. All right. As we discussed earlier, my subcommittee under Government Reform, we always swear the witnesses in, so we're going to do that again here today and keep with tradition. So Dr. Graham, if you would, please.

[Witness sworn.]

Mr. OSE. I thank the gentleman. Let the record show that he answered in the affirmative.

We are joined today by a frequent visitor of our subcommittee. That would be the distinguished gentleman Dr. John D. Graham, who is the Administrator for the Office of Information Regulatory Affairs at the Office of Management and Budget.

Sir, you're certainly welcome. We're glad you're here. We are going to await your testimony with baited breath and you're recognized for 5 minutes.

STATEMENT OF JOHN GRAHAM, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. GRAHAM. Thank you, Mr. Chairman and other members of both subcommittees. I'm delighted to be here this afternoon. It's a little embarrassing to be a person to have to admit how many hours he has spent reading the Federal Register in the last 3 years, and as you can imagine, I've had a few people put issues of the Federal Register in front of me and point to specific paragraphs with disconcerting statements about those paragraphs, but I think that is perfectly appropriate.

One of the good things about this hearing is we come together with a common goal, how to reduce the unnecessary paperwork that is hurting the development and the growth of small businesses in this country. I think the tougher challenge is to design the most

effective strategies to solve this problem, and in my opening remarks, I'd like to talk about four general strategies that have some promise in this area.

The first is for agencies and OMB to be more vigilant in reviewing the information collection requests that the government imposes on small businesses. This is a very labor-intensive, tedious job form by form, question by question, but, since small businesses have to answer them, we think agencies and OMB should have to review these forms.

The remedies in this area are to reduce the number of questions, to simplify the questions or to reduce the number of respondents who are required for each of these surveys.

Examples include the Department of Labor's reducing the sample size of its annual employment survey or the Department of Health and Human Services, while engaged in a good thing, an evaluation of treatment providers, finding that it could achieve the evaluation with a 30 percent reduction in the size of the evaluation form, in particular, reducing the time period for activity logs that needed to be recorded in order to perform the evaluation. This is the bread and butter work between agencies and OMB of reviewing forms and reducing burdens.

Strategy 2, reform or rescind regulations and guidance documents that impose paperwork burdens. For example, the Environmental Protection Agency has proposed a major rewrite of rules under the Resource Conservation and Recovery Act, and those proposals are estimated to save 929,000 hours of paperwork burden and $120 million in overall costs. Our hope is that this rulemaking will be finalized in 2004.

The Occupational Health and Safety Administration has proposed health standards updates that cover an estimated 18 different information collections, with an estimated burden reduction of 208,000 hours.

And, third and most interestingly, the Department of Transportation has recently rescinded entirely the regulation of the airline ticketing industry, removing CRS companies and travel agents from the entire network of regulation. It's hard to have a paperwork burden if you're not covered by the regulation. We should keep in mind that paperwork burden and regulatory reform are closely connected.

Another example, which you can hear about more today from Kim Nelson, is EPA's white paper of options on burden reduction under the toxic release inventory program. I'll let her give you the specifics, but it's a very promising step forward to maintain the environmental objectives of the toxic release inventory program while reducing the burden particularly on small businesses.

Strategy 3, I would be remiss if I didn't say Congress had a role in reducing paperwork burdens on small business. Ideally, we might engage in simplification of the tax code at some point, and that might have something to do with the lion's share of the IRS burden that we are all aware of in terms of paperwork burden. But, let me give you a very concrete example. The bad news was the 2002 farm bill, which contained a provision requiring the U.S. Department of Agriculture to mandate country of origin labeling of foods by September 2004. There were no safety advantages for this

mandated rulemaking, no quantified benefits, and, at the proposal stage, we estimated $3.9 billion in first-year costs and 33 million hours in recurring annual recordkeeping burden.

Mr. Chairman, I've appreciated your leadership in trying to get a reconsideration of this issue, and the good news is in the omnibus budget bill, we have a 2-year delay in this particular regulation, but ultimately we need a careful and more serious evaluation of what we're doing in that area.

When Congress passes laws with mandated rulemakings and heavy paperwork burdens, that makes our job at OMB and the agencies more difficult.

And, fourth, we can replace paperwork with electronic communication and recordkeeping. This is the E in the President's management agenda, particularly we're interested in Business Gateway, a priority for helping small businesses get electronic information about all their compliance assistance requirements.

These, we believe, are the basic strategies of paperwork reduction in all four areas. We believe that the administration is making progress here and there. We're certainly open to constructive criticisms and we look forward to the suggestions from both of these subcommittees. Thank you very much.

[The prepared statement of Mr. Graham follows:]

STATEMENT OF JOHN D. GRAHAM, PH. D.
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES

BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES, AND REGULATORY AFFAIRS
COMMITTEE ON GOVERNMENT REFORM
AND THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

January 28, 2004

Good afternoon, Messrs. Chairmen and Members of these Subcommittees. I am John D. Graham, Ph. D., Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Thank you for inviting me today to discuss implementation of the Small Business Paperwork Relief Act of 2002 (SBPRA). I have enjoyed working with you and the Subcommittees to reduce the paperwork burden that Federal requirements impose on small businesses. You asked me to testify about the status of each SBPRA mandate, including agency single points of contact for small businesses, agency compliance assistance resources, agency enforcement reports, and the OMB-led task force. In addition, you invited me to testify about specific reductions in reporting and recordkeeping requirements that exceeded 100,000 hours accomplished since your July 18th hearing or planned in 2004 for small business.

By way of introduction, the Act imposes two specific requirements on OMB. First, on an annual basis, in consultation with the Small Business Administration, OMB must publish in the Federal Register and make available on the Internet, on an annual basis, a list of compliance assistance resources available to small businesses. Second, OMB must convene and chair a task force to study the feasibility of streamlining requirements with respect to small business concerns regarding collections of information and strengthening dissemination of information.

Aside from these two specific duties assigned to OMB, the Act also imposes four specific requirements on certain Federal agencies:

- The Act requires agencies to establish, no later than June 28, 2003, one point of contact to act as liaison between the agency and small businesses (as defined in Section 3 of the Small Business Act (15 USC 632)).

- The Act requires agencies to make efforts to further reduce the information collection burden for small businesses with fewer than 25 employees.

- The Act requires the heads of certain departments and agencies to designate a representative or representatives to serve on a task force on information collection and dissemination.

- The Act requires each covered agency to submit an initial regulatory enforcement report to Congress by December 31, 2003, and a final report to Congress by December 31, 2004.

In my testimony today, I will summarize OMB activity to date with respect to each of these six SBPRA requirements: the two specifically required of OMB, and the four that relate to covered Federal agencies. In addition, I will identify specific reductions in reporting and recordkeeping requirements of at least 100,000 hours either accomplished since the July 2003 hearing of this Subcommittee or planned in 2004 for small business.

OMB Commitment to Paperwork Reduction

The goal of the SBPRA is to reduce the paperwork burden on small business. OMB is committed to reducing the regulatory and paperwork burdens that America's small businesses deal with every day. In previous testimony, I listed three strategies that OMB uses to reduce needless paperwork burden on small business: e-government, traditional paperwork reduction efforts, and regulatory review. A fourth strategy—statutory reform—is in the purview of Congress. The SBPRA Task Force, in its first report, emphasized the e-government strategy. As that report noted, e-government is increasingly becoming the principal means by which citizens and businesses engage with their government. The President sees electronic government not only as a means for bringing more services to the American citizen and businesses via the Internet, but also as a tool for reducing the Federal government's paperwork burden.

Because of our commitment to paperwork reduction, we take SBPRA implementation seriously. Not only has OMB met its statutory requirements to issue a Task Force report by June 28, 2003 and publish a list of compliance assistance resources by that date, we have also undertaken actions not required under the statute but which, we believe, will help ensure that agencies meet their SBPRA obligations. For example, we have informed agencies of their responsibilities under the Act. This communication was in the form of an October 28, 2003 memorandum to the President's Management Council. In the memorandum, I drew special attention to the December 31, 2003 deadline for submission of regulatory enforcement reports to Congress.

Annual List of Compliance Assistance Resources

The Act requires OMB to publish, on an annual basis, a list of compliance assistance resources available to small business. Because we thought it would be helpful for the public to have the list of agency contacts along with the list of compliance

assistance resources, OMB published these lists together. These lists are available on the OMB website (http://www.whitehouse.gov/omb/inforeg/infocoll.html#sbpra) and the SBA website (http://www.sba.gov/ombudsman/compliance/complianceassist.html).

Compilation of this list of compliance assistance resources would have been impossible were it not for the efforts of each Federal agency in developing the summaries, descriptions, and lists of resources. Federal agencies have established numerous programs to assist small businesses, and the list on the OMB and SBA websites is testimony to their long-standing interest in this issue.

The SBA's National Ombudsman significantly aided OMB in the compilation of the compliance assistance resources and points of contact available to small businesses. SBA went beyond consultation by helping with the collection of compliance assistance summaries from the Federal executive branch and identifying agency points of contact.

Task Force Activity

The Act requires the OMB Director or his representative to convene and chair an interagency task force, which must issue two reports addressing a total of five specific issues. Each report must be published in draft form in the Federal Register to allow public comment. The first report was due by June 28, 2003, and the second report is due June 28, 2004.

As you know, much work went into the first Task Force report. SBA's Office of Advocacy held a public meeting on March 4, 2003 to solicit views of small business. A draft report of findings and recommendations was published in the Federal Register on May 9, 2003 (68 FR 25166). The public comment period ended June 4, 2003, after which the comments were compiled and incorporated into the Final Report. The Final Report was delivered to Congress on June 26, 2003 and a Notice of Availability was published in the Federal Register on June 27, 2003.

The Task Force found that reducing small business paperwork burden is a challenge that raises both regulatory and information technology issues. The Task Force also found that the presidential e-government initiatives, such as the Business Compliance One-Stop Initiative, represent the best opportunity for reducing the paperwork burden on small business. Since the first Task Force report was released, the Business Compliance One-Stop Initiative has been renamed the Business Gateway initiative.

The second Task Force report is due June 28, 2004. In this report, the Task Force will (1) make recommendations to improve the electronic dissemination of information collected under Federal requirements, and (2) recommend a plan for the development of an interactive Government-wide system, available through the Internet, to allow each small business to better understand which Federal requirements regarding collection of information apply to that particular business, and more easily comply with those Federal

requirements. While making its recommendations, the Task Force will consider opportunities for coordination of Federal and State reporting requirements, and among points of contact.

Because the topics of the second report differ from those of the first report, different expertise is required. Therefore, in November 2003, OMB asked agencies to designate representatives to the Task Force for the purposes of developing the second and final report required under the Act. Agencies have done so, and the initial meeting of this Task Force was held on January 20, 2004. I serve as co-chair of the SBPRA Task Force, along with my colleague Karen Evans, the Administrator of OMB's Office of Electronic Government. The Task Force has formed two subgroups, one to address each issue identified in the Act. The Task Force will meet periodically to ensure that a final report is sent to Congress by the statutory deadline of June 28, 2004.

The SBA Office of Advocacy has graciously offered to convene a meeting for the small business community to provide comment and input on each of the two issues to be addressed by the Task Force. That meeting is schedule to be held Monday, February 9, 2004. The input from that meeting will be used by the Task Force to write both the draft report, which will be published in the Federal Register for public comment, and the final report.

Agency Points of Contact

The Act requires each covered agency to designate an appropriate person to serve as its point of contact. OMB, working in conjunction with the Small Business Administration, has incorporated the list of points of contact into the list of compliance assistance resources. Although such a consolidation is not required by the Act, we believe there are advantages in doing so: (1) it makes it easier for small businesses to find, (2) it provides us with an annual mechanism to ask agencies to review and update their point of contact information, and (3) it allows for public comment on the list of points of contact.

In my memorandum of October 28, 2003 to the President's Management Council (PMC), I informed agencies where the list of points of contact can be found. This list of agency points of contact has been available on the OMB website since June 28, 2003, and is also available on the SBA website. I also informed agencies how they can affect changes to their point of contact information. Periodically, we have updated the list to reflect agency changes to their point of contact information, and we will continue to do so.

The Subcommittees have, in the past, raised concerns about the accuracy, completeness, and accessibility of this list. OMB has responded to many of these concerns. For example, we re-posted our compliance assistance list and point of contact list in HTML format. In addition, we have carefully reviewed the November 2003 status report developed by the Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, showing which agencies still need points of contact. This status

report prompted us to generate our own list of agencies that have one or more currently approved information collections that may affect small business. When we compared the results to our list of points of contact, we were able to verify that, in a few cases, we needed to add an agency to our list. In a few other cases, our list included agencies that do not currently impose paperwork burden on small business. We have contacted the missing agencies and asked them to designate a point of contact. Once we receive this information from each of these few agencies, we will update our list. At that time, we will remove from our list those agencies that do not currently have any approved information collections that affect small business.

The Subcommittees have also expressed an opinion that agency points of contact be under the direct authority of the agency chief information officer (CIO). In our view, the agencies are in the best position to determine their small business contact. What is important is that agency points of contact are able to assist small business; if they can provide this assistance, we do not think their location within an agency is critical.

The Subcommittees have also urged OMB to provide training to points of contact. With respect to training, it is important to note that each agency is unique with respect to its paperwork requirements; the burden it imposes on small business; its internal procedures for developing, maintaining, and distributing information collections; and its procedures for enforcing paperwork violations. For these reasons, OMB believes each agency is in the best position to train its point of contact.

Agency Efforts to Further Reduce Paperwork Burden

The statute directs agencies to "make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees." OMB believes that agencies are undertaking efforts to further reduce the paperwork burden on very small businesses, but documentation of these efforts is unavailable. Therefore, for the purposes of our annual information collection budget (ICB), OMB issued a bulletin to agencies requesting information on initiatives to reduce paperwork burden for small business concerns, with particular focus on businesses with fewer than 25 employees (see OMB Bulletin 04-01, December 3, 2003). This is the first time we have requested this particular information, which we believe will allow us to monitor agency performance over time with respect to this provision of SBPRA.

Agency Designations to the Task Force

The Act requires certain agencies to designate representatives to the Task Force. Specifically, the Task Force must include not less than two representatives from Labor (including one from the Bureau of Labor Statistics and one from the Occupational Safety and Health Administration); not less than one representative of the Environmental Protection Agency; not less than one representative of the Department of Transportation; not less than one representative of the Office of Advocacy of the Small Business

Administration; not less than one representative of the Internal Revenue Service; not less than two representatives of the Department of Health and Human Services (including one from the Centers for Medicare and Medicaid Services); not less than one representative of the Department of Agriculture; not less than one representative of the Department of Interior; not less than one representative of the General Services Administration; and not less than one representative of each of two agencies not identified previously.

The roster for the first Task Force can be found within the Task Force report, which is on the OMB web site. Because the subject matter of the second report differs from the first report, different expertise is required. In November 2003, OMB asked agencies to designate representatives to the Task Force for the purposes of developing the second and final report required under SBPRA. Agencies have done so, and the Task Force held its initial meeting on January 20, 2004.

Agency Regulatory Enforcement Reports

The Act requires each agency to develop two regulatory enforcement reports. The initial regulatory enforcement report is to include information with respect to the one-year period beginning October 1, 2002. The final report is to include information with respect to the one-year period beginning October 1, 2003. Each report is to include information on each of the following:

- (A) the number of enforcement actions in which a civil penalty is assessed,
- (B) the number of enforcement actions in which a civil penalty is assessed against a small entity,
- (C) the number of enforcement actions described under subparagraphs (A) and (B) in which the civil penalty is reduced or waived, and
- (D) the total monetary amount of the reductions or waivers referred to under subparagraph (C).

The Act states that each report shall include definitions (selected at the discretion of the reporting agency) of the terms "enforcement actions", "reduction or waiver", and "small entity" as used in the report.

Furthermore, the Act states that each agency shall submit its report to (A) the chairpersons and ranking minority members of (i) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and (ii) the Committee on Governmental Reform and the Committee on Small Business of the House of Representatives; and (B) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

In my October 28, 2003 memorandum to the PMC, I reminded each agency that it should have some prior agency precedent in defining the terms "enforcement actions", "reduction or waiver" and "small entity." Section 223 of the 1996 "Small Business

Regulatory Enforcement Fairness Act of 1996" (P.L. 104-121), entitled "Rights of Small Entities in Enforcement Actions," required each agency by the spring of 1997 to "establish a policy or program . . . for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity." In addition, I noted that Section 223 also required each agency to report to Congress by the spring of 1998 "on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers."

In addition to the October 28, 2003 PMC memorandum, OMB used other forums to communicate to agencies about their obligation to submit a regulatory enforcement report. On November 19, 2003, agencies were reminded of this obligation at the SBA Ombudsman's semi-annual interagency meeting. At that meeting, OMB staff told participants that the first regulatory enforcement report is due by December 31, 2003 and that information in this report should be consistent with agency information reported under the authority of the IG Act and the CFO Act. In the first week of December 2003, OMB desk officers sent e-mail reminders to all cabinet-level agencies to reiterate that (1) OMB expects agencies to submit their regulatory enforcement reports on time, and that (2) the information contained in these reports should be consistent with agency reports submitted pursuant to the IG Act and the CFO Act.

Specific Reductions in Reporting and Recordkeeping Requirements

In your invitation letter, you requested that I identify specific reductions in reporting and recordkeeping requirements that exceeded 100,000 hours accomplished since the July 2003 hearing of this Subcommittee or planned in 2004 for small business. To respond to this request, I refer the Subcommittee to our 2003 ICB report, *Managing Information Collection and Dissemination*. That report identified specific agency initiatives that are designed to reduce paperwork burden. Many of these initiatives represent multi-year efforts, and some can be expected to reduce burden for small business in 2004. For example, the following initiatives—taken from our 2003 report—may result in actions to reduce small business paperwork burden in 2004:

- The Environmental Protection Agency (EPA), through rulemaking, will significantly reduce the paperwork burden imposed by regulations under the Resource Conservation and Recovery Act (RCRA). EPA is undertaking this initiative to ensure that only the information actually needed to run the RCRA program is collected. EPA estimates that the initiative will reduce burden by 929,000 hours and save $120 million annually. A proposed rule was published in FY02.

- The Occupational Safety and Health Administration is undertaking rulemaking to update numerous health standards that are inconsistent, duplicative, or outdated. The proposal affects 18 information collections and would result in a 207,892-

burden hour reduction. Time for completion of this project hinges upon the number and complexity of public comments received on the proposed rule.

We expect to receive updates on these initiatives for inclusion in our 2004 report to Congress. In addition, other examples from the 2003 ICB might also meet your criteria, but we will not know for sure about the status or timing of these ongoing initiatives—or about new agency initiatives to reduce burden—until we receive agency submissions for our 2004 report.

In addition to agency initiatives planned for 2004, OMB has taken action on Information Collection Requests that are expected to reduce burden for small business. For example, last November, OMB approved an extension of the ICR for EPA's Energy Star program. Since the previous information collection was approved, EPA streamlined its information requirements. The estimated burden reduction is 134,371 hours. This burden reduction was partially achieved through electronic means.

When these efforts are considered in addition to the various e-government initiatives agencies have underway, agencies appear to be making a substantial effort to reduce burden on small business. As part of this effort, we continue to push agencies to include the PRA as an integral part of their management strategies. We want agencies to continue reducing burden on small businesses as efficiently as possible, regardless of whether these reductions are realized in the electronic or non-electronic realm.

Conclusion

To conclude, Mr. Chairman, SBPRA implementation is on schedule. OMB has fulfilled its statutory requirement to issue a Task Force report and to publish a list of compliance assistance resources by the June 28, 2003 deadline. The Task Force is already working on the second report, which is due June 28, 2004. Aside from these statutory requirements, we have undertaken actions to ensure effective implementation of the Act. We have used a variety of methods to remind agencies of their obligations under the Act; we have taken, and will continue to take, steps to ensure that our list of agency points of contact is complete and accurate; and we have asked agencies to identify their efforts to further reduce the paperwork burden on small businesses with fewer than 25 employees. We know we have more work to do, but we believe we have made progress since the last time I testified before the Subcommittees.

Perhaps more importantly, the Administration continues its efforts to reduce paperwork burden through a variety of strategies. We continue to believe that e-government initiatives, such as the Business Gateway, provide an enormous opportunity to reduce the paperwork burden on small businesses.

Mr. OSE. I thank the gentleman. We're pleased to be joined today by my good friend and colleague from Massachusetts, Mr. Tierney, who has agreed to submit his statement into the record.

We're going to go to questions now, and as we said earlier, we will alternate between the subcommittee that I chair and the subcommittee that Mr. Schrock chairs, back and forth, back and forth between the subcommittees. And within those, we'll go back and forth, back and forth between this side and that side. So if I get this screwed up, which I probably will, I just want to make sure that somebody is watching and we can handle it from there. Each Member will be given 5 minutes. We'll have multiple rounds if that's what everybody desires.

So, I'm going to go ahead. Dr. Graham, I do want to go to the fourth item that you mentioned in terms of the efforts. You have more vigilance. You have the reform and the guidance documents, the congressional mandates. I apologize. I didn't get the fourth one.

Mr. GRAHAM. Electronic communication.

Mr. OSE. E-government. OK. Dr. Graham, you and I have discussed this on a number of times. I want to cover a couple of things that we've discussed in the past. I read your testimony in terms of the updated of the single point of contact issue. It's our understanding that there are 14 agencies still without a single point of contact. I believe in the left-hand column of the large chart over there, they're listed. And, my question is we'd like to update that chart so we can change the noes to yeses. Do you have updates that we can add to that list, or do you know when we might expect the remaining 14 in that first column over there on single point of contact to be in compliance? I can't read it from here, Dr. Graham.

Mr. GRAHAM. Well, I'm pleased to see we've got more yeses this time than the last time we went through this exercise, and I think one of the good things about an oversight committee is they put a little heat on the executive branch to try to get a few things done.

I do think in the last week or so, we've had a little bit more progress than you have up there, in part because of this hearing of course, but I will get you the specifics on whether there are more of those Ns that should be Ys in writing after the hearing.

Mr. OSE. How frequently do you review who is or isn't—or who has or has not established a single point of contact?

Mr. GRAHAM. Well, I think that you raise an interesting question. As we read the statute that we're discussing here, that's a requirement on the agencies. It's not a requirement of OMB. And, as a consequence, we view that ultimately—we don't have the ability at OMB to review every law that's applied to every agency to make sure that they're covering every single law, and this is one of those.

However, this committee has expressed an interest in making sure that this gets done, and, as a consequence, this individual has been engaged in activity which we would not normally engage in to try to get more of these agencies to take these steps.

Finally, we can do more than that, but that's our reading and understanding of the situation.

Mr. OSE. I'm willing to have all the agencies come in individually and we'll have a hearing. I'm just trying to figure out if we can do that just administratively, and as we discussed in the past, I'm looking to you, and you've been very effective on these other agen-

cies in terms of encouraging them to establish those single points of contact. So we are going to——

Mr. GRAHAM. We'll keep working on those last 14.

Mr. OSE. All right. You had some comments about the training for each agency in terms of the point of contact, and the question I have is, given the wide variety of—the wide portfolio—that might exist in any single agency, how do we go about establishing some training regiments so that we have a consistent application of the single point of contact interaction with the taxpayer, if you will?

Mr. GRAHAM. I think that's a good question. I think each of the agencies, you know, has a responsibility to make sure that the person who is designated as the single point of contact has at least enough knowledge of the agency's programs and activities that they know where to point the small businessperson in the agency to find more detailed information. We don't think we're there yet with all the single points of contact. The agencies have identified people in many cases.

Take the Department of Health and Human Services, a huge, complicated bureaucracy. A single point of contact at that agency has a tremendous challenge. But, we're in the process of trying to encourage agencies to make sure that at least at that initial call, that initial contact point, that person knows enough to then refer people to the right people in the agency to answer their questions.

Mr. OSE. Are there ongoing training programs within the agencies to accomplish that?

Mr. GRAHAM. I don't know that I would refer to them as training programs, but, in the context of the task force that is mandated under the statute where we have representatives from various agencies, we are encouraging the members of those task forces to reach out to their single points of contact and make sure that they have the appropriate knowledge.

Mr. OSE. All right. The gentleman from Virginia.

Mr. SCHROCK. Thank you, Mr. Chairman. Thank you, Dr. Graham. Let me first say I agree with you on the country of origin thing. It just exacerbates an already bad problem and adds burden and grief to businesses which are already experiencing it. So I absolutely agree with it. And, yes we do too much mandating up here. How we stop that, I don't know. I think over time, hopefully, that will happen.

The IRS—is anybody from IRS here? Good—accounts for not only 80 percent of all the paperwork living on the public, but also the lion's share of the Federal enforcement fines and penalties levied on small businesses. Enforcement reports show that IRS directs 66 percent of its discretionary enforcement actions against small business and has only reduced or waived 12 percent of the fines or the penalties levied on small business.

Is OMB willing to meet with IRS about reducing its enforcement penalties on small business, and, if not, what do you recommend? Because they seem to be the biggest culprits in this.

Mr. GRAHAM. Well, it seems at first blush like a reasonable question, however, I have raised that topic of the words IRS enforcement and OMB in a conversation with OMB legal counsel and White House general counsel, and quite frankly, they don't have

any interest in the Office of Management and Budget's being involved in enforcement activities of the Internal Revenue Service.

And, this relates to a very longstanding relationship between OMB and Treasury that I believe I wrote about 3 pages of testimony for it at a previous hearing for Chairman Ose's committee.

So it seems reasonable at first blush, but we've got a lot of people to persuade if we're in the business of turning OMB into an oversight unit on the IRS enforcement operation.

Mr. SCHROCK. How do we break that logjam? How do we get them to do it?

Mr. GRAHAM. How do we get the idea of OMB as an overseer? I think you're talking about a discussion of the relationship between the Treasury Department and the Office of Management and Budget after a transition of 20 years of a different operating arrangement.

Just to give you a sense of perspective, the people at Treasury who work on paperwork are larger in total size than all of the people at OMB who work on paperwork of every agency. I mean, you're talking about a very significant change in the nature of the priorities at OMB to move them into an aggressive vigilant role. And, in the enforcement area particularly, you're going to have a much more difficult challenge getting any consensus that we should be involved in enforcement activities.

Mr. SCHROCK. Well, maybe that's a challenge Chairman Ose and I would take on, because this is just totally out of control. And, maybe we can do that this year before Chairman Ose escapes to California to live the good life.

Mr. GRAHAM. Well, he's been giving me a good earful on this for about 3 years now.

Mr. SCHROCK. Oh, he has. All right. Well, when he leaves——

Mr. GRAHAM. One of these areas when stubborn Graham hasn't been able to deliver any goods.

Mr. OSE. It's the rock and the hard spot now. He's the rock. I'm the hard spot.

Mr. SCHROCK. OK. As we discussed at our July 18th hearing and in correspondence with OMB, both before and after the hearing, the subcommittees found that initial OMB chaired task force report to be largely nonresponsive to congressional intent.

Your written testimony reveals that since OMB's June 27th publication of the report, OMB has convened only one task force meeting last week on January 20th, which, I think, is kind of coincidental, to develop the final task force report which is statutorily due on June 28th. Will any of the topics that we found not adequately covered in the initial report be addressed? Do you think they will be reexamined? If so, which ones, and, if not, why?

Mr. GRAHAM. Well, as I recall, the statute lays out specific responsibilities for the task force in the second year report versus the first year report. So, our priority in the second year will be on those second-year activities.

I don't know whether nonresponsive is necessarily the most appropriate way to describe that. There were some ideas that staff of the committee and subcommittee had about what they thought the task force should conclude with regard to those activities. The various agency representatives looked at those, and they reached some

different conclusions. There may be differences in judgment, but I don't think nonresponsive to the statute is a fair characterization.

Mr. SCHROCK. My time is up, so I think I'll pass to somebody else, Mr. Chairman.

Mr. OSE. Before I recognize the gentleman from Massachusetts, I want to welcome the gentleman from Maryland, Congressman Bartlett, the gentlelady from New York, Congresswoman Kelly to the hearing.

And the Congressman from Massachusetts.

Mr. TIERNEY. Thank you, Mr. Chairman. Dr. Graham, how are you?

Mr. GRAHAM. Good to see you, sir.

Mr. TIERNEY. Good to see you. Thanks.

Mr. Chairman, I wonder as a first order of business if I might just ask unanimous consent that the hearing record be held open for 10 days for individuals or groups like the Environmental Entrepreneurs to allow them to submit a statement?

Mr. OSE. Without objection.

Mr. TIERNEY. Thank you. Mr. Schrock made a comment about the IRS, and Dr. Graham, you just started talking about that. I just make a note that I had the opportunity to serve as the minority member for this committee on the joint congressional committee on oversight on the IRS on their periodic review, and it seems to me that one of the problems we have there is just how we allocate our resources and where we direct the IRS's attention.

In large part, the Commission was testifying that our failure to audit a number of businesses, particularly those involved in transfer of pricing schemes for tax avoidance, was costing us billions and billions of dollars every year. So, sometimes paperwork is worthwhile, but once you have it, you have to have enough resources and people to point in that direction to try and make sure that we save this government some money, the taxpayers some money on that.

Do you have any examples that you might want to share with us of agencies that have done particularly well in finding better ways to access information or use information and report on it?

Mr. GRAHAM. Well, in the electronic information area, which is the fourth of the strategies that I described to you for reducing paperwork, I think both the Department of Transportation and the Environmental Protection Agency are widely recognized within the Federal Government as pioneers of both electronic government generally and electronic rulemaking in particular, and I'm pleased that you have Kim Nelson, who certainly is one of the governmentwide leaders in that area, is on the second panel, and I'd encourage you to address that question to her specifically.

Mr. TIERNEY. I will. Thank you.

Mr. Chairman, I have no other questions at this time. I actually have another Postal Committee hearing that I have to go to, so I'm going to turn it back to you and I know Ranking Member Velazquez will carry it from here.

[The prepared statement of Hon. John F. Tierney follows:]

Representative John F. Tierney
Government Reform Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Hearing on Implementation of the
Small Business Paperwork Relief Act
January 28, 2004

Chairman Ose and Chairman Schrock, thank you for holding this hearing. Small businesses are the backbone of the economy and are the source of approximately 75% of new jobs.

There are tens of thousands of small business owners in my district. One of the biggest challenges for these small business owners is keeping up with the multitude of federal and state regulations that apply to them.

Many paperwork requirements are essential for federal agencies to adequately enforce our laws. For example, EPA relies on businesses meeting self-reporting requirements in its enforcement of the Clean Water Act.

Other requirements are important for safety reasons. Fire departments rely on businesses to report hazardous chemicals under the Emergency Planning and Community Right to Know Act in order to respond safely and effectively to a chemical fire.

However, in order to provide proper information to the government, small businesses have to be able to understand what is even required of them. I supported the Small Business Paperwork Relief Act as a step toward helping small businesses understand what information they are required to provide to the government and as a step toward simplifying and streamlining the paperwork process.

The bottom line is, how can we help the real day-to-day challenges of small businesses in accessing information and complying with regulatory requirements.

At a public meeting held by the Small Business Administration last year, a representative from the National Association of Manufacturers stated that there is not enough compliance assistance from agencies. He explained that this lack of help is the biggest impediment for businesses to comply with regulation.

I am interested to hear from the agencies about what has been done and what is being done to improve compliance assistance for small businesses. Last July, these Subcommittees held a hearing after the release of the first of two reports by the Small Business Paperwork Relief Act Task Force.

The Task Force's report made recommendations that certainly warrant follow-up such as focusing on information technology, including e-government initiatives, for streamlining the information collection process.

The regulatory enforcement reports that agencies were required to submit under the Small Business Paperwork Relief Act focus primarily on penalties assessed against small businesses. It is important to be careful when looking at these reports to keep in mind the importance of penalties in effectively enforcing the law and in creating a fair playing field.

Penalties are essential to enforcement because they serve as an incentive for businesses to do the right thing.

Doing the right thing often costs money and therefore, not following the law should cost money. Small businesses that obey the law should not be put at a disadvantage because their competitors save money by not obeying the law.

A comprehensive and cooperative effort is needed across the

federal government to continue to identify and implement ways to assist small businesses with information collection. It is essential that as the Task Force moves forward with preparing its second report and as OMB, federal agencies and Congress continue evaluating the implementation of the Small Business Paperwork Relief Act, that the input and needs of small businesses continue to be included every step of the way.

I ask unanimous consent that the hearing record be held open for ten days so that the organization Environmental Entrepreneurs, who were not able to make it here today to testify, can submit information to be included in the record.

Thank you, Chairmen.

Mr. OSE. You realize we all envy going to the Postal Committee hearing.

Mr. TIERNEY. I'll bet you are.

Mr. OSE. The gentlelady from New York.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Dr. Graham, could you please describe the type of progress that the interagency task force has made in raising awareness of the disproportionate impact that rules and regulations have on small businesses?

Mr. GRAHAM. Well, the task force it has basically been working internally within the government to simplify the arrangements as we relate to agencies and small businesses, but the awareness of the burden of regulation and paperwork on the small business community, quite candidly, I would not give any credit necessarily to the task force on that. I would give it to the Advocacy Office of the Small Business Administration, which, for example, commissioned a major report examining the degree of regulatory and paperwork burden of companies of different sizes, and we refer to that at OMB as the Crain-Hopkins report, the two authors. It has some very useful information that describes the extra burden of paperwork and regulation on the small business community.

Ms. VELAZQUEZ. But, how do we know that those agencies are aware?

Mr. GRAHAM. How do we know the agencies are aware? Well, first of all the, I think this subcommittee—both subcommittees—have played a very important role in making sure that those agencies are aware. In fact, a task force that we're now engaged in was created because of the activities of these two subcommittees and the Congress generally, and I think that there are pockets of professionals within various agencies that know a lot about the small business impact and that care a lot about the small business impact.

However, to be quite candid with you, that is not a universal sentiment through all of the professionals in the various agencies, and one of the key challenges we face is how do we strengthen the hand in the agencies of those professionals who do understand the small business impacts and care enough that they want to make a difference in reducing burden on small businesses.

Ms. VELAZQUEZ. Can you tell us about any agencies that are particularly severe violators of the effort to reduce the paperwork burden on small businesses?

Mr. GRAHAM. I think that there is in the Crain-Hopkins report that I mentioned to you—this is the report commissioned by the Small Business Administration, an evaluation of regulation in different areas and an estimate of the burdens in different areas. And, it starts with the clear conclusion that the Treasury Department and IRS obviously account for a substantial fraction of the overall burden, well over a majority of that burden, but, if you look in the areas of labor and environmental regulation, there are also substantial paperwork and recordkeeping requirements in those areas as well. So, I would say it's broadly based across the government with an emphasis in those areas.

Ms. VELAZQUEZ. Is it feasible, Dr. Graham, that we could set up—or you can set up a reward program for agencies who meet the

goals of the Paperwork Reduction Act? Do you believe that agencies will be more responsive if there were incentives for compliance?

Mr. GRAHAM. I think it's possible. I think the question becomes the nature of those incentives that are created, do we have the effect of increasing the influence within the agency of those professional names who know about the small business impact and care about that, and I think that depends on the details of exactly how the incentive system is set up and how it relates to the activities of those individuals.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. OSE. The gentleman from Georgia.

Mr. DEAL. I believe I'll pass, Mr. Chairman.

Mr. OSE. The gentlelady from Georgia.

Ms. MAJETTE. Thank you, Mr. Chairman, and thank you, Dr. Graham for being here this afternoon. I'd like to find out your opinion regarding the recommendation to reduce the penalty for first-time offenders of the regulations. Do you have an opinion on that recommendation?

Mr. GRAHAM. Well, I think that there clearly needs to be discretion in the enforcement operations of different agencies, and we at OMB don't have experience or authority in that enforcement area.

I would actually encourage you to ask each of the agency representatives today what the practices of the agencies are in that area, and my understanding is a lot of the agencies already engage in that practice to a significant extent.

Ms. MAJETTE. From your perspective, do you think that there is something that we should do on a broader scale to lessen the impact on those first-time offenders?

Mr. GRAHAM. Well, I would be reluctant to freelance a broad-based answer to that question, but I think I clearly agree with the basic sentiment of your question that there needs to be—it's worth looking into the question of whether that broad-based type of action would be appropriate.

Ms. MAJETTE. So do you think, though, that it should be left to the individual agency to make a decision——

Mr. GRAHAM. Based upon what I know, which is not a lot, because as I try to emphasize, OMB is not in the enforcement business, or even in the review of the enforcement business. I'd encourage you to ask the people from the agencies that question.

Ms. MAJETTE. All right. Thank you. I yield.

Mr. OSE. The gentlelady yields back.

The gentleman from Maryland.

Mr. BARTLETT. Thank you very much. In a former life, I was a small business person. I was 1 of maybe 35 people that came here as a member of NFIB, and so I noted with interest Mr. Schrock's observations about the enormous burden that IRS is to small business.

If a homeowner finds that a large crocodile has inhabited his backyard fish pool, he may find it more productive to remove the crocodile rather than trying to domesticate him.

I wonder, sir, what thought you have given to eliminating the problem of IRS by simply eliminating the IRS and going to something like the consumption tax or the fair tax, in which case small business would not be taxed?

As a matter of fact, as you know very well, you can't tax a business. It simply becomes a part of the cost of doing business, and so it's passed on to the consumer. And, this is a very regressive tax. It is one of our most regressive taxes, because the poorest of the poor must buy the products and services of our businesses that simply pass on this tax.

Sir, where are you and the organization you represent relative to eliminating the problem of the IRS by simply eliminating IRS and going to something like the fair tax, the tax on consumption?

Mr. GRAHAM. Well, let me start by saying that the OMB in our testimony in a variety of hearings has emphasized the point that, if IRS paperwork reduction is a primary objective—and that certainly is one of the objectives of the Paperwork Reduction Act itself—we do have to ask fundamental questions about whether our tax code has too much complexity and too many nuances to really have a simple, easy way for taxpayers to deal with it.

So, I think simplification of the tax code is a necessary, critical step toward reducing IRS paperwork, but I think there are other people who are more authoritative on tax policy in the administration that really should get into the meat of your question, but I definitely agree with its basic sentiment.

Mr. BARTLETT. So, from your perspective, substituting another tax structure for the IRS would not necessarily be unproductive and impossible?

Mr. GRAHAM. From a paperwork reduction perspective, one can imagine either alternative income taxes or various consumption taxes that would have a lot less paperwork burden than what we have with the current tax code.

Mr. BARTLETT. Is there any movement on the part of the administration to encourage at least a discussion of that kind of a change?

Mr. GRAHAM. I think that's a good question to pose to our colleagues in Treasury. I think those are the right people to—who think hard about those questions.

Mr. BARTLETT. OMB is not involved in this?

Mr. GRAHAM. One of the comments I made—I forget if you were in the room earlier—there was a very long and treasured distinction between the responsibilities of the Office of Management and Budget and the Treasury Department, and as you may know, the remnants of OMB or the origins of OMB, I should say, were in the Department of the Treasury at one point, and then we were moved out. I think really the revenue side and the expenditure side, there's sort of an alliance that the two agencies are going to be primarily responsible for those two separate entities, and that has led quite frankly to OMB's not being the primary player in the administration on the particular subject that you raise on tax reform.

Mr. BARTLETT. Thank you. Thank you, Mr. Chairman.

Mr. OSE. The gentlelady from New York.

Mrs. KELLY. Thank you, Mr. Chairman. Dr. Graham, I'm glad you're here today. I am very pleased of the work that you've been doing in the agency.

A number of years ago, I got passed and signed into law by President Clinton a law that would allow a separate office in the GAO to examine all the rules and regulations that were promulgated

and finalized by the agencies of the United States that would allow this office then to have a look at them, and they would look at them for three things, the cost-benefit analysis, a look at the redundancy of rules and regulations, and the overlap of rules and regulations.

It seems to me if we're really going to cut paperwork, those are some things we need to look at, especially with regard to redundancy and overlap, and I would ask you, Dr. Graham, if there's any movement at OIRA today to have a look at redundancy and overlap? There ought to be a way in an electronic age we can eliminate both redundancy and overlap and relieve the burden on our small businesses that way. Can you?

Mr. GRAHAM. I think there are modest steps that we can take in the executive branch, even without any new legislation, to provide progress in this direction.

For example, in 2002, we issued a request for public nominations of regulatory reforms that would reduce paperwork, reduce burden on businesses and consumers without compromising the benefits of the regulatory system, and we received from over 1,700 commentors more than 300 unique, distinct recommendations, and today the agencies are still working through which of those to adopt, which of those are not good ideas, which of them might be a good idea if they were modified or fashioned a little bit.

So, in our annual report to Congress, we actually describe the agency's progress in each of these areas, and what you're going to hear today from several of the agencies is some information on progress that they're making on some of those regulatory reforms.

Mrs. KELLY. Are you, in any way, wielding a stick in terms of trying to get these things done?

Small businesses are strangling. They have been strangled repeatedly and for far too long, by way too much paperwork. The red tape for simple people who are running a small business that may have three or four people only as their employees. It's really horrible, and it's not just the IRS. It's every agency of government. It's an agency requiring someone like a building contractor to respond to the agency on who they're employing and very personal questions about why they're employing these people and what those people are doing. That type of thing takes time. It takes cost. There have been estimates that are as high as—well, $7 million a year or something like that. Maybe more. Maybe that's way underestimating what the cost is for small businesses.

I think that there's got to be a time, and I certainly sense that this administration is interested in trying to stop this kind of thing from happening. What kind of a stick do you have to wave at the agencies to try to get them—to prod them along?

Mr. GRAHAM. Well, maybe it needs more than a stick. Maybe I need both an Air Force and a Navy and an infantry. But I think that the tools that we have at OMB are to stimulate proposals for smart regulatory reforms and to jawbone our agencies into taking them seriously and trying to look at them, and we, of course, appreciate the efforts of this committee to help us do oversight on their implementation of those.

One of the promising ideas that I mentioned in my earlier remarks is the effort at the Environmental Protection Agency to mod-

ernize and improve the toxic release inventory program, and this is a very sensible program to provide communities information about how much pollution is being emitted from various sources.

But it turns out that they are requiring a number of sources, including small businesses, that report zero or near zero emissions to continue to have to report each year those types of numbers, and I'm pleased that Kim Nelson is with us today and can describe some efforts that they're undertaking to try to bring more burden reduction into the toxic release inventory program.

Mrs. KELLY. Thank you. I'm running out of time, but again, I would encourage you and ask us for legislation if you need it, to help eliminate the redundancy and overlap. Simply that would help. If you could do that, that would be very helpful. Thank you, Mr. Chairman.

Mr. OSE. Thank you. Does the gentleman from Iowa wish to have an opportunity to ask questions in this round?

Mr. KING. I'll pass. Thank you, Mr. Chairman.

Mr. OSE. OK. I do want to go back to one thing. I want to clarify something. I'm not quite clear on, Dr. Graham. It's my understanding that the Paperwork Reduction Act requires OMB approval for all paperwork requests, including IRS. Am I——

Mr. GRAHAM. That's correct.

Mr. OSE. That is correct. So before they can use it, they've got to come to OMB and get your sign off on it.

Mr. GRAHAM. For the information collection requests, yes.

Mr. OSE. Not the——

Mr. GRAHAM. Not the guidance document, not the regulation but the information collection request.

Mr. OSE. OK. All right. Now, I want to go back to a subject we were getting to. We talked about single points of contact. The second column over there on the large chart is compliance. It has to do with compliance assistance. And, one of the requirements of the Small Business Paperwork Relief Act was that, in addition to the single point of contact, there was supposed to be point to which people could go for compliance assistance.

Now, the act required OMB to publish on June 28, 2003 a listing of the agency compliance assistance resources available to small business. In that middle column of the large chart, you'll see a bunch of yeses and noes, Y's and N's. There are 18 N's still on that chart, including the GSA and FERC. The GSA is the agency that contracts with so much of small business. It's the one on the right, Dr. Graham, and then FERC obviously is—well, at least in California, it's a very important agency.

I'm trying to find out when we'll be able to get those 18 agencies to have their compliance assistance much like the single points of contact in the 14 agencies. Do you have any sense of that?

Mr. GRAHAM. Well, let me start. It's a reasonable question, and the good news is that we feel we have tackled a lot of the major departments and agencies, and we are left with, well, there are a large number of those agencies, while they do not account for, you know, a majority or even a substantial fraction of the overall issue here.

I think GSA is particularly frustrated, and it's really appropriate for you to be asking this, why we can't get GSA to do that since

they do, in fact, have a lot of interaction with the small business community.

FERC, you probably have the insight there just by knowing that it is, in fact, an independent agency in most of its activities outside the purview of Executive Office of the President oversight. But again, there's no problems with us picking up the phone and reminding them of their responsibilities under the Paperwork Reduction Act.

Mr. OSE. Would you like us to send you a letter so you can——

Mr. GRAHAM. I was assuming I was going to get one, Mr. Chairman.

Mr. OSE. Well, I am interested. I mean, GSA procures all sorts of services from lots of small businesses I think you're correct, they have at best a very small percentage, but GSA is one of those that I think is on a daily basis interacting with small business, and I'd like to see that compliance point—see the compliance resources made available to small business.

Now, the second question I have is that one of the questions that we found in our last meeting was that when we asked about the forms that people could use off the Internet, in other words, go to each agency's Web site and pull it down, for paperwork requirements and the like, you responded on September 11th that there were staff limitations that constrained your ability to collect that information or collect those forms.

So, what I had done was my staff called all of the 71 different agencies and asked them to send us a copy of their information collection pieces, and we have them right down here.

Mr. GRAHAM. Wow.

Mr. OSE. We'll be happy to give them to you. In fact, we're going to give them to you.

Mr. GRAHAM. Do I have to read each——

Mr. OSE. No. What I want you to do is post them with a link on your Web site so people can get to them without any major challenge, so to speak. I mean, we tried to take the staff issue off the table by——

Mr. OSE. You've done that, sir. So, what can we expect in terms of getting OMB to post these forms on the Web site, either by link or otherwise, so that people can access them off the Web?

Mr. GRAHAM. Well, let me give you an initial reaction to that and not a final one, and that is supposing I am a small business person, whether I'm working in dry cleaning or kind of a service industry of some sort, and I want to get on OMB's Web site, and I want to find out which of these net books, which tab in which notebook applies to me. We need more than the notebooks up there. We need a software system that will allow that person to say, I am in a dry cleaning business, these are my sort of parameters of my business, and then there needs to be a software capability that kicks out, these are the forms that are relevant to you.

Just posting all of the forms on our Web site without any ability for the person to access those forms that are relevant to them, my initial instincts tell me—though I'm always persuaded, Mr. Chairman—that is not going to solve the problem. And that's what Business Gateway is all about. Business Gateway says here are the parameters of my business. Now tell me with the engine—the soft-

ware engine behind it, which of those notebooks and tabs in those notebooks apply to me.

Mr. OSE. I remember the last time I travelled to Washington, I started with a step. So I'm thinking this might be a step in the right direction.

Mr. GRAHAM. Well, we're certainly willing to consider that, Mr. Chairman.

Mr. OSE. Mrs. Kelly, you had a request to——

Mrs. KELLY. Well, I just wanted—I'd like to just point out that year after year we've been trying to do something to help small businesses rid themselves of this enormous burden and costly burden. It's costly for all of us. It drives up the price of everything we do with small business.

But, I note here that 24 agencies didn't bother to provide with requested copies of all of the paperwork that was applicable to small businesses, and I also notice here that in these—this line of—with noes with noncompliance, the OMB is noncompliance straight across the board. Now, I know you will give me reasons for that, but it would, I think, be helpful if we could have some strong explanations about why some of these agencies, 24 agencies that govern small businesses, haven't bothered to send in paperwork that they require the small businesses themselves to file. That is obscene. I'm not after you, Dr. Graham. I'm just infuriated that somehow, somewhere in this government we are not responsible.

I shouldn't say "we." The agencies are not responsible. I don't know what it's going to take, but year after year. Ms. Velazquez and I have held hearings before, and this has gone on year after year. I am so glad, Mr. Chairman, that you are holding this hearing now, and I think it needed to be pointed out that the agencies don't even bother to respond when you have a joint hearing up here on Capitol Hill.

Again, if this is going to require legislation, then so be it. We will have to write a rule.

Mr. OSE. Well, if I may be so bold, I believe the legislation already exists requiring them to report, and one of the things that we struggle with is finding the agency, in this case our opinion is that it's OMB, which can just kind of sit there and hover and say where is it? Where is it? Where is it?

Mrs. KELLY. Mr. Chairman, I'm suggesting at this point that we consider penalties.

Mr. OSE. Ms. Velazquez.

Ms. VELAZQUEZ. I have no more questions.

Mr. OSE. Mr. Bartlett. Ms. Majette.

Ms. MAJETTE. I just need clarification, Dr. Graham. Are you saying that there is a need to develop the software that would do what you are suggesting or that the software exists but somehow it's not being used effectively or at all?

Mr. GRAHAM. It's in the early stages of being developed right now. As a part of the interagency task force that this law created, and the project goes under the name Business Gateway, the gateway for a small business to learn about which of those requirements apply to them. But we have challenges in the next year or more to develop the appropriations, to develop the evaluation, to do

the technical work, to develop Business Gateway, because as you can imagine, the software that is necessary to reliably provide the answer to the questions I described, given all those notebooks, it's a pretty sophisticated engine that's going to do that.

Ms. MAJETTE. With respect to the appropriation, is there in the upcoming budget—is there going to be a need for additional funding that you think will be above the levels that you're expecting to be authorized?

Mr. GRAHAM. I think for the next fiscal year we have funding we need, but it's going to require more than 1 year. This is an ongoing activity that we need to provide adequate priority to.

Ms. MAJETTE. What kinds of figures are you talking about?

Mr. GRAHAM. I don't have the precise ones off the top of my head, but if you want them, I'll get them for you.

Ms. MAJETTE. Yes, please. Thank you.

Mr. OSE. If I might be so bold on that, it may be possible, it may be as simple as putting a link on, for instance, OMB's Web site to the agencies where these forms might exist. It wasn't—it's not—it may not be a question of requiring some fancy new software on. On a Web-based system, it may be as simple as creating a link.

Ms. MAJETTE. If I understand Dr. Graham's concern, if you're dealing with a small business owner who wants to be in compliance but may not know exactly where in the books to turn to find all of the forms that he or she may need in order to be in compliance, then you're talking about having a mechanism by which that business owner will be notified that these are the four—if the business owner provides the parameters of the business then the software would somehow kick back to the business owner, forms 1, 5, 7, 29, 86 and 103 so that then the owner can go ahead and fill those forms out, knowing that those are the forms that need to be completed in order to be in compliance.

Mr. GRAHAM. That's right, and it will require, unfortunately, more than just a link from OMB's Web site to the agency's Web site, because even if I'm a small business that works with the Department of Health and Human Services, there are a wide range of notebooks. There's probably a whole bunch of notebooks in there of Health and Human Services, and I need to know which of those apply to me, given that I am a small health maintenance organization, for example. I think the premise of your question is correct. It is a nontrivial task to generate an engine that will allow that kind of information to be provided, and consider how important it is that it be reliable, because if that information that comes back from the engine misleads the small business person into believing they only need these forms, they don't need these forms, then you have a very messy situation developing. So, obviously, the task force wants that product business gateway to be done with accuracy, a high degree of accuracy.

Ms. MAJETTE. Yes. And, I guess the analogy would be what happens a lot of times with the IRS if someone calls in to ask a question, assuming that person that they receive the answer from is knowledgeable enough to answer the question properly, they are then relying on that information. And, if they have not been given correct information, they may not be in compliance or they may not do everything they need to do. So, the question is on——

Mr. GRAHAM. Bingo. You're hitting it right on——

Ms. MAJETTE. Where does the burden rest? Does it rest with the individual business owner or does the burden rest with the agency that's requiring compliance to provide sufficient information so that——

Mr. GRAHAM. I don't know the legal answer to your question, but I do know the task force feels very strongly that the Federal Government should not venture some half-concocted software system that purports to give this information that isn't very adequate. We want a quality system put up from the start and then improve it over time, and that is why it is not going to happen overnight, this type of exercise.

Ms. MAJETTE. Is there anything we can do to facilitate that process?

Mr. GRAHAM. I think it will be very useful to continue to have, in fact at some point to have a hearing at this committee where you hear from some people from the agencies working on Business Gateway to learn more specifically what are the challenges they are facing, what are the extra steps that are needed. That would be a useful thing to do.

Mr. OSE. From an identification standpoint, if people contacting the agencies—there is a thing called NAICS, North American Industrial Classification System, which Chairman Manzullo has been pushing very strongly, the purpose of which would be to allow that dry cleaner or allow that engine manufacturer or allow whomever to be able to identify which forms electronically. And, we have had a significant debate over time about whether or not that is the appropriate system of classification and the like. We haven't come to a resolution yet. I think that accurately characterizes our discussions.

Mr. GRAHAM. I think the task force thinks that is a constructive idea, but not necessarily the best approach. Business Gateway, the way they are developing it will allow the small business person to say modest things about the nature of their business without getting into the codes, and then in the software it will provide those answers.

Ms. MAJETTE. Yes. Thank you.

Mr. OSE. OK. Mr. King from Iowa.

Mr. KING. As I sit here and try to get up to speed on this conversation, I might have missed this in your testimony, Mr. Graham, but the origin of the Business Gateway project, when was that conceived and how was it conceived and what is the thrust for driving it at this point?

Mr. GRAHAM. It arises out of the President's management agenda and the effort to promote—both to promote electronic commerce and electronic government. So it has emerged out of the entire effort in the President's management agenda.

Mr. KING. When was that?

Mr. GRAHAM. It started several years ago, because it was started in the talk phase and then in the design phase and now we are at the very early stages of actually trying to develop the kind of software we are talking about here.

Mr. KING. Is it this President?

Mr. GRAHAM. I believe it was. I am sure there may have been conversations about it previously, but its real seriousness began in this administration.

Mr. KING. The thought that occurs to me, try to get accuracy out of the IRS. It is pretty hard to find three answers that are all the same, or even two that are the same when you make that call and ask them, yet we don't have any hesitation about enforcing IRS regulations. We aren't insisting upon 100 percent accuracy before we enforce IRS laws. And, that has been a burden on the public. But it seems to me that if you could deploy a Business Gateway plan and do so fairly quickly, at a significant degree of accuracy, we would be able to refine those inaccuracies by simply the problems that arise from that and make corrections as you go. It seems to me that it wouldn't be a difficult piece of software to write. And, if someone calls in and asks for advice and says that I am running a particular type of business, what do I need for forms? Those data I would think are easily available. Isn't that transferred into the electronics?

Mr. GRAHAM. I agree with the basic premise of your question. And, please don't misunderstand me, that I am not suggesting that this thing should have to be 100 percent accurate before we would begin to field test it or pilot it in some way, but I think you can understand that we wouldn't want a system like this to be highly error prone early in its development because the reputation that will develop because of that will ultimately cause a premature casualty in the development of that innovation.

But, it doesn't require 100 percent effectiveness. I don't think that the availability of the information you just described, which is what Chairman Ose has been pushing me on for 3 years, I don't think it is quite as straightforward. And, that's one of the reasons, it's very hard for small business people to get their arms around this, even fairly sophisticated, knowledgeable people to try to access the various systems that now exist don't get easy answers to their questions about which of these forms is applicable to me. It is not an easy thing.

Mr. KING. I would suggest that if there was a profit incentive here, if business were actually in control of this development, we would have it done.

Mr. GRAHAM. Or a competitive bidding process to develop this system.

Mr. KING. Thank you, Mr. Graham.

Mr. OSE. I have but a couple more questions for Dr. Graham and if anyone has any questions, we will go on. We have heard about the 14 missing responses on the single point of contact, the 18 on compliance assistance. Ms. Kelly talked about the 24 who didn't even respond to our request for their paperwork applicable to small business.

Mr. GRAHAM. I was unclear. Twenty-four that did not respond to your requests? So, we have 24 more notebooks that we haven't seen yet?

Mr. OSE. I want to followup on the enforcement reports. The Small Business Paperwork Relief Act required each agency to submit its initial agency enforcement reports by December 31, 2003, and yet we are missing 42 of them by our last count. And, what

I am trying to find out is whether or not you will help us get those 42?

Mr. GRAHAM. Facts: One, these were statutory requirements of the agency. Two, this subcommittee encouraged us to make sure agencies were aware of it and we issued the President's Management Council memo because of this subcommittee's interest. We will take further steps at your suggestion to make them aware. That's where we are at the present time.

Mr. OSE. I did pick up—one of the things we thought we figured out on that memo for the President's Management Council——

Mr. GRAHAM. The deputies of all the major departments and agencies within the purview of the President.

Mr. OSE. There were 20—I think we found there were 20 agencies who were unaware of it.

Mr. GRAHAM. It will be interesting to know how many of those Cabinet departments or agencies or how many are outside——

Mr. OSE. None of them are. There are actually—they are smaller.

Mr. GRAHAM. A lot of them are independent agencies.

Mr. OSE. Second bracket there on that larger poster. But GSA is one of them. SBA.

Mr. GRAHAM. I think your concerns are very well taken.

Mr. OSE. Anyway.

Mr. GRAHAM. The SBA one is fascinating. That's a headline.

Mr. OSE. I just want to get the information put together in a single location and have it be responsive to the congressional legislation. So, if you could help us with that, we will give you what we have accordingly.

Ms. VELAZQUEZ. Mr. Chairman, aren't you amazed by the fact that SBA doesn't know that they need to have a notebook to tell businesses what the compliances are?

Mr. GRAHAM. And, they are extremely involved in the task force.

Ms. VELAZQUEZ. I can see that.

Mr. OSE. Ms. Kelly.

Mrs. KELLY. Dr. Graham, this only points out my prior comments. Can you help us, help us make the agencies listen to what our requests are and respond? If not, I don't see any route for us to take except take a legislative one, which then would have to have some kind of punitive damage. I don't think one agency would decide they would not comply if we had an automatic self-enacting or automatic rule that would apply if the requests from Congress weren't meant that caused them to lose 10 percent of their budget straight off the top. There are things we can do and there are things we may have to do. This has gone on year after year after year and it is from one administration after another. The agencies have an unparalleled arrogance in the way they treat this committee and the way they treat the Small Business Committee in our requests for information. That has to stop and we need your help.

Mr. GRAHAM. As you know, I have been as helpful as I can be. And you are going to hear from three agencies here shortly, and I will be eager to hear the kind of responses you get. However, in the design of this hearing, you put together three agencies that have been pretty darn good. So I think you may have to schedule another one to get at the root of what your question is about.

Mr. OSE. I did just want to—Ms. Kelly used the word "request." These are not requests, but statutory requirements. There is a very, very specific difference that needs to be highlighted here.

Mrs. KELLY. All the more reason why there needs to be a very strong message delivered to the agencies that when the statutory request comes in, they are to respond. There is no other way we can help small businesses in this Nation. And, what about the small businesses? What about the guy that's running Alphie's Garage or Nydia's Nails or something like that and they request information? Well, Nydia's Nails happens to be in my hometown, Nydia. And, so is Alphie. He is also there.

Ms. VELAZQUEZ. I thought you admired my nails.

Mrs. KELLY. Well, I do. In all honesty, these people when they ask for requests, they are treated the same way we are. This has to stop. There has to be a point where the people who are elected to represent the small businesses of this Nation, we say enough; and we enact something that is going to make these agencies stand up and listen.

Where are those notebooks? Why haven't these people responded? Nydia will tell you, we have done this repeatedly in the Small Business Committee by ourselves and we get the same thing. I am just simply the voice. I am not the only Member of Congress who feels this way. I really feel that it is time that the agencies got this message. It has never been delivered by me this harshly and this time it is. We have had it.

Mr. SCHROCK. Ms. Kelly is absolutely right. They are going to ignore us until we take legislative action. Dr. Graham can knock on their doors all day long, but they are going to thumb their nose at us because they have been doing it and getting away with it. Unless we do it legislatively—I don't want to—let's take 25 percent of their budget away. Try to make it hard on them and make severe penalties on the people who run those organizations. But, we can sit up here all day long and do this every week, every month, every year, and unless we take some drastic action, nothing is going to get done. I think the time is now. These small businesses are dying out there. And, the sooner we do it, the better.

Mr. OSE. Congresswoman Majette.

Ms. MAJETTE. I was just admiring Nydia's nails.

Mr. OSE. What you hear up here is a certain level of frustration on the part of all the Members. And, what we are attempting I think to convey to you is that, under the rubrick of Office of Management and Budget, these agencies come to you or your entity for various things. From where we sit, we think you are the gatekeeper, if you will, and we look to you for enforcement of these things. That may be an agenda that you don't wish, but that is an agenda we have and are going to put forward.

Mr. GRAHAM. It's an idealistic vision and we will keep working as hard as we can to deliver better responsiveness both from OMB and the agencies.

Mr. OSE. I think you will find up here everyone is an eternal optimist. Dr. Graham, we thank you for joining us today. The record will be open for 10 days, per Mr. Tierney's comments earlier, for questions. We are going to take a recess so that the next panel can gather up here.

[Recess.]

Mr. OSE. We will reconvene here. I want to welcome to the committee our next three witnesses. Joining us from the Department of Labor is the Assistant Secretary for Administration and Management, Mr. Patrick Pizzella. Also joining us is General Counsel from the Department of Transportation, Mr. Jeffrey Rosen. And, our third witness is the Assistant Administrator for Environmental Information at the Environmental Protection Agency, Ms. Kimberly Nelson.

As I indicated earlier, we swear in our witnesses as a matter of course here. If you please rise and raise your right hands.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative. Before I recognize Mr. Pizzella and go forward with his statement, I do want to advise everybody we expect a vote shortly—actually, two votes which will require us to temporarily recess because of the issue of two votes. In any case, we will come back and finish the panels. So, our first witness on the second panel is the Assistant Secretary for Administration and Management and Chief Information Officer at U.S. Department of Labor.

Mr. Patrick Pizzella, glad you could join us and you are recognized for 5 minutes.

STATEMENTS OF PATRICK PIZZELLA, ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT, DEPARTMENT OF LABOR; JEFFREY ROSEN, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; AND KIMBERLY TERESE NELSON, ASSISTANT ADMINISTRATOR FOR ENVIRONMENTAL INFORMATION, ENVIRONMENTAL PROTECTION AGENCY

Mr. PIZZELLA. Thank you, Mr. Chairman. Good afternoon Chairman Ose, Chairman Schrock and other members of the subcommittees. Thank you for inviting me here today to discuss DOL's implementation of the Small Business Paperwork Relief Act and the Fiscal Year 2003 Regulatory Enforcement Report which was required by the act.

I appreciate this opportunity to discuss DOL's responsibilities under the act and our efforts to provide relief and fair treatment to small business owners.

DOL is committed to reducing the burdens on America's small businesses and what they deal with as a result of Federal regulations and paperwork. Both the SBPRA and the Paperwork Reduction Act are important tools for DOL to use to reduce unnecessary paperwork burdens on small businesses. Additionally, expanding the availability of government services and information via the Internet not only reduces the paperwork burden on citizens and businesses but also offers convenience to small business owners. The Department strives to inform small businesses about the extensive compliance assistance resources provided by our agencies, whether they are found on the Internet or through our local and national offices.

DOL takes seriously our responsibilities under the SBPRA and the Paperwork Reduction Act and we believe we are fulfilling the requirements of the acts. DOL has decreased the paperwork burden reported in our information collection budget in 7 out of the 8

years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments. The information collection budget reporting process does not provide for a separate accounting of paperwork burden for small businesses. However, we can state that, in general, small businesses will benefit as we eliminate or simplify paperwork requirements for businesses of all sizes.

This year our information collection budget does detail one nonelectronic paperwork reduction initiative which exceeds the 100,000-hour threshold. This was accomplished as part of OSHA's efforts to revise provisions of its standards.

Now, I would like to discuss the Department's Fiscal Year 2003 Regulatory Enforcement Report. In December 2003, DOL submitted our initial regulatory enforcement report as required by the act. This report presents data on the number of DOL-agency enforcement actions in which a civil penalty was assessed, the number of these enforcement actions for which small entities were assessed, the number of enforcement actions in which the civil penalty was reduced or waived, and the total monetary amount of these reductions or waivers.

Within the Department of Labor, the Employee Benefits Security Administration, the Employment Standards Administration, the Mine Safety and Health Administration, and the Occupational Safety and Health Administration reported enforcement actions in which civil monetary penalties were assessed. It should be noted that reductions or waivers for small entities are in many cases already factored into the formulas used to compute penalties. In addition, agencies reduce penalties before assessment. The Wage and Hour Division field managers make preassessment adjustments before assessing penalties against small entities.

Reductions or waivers were granted in 99 percent of the 5,283 EBSA actions against small entities for a total of approximately $3.4 million. For purposes of the report, EBSA defined small entities to refer to employee benefit plans with 100 or fewer participants. ESA's Wage and Hour Division reported 2,117 enforcement actions including 1,018 against small entities. Reductions or waivers were granted in 26 percent of the actions against small entities totaling $650,000. For purposes of the report, the Wage and Hour Division defines small entities as businesses with 50 or fewer employees. As noted above, Wage and Hour makes its preassessment adjustments to civil penalties, including calculating further reductions and waivers.

The Mine Safety and Health Administration is required by statute to impose a civil penalty for every violation. MSHA is not authorized to waive penalties in any case. However, prior to determining proposed penalties, MSHA considers 6 statutory criteria, including business size. Thus, business size does not affect proposed penalty amounts. In addition, a mine operator may request a review of the business's financial situation after MSHA issues a proposed civil penalty as a justification for further reduction of the penalty.

In 2003, MSHA proposed penalties in 104,000 enforcement actions, 96 percent of which for operations with fewer than 500 persons; 45 percent of all proposed penalties were for mines employing

fewer than 20 persons, MSHA's definition of a small mine. MSHA investigated 6 requests for financial review during fiscal year 2003, but did not reduce the penalty in any of the six cases. OSHA—shall I continue? My time is up.

Mr. OSE. I do want to clarify one thing you said. You talked about MSHA and business size. The transcript is going to say, thus, per your words, "business size does not affect proposed penalty amounts," but your testimony says, "thus business size does affect proposed penalty amounts." I just want to clarify that. You said the word "does not."

Mr. PIZZELLA. It is one of the six criteria that is taken into consideration. So then it does.

Mr. OSE. So it does affect.

[The prepared statement of Mr. Pizzella follows:]

Statement of Patrick Pizzella
Assistant Secretary for Administration and Management and
Chief Information Officer
U.S. Department of Labor
Before the Subcommittee on Energy Policy, Natural Resources and
Regulatory Affairs, Committee on Government Reform and
the Subcommittee on Regulatory Reform and Oversight,
Committee on Small Business
U.S. House of Representatives
January 28, 2004

Good afternoon, Chairman Ose, Chairman Schrock, and Members of the Subcommittees. I am Patrick Pizzella, Assistant Secretary for Administration and Management, and Chief Information Officer for the Department of Labor (DOL). Thank you for inviting me here today to discuss DOL's implementation of the Small Business Paperwork Relief Act (SBPRA) and the FY2003 Regulatory Enforcement Report which was required by the Act. I appreciate this opportunity to discuss DOL's responsibilities under the SBPRA, and our efforts to provide relief and fair treatment to small business owners.

DOL is committed to reducing the burdens that America's small businesses deal with as a result of Federal regulations and paperwork. Both the SBPRA and the Paperwork Reduction Act are important tools for DOL to use to reduce unnecessary paperwork burdens on small businesses. Additionally, expanding the availability of government services and information via the Internet not only reduces the paperwork burden on citizens and businesses, but also offers convenience to small business owners. The Department strives to inform small businesses about the extensive compliance assistance resources provided by our agencies, whether they are found on the Internet or through our local and national offices.

DOL takes seriously our responsibilities under the SBPRA and the Paperwork Reduction Act (PRA) and we believe we are fulfilling the requirements of the Acts. DOL has decreased the paperwork burden reported in our Information Collection Budget in seven out of the eight years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments.

The Information Collection Budget reporting process does not provide for a separate accounting of paperwork burden for small businesses. However, we can state that in general small businesses will benefit as we eliminate or simplify paperwork requirements for businesses of all sizes.

This year, our Information Collection Budget does detail one non-electronic paperwork reduction initiative, which exceeds the 100,000-hour threshold. This was accomplished as part of OSHA's ongoing efforts to revise provisions of its standards.

Now I would like to discuss the Department's FY 2003 Regulatory Enforcement Report. In December 2003, DOL submitted our initial Regulatory Enforcement Report, as

required by the SBPRA. This report presents data on the number of DOL agency enforcement actions in which a civil penalty was assessed, the number of these enforcement actions for which small entities were assessed, the number of enforcement actions in which the civil penalty was reduced or waived, and the total monetary amount of these reductions or waivers.

Within the Department of Labor, the Employee Benefits Security Administration (EBSA), the Employment Standards Administration (ESA), the Mine Safety and Health Administration (MSHA), and the Occupational Safety and Health Administration (OSHA) reported enforcement actions in which civil monetary penalties were assessed.[1]

It should be noted that reductions or waivers for small entities are in many cases already factored into the formulas used to compute penalties. In addition, agencies reduce penalties before assessment. For example, Wage and Hour Division field managers make pre-assessment adjustments before assessing penalties against an employer.

EBSA reported 11,882 enforcement actions involving civil penalties, including 5,283 actions against small entities. Reductions or waivers were granted in 99 percent (5,223) of those 5,283 actions, for a total of approximately 3.4 million dollars. For purposes of the report, EBSA defined "small entities" to refer to employee benefit plans with 100 or fewer participants.

Through EBSA's "Delinquent Filer Voluntary Compliance Program" (DFVCP), plan administrators who voluntarily come forward to bring their annual report filings up to date face greatly reduced penalties. Of the 5,223 actions in which penalties were reduced or waived against small entities, 5,204 were reduced penalties paid under this program. As part of this program, the Internal Revenue Service and Pension Benefit Guaranty Corporation have agreed not to impose additional penalties.

EBSA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	11,882	5342	$9,294,822	(not available)
Small (≤100)	5283	5223	$3,383,539	(not available)

ESA's Wage and Hour Division reported 2,117 enforcement actions, including 1,018 against small entities. Reductions or waivers were granted in 26 percent (268) of the actions against small entities, totaling approximately 650,000 dollars, with final penalties of 2.8 million dollars. For purposes of the report, the Wage and Hour Division defined "small entities" as businesses with 50 or fewer employees. As noted above, Wage and

[1] Several DOL agencies or offices had no information for the report either because they have no authority to assess or impose civil penalties or because they took no such enforcement actions during the time period covered: the Employment and Training Administration; the Employment Standards Administration's Office of Federal Contract Compliance Programs, Office of Labor-Management Standards, and Division of Longshore and Harbor Workers' Compensation Programs; and the Veterans' Employment and Training Service.

Hour makes pre-assessment adjustments of civil penalties; in calculating further reductions and waivers, ESA included only post-assessment adjustments.

ESA/Wage and Hour				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	2117	543	$1,848,578	$8,125,959
Small (≤50)	1018	268	$649,756	$2,809,491

MSHA is required by statute to propose a civil penalty for every violation. MSHA is not authorized to waive civil penalties in any case. However, prior to determining proposed penalties, MSHA considers six statutory criteria, including business size. Thus, business size does affect proposed penalty amounts. In addition, a mine operator may request a review of the business' financial situation after MSHA issues a proposed civil penalty as justification for further reduction of the penalty.

In FY 2003, MSHA proposed penalties in 104,800 enforcement actions, 96 percent of which were for operations with fewer than 500 persons. Forty-five percent of all proposed penalties were for mines employing fewer than 20 persons, MSHA's definition of a small mine, totaling approximately 8 million dollars. MSHA investigated six requests for financial review during FY 03, but did not reduce the penalty in any of the six cases.

MSHA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	104,800	not applicable	not applicable	$20,343,990
Small (<500)	100,300	not applicable	not applicable	$19,335,594
Small (<20)	47,150	not applicable	not applicable	$7,952,307

OSHA proposes penalties after taking into account the statutory factors of: size of the business, the gravity of the violation, the good faith of the employer, and the history of previous violations. In virtually every case where the business meets the criteria for being considered a small business, a reduction is made. The rates of reduction for business size range up to 60 percent, for the smallest businesses.

OSHA's proposed penalties are made final by order of the Occupational Safety and Health Review Commission (OSHRC). The numbers reflect the difference between the final penalty and OSHA's proposed penalty, which already takes into account the reductions provided by statute.

OSHA reported 24,583 enforcement actions with penalties. Of those, 20,780 were at businesses with 250 or fewer employees and 12,366 were at businesses with 25 or fewer employees.

For businesses with 250 or fewer employees, assessments were reduced 71 percent of the time totaling approximately 29 million dollars. For businesses with 25 or fewer employees, assessments were reduced 67 percent of the time, totaling approximately 12 million dollars in reductions, and final penalties of approximately 23 million dollars. I would note that DOL has released an addendum to our Enforcement Report that details the amount of these reductions. These reductions are in addition to those required by the statute for size.

OSHA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	24,583	17,669	$40,457,500	$75,085,617
Small (≤250)	20,780	14,738	$28,682,153	$51,774,351
Small (≤25)	12,366	8270	$12,437,362	$22,720,979

The Department of Labor is committed to reducing the paperwork burden on American business. In addition, the Department has a very strong program of compliance assistance to help all businesses, especially small businesses, comply with our requirements. When we conduct an investigation, our objective is not to punish companies, but to assure compliance with our laws and to protect America's workers.

That concludes my prepared testimony. I would be happy to answer questions you may have.

Mr. OSE. Now that is the bell for our first vote. We have in fact three votes: 15, 5 and a 5. We will all depart as best we can. We are going to get through your 5 minutes and we will probably call a halt to it and come back for Ms. Nelson's opening statement. I understand this is your first time in front of a congressional committee, having recently been confirmed. Congratulations on being confirmed. And, second, my regrets on having to appear here.

Mr. ROSEN. Thank you and good afternoon, Chairman Ose and Chairman Schrock, as well as members of both committees, and thank you all for the opportunity to testify here today. I did hear your comments during the previous panel, so I do want to underscore that the Department of Transportation takes very seriously our responsibilities under both the Small Business Paperwork Relief Act and the earlier Small Business Regulatory Enforcement and Fairness Act. And because we pay close attention to those laws, we believe we have done a good job in developing rules that reduce, to the extent possible, the burdens that we impose on small businesses and that we are giving appropriate consideration to small entities in our enforcement actions, although there is always more to be done.

I was gratified when in looking at the long chart, the second chart on the right, that we had submitted our regulatory enforcement report in a timely fashion. We had provided our single point of contact, who is actually here today, I am pleased to say. And, we have also provided our listing of compliance resources. So, on that score, we have done the three requirements of the Small Business Paperwork Relief Act.

Since you have our report, I want to try to highlight just three things here today. First, just a few brief numbers. As you know, we have six operating administrations at DOT that assess civil penalties. During fiscal year 2003, those six agencies reduced or waived, as your first chart indicates, in excess of $6.7 million in civil penalties that were assessed against small entities. The two operating administrations with the highest civil penalty assessments against small entities were the FAA and our Federal Motor Carrier Safety Administration, the agencies that regulate aviation and trucking.

If you focus on those two, which have the highest civil penalty assessments, the numbers are interesting. Of all the enforcement actions that FAA initiated in fiscal year 2003, only 20 percent were initiated against small entities. But small entities received 47 percent of the reductions or waivers that were provided that year. For motor carriers, where small businesses predominate, small businesses were only 47 percent of all the enforcement actions that the agency took and the small entities received a roughly proportionate 43 percent of the reductions or waivers of penalties.

But, and this is my second highlight for today, because I do want to emphasize that the numbers don't tell the whole story and that is important as you look at our overall report. The reason that is so is that discretion plays a very large role in whether the Department even initiates an enforcement action against a small entity. For example, small businesses represent approximately 87 percent of trucking companies, but only 47 percent of the enforcement actions that were taken by the Federal Motor Carrier Safety Admin-

istration. Our operating administrations try to emphasize that compliance is the goal rather than the assessment of civil penalties. This is especially true when there has been a good faith effort to comply and the alleged violation does not involve criminal wrongdoing or serious threat to health, safety or environment, and where there is instead an indication that the violator was attempting to comply or is ready to take remedial actions. Once it has been pointed out that they did not, unfortunately—and this is why I say the numbers do not tell the whole story—our operating administrations do not keep records of this type of informal consideration that they give in the process of determining whether to commence an enforcement action at the outset. Thus for some of our operating administrations, their numbers——

Mr. OSE. That means you have a minute, Mr. Rosen.

Mr. ROSEN. Their numbers do not tell the whole story.

My third and last observation for today is I just wanted to note that, of the more than roughly 8,000 information collection requests authorized by OMB throughout the entire Federal Government, I have been told that DOT is responsible for only 34 that have been identified as imposing significant burdens on small entities.

Perhaps, since I see my time is out, in the question period, I can tell you about what our efforts are to do better with regard to those. With my time up, let me just say I can assure you that as the new general counsel of the Department, I will continue to monitor this important initiative and our effective compliance.

Mr. OSE. Thank you for your testimony.

[The prepared statement of Mr. Rosen follows:]

Testimony of Jeffrey A. Rosen
General Counsel
U.S. Department of Transportation
Before the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
and the
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
U.S. House of Representatives

January 28, 2004

My name is Jeffrey A. Rosen, and I am the General Counsel of the Department of Transportation (DOT). I am pleased to have the opportunity today to testify about the Department's further implementation of the Small Business Paperwork Relief Act of 2002, especially our December 15, 2003 Regulatory Enforcement Report. For DOT, reducing the burden on small businesses is an important goal while we advance our overall mission, and we take our responsibilities very seriously in that regard.

Before I discuss the details of our report, I would like to note that DOT has, by some measures, one of the largest rulemaking responsibilities in the Federal Government. Our operating administrations and the Office of the Secretary have a tremendous responsibility for a broad range of matters that include safety, security, and economic development, among other things. Our Department is quite proud of the excellent safety, security, and environmental record of the industries we regulate, but DOT is also constantly aware of the extraordinary risks faced in industries that annually transport millions of people, tons of hazardous materials, and all forms of industrial and consumer goods. We are also responsible for ensuring that the billions of dollars that we provide in

financial assistance are used in accordance with statutory objectives and mandates. At the same time, we are also aware of the burdens our rules can impose, and in our rulemakings we consider the costs and benefits and determine whether those benefits justify the costs. In addition, we periodically review our existing rules. Among other things, we may examine any problems the regulated entities are having in complying with a particular rule. Based on that review, we may decide to make changes to the rule to address those problems.

DOT's Regulatory Enforcement Report was timely submitted in December 2003. Hopefully, the information it provides is helpful to show DOT's progress. I won't walk through the report itself, but there are three main points that I would like to make regarding our report.

First, to the extent permitted by law, when the violation did not present a significant risk, the Department's existing policy is to waive or reduce civil penalties for small entities that are first-time violators who have acted in good faith and who move quickly to correct the problem. This is in recognition of the fact that small entities have limited resources and those resources are often best spent correcting the violation rather than paying a fine. In addition, many of our operating administrations have developed "ticketing" (a simpler process than normal enforcement actions where the alleged violator is given something similar to a parking ticket that contains a description of the alleged violation, information on how to correct the violation, and sometimes a substantially reduced fine) or "warning letter" programs whereby the small entity receives a ticket or warning for less serious

violations.

Second, throughout the Department, operating administrations use their discretion in deciding whether to take any enforcement action against a small entity. The use of discretion is a concept that could not be readily captured in our report because the statute asks for specific numbers. Nevertheless, while preparing this report, each operating administration wanted to note that there are many instances where it exercised its discretion not to take enforcement action because the entity was small and the gravity of the violation was not substantial. This decision could be made at various levels. For example, an inspector may not file a violation report or a reviewing attorney may decide that initiating an enforcement action is not necessary. The operating administrations make every effort to emphasize that compliance is their goal rather than collecting civil penalties. This is especially true when there has been a good faith effort to comply and the alleged violation does not involve criminal wrongdoing, or a serious threat to health, safety, or the environment. The agencies, however, do not keep records for this type of action, so the numbers to not fully reflect our efforts to achieve the goals of the Small Business Paperwork Relief Act of 2002..

Third, not all of the operating administrations within DOT assess civil penalties. The operating administrations that assess civil penalties are the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the National Highway Traffic Safety Administration (NHTSA) and the Research and Special Programs Administration

(RSPA). In addition, civil penalties are assessed by the Office of Aviation Enforcement and Proceedings within the Office of the Secretary of Transportation (OST).

Further, I would also like to clarify a few other items with respect to the report. First, completed enforcement actions include enforcement actions initiated in prior years, but completed in FY 2003. Second, when reporting the total number of enforcement actions that assessed civil penalties during FY 2003, we counted only those enforcement actions that were initiated in fiscal year 2003. Third, the numbers reported for civil penalties reduced or waived does not include money actually received by the Department, just the amount assessed. Fourth, because each operating administration regulates a specific mode of transportation, the definition of a "small entity" varies with each operating administration. The definition used is the one they use for analytical purposes under the Regulatory Flexibility Act. Finally, the invitation to testify here today requested some additional information from the Department that was not called for in the statute. Specifically, you asked for the total amount of civil penalties assessed against small entities. In the time available, I was able to obtain some rough estimates from the operating administrations that assess civil penalties. Although estimates, they should give the subcommittees the context they are looking for. Attached to my statement is a chart that outlines the relevant enforcement actions and civil penalty assessments for each operating administration. This information is contained in our Regulatory Enforcement Report for 2003, except for the total amount of civil penalties assessed against small entities.

It can be difficult to derive significant meaning from these numbers without specific information regarding: (1) how often decisions were made not to pursue an enforcement action against a small entity or (2) to reduce the penalty assessed because the violator is a small entity, and (3) the factors in each action that may prevent an operating agency from reducing or waiving a penalty. However, based on the data we have collected regarding the reductions or waivers provided to small entities, we believe the Department is effectively implementing the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and giving appropriate consideration to small entities in our enforcement actions.

The invitation to testify also requested information regarding specific DOT reductions in reporting and recordkeeping requirements. That is another area in which we aim to accomplish the important statutory objectives. We recognize that paperwork requirements can impose a significant burden, especially on small businesses, and we are committed to finding new and innovative ways of reducing this burden. DOT is especially encouraged by new developments and initiatives in the use of technology to reduce reporting and recordkeeping requirements on small businesses, and we are in the process of implementing initiatives that take full advantage of this automation in the future. DOT capitalized on the use of electronic capabilities to reduce the information collection burden in FY2002, as I will discuss later. In FY2003, however, DOT experienced some challenges in reducing reporting and recordkeeping requirements, primarily due to 1) new statutory requirements for information collections related to the safety of the traveling

public; and 2) the lead time required to fully recognize the benefits of the use of automation. I will detail these challenges to reducing the information collection burden on small businesses, and will also highlight the actions the Department has taken and will continue to take in the future to reduce the information collection burden on small businesses.

First, by way of background, DOT executes 34 information collections which impose a burden on small businesses. Burden hours range from 24 hours for one to 160 million hours for another. Although the goal is to reduce this burden on small businesses, many of the Department's information collections are mandated by law and have been deemed necessary to ensure the safety of the traveling public. Additionally, some new rules continue to be necessary that unfortunately cannot avoid increased reporting and recordkeeping requirements. We want to minimize or eliminate these wherever we can, but attempts to reduce these burdens that are underway--while also minimizing safety risks--will require time to implement. Because of these restrictions we have not yet been able to reduce reporting and paperwork requirements, exclusive of electronic filings, in the relatively brief time since enactment of the SBPRA.

My second point regarding reporting and record-keeping, however, relates to some of the significant steps we are taking with electronic technology. While DOT is investing in the use of technology to reduce the paperwork collection burden on small businesses, the integration of technology, and the resulting changes in associated business processes require significant lead time and a more comprehensive societal acceptance and integration of technology. For example, although DOT has introduced technology to

create efficiencies in reporting and recordkeeping, many of DOT's constituents do not yet have the training and/or equipment to take advantage of these solutions; consequently, the solution cannot be universally applied to create the reporting efficiencies envisioned. So we see technology as an increasingly important factor in reducing the burden on small business, but not the sole method by which we seek to accomplish the goals of SBPRA.

Despite the challenges to reducing the burden on small businesses, DOT has instituted several initiatives that have resulted in, or will result in, success in this area. For example, under the Hours of Service Act, the Federal Railroad Administration (FRA) is required to monitor the hours railroad workers operate trains. The monitoring is used to ensure that workers do not work excessive hours and thereby jeopardize rail safety. FRA collects this information from all railroads through its electronic recordkeeping initiative. In FY2002, FRA reduced the hours to collect this information from 4,067,432 to 3,294,736, a decrease of 12 percent. Respondent burdens vary with the number of employees covered under this rulemaking. Larger railroads bear the brunt of the reporting requirements while small railroads, with a limited number of employees, incur a relatively small burden. FRA has actively been working on its electronic recordkeeping initiative with both large and small railroads to further reduce the burden.

One of the most encouraging initiatives that DOT is participating in is a Federal program, the Business Gateway Initiative, which will benefit all small businesses, citizens, and others who conduct business with the Government by providing a one-stop web portal for multiple Government services and reporting requirements. By providing a single

collection point, Business Gateway will ultimately reduce the requirement for small businesses to submit redundant data to multiple agencies.

In FY2004, the Department will continue to analyze reporting and recordkeeping burdens on small businesses, and look for opportunities to reduce this burden while always ensuring that the safety of the traveling public is the foremost consideration. It is anticipated that, as capabilities for the electronic transmission of information, and the availability of technology, expand, small businesses will be able to capitalize on the use of this technology to reduce their time spent in responding to information collection requirements. Again, DOT is committed to reducing the information collection burden on small businesses where possible, and anticipates further progress in FY2004 and beyond.

In conclusion, the Department is proud of its efforts in the regulatory compliance area, especially with respect to small businesses. Our Regulatory Enforcement Report provides Congress with information regarding the implementation of our policies and procedures with respect to reducing or waiving civil penalties assessed against small entities. We know there is always room for improvement, and we look forward to receiving the subcommittees' feedback on our report.

DOT recognizes the importance of small business to our Nation's economy. I can assure you that, as General Counsel of the Department, I will continue to monitor this important initiative and ensure our effective compliance.

Thank you for the opportunity to discuss the Department's Regulatory Enforcement Report for 2003. I would be pleased to answer any questions that you may have.

DOT Summary of Enforcement Actions and Civil Penalty Assessments Against Small Entities

	Enforcement Actions Initiated in FY 2003	Enforcement Actions Initiated Against Small Entities in FY 2003	Completed Enforcement Actions Against Small Entities in FY 2003	Total Amount of Civil Penalties Assessed Against Small Entities for FY 2003	Total Amount of Civil Penalties Reduced or Waived for Small Entities for FY 2003
FAA	3,087	641	496		2,362,400
FMCSA	5,726	2,690	2.41	$13,608,379	$2,289,401
FRA	1806	238	158	$1,277,500	$473,280
NHTSA	2	2	1	$985,000	$325,000
OST	84	13	13	$70,000	$40,000
RSPA	901	772	667	$2,221,010	$637,609
DOT	11,606	4,356	3,745	$18,161,889	$6,731,690

Mr. OSE. Now we are going to take a recess here. Probably it will be 4 p.m. until we get back.

[Recess.]

Mr. OSE. Ms. Nelson, you are recognized for 5 minutes.

Ms. NELSON. Thank you.

Good afternoon, Mr. Chairman. I appreciate being here today to talk to you about the Small Business Paperwork Relief Act and, in particular, to talk about EPA's report to Congress where we were able to highlight our enforcement actions and penalties for the last fiscal year. I will not go into all the details because you already highlighted in your opening remarks that just about 11 percent of EPA's enforcement actions were taken against small businesses. We were able to reduce our civil penalties for about half of those actions by about $4.8 million.

I think it is also important to note that we were able to reduce or completely waive civil penalties for small businesses by over $457,000 in cases where small businesses made a good-faith effort to comply by discovering violations on their own part as part of a voluntary compliance assistance program.

EPA is taking a two-pronged strategy to both improve compliance assistance as well as reduce paperwork. On the compliance side, the agency announced last year our smart enforcement approach in which we are putting emphasis on providing compliance assistance to regulated entities as well as preventing environmental violations. Key to this strategy is 13 sector-based compliance centers that we have created and published information alerts that we have sent out to over 700,000 entities, and small businesses particularly benefit from these services.

As I have mentioned, our small business compliance policy provides guidelines for the reduction or waiver of civil penalties to be paid by small businesses for environmental violations whenever a good-faith effort has been made to comply by discovering violations as part of a government-sponsored compliance assistance or voluntary audit. In addition, virtually all of EPA's penalty policies have provisions which respond to financial concerns of small businesses. The agency, for instance, does not seek penalties in settlements which, combined with the cost of coming into compliance and remedying the harm that was caused, would be beyond the financial capacity of the violator to pay.

We also have a small business strategy aimed at integrating an awareness of small business needs and issues into all of our agency core functions, with special attention to the impact our regulatory activities may have on small businesses. The small business work group is in the final stages of developing an implementation plan for that strategy, and we hope that will be ready in the spring.

In terms of paperwork reduction, we have designated our EPA small business ombudsman as our single point of contact under this law. That ombudsman, who is here with us today, is now leading an agency-wide work group that is going to focus specifically on paperwork reduction and quantifiable measures for reporting reductions.

Dr. Graham mentioned two specific areas that I will go into and just highlight briefly.

One is our Toxics Release Inventory program, and we do have proposals on the street today to seek stakeholder input in particularly three areas. We are looking at putting higher thresholds in for small businesses that would eliminate reporting. We are looking at modifying requirements that would actually allow small businesses to use what we call Form A, which is a certification that they are below certain thresholds. We are looking at expanding that use.

And, one that I particularly like is substituting reporting with a new form that would allow small business to say there was no significant change in their processes and thereby their releases for the last year, and, if they can do that, they can just sign one page and submit that, and we use those numbers for the previous year.

Clearly, as Dr. Graham said, we have to balance the burden associated with the program while still maintaining the practical utility of the data, and we think some of these proposals do that.

Another really important area is our Resource Conservation and Recovery Act. In that program we have made significant improvements. That is the program that actually runs the hazardous waste programs for the Nation. We have estimated that between the States and the regulated community we are going to save over $120 million in compliance costs and almost $1 million in person hours responding to those program requirements. What is most important about that is the way we reduce the burden. There is a tremendous undertaking by the program to only request the information that is used. So, they have looked at every single piece of information requested and, if somebody is not using it, we will no longer ask for it in the future.

There is one particular provision that is specific to small businesses and that deals with our self-inspection frequencies for small generators. We are changing that from a daily self-inspection requirement to a weekly requirement for small generators which tend to be small businesses. Again, we are looking at anywhere between 200,000 and 600,000 hours a year that small businesses would save.

Through all of our activities, we recognize that small businesses are an important partner in our efforts to maximize environmental protection and to protect human health, and we look forward to working with you and the committee to move forward in our efforts to do that. Thank you.

Mr. OSE. Thank you, Ms. Nelson.

[The prepared statement of Ms. Nelson follows:]

Testimony of Kimberly T. Nelson
Assistant Administrator for Environmental Information
U.S. Environmental Protection Agency

before the
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform

and
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business

U.S. House of Representatives

January 28, 2004

Good afternoon. Thank you for the opportunity to testify about the Environmental Protection Agency's (EPA's) implementation of the Small Business Paperwork Relief Act of 2002 (P.L. 107-198). I appreciate having this opportunity to appear here today to discuss this important issue.

EPA is responsible for implementing and enforcing seven major environmental statutes: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Superfund law, which includes the Emergency Planning and Community Right-to-Know Act. Over the last three decades, these laws have dramatically improved human health and the environment in this country. Citizens are able to drink, swim, and fish in thousands of miles of formerly contaminated rivers and streams. Industrial waste areas have been cleaned and returned to productive use. Enforcement of the environmental laws by both the federal government and states has been critical to these achievements.

The environmental laws seek to protect human health and the environment in two basic ways: by bringing pollution discharges to within legal parameters and by putting preventative measures into place. Requirements which on their face may seem like only so much paperwork are actually cornerstones to protecting our environment. For instance, the strong preventative requirements contained in the Solid Waste Disposal Act, such as those which require tracking hazardous waste "from cradle to grave" have largely eliminated the creation of new Superfund sites. Violation of the environmental laws can range in scale from the contamination of the drinking water source for an entire town to the failure to file an oil spill prevention plan. Resolution of the violations often includes remedying the environmental harm caused, as well as the payment of a penalty.

EPA Enforcement Actions and Penalties in Fiscal Year 2003

While compliance with environmental statues will always require reporting on the part of the regulated community, EPA always seeks to balance this burden with the need to protect human health and the environment. The Small Business Paperwork Relief Act (SBPRA) requires that federal agencies publish an annual report in 2003 and 2004. EPA's recent Report to Congress Under the Small Business Paperwork Relief Act of 2002: Enforcement Actions and Penalties in Fiscal Year 2003 provides information Congress has requested in three specific areas: 1) the total number of enforcement actions taken in a fiscal year in which a civil penalty is "assessed," both in total and with respect to small entities; 2) the number of actions in which the penalty in each of these categories is reduced or waived; and 3) the total monetary amount of the reduction or waiver for each category.

The data included in EPA's Report reflects that out of a total of 1,902 civil enforcement

settlements for all regulated entities. 202 civil actions were taken against small businesses in which a penalty was sought, or just 11%. A total of $7,569,255 in civil penalties were proposed in the 202 civil actions. The penalty was reduced or waived in 89 of the actions, resulting in a total penalty reduction of more than $4.8 million for small business. In addition to the $4.8 million, the Agency reduced or waived civil penalties for small businesses by $457,721 in cases where small businesses made a good faith effort to comply by discovering violations as part of government-sponsored compliance assistance program or a voluntary audit. For fiscal year 2003, EPA's compliance assurance and enforcement program resulted in an estimated 600 million pounds in pollutants reduced, treated, or properly managed. I have provided the full report for review by the Subcommittee following this testimony.

EPA Actions to Assist Small Business

In April 2003, the Agency officially announced its "smart enforcement" approach to ensuring compliance with the environmental laws, to place greater emphasis on providing compliance assistance to regulated entities and to help prevent violations of the environmental laws. For example, we established thirteen sector-based compliance assistance centers, published information alerts regarding compliance solutions and reached more than 700,000 entities with other compliance assistance efforts. Small businesses are a specifically targeted audience for these assistance services.

The great majority of EPA's enforcement actions are not taken against small businesses. Where the actions do concern small businesses, there are numerous benefits and protections built into the enforcement process. EPA's Small Business Compliance Policy provides guidelines for the reduction or waiver of civil penalties to be paid by small businesses for environmental

violations whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations as part of a government-sponsored compliance assistance program or a voluntary audit. (EPA's Report identifies nearly $458,000 in penalties that were waived or reduced for small businesses under this or a similar self-disclosure policy.)

In addition, EPA recognizes and accommodates the frequently limited financial resources of small businesses in its various statute-specific policies for determining the appropriate penalty in settlement of an enforcement action. Virtually all of these penalty policies have provisions which respond to the financial concerns of small businesses, such as consideration of the size of the business in terms of its ability to pay a penalty. The Agency does not seek penalties in settlements which, combined with the cost of coming into compliance and remedying the harm caused, would be beyond the financial capacity of the violator to pay. EPA's calculation of the economic benefit a violator gained by avoiding the costs of compliance makes two assumptions that may result in significant savings for small businesses. As explained in our Report, EPA assumes that all businesses have the same tax rate and access to capital.

I would also like to highlight that, with one minor exception, all environmental statutes call for penalties of "up to" $27,500 per day per violation. This means that, unlike many other laws and regulations, there is no automatic penalty amount "assessed" for a particular violation. Penalties are either ordered by a court or reached in settlement, based on factors unique to each situation, such as the violator's ability to pay, and the costs of coming into compliance. As explained in more detail in our Report, when EPA sits down to negotiate a settlement, we work with the violator to determine elements of the agreement for example, which type of control equipment should be installed. The cost of these elements may significantly impact a violator's ability to pay a penalty. As a practical matter, EPA often delays determination of a target penalty

until these pieces of information are in place.

There are only limited circumstances in which EPA's enforcement program may make predetermined penalty assessments. As discussed in the Report, the Agency has developed some expedited settlement programs that provide some discounted, nonnegotiable penalties which are predetermined based upon the type of violation. All violators that meet the program-specific eligibility criteria receive the same discounted penalty, regardless of the size of the violator. As a rule, these programs address only minor violations.

Reductions in Reporting and Recordkeeping Requirements for Small Business

In June 2003, EPA issued the final Small Business Strategy aimed at: integrating an awareness of small business needs and issues into all core functions, paying special attention to the potential impact that our regulatory activities may have on small businesses; continuing to address improvements in our collection and delivery of information and assistance in a way that makes sense for small businesses and, in conjunction with our co-regulators, improving the coordination of program activities that may potentially impact small businesses.

The Strategy was developed by the Small Business Workgroup, which includes representation from all EPA program offices and several regions, based on extensive feedback received from all internal and external stakeholders, including trade associations and actual small business owners. Currently, the Small Business Workgroup is in the final stages of developing the Strategy Implementation Plan, which is expected to be finalized in late Spring of this year.

Within the context of EPA's overall Small Business strategy, EPA is concentrating its efforts on the information collection burden that many small businesses face. EPA's Small Business Ombudsman, who is also the Director of EPA's Small Business Division, has been

designated as EPA's point of contact for SBPRA. The Small Business Division is now organizing an Agency-wide workgroup that will find ways to further reduce the information collection burden on small businesses and identify quantifiable measures for reporting these reductions.

While strategy and coordination are important and necessary, real action is what counts. The Agency has undertaken specific initiatives that assist small businesses with various regulatory requirements, including reporting and recordkeeping.

Toxics Release Inventory (TRI)

The Toxics Release Inventory (TRI) Program, is actively engaged with stakeholders on a number of burden reduction options, including:

- establishing higher reporting thresholds for small businesses;
- modifying the eligibility requirements of the "Form A Certification Statement," which would expand the number of facilities that can skip reporting by raising the minimum quantity reportable and/or raising the threshold a facility can manufacture, process, or use before reporting is required; and
- creating a new reporting form allowing facilities meeting certain criteria to certify "no significant change" in reporting in the current year as measured against a designated baseline year rather than completing a full report that is essentially the same as one submitted the previous year.

Our goal is to reduce burden associated with TRI reporting while maintaining the practical utility of the data. At the conclusion of the public comment period, we will begin our internal decision-making process on which of these options, or other options suggested by

comments, will provide the most opportunity to meet our goal.

Other areas such as the TRI lead rule will be addressed through different initiatives. There is currently an Agency-wide initiative focused on the scientific approach to assessing the hazards and risks associated with metals. A Metals Action Plan has been completed, and we are now developing a framework for evaluating metals, with stakeholder and Science Advisory Board involvement at each phase. When finalized, we will apply them to the TRI program in an appropriate way.

Resource Conservation and Recovery Act (RCRA) Burden Reduction Initiative

Another area of concrete action focuses on information collection burden associated with the Resource Conservation and Recovery Act (RCRA). This burden reduction initiative is an EPA effort to significantly reduce or eliminate recordkeeping and reporting burden associated with the nation's hazardous waste program. By only asking for the information actually needed to run the nation's hazardous waste program, we are ensuring that environmental expenditures are devoted to environmental protection rather than generating unnecessary paperwork. With the final rulemaking scheduled to be published late this Spring, we estimate that we will save States and the regulated community $120 million in annual compliance costs associated with the federal hazardous waste program. As part of these cost savings, we estimated the elimination of 929,000 person hours spent annually complying with our hazardous waste regulations.

While the rule will have benefits for small businesses across the board, there is one particular provision that will provide relief specifically for small business. We will be changing the self-inspection frequencies from daily to weekly for hazardous waste tanks at small quantity generator facilities, many of which are small businesses. The burden hour savings would be

tremendous, ranging from 200,000-600,000 burden hours a year (depending on the percentage of small quantity generator facilities assumed to have tanks). These hours would be in addition to the 929,000 hours we are already estimating.

EPA's enforcement actions protect human health and the environment by requiring violators to correct their violations promptly and to remedy, as appropriate, the harm caused by the violations. Through all of our activities, we recognize small business as an important partner in our efforts to maximize environmental and public health results.

Again, thank you for this opportunity to testify. I would be happy to answer any questions you may have.

Mr. OSE. I just want to go to one thing. I want to recommend that you find your counterpart in the Department of Agriculture where your form says "no change from previous year" and just drop him a note saying, you can do this.

Ms. NELSON. OK.

Mr. OSE. All right. I have a series of questions here that are applicable to each agency, so as we go through them we will just go boom, boom, boom, and the like.

I want to focus first on the policies you have for waivers and reduction of penalties for first-time violations by small business. So, Mr. Pizzella, what is your agency's policy for first-time violations by small business that are judged to not have the potential to cause serious harm to the public?

Mr. PIZZELLA. It does vary amongst some of our enforcement agencies. The Mine Safety and Health Administration is required by statute to propose a civil penalty for every type of violation. However, in the Wage and Hour area, they usually would not assess a penalty for a first-time paperwork violation. OSHA also is unlikely to assess a penalty for a first-time paperwork violation.

There are several criteria that get taken into account in determining whether or not to proceed with an assessment: the size of the business, the history behind the business, whether it is a first-time infraction. It is not one-size-fits-all. We like to think, particularly with the Secretary's initiative on compliance assistance, that we have gotten out of the "gotcha" game, and we are trying to help businesses comply with the rules and regulations that are out there and not rack up numbers just for the sake of racking up numbers. We believe we are implementing the act effectively, but we think we can even do better.

I hope I have answered your question.

Mr. OSE. You have. I appreciate your response.

Mr. Rosen.

Mr. ROSEN. Within DOT, as I mentioned in my opening statement, there are six agencies that have the authority to effectuate civil penalties; and each of them has adopted a policy that would call for them to waive civil penalties for small businesses who are first-time offenders or allowing the small businesses to use the money that would otherwise pay a civil penalty to be used toward compliance efforts.

Now, each of the operating administrations has somewhat different criteria as to how they effectuate that in terms of their requirements for it being a good-faith violation, that is a good faith that they were attempting to comply and that the offender is taking steps to correct the issue. But, in general, across the administrations the policy is to waive the penalties for small businesses who are first-time offenders under the circumstance that I was identifying.

Mr. OSE. Thank you.

Ms. Nelson.

Ms. NELSON. We do have a practice that allows us to reduce the penalty for first-time violations. I would say in fact it goes broader than that. We will reduce penalties even if people have previous violations, particularly where they can show that they, in fact, discovered the violations, they promptly disclosed it to us, and they

promptly corrected the violation. So, we believe there is a lot of latitude and, in fact, the numbers support that.

Mr. OSE. All right. Let me go back to each of the policies your respective agencies have.

Has the policy that you are now implementing, changed since the June 2002 enactment of the Small Business Paperwork Relief Act?

Mr. PIZZELLA. The biggest change has to deal with compliance assistance. I mean, that permeates our department now. The single point of contact in our department is a senior executive in the office of our Assistant Secretary for Policy. She is responsible for driving the compliance assistance initiative throughout the department. In all of the agencies—MSHA, OSHA, Wage and Hour—compliance assistance is a huge part of their program.

So that is the big single difference, and we like to think it is having an impact, and we are much more friendly, as friendly as you can be from the government, with those that we regulate.

Mr. OSE. Mr. Rosen, was the June 2nd enactment important to these changes?

Mr. ROSEN. I think it was important, but my understanding is that the 1996 act, the Regulatory Enforcement Fairness Act, was the initial prompt that caused each of our agencies to adopt policies regarding the penalties with regard to first-time offenders. Then, with the passage of the 2002 act, there was additional guidance provided and some refinements and improvements to those policies, including guidance as to reporting to enable us to provide our report to you.

And, there are ongoing refinements. For example, the recent FAA reauthorization bill, the Vision 100 bill, changed the levels of civil penalties associated with violations up to $25,000, and there is an explicit difference for small businesses where there is a ceiling of $10,000. So, we are going back and taking a look at what revisions we need to make, for example, with regard to the aviation area.

Mr. OSE. Ms. Nelson.

Ms. NELSON. Our policy was in place in 1996. It was expanded, actually, just a month before the Paperwork Reduction Act was passed. So our expansion occurred in May. So, we were a little bit ahead of the curve there. When the act was passed, we felt that our new revised policy was consistent with the intention of the act.

Mr. OSE. OK. Thank you all.

We are talking about paperwork in this case, though the charts also reflect compliance in regulatory issues. Do you have different policies for first-time violations by small business of paperwork requirements versus first-time violations of regulatory requirements?

Ms. Nelson, we will start with you.

Ms. NELSON. In EPA, we do not.

I will say from my own State experience—I had 14 years in a State environmental agency before coming here. In fact, we did distinguish these in Pennsylvania, but I will say, although we don't distinguish them here, it is very hard, even when you do distinguish them, to make a difference between what is a paperwork violation and something that has an environmental impact. Because something like a spill, a prevention plan that should be onsite may seem a little bothersome to people to fill out but, in fact, if it is not there, could be extremely harmful to human safety, to public

health and safety if, for instance, firefighters come onsite during an emergency and the list of chemicals that are onsite is not readily available to them.

So, we do not make that distinction here. But I will say for those, when we are negotiating, if it appears it is purely paperwork and there was no impact on human health or the environment, it is rare, if ever, we take a real action against somebody for that purpose.

Mr. OSE. Mr. Rosen.

Mr. ROSEN. Well, what I am told is that, as a formal matter, we do not make that distinction in terms of a policy up front. But as a practical matter, when the agencies have to take enforcement actions, it would, of course, be a greater concern on things that involve health and safety, for example. If a violation involves something that is purely paperwork, it is much more likely as a practical matter that there would not be penalties and that could happen, not just on the first violation but even on the second or third, if the more important objective there is to obtain compliance. So there may be in practice some differentiation, but as a matter of what is the policy for first-time violation, we do not as a formal matter separate out between paperwork violations and regulatory violations.

Mr. OSE. Mr. Pizzella.

Mr. PIZZELLA. Very similar. By statute, all of these agencies include the gravity of the infraction when assessing penalties. A simple paperwork violation that does not endanger workers' health and safety would naturally be less grave and may be not considered in that first case. For a first-time paperwork violation that did endanger worker health, a penalty would likely be assessed. OSHA has some internal guidelines where they make distinctions for their field staff. But, in general, again, it deals with the gravity of the infraction.

Mr. OSE. So there is no distinction between a paperwork or regulatory infraction in each case?

Mr. PIZZELLA. Yes.

Mr. OSE. I mean, if you say yes, there is no distinction, would that accurately reflect, Mr. Pizzella, your agency? Gravity might have something, but there is no distinction at the outset kind of thing?

Mr. PIZZELLA. Yes, I think that is correct.

Mr. OSE. OK. Mr. Rosen.

Mr. ROSEN. That is right. There is no automatic distinction at the outset.

Mr. OSE. Ms. Nelson.

Ms. NELSON. That is correct.

Mr. OSE. OK. Now do you track first-time violations by small business owners, Mr. Pizzella?

Mr. PIZZELLA. Well, a first-time violation would be noted in a case file by the employee on staff doing that, but these notations are not accounted for centrally in the office. So in order to gather that specific type of information, we need to go through every individual case file to accumulate it right now. We don't have that at the moment.

Mr. OSE. All right. Mr. Rosen, how about transportation?

Mr. ROSEN. Something similar. We track the initiation of an enforcement action. We would have a formal record of that. But in terms of tracking the earlier phase of whether there was a violation for which there was not an enforcement action, for example, we do not have a systematic tracking of that. We might have a record with a given inspector somewhere, but in a systematic way what we track is the enforcement action.

Mr. OSE. So, until and unless there is an enforcement action, there is no track?

Mr. ROSEN. No systematic one, that is right. There could be a record of an inspector somewhere, but it would not be systematic.

Mr. OSE. All right. Ms. Nelson.

Ms. NELSON. Our answer would be similar. We do not have a data field that says first-time violation. We track every violation and we can tell when we pull up a record for a company if they have ever had any violation before. So, if they are in our data base and there is no history of any violation, then that may become the first violation. But I could not today go into the system and say how many violations were first-time violations, because we do not keep track of those separately.

Mr. OSE. Are each of your records or data bases electronic?

Ms. NELSON. Ours are, yes, in EPA.

Mr. OSE. OK.

Mr. ROSEN. I believe ours vary among the six agencies. Some are and some are not.

Mr. PIZZELLA. It also varies. The case file is not—as I mentioned earlier, sometimes a notation is made in a case file, but that is not electronically right now available to us.

Mr. OSE. So it is all manual in your case?

Mr. PIZZELLA. Not all manual. A lot of the data is collected electronically, but in the case of the first-time violation, it might be noted in the case file, but it would not be—it is not centrally accumulated at the department.

Mr. OSE. All right. So we were talking about whether or not the agencies track first-time violations by either paperwork or regulatory requirements, and the answer is no, correct? No, no, no.

Ms. NELSON. Correct.

Mr. ROSEN. Correct.

Mr. PIZZELLA. Correct.

Mr. OSE. Now, Mr. Pizzella, OSHA reduced 78 percent of all enforcement dollars from October 1, 2002 to September 30, 2003, so—the last fiscal year. So $40.5 million of the $51.6 million that was originally assessed was reduced or waived. Do you have any information about what percent of this $40.5 million or of the $51.6 million involved first-time violations?

Mr. PIZZELLA. No, because the number was not part of the report; and it is not easily tracked in our department for two reasons.

First, we do not have a different citation for first offense versus just offense. However, as I mentioned previously, a penalty in all cases takes into consideration whether there is a pattern of violations. So, naturally, a first offense would not exhibit a pattern.

Second, many of these violations are never cited, so they never have a penalty imposed; and, subsequently, there is no penalty to be later reduced.

Mr. OSE. Are the same criteria applied on small businesses as on nonsmall businesses within OSHA?

Mr. PIZZELLA. You know, I will have to get back to you specifically on that.

[The information referred to follows:]

CHAIRMAN OSE

Does OSHA conduct the same enforcement of small business as large business? Is there a difference in enforcement when it comes to the size of the business?

All employers must comply with the standards that address hazards that may be found in their establishments. However, businesses of a larger size have a greater probability of being inspected than do small businesses, due to various Agency policies that affect enforcement. For example, OSHA's Site-Specific Targeting program can only be used in businesses with fewer than 40 employees if their injury and illness rates meet a minimum threshold, and cannot be applied to businesses with fewer than ten employees. Furthermore, OSHA must provide a compelling reason in a written directive to try to include a business with ten or fewer employees in any Local Emphasis Program (LEP) for possible inspection.

The specific enforcement actions that OSHA may take with regard to an individual business will vary greatly depending on the nature of the business and the hazards that may be found there. Size of business can be a factor, but not as great a factor as the nature of the work. Some comparatively small businesses (such as logging operations) may be very hazardous, while others present few serious hazards.

Since the mid 1970's, OSHA also has been precluded by two provisions of the DOL Appropriations Act from undertaking certain enforcement activities in businesses where 10 or fewer are employed. The first concerns small farms that do not have a temporary labor camp. The second applies to small businesses that fall in a Standard Industrial Classification code with a Lost Workday Injury Rate below the national average, according to the most recent Bureau of Labor Statistics information. The details of these enforcement exemptions and limitations under the Appropriations Act may be found in OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J).

Mr. OSE. All right. We will make a note of that.

On the Mine Safety and Health Administration, there were a little over 47,000 enforcement actions against small entities, and then the testimony is that MSHA is not authorized to waive civil penalties. Please tell me what the thinking was behind the prevention of waiver within MSHA as opposed to elsewhere and whether or not this is something we need to look at as Members of Congress.

Mr. PIZZELLA. I can only speculate that the safety and health issues that involve MSHA—the nature of the Mine Safety and Health Administration's work is probably what triggered that. I think it would be improper for me to speculate on what type of change or no change that Congress may want to be thinking about.

Mr. OSE. All right. Mr. Rosen, the Department of Transportation's enforcement report shows that DOT reduces or waives 42 percent of the penalties and fines it imposes. I am trying to get a sense of why, from an overall perspective. Is there some reason why small businesses have their penalties and fines waived 34 percent of the time and nonsmall businesses have it waived and reduced more so?

Mr. ROSEN. Well, I think to truly get at the bottom of the numbers would require looking at all or most key individual cases one at a time. But, I think the way I could address that falls into two categories.

First is, as I mentioned in my opening statement, discretion plays such a big part at the front end of whether there is an enforcement action at all, or whether penalties are sought at all, I think is a big part of what happens with regard to the small businesses which are first-time offenders, they are not even assessed a penalty that needs to be waived. So that tends to have an influence in skewing some of the numbers.

I think the second thing is a little bit of what I would think of as a statistical anomaly of two types. One is, if you have a large entity, you may have started with a very large civil fee assessment, say $1 million, and, if you wind up compromising that or reducing it in some fashion to half a million, you get a very large reduction of a fee that might not have ever been assessed against a small entity and it then tends to create numbers that look larger for the big entities.

The other half of that, of the statistical kind of question, is, as I have alluded to, we have six agencies. The two that had the largest penalties against small entities were the Motor Carrier Administration and the FAA, aviation; and in those two the numbers point to a different direction.

I think if you think about motor carriers, roughly 87 percent of those, of the regulated businesses, are small businesses. Whereas if you look at, for example, the RSPA is one of our agencies, Research and Special Programs Administration, one of the things it regulates is pipelines, natural gas pipelines, ammonia pipelines and so forth. You probably do not find a lot of small businesses among those pipelines, or at least the proportion is significantly less than it is in the motor carrier area. So you almost have to look behind subsets of the data to have a better understanding of both the numbers. But, even then, as I said, the discretion at the front

end is such a big factor that I think you have to take that into account as well.

Mr. OSE. All right. Ms. Nelson, the information we have shows that only 11 percent of EPA's enforcement actions involve small entities, small businesses. Frankly, I find that refreshing. I am trying to find out what do you guys have in place, if you will, that might be transferable to other agencies. Are there nuances to the manner in which you guys do this that we need to explore here?

Ms. NELSON. Well, certainly we would be happy to share whatever we have in place. I mean, when you look at the reductions and waivers for small businesses versus all entities, there is a higher percentage that gets waived or reduced for small businesses. It is almost 50 percent versus only about 30 percent for all businesses. So, we would be happy to share policies and see if that is useful.

I do think it is fair to point out, because I did spend 14 years in a State environmental agency, that many environmental laws are delegated to States to enforce. So, if you were to look at these numbers, for instance, for a State environmental agency, you may see something a little bit different because some of the environmental laws do not cover some of the smallest businesses, like the Clean Air Act. Permits do not cover the smallest businesses. They are often covered by State environmental laws. So that may be a factor there.

Mr. OSE. So, it may be that the number is higher at the State level in the instance of your portfolio, so to speak, compared with theirs?

Ms. NELSON. It could very well be. We did a lot of compliance assistance at the State level. We had similar small business policies. I would have to go back and look at that number. But, given the delegation—and EPA is fairly unique in the delegations that we have to States to implement programs as well as the enforcement authority for the Federal laws.

Mr. OSE. OK. I will go vote.

Mr. SCHROCK [presiding]. I am in the Postal Commission hearings as well, so I have to get my mindset here.

I am sorry I have not been able to hear you, Ms. Nelson, but the followup question is, how many hours of burden reduction does EPA estimate if these changes are proposed and then finalized, and then what is the timetable for the issuance of the proposed rule and then the final rule?

Ms. NELSON. The question I think you are referring to is the proposals we have on the street for the Toxic Release Inventory program.

Mr. SCHROCK. It is.

Ms. NELSON. To be quite honest, we have not calculated the exact burden reduction by hours or dollars for each one of those options. To some degree, because some of those are overlapping and there are still some issues with some of those—for instance, the option that calls for perhaps certifying no change to last year, one of the things we have to consider is does no change mean within 5 percent or 10 percent of last year's processor report, and that parameter may affect considerably the universe which would be covered. So, we will start to calculate those burden reductions as we move forward with the rule.

In terms of the timeframe for a proposed rulemaking, the comment period closes next week. From my perspective, this will be one of the highest priorities of my office. We will move aggressively in evaluating those comments. It is unlikely we will have a rule out—a proposed rule out for comment before January of next year. When you consider the regulatory process, OMB needs 60 to 90 days to review, and we have to go through our own process internally. So, when I lay out the steps we have to go through to write a proposed rule, we are probably looking at about a year from today.

Mr. SCHROCK. Believe it or not, I did run through the testimony here, and one of the questions we have is, in your written testimony you also mentioned a two-part EPA burden reduction initiative that is going to occur. EPA estimates the first part would eliminate 929,000 hours. What is proposed for that elimination? It sounds good to me, but what is proposed?

Ms. NELSON. That was an incredible undertaking by the hazardous waste program. What they did was looked back over the history of the program since it has been in place, and they looked at every single piece of information that program collects from States or regulated entities, every single piece of information. And, if there was not somebody someplace who used that piece of information or can document the use of that piece of information, then they put it on the list to be eliminated. As a result, there was over, I think, about 100 pieces of information that we will no longer collect because there was not anyone who said I use that and this is how I use it. That is I think a very, very broad undertaking.

Mr. SCHROCK. My guess is your agency is not the only agency that could say that if they would come up here and say it.

I think the thing that interests me is they file all of these claims or whatever it is against these small businesses, and it seems like they reduce or waive most of them. What is that all about? It just seems to me like people are sitting downtown to justify existences, creating this stuff, and then it just gets thrown out, and these agencies just continue to get bigger and bigger and bigger doing that stuff. I do not understand that.

I know, Mr. Rosen, you have a lot on your plate. There is no question about that. I would be curious about what your spin is on that. Because it seems to me a lot of this stuff just makes absolutely no sense whatsoever.

Ms. NELSON. You know, from EPA's perspective, I think a very small percentage of our actions are taken against small businesses, only 11 percent.

Mr. SCHROCK. You are right, 10.6.

Ms. NELSON. I think we take that into consideration when we are developing our enforcement policies. We have a strong emphasis on compliance assistance. For instance, I personally am responsible for the Toxic Release Inventory program. In the 2½ years I have been at EPA, we have not taken an enforcement action. Our emphasis has been on compliance assistance. We have had some new rules which I know have been a burden, but our entire emphasis has been developing question and answer documents, getting compliance assistance materials out, and working with facilities to come into compliance.

I think within EPA there is a strong history of that. Last year, when we did an inventory of compliance assistance activities, I think we had about 350 different compliance assistance activities across the agency.

Mr. SCHROCK. Well, labor and transportation certainly have big percentages, and obviously there is a reason for that. In transportation, I gather it is trucking. Am I wrong in that assumption, trucking violations of some kind?

Mr. ROSEN. Well, that is obviously an important one, as are the aviation ones. And, then, just in terms of the statistics, we also have some civil penalties issued by NHTSA regarding automotive safety and also RSPA regarding pipeline safety, and then hazardous materials, which is enforced both by the Federal Rail Administration and by the Motor Carrier Safety Administration.

So, there is a series of challenges there, but I think the point you made is a valuable one.

I guess one anecdote I would like to mention is the Motor Carrier Administration had a new hours of service rule that went into effect at the start of this year, and one of the things they did was put out publicly a policy statement on enforcement to indicate that, as they transition to the new version of the rule, that it is their intention to focus on education and compliance assistance and not on enforcement and certainly not on penalties.

Mr. SCHROCK. OK. You forgot to turn the clock on, didn't you? That is all right.

Let me turn to Mr. King.

Mr. KING. Thank you.

I will see if I can catch my breath here.

Mr. SCHROCK. I know. I told them I ended up in the basement instead of here.

Mr. KING. As I sit here and listen to the pieces of testimony that I have had the privilege to hear—and it has been a little bit patchy, so forgive me if there are some gaps in my knowledge of your testimony. But, as I left here for the vote, we were on the subject matter of first-time violations and how those first-time violations are tracked. As I gathered, the best way any of you have to identify which ones are first-time violations would be if there is a violation. Then you can look at the file and see if a previous file exists, whether it be on paper or whether it be electronic. That would be a summary of the last thing as I stepped out of the room.

I notice also that with the statistics in this report that is here, and I will borrow Mr. Schrock's when he is not looking, it shows that you have the reduced or waived violations, particularly with Labor, Mr. Pizzella, roughly at 20 percent of those violations where the penalty would be reduced or waived, but I do not see a distinction between the reductions and the waivers. Do you have a number on that?

Mr. PIZZELLA. To reductions and to waivers?

Mr. KING. I think there is a real distinction there between those two. A reduction and a fine could be an incremental percentage decrease; and a waiver, of course, is far more dramatic and far more forgiving than a minor reduction of a fine.

Mr. PIZZELLA. Because I am responding on behalf of several enforcement agencies, I want to get back to you in writing on that one, because there are probably distinctions amongst them. So I would ask the committee to let me respond in followup.

[The information referred to follows:]

CONGRESSMAN KING

When there is a reduction or waiver for a penalty for a business, is there a distinction/difference when it comes to a small business?

OSHA
The only difference in a reduction of penalty for a small business is the size of the reduction. The penalty-reduction factor is greater for smaller businesses. Chapter IV, paragraph C.w.i.(5)(a) of the FIRM provides for the following rates of reduction:

Number of Employees	Percent Reduction
1-25	60
26-100	40
101-250	20
251 or more	none

The memorandum to Regional Administrators, dated March 23, 1995, "FIRM change: Minimum Serious Willful Penalty" provides for the following reductions:

Number of Employees	Percent Reduction
10 or less	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101-250	10
251 or more	0

MSHA
MSHA uses a system to determine civil penalties that automatically considers the business size in the initial assessment of penalties. However, a mine operator of any size can request a penalty reduction based only on the mine operator's ability to continue in business. MSHA does not have a formula for determining reductions. Normally, when a reduction is determined to be warranted, MSHA's past practice has been to reduce outstanding civil penalties by half. MSHA does not give waivers.

EBSA
Yes. In general, for the vast majority of civil penalties assessed by EBSA, there is a cap on the

penalty amount for small plans that is significantly lower than the cap for large plans.

ESA – Wage and Hour Division
Wage and Hour typically considers the size of the establishment and the seriousness or gravity of the violation before a civil money penalty is assessed. The reduction or waiver of a civil money penalty is considered in light of the individual circumstances of each case – including the statute violated, the size of the business, the seriousness of the violations and their impact on workers' safety and health, and whether the violations were repeat or willful.

Mr. KING. I would appreciate that, if you could report to the committee in writing on those distinctions, particularly with regard to the small entities that are listed here.

I see that about roughly half of your enforcement is—a little less than half of it is small entities, and then the reductions and waivers are about 20 percent of the whole. So I would just ask conceptually then a question of you, and I will deal with the hypothetical circumstance. I am concerned about the weight of regulations, the enforcement of those regulations on small business.

Say a hypothetical situation where you have someone who operates I will say a fast food facility—and I am going to be guessing at some of this—that the normal investigation might be such that a representative of the Department of Labor might visit the region, stop and look up the employees and interview the employees as to the employment practices and the safety regulations and how they might be enforced or not within a company. I am just going to hypothetically say that we have someone who is under the age of 18, 17 years and 11 months and 29 days, who had announced that they had run the french fryer and maybe the pizza dough maker and possibly even worked after 7 p.m. on a school night. Now, if that company had been in business for a number of decades without any violations, it could be discerned when you looked at their file, would that be an appropriate candidate for a waiver?

Mr. PIZZELLA. It sure sounds like it. I mean, there has to be a sense of reasonableness that is involved in enforcing these regulations.

As I mentioned earlier, one of the Secretary's big initiatives is compliance assistance. Our single point of contact at the Department of Labor happens to also be the person who is spearheading the compliance assistance program at the department. We have been getting away from the "gotcha" game, and we do everything we can to ensure, whether it is through the Internet, through training sessions, or through 1–800 numbers, that businesses are familiar with what they have to do to comply with this large amount of regulations. And, your example, I think, strikes me as a perfect example of the type of first-time possible violator that someone out in the field should try to assist, rather than play "gotcha" with.

Mr. KING. In your response, Mr. Pizzella, you have also acknowledged the responsibility to educate, and I absolutely agree that is a far better method, particularly with small business. I started a business in 1975, and I was never afraid of the work; I was never afraid that I could not get the customers or satisfy them or bill them or collect the money. What I was afraid of was who are all the regulators out there who might descend upon me that I am not aware of and how do I deal with that and how do I anticipate that nightmare that could come down upon my head. I think the specter of that is intimidating. We have entrepreneurs that punch a time clock today that might be writing paychecks to employees, but they fear the weight of regulation.

Mr. PIZZELLA. Two of our enforcement agencies, MSHA and OSHA, actually have offices dedicated to small businesses specifically, in addition to the compliance assistance activities that run throughout their agencies. So, we understand the particular

uniqueness of the small businessman and woman who—the entrepreneur who is taking the risk, and the Department of Labor does not want to be putting a thumb down on the next generation of businesses that are developing. I think and I hope that you will see from the Department of Labor a fresher approach to cooperate and particularly through compliance assistance ensure that businesses are doing what they should be doing and not overburdening them with trying to comply with all of these regulations.

Mr. KING. Well, then in the case of the hypothetical that I had stipulated here, if that fine is not waived and then that sends a message throughout all the people in that community, young and old alike, future entrepreneurs, failed entrepreneurs, and those who will not try, a message that it is rigid, a rigid department. So, my question to you would be then, how do I approach your department to rectify those situations with the least amount of resistance?

Mr. PIZZELLA. You mean as a businessman?

Mr. KING. No, as a Congressman.

Mr. SCHROCK. There are different rules now.

Mr. PIZZELLA. I guess I can throw away my notes.

Mr. SCHROCK. Pull out your Congressman tab.

Mr. PIZZELLA. I would say, I think I brought with me something that we provided to every Member of Congress and to many of our, many businesses in the country, a compliance assistance program that we have. We share this with as many businesses as we can through training sessions, and it is on our Web site. We also have an Employment Law Guide that we have updated that we try to get into the hands of many businesses as possible. We do find that many congressional offices request these for their constituents, so you should feel free to request as many as you might like.

Mr. KING. At the conclusion of this hearing, I will step over there and personally receive that from you.

Thank you very much, and I appreciate all of your testimony here today.

Mr. SCHROCK. Mr. Pizzella, let's get to OSHA for a second. Well, let's talk about OSHA for a second. How many paperwork hours were reduced by DOL's June 30, 2003, final version of its 19 January 2001, revised OSHA recordskeeping rule which imposes 3.4 million hours of public burden? What percent of that burden affected small businesses?

Mr. PIZZELLA. I think I was earlier discussing this, that we are not sure of that, because the number is not part of the report. It is not easily tracked for a couple of reasons, Mr. Congressman.

First, we do not have a different citation for the first offense versus an offense. However, as we mentioned, the penalty in all cases takes into consideration whether there is a pattern of violations. So, naturally, a first offense does not exhibit a pattern. So that makes complying with that data a little difficult.

Second, many of these violations are never cited, so they never have a penalty imposed and subsequently there is not a penalty to be later reduced. So, a field inspector finishes his inspection and consults his policy guidelines, and if the policy guidelines say no citation shall be issued for a minor paperwork violation, then that is what will follow.

Mr. SCHROCK. You are not talking about OSHA recordkeeping?

Mr. PIZZELLA. Yes. I thought I was—yes, my response was regarding OSHA.

Mr. SCHROCK. OK. During and after Chairman Ose's subcommittee hearing on April 11 of last year, his paperwork hearing, we asked OSHA Administrator John Henshaw: In your testimony you mentioned that employers with 10 or fewer employees are not required to compile injury and illness logs. This could be increased to exempt more employers. How about to 20 or 25? Some of the material I read before we started this process today, some agencies look at small businesses as 5, some 20 to 25, some 50, some 100. So there is just a whole bag of different figures out there, and it seems to me that if there was one figure that everybody was working with, it would make it a lot easier, agreed?

Mr. PIZZELLA. You know, it makes so much logical sense to me. I cannot disagree with you, but I will say I will have to take that up with Mr. Henshaw on that. Because each of these enforcement agency heads, they have some particular reason as to why the way they count is the way they count. Some I know is imposed statutorily, but there is some flexibility. In most cases, there is flexibility.

Mr. SCHROCK. So, one small business guy could have the Department of Labor looking at him where they consider 10 or fewer employees, but then the next week EPA, for instance, could look at them as a small business, 20 to 50. The poor business people are out there terribly confused because they do not know what a small business is. They know they are, but they do not know what the numbers are.

Mr. PIZZELLA. I would defer to my colleague.

Mr. SCHROCK. No, no, no. I just used EPA as an example. I don't want to put her on the spot. No answer. That is a tough one, isn't it?

Mr. PIZZELLA. Yes. The question is very logical, and I will have to get back to you.

Mr. SCHROCK. I would be curious to know. Because when I was reading the testimony late last night, I mean, some of the paperwork they gave, they were saying it could be a range this big. And I thought, huh, what is it, really?

I yield back.

Mr. OSE [presiding]. I want to followup on Mr. Schrock's comment. I do not build a lot of roads other than when I am building subdivisions, and I do not deal necessarily with EPA other than generally on delineation of wetlands and all that sort of stuff, but, on labor, I will just tell you for a fact that the entities in which I have an interest are designed to prevent me from going afoul of these thresholds. In other words, if I start bumping up against a 10-person threshold, I will say, you know what? Time to set up another entity.

It sounds maddening, but it is a very economically driven decision, and that is it is cheaper for me to set up another entity with the checkbooks and the letterhead and the accounting and the tax returns and all of this other stuff than it is for me to exceed the threshold on the employee level. Which begs the question which I think Mr. Schrock was hammering at, is if the threshold is 50, then

I would not have to set up so many entities. So, if I am over here dealing with this agency, maybe I am at 50, but I am over here at this one, I am at 10. What I am trying to figure out is whether or not the setting of those thresholds, just very specifically, is that discretionary or is it not?

Mr. PIZZELLA. There is discretion on the part of the agencies. I cannot speak for the Assistant Secretary of OSHA in particular on this, because I am not familiar with the reasoning behind it all, but I will get you those answers.

Again, as I mentioned to the Congressman from Virginia, the question is so logical it begs some appropriate answer, and I will get the correct answer.

[The information referred to follows:]

CHAIRMAN SCHROCK

Why is there not a standard designation for the size of a small business across agencies and departments? What is the reason for the designation of the size of a small business for each agency at DOL?

SBPRA requires information related to small entities and allows the reporting agencies to use discretion when defining "small entity". Therefore, by virtue of allowing agencies to use their own definitions of "small entity," Congress recognized that there are various ways to define a small entity. The approaches of the different DOL agencies are described below.

OSHA

In analyzing potential small business impacts of its proposed safety and health standards, OSHA uses SBREFA's definition of small business and the Small Business Administration's "size standards." SBREFA defines "small business" as follows: "...'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register[.]"

Under the Small Business Act, SBA does not use one single definition of "small business." Instead, in its regulations, SBA has developed tables of "size standards." These "size standards" categorize businesses for each industry sector as "small businesses" based on the number of employees or gross sales for the business. Since OSHA's standards virtually always address a combination of industry sectors, OSHA uses the SBA size standards as its criteria for analyzing small business impacts in each of those sectors.

MSHA

MSHA has designated mines as "small" for rulemaking purposes based on three separate sets of criteria:

1. The first is SBA's definition of a small entity in the mining industry, which is a mine with 500 or fewer workers. MSHA uses this definition for all rules and in the SBPRA report.

2. The second is MSHA's traditional definition of a small mine, which is one with fewer than 20 workers. This definition is based on the history of these mines having much higher injury and fatality rates than mines with more workers. In addition, mines with fewer than 20 workers tend to differ from larger mines in economies of scale in material produced, in the type and amount of production equipment, and in compliance cost impacts. MSHA uses this definition for all rules and in the SBPRA report.

3. The third is any rule-specific cost or compliance factor associated with mine size. For example, for MSHA's HazCom final rule, MSHA's requirements and economic analysis took separate notice of very small mines, those with five or fewer employees. For some rules, MSHA develops special small mine definitions as appropriate for that specific rulemaking.

In addition, MSHA's Small Mines Office focuses on mines with five or fewer employees.

EBSA

EBSA has jurisdiction over employee benefit plans and thus, a small entity in EBSA's regulated community would be a small employee benefit plan, which ERISA itself defines for some purposes (including the SBPRA report) as a benefit plan with fewer than 100 participants.

ESA – Wage and Hour Division

For purposes of reporting under SBPRA, WHD has used its traditional performance definition of "small entity." WHD has responsibility for a number of difference statutes with various coverage criteria; therefore, the agency has historically defined a small business as any business enterprise (as opposed to establishment) in which total employment is 50 or fewer employees. WHD has consistently used this definition in its program planning and strategic goal development.

Mr. SCHROCK. There needs to be a standard somewhere.

Mr. OSE. Mr. King.

Mr. KING. No more questions.

Mr. OSE. I have another question. See these binders right down here? They have the forms that a lot of different agencies use for reporting purposes. I am wondering whether or not on your respective Web sites you guys have posted the forms that small businesses need, together with a system whereby a small business owner can sort through and get the right forms? I will start with the EPA today.

Ms. NELSON. I will have to look into that in terms of—most of our forms are posted. I will talk with our ombudsman in terms of whether they are in a single location.

We are working with the business gateway project that Dr. Graham mentioned, and we have already submitted to them the 60 or so forms that are applicable to EPA for businesses. So we are working with them to post those in one place and have already submitted those.

Mr. OSE. Mr. Rosen, how about transportation?

Mr. ROSEN. Mr. Chairman, I do not actually know the answer to that for each of the agencies. I suspect that we do not. I know that we are working with the business gateway initiative also to accomplish fundamentally that objective. I would have to look into each of the agencies to see what the correct answer to that is and report back to you if you would like me to. I suspect that the question of the electronic storage is one that is probably a little outside my capability.

Mr. OSE. Mr. Pizzella.

Mr. PIZZELLA. Most of our forms are posted. Whether it is as easy as you described for the small businessperson to access them, I cannot answer that right now, but I will get you an answer on that.

[The information referred to follows:]

Is it easy for a business to get access to the forms it needs to be in compliance on your Web Site?

OSHA
All of the forms employers need can be downloaded from the OSHA Web Site. The OSHA poster (English and Spanish versions) and OSHA's recordkeeping forms can be downloaded from the publication page. The recordkeeping forms can also be downloaded from the recordkeeping page. On this page, employers can also download the Microsoft Excel template, which can be converted to other formats, for those employers that wish to keep their recordkeeping forms electronically.

MSHA
MSHA has online filing for most of the commonly used forms. Copies of all forms can be downloaded from the MSHA Web Site.

EBSA
Yes. EBSA's Web Site includes a quick link to all of the forms that employee benefits plans must file with the Department of Labor.

ESA - Wage and Hour Division
WHD's Web Site contains a quick link to most commonly-used forms.

Why is there not a standard designation for the size of a small business across agencies and departments?

See the response to Chairman Schrock's closely related question below.

What paperwork reductions did DOL get for a recision in the ergonomics rule?

The change in the requirement to record ergonomic injuries in recordkeeping logs resulted in OMB noting a reduction of 40,582,309 burden hours in its inventories for December, 2000; January, 2001; and February, 2001. However, because the increase and decrease occurred within the same fiscal year, this contributed no net change in the Department's paperwork burden reported for that fiscal year.

Mr. OSE. The reason I ask the question is twofold, No. 1, to indicate an interest, but, No. 2, to tell you that there were 24 agencies that did not provide us the requested copies of all paperwork applicable to small business, and the Department of Labor and the Department of Transportation were 2 of those 24. I think we got the wrong thing from Labor, and I would like to see it corrected.

Mr. PIZZELLA. You will have it from the Department of Labor on Monday.

Mr. ROSEN. Today was the first I heard of that, Mr. Chairman, and we will certainly address it.

Mr. OSE. Will you fix it?

Mr. ROSEN. Yes.

Mr. OSE. OK. By Monday?

Mr. PIZZELLA. Sorry, Jeff.

Mr. OSE. I am through negotiating with him.

Mr. ROSEN. Well, if I knew what the burden involved, I could commit more readily, but, if you do not mind, I would like to figure out from people more knowledgeable than I how burdensome that would be. I would hope it would not be, and then we could do it very quickly.

Mr. OSE. Our original request was made in July, and I just think there might have been some confusion as to what we were looking for.

Mr. ROSEN. I suspect that is the case. Obviously, July was before I had joined the Department. It does not excuse it, but it means that I need to look into it.

Mr. OSE. I have somebody on my staff who would be happy to facilitate that. Her name is Barbara Kahlow, and you can call her directly if you have any questions. But, if we could get that by Monday, that would be great.

I want to go to the enforcement stuff. Ms. Nelson, in terms of EPA, the June 2002, Small Business Paperwork Relief Act required the collection of enforcement data so that it could be reported to us by December 31, 2003. Now I am operating on the presumption that EPA has adjusted its data systems in order to collect those enforcement data. Am I operating on the correct assumption?

Ms. NELSON. You are correct. We did do that. We are in the process of upgrading our system and were able to accommodate those changes.

Mr. OSE. So that is done at EPA?

Ms. NELSON. Yes, correct.

Mr. OSE. OK. At Transportation?

Mr. ROSEN. My understanding is that my staff, at the time that the act passed, asked each of the relevant agencies to make that happen and was successful for the most part, except it appears we have one area, the Federal Railroad Administration, with regard to the question of shippers that were small businesses where we have had a miscommunication that we have been working on fixing since the time we put together our report last December. We are correcting that. It will be in our next report. We will have been fixed.

But, other than that glitch, I believe that we have otherwise already taken care of our systems to report appropriately.

Mr. OSE. Mr. Pizzella, over at Labor?

Mr. PIZZELLA. Yes. Congressman, we believe that our data systems are capable now to help us produce that enforcement data.

Mr. OSE. So there will not be any difficulty in getting it then?

Mr. PIZZELLA. No.

Mr. OSE. OK. My time has expired.

Any further questions, gentleman? Mr. King.

Mr. KING. Thank you, Mr. Chairman.

I think I would just like to go down through a list that kind of sticks in my head over the years of some of the things that come up with regard to child labor. I know we have laws and then we have interpretations of laws and interpretations of rules, actually, seldom of laws, and issues that come up. One would be a material safety data sheet required for soap that is used to wash vehicles at a car dealership. Therefore, anyone under the age of 18 cannot wash the vehicles because it has an MSD sheet, even though the chemical composition would be identical to the shampoo they used in their hair that morning. That would be one.

Another one would be prohibition toward anyone under 18 going above more than 2 feet off a floor. So they can't get in on a low stepladder. Prohibition of teenagers, I'll say candy stripers, from being in the vicinity of blood-borne pathogens. So, it has severely constricted the flexibility of young people learning a dedication to the health care industry.

And then, things such as—and these are more justifiable certainly—young people maybe getting on a forklift to drive it from one place to another, transfer it, somebody that is 17 years and 11 months old and 29 days old can't get on the lawn mower and cut the grass.

The implications of these—and I bring these up partly for a response of those interpretations, but also for an opportunity to address what happens in this country when we tie so many regulations in place that young people lose their opportunities to work, and at the very age where they need to learn their work ethic, we tell them it's too dangerous for you to use this soap or climb up on that stepladder or drive this lawn mower or move this forklift or run this piece of dough mixer or the french fryer.

So, consequently, they need to be doing something, so they end up on the streets with drugs and alcohol and fast cars, which are readily available, and we don't seem to be too concerned about that.

Do you get very much comment on that? And, is there much feedback? And, is there anything you'd like to take issue with that I've laid out here?

Mr. PIZZELLA. I will take issue with nothing that you've laid out. The expertise in answering those questions really rests within the assistant secretaries that have the enforcement responsibility for those particular areas. Obviously, OSHA encompasses most of what you just discussed, and the Wage and Hour Division, and the Employment Standards Division encompasses the rest.

And, I'll make two proposals. One is that we'll try to answer what you've asked in writing, but more importantly perhaps we can arrange a meeting with the Assistant Secretary of OSHA and the Administrator of the Wage and Hour Division to sit down and talk with you and go over some of these hypothetical theoretical situations and perhaps even some actual cases, so we can sort of

eliminate a lot of the smoke and blue mirrors and you can hear firsthand the way these regulations, in some case statutes, are being enforced and interpreted.

And perhaps, based certainly on the way you've presented them, there's room for corrective action.

Mr. KING. Would that also provide an opportunity to look at any statistics that might be there as to injuries that occur with young people who are violating the regulations that we have?

Mr. PIZZELLA. If those statistics are available.

Mr. KING. And I wonder if we might be able to compare those statistics to the injuries—this gets far more subjective, and the question really—the blunt question is, are they safer at work or are they safer at play under the circumstances that we have? And, that's more rhetorical than not, but I look very much forward to a meeting to sit down and discuss these issues, Mr. Pizzella; and I will invite my colleague, Mr. Schrock, as well. Thank you very much.

That would conclude my questions, Mr. Chairman.

Mr. OSE. Thank you. I want to thank this panel for appearing today and giving us your testimony and answering our questions. We appreciate it.

Mr. ROSEN. I'd like to thank the committees for having us here, and if there are other ways that I can be helpful after today, I hope you'll certainly take the opportunity to let me know.

Mr. OSE. Well, we're going to give you a chance because we're going to leave the record open for 10 days so that we can send questions to you that might arise within the membership. We would appreciate a timely response.

Thank you all. We'll take a 2-minute recess for this next panel.

[Recess.]

Mr. OSE. If we could have the third panel join us, please. I see Mr. Langer is here. Is Mr. Igdaloff here?

Mr. LANGER. Yes. He'll be back in a moment.

Mr. OSE. All right. We'll take another 2-minute recess.

[Recess.]

Mr. OSE. We'll reconvene. First of all, I want to welcome both our witnesses, Mr. Igdaloff from California, Mr. Langer from the National Federation of Independent Business.

Gentlemen, if you'd both rise, please. We swear all our witnesses in, so you're not getting special treatment.

[Witnesses sworn.]

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

Now, Mr. Igdaloff, I understand you have a 7 o'clock flight out of National?

Mr. IGDALOFF. Yes.

Mr. OSE. OK. Mr. Langer, how is your time?

Mr. LANGER. My wife is waiting for me at National.

Mr. SCHROCK. He lives here. Don't let him kid you.

Mr. LANGER. She's just waiting for me to pick her up.

Mr. OSE. Have you ever heard the phrase rock and roll?

You all are recognized for 5 minutes for the purposes of a statement.

STATEMENTS OF HAROLD IGDALOFF, PRESIDENT, SUNGRO CHEMICALS, INC., CALIFORNIA; AND ANDREW LANGER, MANAGER, REGULATORY POLICY, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. IGDALOFF. Thank you, Chairman Ose and Chairman Schrock, and ranking members of the committee for the opportunity to speak on behalf of the National Small Business Association, the Nation's oldest nonpartisan small business advocacy group reaching more than 150,000 small businesses across the country. As the president of Los Angeles-based Sungro Chemicals, Inc., I'd like to thank your two committees for your ongoing commitment to America's small business.

Sungro is a formulator of pesticide products with over 50 products registered with the Environmental Protection Agency. I'd like to talk specifically about the difficulties I've encountered there, as well as discuss in broad context the concerns of NSBA members.

The last time I testified before a congressional body was in 1996, right before you passed the Small Business Regulatory Enforcement Act. Since that time, you've passed the Small Business Paperwork Relief Act. Both laws have strived to greatly alleviate the headaches I was dealing with in 1996. However, as you know and have already stated, agency compliance with these laws, specifically the Small Business Paperwork Relief Act, sometimes leaves much to be desired.

Before I launch into specifics, I'd like to remind you, paperwork is a symptom, not the root problem. Government's tendency to overregulate is the source of burdensome paperwork. Due to a simple directive requiring a change in wording on our pesticide labels from Precautionary Statements, which had been acceptable for over 25 years, to First Aid, we had to revise each of our labels, send each one to EPA for review, and approval, frequently getting contradictory responses to the warning statements on the same labels for the same products. And, after we got a stamp-approved label from EPA, we then had to send each one of these labels to each State agency that regulates pesticides and wait for their approval process. We estimate just this one change probably took 2 to 3 man-months to implement.

By their very nature, unnecessary Federal regulation and paperwork burden discriminate against small business. We don't have large staffs of accountants, benefit coordinators, attorneys or personal administrators. Small businesses are often at a loss to implement or even keep up with the overwhelming paperwork demands of the Federal Government, and most Federal officials who develop regulations are largely unaware of the many activities and requirements of their fellow agencies.

I'd like to call your attention to another example of voluminous paperwork, the pesticide reregistration booklets. The Office of Pesticide Programs within EPA issues these lengthy, complex booklets on each active pesticide ingredient, which we have to review and sort through to find out what we have to do to conform, and then submit the paperwork under a protocol that requires one sheet of paper for each item. If you've got page 2 instead of page 3 out of order, they send it back to you for further review.

A few hours of extrapolation and condensation by a knowledgable staff would significantly reduce the size of the publications as well as the time and complexity required to conform.

We also have a problem with the DOT regulations relative to hazardous waste shipments. You have to have an advanced college degree to cross-sort all of the cross-references that are in that particular regulation to decide what we should put on the shipping papers for a particular commodity.

The regulatory and paperwork overloads are gradually eliminating participation. As an example, we have to report annually our total sales and production of each pesticide product. In my testimony in 1996, I pointed out the problems with this antiquated form that is used. This sheet contains three products per page, and we have to take data off of a spreadsheet that comes out of our computer and hand-transmit all of this information to the 16 pages of the report. A tabular spreadsheet would replace this 16-page report we have to submit.

It not only takes us time to do it, but we get calls from the regional agency saying, well, you put a "G" in this particular square instead of an "L"; is this supposed to be pounds or is this supposed to be gallons?

We have to put over 500 pieces of data hand transcribed into this simple form. There seems to be little concern for paperwork reduction in the OPP relative to their internal procedures or external communication. As a result, the practice typified by the example above, the OPP has chosen to increase the maintenance fees for each product that we have approved from $600 per year to over $3,000 per year. This, coupled with additional fees imposed by each State—California has gone from $200 per product to $750 per product—is essentially taking the small business community right out of the pesticide formulating business.

The new law that just came out of Congress defined a small business as a business doing $60 million. Now, if the mindset defines $60 million a year as a small business, what are they basing their criteria for performance on. We talked to Karen Brown this morning about perhaps making an amendment to that law to put another category below the $60 million level to take care of the small business people. We have to lay out $100,000 in fees in January before we can offer a product for sale.

In terms of EPA's compliance with the Small Business Paperwork Relief Act, I would like to voice a number of concerns. While increased flexibility for small business in terms of the EPA audit policy and small business compliance policy may reduce the penalties assessed in a formal investigation process, it has the potential of strong-arming small businesses into admitting and paying for something they may not agree with. I would also argue that even though EPA has implemented a discount penalty based on violation, there should be further discounts reserved only for small businesses who unknowingly commit one of those violations.

We have been forced in instances and cancellations to waive our 6-month right for appeal to a 30-day appeal in order to keep our products in the business stream, and we've been displaced in our marketplace as a result of some of the big chemical companies trading off their marketplaces for the small business marketplace.

I don't have resources on a par with those of large business to ensure compliance with what you see are notebooks full of paperwork requirements, and I see you've got them.

The EPA, in their enforcement actions report to Congress for fiscal year 2002, stated that due to the complexity of the environmental enforcement process and the variety of settlement options, the data maintained by EPA cannot be classified this neatly.

The EPA has quite eloquently proved my point here. If the EPA cannot even collect their own information because the process is too complex, how can they justify requiring small business owners to comply with their quagmire of rules and regulations?

Mr. SCHROCK. Bingo.

Mr. IGDALOFF. I find it interesting that less than 30 percent of agencies are in full compliance with SBREFA with only 28 percent filing their enforcement report. I suggest that the compliance rate for small businesses on any number of agency regulations is far above 20 percent.

In addition to my concerns with EPA, I also want to make mention of enforcement practices of OSHA in fiscal year 2002. Of all enforcement actions on businesses through OSHA, a whopping 84 percent were penalties on businesses with fewer than 25 employees.

One important discrepancy among many of the reports is the definition of a small business. The SBA has established certain size standards based upon revenues or employee size under the NAICS industry classification system. The overwhelming majority of industries under NAICS have a 500-employee cap to be a small business. However, the EPA defines a small business as 100 or fewer employees within. Within the Department of Labor there are varied definitions for each—20, 50 and 250, all use the small business employer cap.

So, how can any agency evaluate the impact on small business when they don't know which small business community they're having their impact on, when everybody has a different definition?

I would urge all agencies to use the SBA size guidelines or get together and agree on some rational standardization system of classifying small businesses of different categories, and then, based on the particular environment of companies that they're working with, apply their regulations consistent with the activities of those companies.

Potential solutions: First and foremost, streamline the paperwork, eliminate the duplication of paperwork and coordinate due dates. This will save businesses countless hours. And, there's a lot of overlapping of information that's submitted both to the Federal Government and to the State agencies, and I think some coordination between the State agencies and the government would tend to help reduce that burden.

Small business assistance and compliance: Small business owners are smart, entrepreneurial, creative and quick students. We are not, however, regulatory experts. Increase the importance of burden reduction through additional dedicated staff. I know what it means to be short-staffed and I understand that people can only do so much. Regulatory cost/benefit analyses should be done on every piece of new regulation. This is common-sense business policy. Fed-

eral agencies should be required to submit the estimates of costs as well as benefits associated with rules and paperwork for each of their programs.

In closing, I would like to commend Chairman Ose and Chairman Schrock for their efforts and dedication to the small business with the Paperwork and Regulatory Improvements Act of 2003. NSBA supports this legislation, and I look forward to working with you.

Congress and the administration need to take a bottom line look at the mountains of reporting small businesses face. Paperwork is paperwork, regardless of whether it's good or bad. When I'm completing the annual production report to EPA, revising labels for pesticide products and reporting the same basic information and data to State agencies, I'd like to let you know what I'm not doing. I'm not researching ways to provide the most competitive health insurance packages to my employees. I'm not creating new pesticides. I'm not looking for ways to make more environmentally friendly pesticides. I'm not selling additional product. I'm not growing my business. I'm not hiring new employees.

Thank you.

Mr. OSE. Thank you, Mr. Igdaloff.

[The prepared statement of Mr. Igdaloff follows:]

Testimony of Harold Igdaloff

Sungro Chemicals, Inc.

On Behalf of
The National Small Business Association

House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

House Small Business Subcommittee on Regulatory Reform and Oversight

Hearing

"WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS"

January 28, 2004

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Washington, DC 20005
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T. DALOFF

Thank you, Chairman Ose and Chairman Schrock, ranking members Tierny and Gonzalez. I appreciate the opportunity to speak on behalf of the National Small Business Association (NSBA), the nation's oldest nonpartisan small business advocacy group reaching more than 150,000 small businesses across the country. As the president of L.A.-based Sungro Chemicals, Inc. and a long-time board member of NSBA, I would like to applaud your two committees for your ongoing commitment to America's small businesses. Sungro is a formulator of pesticide products, with over 50 products registered with the Environmental Protection Agency (EPA), I would like to talk specifically about the difficulties I've encountered there, as well as discuss in broad-context the concerns of NSBA's members.

The last time I testified before a Congressional body was in 1996 right before you passed the Small Business Regulatory Enforcement Fairness Act (SBREFA). Since that time, you've also passed the Small Business Paperwork Relief Act; both laws that have strived to greatly alleviate the headaches I was dealing with in 1996. However, as you know and have already stated, agency compliance with these laws, specifically the Small Business Paperwork Relief Act, sometimes leaves much to be desired. Before I launch into the specifics, I'd like to remind you: paperwork is a symptom, not the root problem. Government's tendency to over-regulate is the source of all the paperwork. A personal example of this is the fact that due to a simple directive requiring the change of the wording on all pesticide labels from "Precautionary Statements" (acceptable for over 25 years) to "First Aid" we had to revise each of our labels and send each one to the EPA for review and approval, frequently getting contradictory responses from EPA requiring resubmission. After receiving a stamped approved label from the EPA, we then have to fill out an application and send a copy for approval to each state where the products are registered. As I'm sure you can imagine, this is extremely time-consuming.

Overview

You've heard the numbers time and again: federally mandated paperwork equates to eight billion hours with the IRS accounting for 80 percent of that figure. The Small Business Administration reports that the average per-employee cost of all federal regulation for companies with fewer than 20 employees is nearly $7,000, three times what large companies pay. In many cases, paperwork is a burden imposed after a business enterprise has taken steps to comply with the regulation in question.

By their very nature, unnecessary federal regulation and paperwork burdens discriminate against small businesses. Without large staffs of accountants, benefits coordinators, attorneys, or personnel administrators, small businesses are often at a loss to implement or even keep up with the overwhelming paperwork demands of the federal government. Big corporations have already built these staffs into their operations and can often absorb a new requirement that could be very costly and expensive for a small business owner. Oftentimes, regulation and its accompanying paperwork burden are manipulated by large companies to create additional barriers to entry by smaller competitors.

Most federal officials who develop regulations are largely unaware of the many activities and requirements of their fellow agencies. The Small Business Paperwork Relief Act simply intends to bring small business reality and a sense of regulatory necessity into the thinking of the federal bureaucracy--and eliminate excessive redundancy.

In order to accomplish these goals, the Office of Information and Regulatory Affairs (OIRA) was given the authority and duty of preventing needless and redundant information requests from being imposed on the public. While the agencies are required to demonstrate the necessity of the data request and to publish

it in the Federal Register for public comment, a strong OIRA is necessary to provide an adequate check for these agencies. Both SBREFA and SBPRA were intended to increase small business involvement in formulating new regulations and reduce the overall burden small businesses bear. Even with the 2002 passage of the Small Business Paperwork Relief Act, agencies have continued to increase the amount of paperwork leading to a seven-year upward trend of the paperwork burden. A perfect example of that is the EPA's Toxic Reporting Inventory (TRI).

Though SBREFA has empowered the SBA Office of Advocacy to take a more active role in preventing regulations that would harm small businesses, there are still agencies that proceed with unfair regulations. SBPRA has also outlined three steps agencies were mandated to take to ensure small business concerns were being represented; a single-point of contact, publishing all compliance assistance, and completing annual reports on small business enforcement actions said agency has taken. Yet, as we can all see, many agencies have not fully complied with this rule. I'd like now to turn to specific EPA oversights.

EPA

In addition to the EPA's TRI, which has already been discussed, I'd like to call your attention to another example of voluminous paperwork. The Pesticide Re-registration booklets the Office of Pesticide Programs (OPP) issues for each active pesticide ingredient are lengthy and complicated. A few hours of extrapolation and condensation by the knowledgeable staff would significantly reduce the size of the publications as well as the time and complexity required to conform.

In terms of the EPA's compliance with the Small Business Paperwork Relief Act, I would like to voice a number of concerns.

1. The regulatory and paperwork overload is gradually eliminating participation by small businesses in certain areas of activity. As an example of unnecessary paperwork, we have to report annually, our total sales and production of each pesticide product. In my testimony in 1996 I pointed out the problems associated with an antiquated form used by EPA for reporting this data. A tabular spreadsheet would replace the sixteen page report we have to submit. We are only allowed to put the data for three products (ten items per product) on each page. All the information on this report aside from pounds produced and yet to be produced and sold, is already in the EPA files. In our case over 500 pieces of data have to be hand transcribed to complete this form. Several small businesses have received significant fines for failure to fill out this cumbersome and confusing form.

2. There seems to be little concern for paperwork reduction in the OPP relative to their internal procedures or external communications. As a result of the practices typified by the example above, the OPP has chosen to increase the maintenance fee for each approved product from $600.00/yr in 1989 to over $3000.00/yr in 2004, a 500 percent increase in fifteen years. This coupled with the additional fees imposed by each state is essentially removing small businesses from this area of economic activity.

In terms of the EPA's compliance with the Small Business Paperwork Relief Act, I would like to voice a number of concerns. While increased flexibility for small businesses in terms of the EPA Audit Policy and Small Business Compliance Policy may reduce the penalties assessed and formal investigation process, it has the potential of "strong-arming" small businesses into admitting and paying for something they may not agree with. I would also argue that even though EPA has implemented a discount penalty based on the violation, there should be further discounts for small businesses who unknowingly commit

one of those violations. I cannot stress enough to you – as the president and owner of a company that employs 12 people, I do not have resources on-par with those of a large business to ensure compliance with what you see are notebooks-full of paperwork requirements.

The EPA, in their enforcement actions report to Congress for FY 2002 stated that "...due to the complexity of the environmental enforcement process and the variety of settlement options, the data maintained by EPA cannot be classified this neatly..." The EPA has quite eloquently proven my point here. If the EPA cannot even collect their own information because the process is too complex, how can they justify requiring small business owners to comply with their quagmire of rules and regulations?

Overall Agency Compliance

When your committee sent me the sheet listing agency compliance with SBPRA's statutory obligations, I found it interesting that while small businesses are permitted little leeway in compliance with agency rules and regulations, less than 30 percent of agencies were in full compliance with SBPRA. 80 percent of agencies have established a single point of contact for the paperwork and regulatory questions of small businesses, only 75 percent have published or made available a list of compliance assistance resources for small businesses, and a disappointing 28 percent filed their enforcement reports. I suspect that the compliance rate for small businesses on any number of agency regulations is far above and beyond 28 percent.

In addition to my concerns with the EPA, I want to be sure that I make mention of the enforcement practices of OSHA in FY 2002. Of all enforcement actions on businesses through OSHA, a whopping 84 percent were penalties on businesses with fewer than 250 employees, and of those penalties, 60 percent were against businesses with 25 or fewer employees – overall, 50 percent of all enforcements from OSHA were imposed on small businesses with less than 25 employees.

One important discrepancy among many of the reports is the definition of a small business. The U.S. Small Business Administration has spent countless hours debating the issue of "what is a small business", and has established certain size standards based upon revenues or employee size under the North American Industry Classification System (NAICS). The overwhelming majority of industries under NAICS have a 500-employee cap to be considered a small business. However, the EPA has chosen to define a small business as 100 or fewer employees. The Department of Labor has a wide variety of definitions for small business; the Employee Benefits Security Administration outlines a small entity as one having 100 or fewer participants in an employee benefit plan, OSHA used a 250-employee guideline, Wage and Hour Division defines it as 50 or fewer employees, Mine Safety and Health Administration says fewer than 20 employees. The measurement being taken by these agencies can be seriously skewed based upon their definition of a small business. I would urge all agencies to use the SBA size guidelines when completing these enforcement reports.

This entire process points to a broad conclusion. Only 28 percent of agencies completed the statutorily mandated enforcement report – even with the Committee's extended deadline. If the agencies imposing all this paperwork can't even complete a simple, one-page report defining their enforcements on small business as compared to overall enforcements, it is blatantly obvious to me that there is too much paperwork, too much regulation and by far too much confusion. I urge you to hold these agencies to the same standards to which they hold me.

Potential Solutions

Streamline paperwork: Agencies must seek ways to eliminate duplication of paperwork and coordinate the due-dates. The paperwork requirement for filing mandatory emergency plans is an excellent example. As you know, many agencies require emergency plans, and inevitably, these due dates are all different. This is not uncommon, and it would be a huge relief to simply streamline dates and reduce the number of times one plan must be reported.

Small business assistance: Small business owners are smart, entrepreneurial, creative and quick students. We are not, however, regulation specialists. It is easy for a well-meaning small business to overlook a requirement or a deadline because we don't have dedicated compliance staffs to research the vast federal (not to mention state, city and local) regulatory paperwork quagmire. We are busy creating new jobs and spurring economic growth.

Increase the importance of burden reduction: As a businessman, I know what it means to be short-staffed. I understand that people can only do so much. Additional people within OIRA dedicated to helping agencies understand the importance of reducing the paperwork burden on small businesses would be a good start.

Cost-benefit analysis: This is common-sense business policy. If I want to do something because I think it will be good, the next step I take is to complete a cost-benefit analysis to see if it really would be a good move. Federal agencies should be held to no less a standard, and should be required to submit the estimates of the cost as well as the benefit associated with rules and paperwork for each of their programs.

Enforce agency compliance with SBPRA: When nearly 66 percent of all agencies failed to submit the enforcement reports mandated by the SBPRA, clearly there is something wrong. Just as small businesses are held accountable for our actions, agencies must also, and OIRA must take the steps to help agencies comply as well enforce laws like the SBPRA and SBREFA.

Conclusion

In closing, I would like to commend Chairman Ose and Chairman Schrock for your efforts and dedication to small business through the Paperwork and Regulatory Improvements Act of 2003. H.R. 2432 will statutorily encourage OMB to place an emphasis on reducing the burden for small business. NSBA supports this legislation and looks forward to working with you on it.

Congress and the Administration need to take a bottom-line look at the mountains of reporting small businesses face. Paperwork is paperwork, regardless of whether it's good or bad. When I'm completing the annual production report to EPA, revising labels for pesticide products, and reporting the same basic information and data to the state agencies multiple forms for pesticide activity which duplicates , I'd like to let you know what I'm not doing. I'm not researching ways to provide the most competitive health insurance package to my employees. I'm not creating new pesticides. I'm not looking for ways to make more environmentally-friendly pesticides. I'm not selling additional product. I'm not growing my business. I'm not hiring new employees.

I thank you for your time and welcome any questions you may have for me.

Mr. OSE. Mr. Langer.

Mr. LANGER. Chairman Ose, Chairman Schrock, and staff who are here, I want to thank you for letting me participate today on behalf of the 600,000 small business owners represented by the NFIB. I'd like to thank you for the opportunity to appear before you to discuss the current status of paperwork burden reduction and the importance of this effort to our members and to small business businesses in general.

Small businesses are being buried under mounds of paperwork. It costs them time and it costs them money. Not only do we know this, but we've measured it a number of ways. Small businesses have told us, they've told Congress, what the extent of this problem is.

So, what do we know? We know that regulatory costs are higher for small firms and that for firms with under 20 employees, it costs them an average of nearly $7,000 per employee per year to comply with regulations.

NFIB's own research foundation recently surveyed small businesses around the country and found that the average cost per hour for paperwork was nearly $50. To dovetail into what you said earlier, Chairman Ose, if we were to take your number of 8.2 billion hours for paperwork, for Federal paperwork, that's a cost not of $320 billion a year, but close to $400 billion a year in lost time for paperwork.

This cost shoots up to $75 for tax preparation which comprises, of course, the bulk of the paperwork. That poll is discussed in detail in my written testimony, and the complete poll is attached as an appendix to it.

We know that it's the complexity of the paperwork, combined with the sheer amount of it that are the primary concerns of small business owners, neither of which should be surprising to anybody. I won't recount the history of congressional efforts to minimize paperwork and regulatory impacts. A number of Members of Congress have taken ownership of the paperwork reduction issue and have introduced some stellar pieces of legislation. Unfortunately, however, those initiatives have met with real incalcitrance on the part of certain agency bureaucracies.

When I testified here in July, it was on the subject of single points of contact regarding paperwork within Federal agencies and the efforts of the OMB to bring agencies in line with Federal law. But here we are 6 months after congressional inquiries into the first issue, and 14 agencies still aren't complying with the directive to have a single point of contact down from 33. To be fair, a jump of more than 19 agencies is a good thing, but still short of the ultimate goal.

Having a single point of contact at an agency is not something that the Federal agencies can take lightly. From my own personal experience in July of dealing with the document, running around from office to office to track down information about that Superfund ability-to-pay claim form, I know that it can take hours. And, again, I'm a professional. I know where to go to find answers to questions about documents. But for the small business owner already spending precious hours filling out Federal paperwork, it is a terrible waste of time and money.

What is more disheartening is the continued absence of identifiable compliance assistance efforts from 18 Federal agencies, including the GSA and FERC.

As I stated a moment ago, complex and confusing paperwork is a paramount concern to the small business owner, and while a single point of contact is essential to answering questions, proactive assistance by agencies in helping businesses comply with the law can go a long way toward answering those questions before they need to be asked. Moreover, in the case of agencies like the EPA and OSHA, and let's say FERC, it goes a long way toward making sure that those regulations are complied with properly.

As I note in my written testimony, we have experienced firsthand the problems of creating compliance-friendly guidance when it came to the development of the TRI rules for lead. And, my written testimony discusses the lead TRI issue in greater detail.

Small business owners want to comply with the law, but they have to be told simply and succinctly what they need to do. I mention as one possible solution the development of a business gateway, which I worked on as the Business Compliance One-Stop System, as an aid to this end. But, that system is some time from being ready to use. In the interim, agencies have to take ownership of this problem and be held accountable for it.

I was disappointed to learn that nearly two-thirds of the required agencies hadn't completed reports on their enforcement activities against small entities, and that 21 of those agencies, including GSA, have been unaware of the requirement to do so. The importance of this information is reinforced by those agencies that did submit reports. Small entities make up a great percentage of those against which enforcement actions were taken.

For instance, in the case of the Department of Agriculture, out of 536 enforcement actions, 506 of them were against small entities.

It is especially helpful in understanding the vastness, the hugeness of enforcement, especially when it comes to the most burdensome and complex paperwork-requiring agencies like the IRS. The IRS claims more than 15 million small entity assessments, versus just over 23 million total enforcement assessments. To me, that's a staggering number.

I don't want to extrapolate, but when you consider that according to our poll, small businesses are spending $75 per hour on average in tax preparation, that 15 million enforcement assessments against those entities represents a huge cost. Think about it, 15 million assessments can all not be chalked up to people cheating on their taxes. I would suspect that a significant amount of that is simple mistakes, which means that people are spending large amounts of money only to find their preparation to be mistaken.

That, too, reconfirms the problems with compliance assistance and paperwork reduction itself and the need to make Congress' paperwork efforts stick to the IRS. Right now, IRS believes itself to be largely immune from having to reduce its paperwork through various memoranda of understanding within OMB, though I do note that OMB has been directed to focus staff attention on reducing that paperwork.

Tax paperwork accounts for 80 percent of the paperwork burden imposed on small business. It is hugely expensive and, as the IRS's own report shows, fraught with potential liabilities. The time has come for another stab at forcing the IRS to comply with the rules that other agencies comply with, or at least are supposed to. At the very least, OMB needs to take much greater steps to ensure that serious paperwork reduction is being undertaken at IRS and that MOUs that exist between them should be scrapped or at the very least reevaluated.

I urge you to do what needs to be done to help these small businesses free themselves of their paper shackles.

Thank you once again for allowing me to testify today, and I look forward to any questions that you might have.

Mr. OSE. Thank you, Mr. Langer.

[The prepared statement of Mr. Langer follows:]

Testimony before the United States Congress on behalf of the

Testimony of

Andrew M. Langer
Manager, Regulatory Policy

before a joint hearing of

The House Government Reform Committee
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
and
The House Small Business Committee
Subcommittee on Regulatory Reform and Oversight

on the date of

January 28, 2004

on the subject of

Small Business Paperwork Burdens and Relief

Chairman Ose, Chairman Schrock, and members of the Government Reform and Small Business Committees:

On behalf of the 600,000 small-business owners represented by the National Federation of Independent Business, I would like to thank you for the opportunity to appear before you to discuss the paperwork burden imposed by the federal government on our members, and small businesses in general.

NFIB represents small employers who typically have about five employees and report gross sales of around $350,000 per year. Our average member nets $40,000 to $50,000 annually. As I have testified before, we believe it is important to distinguish the type and size of businesses NFIB represents. Too often, federal policy makers view the business community as a monolithic enterprise that is capable of passing taxes and regulatory costs onto consumers, without suffering negative consequences. For small business, this is not the case. NFIB members are not publicly traded corporations; they are independently owned and operated. They do not have payroll departments, tax departments or attorneys on staff.

Being a small business owner means, more times than not, you are responsible for everything (ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments). That is why simple government regulations, particularly when it comes to the paperwork they generate, are so important. The less time our members spend with "government overhead," the more they can spend growing their business and employing more people.

As I have said before, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change. A report commissioned by the Small Business Administration's Office of Advocacy estimates that the regulatory compliance costs for firms with fewer than 20 employees is nearly $7,000 per employee, per year.[1]

This means that for one of NFIB's average members, with five employees, those costs total approximately $35,000. For a business operating on a shoestring, such costs can be devastating.

Today, I would like to discuss a recent survey conducted by NFIB's Research Foundation regarding Paperwork and Recordkeeping, a survey which is attached as an appendix to this testimony. The NFIB Research Foundation is a non-profit 501(c)(3) organization,

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[1] Report for the SBA Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, Crain and Hopkins, 2001 (http://www.sba.gov/advo/research/rs207tot.pdf)

and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion, and the overall theme of this testimony is that the best thing for small businesses is ***simplicity***—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them, and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below), as well as our sampling survey of NFIB members who might be faced with reporting requirements under the Toxics Release Inventory (TRI, also discussed below).

Measuring the Burden: The NFIB Research Foundation's Recent Polling on Paperwork Costs

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly $50 per hour. In addition, the following conclusions were reached[2]:

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners most frequently handle paperwork and record-keeping related to licenses and permits (55% of firms), purchases (46%), and clients/customers (46%). They least frequently deal with financial (27%) and tax (12%) records. Three of four have someone (another firm) outside handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases. (And, as is discussed below, in the case of TRI reporting, owners do it more often themselves, or use consultants).

2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher. (This confirms the findings of the informal survey above).

3. The estimated average per hour cost of paperwork and record-keeping for small businesses is $48.72. By subject matter the average per hour cost is: $74.24 for tax-related, $62.16 for financial, $47.96 for licenses and permits, $43.50 for government information requests, $42.95 for customers/clients, $40.75 for

[2] NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf

personnel, $39.27 for purchases, and $36.20 for maintenance (buildings, machines, or vehicles).

4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.

5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29%). The second most frequently cited difficulty is the volume of paperwork (24%). Duplicate information requests (11%) place third, followed by maintenance of records that ordinarily would not be kept (10%) and requests for inaccessible or non-existent information (9%). Twenty (20) percent could not decide.

Computerization has had a positive impact on the paperwork burden of small business owners and will continue to do so. Unfortunately, technology alone cannot alleviate the paperwork. More than filing information request (demand) forms and storing copies, paperwork requirements involve understanding the information needed and the form in which it is required, acquiring the necessary information and organizing it in a useful way, determining what to keep and for how long, etc. And, then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. People must organize and input the necessary data, and people are expensive.

However, I do believe that the Business Compliance One-Stop program undertaken by the Small Business Administration is a good step towards alleviating the problem using computers. That program, also known as BCOS, would allow small-business owners to input simple data regarding their businesses, and they would immediately receive all of the information necessary to fulfill their regulatory burdens. It is an ambitious program, but one that ought to be supported fully by Congress.

As to the issue of paperwork costs associated with tax preparation, it has been recognized by both Chairmen in the past that the requirements levied by the Internal Revenue Service represent a significant portion of the burden faced by small businesses. Currently, the IRS has no mandate to reduce paperwork burdens, as there exists a Memorandum of Understanding between IRS and the OMB regarding the application of SBREFA to the tax collecting agency. The Department of the Treasury hasn't designated a single point of contact on paperwork, nor has it completed the required reporting on enforcement of paperwork reduction laws.

In order to take a significant bite at the paperwork apple, some oversight must be made regarding the burdens levied by the IRS. The MOU ought to be examined, and there ought to be a reconsideration of the current policy agreements between OMB and the IRS. Tax paperwork costs nearly $75 per hour and small businesses can ill-afford to have such resources siphoned off. Some consideration should be given to new legislation

aimed at holding the IRS accountable to paperwork reduction laws already applying to other agencies.

A Specific Paperwork Example: Lead TRI

The paperwork associated with the TRI for lead and lead compounds illustrates the frustration small-business owners face with overly complicated and burdensome paperwork. NFIB initially cautioned EPA on their bringing the reporting threshold down from 10,000 pounds to 100 pounds, as we believed it to be wholly unnecessary, overly burdensome, and not conducive to bringing to EPA (and the public) the data necessary for a complete inventory of toxics releases. It was the execution of the lead TRI initiative itself which was problematic: EPA underestimated the burden imposed by the new paperwork; they created guidance documents which were confusing and unhelpful; and several of their suggestions on burden reduction would have, in fact, increased burdens.

The Burden of the Rule

In comments NFIB filed with the Office of Information and Regulatory Affairs, we said:

> We believe [the regulations governing filing for lead under TRI] to be in violation of agency guidances enacted under the auspices of the 1996 Small Business Regulatory Enforcement Fairness Act. Specifically, that the EPA came to faulty conclusions in its findings that the new standards would not have a significant economic impact on a substantial number of small entities (SEISNSE). Because of the onerous burdens being placed on small businesses, we have requested that the EPA defer implementing this rule for one year. However, the EPA continues to press forward with the implementation of this requirement... In the end, NFIB believes it has been demonstrated that had the EPA used the analytic approach followed by the GAO when that agency reviewed this rule, using the discretion allowed under the Regulatory Flexibility Act, EPA could have chosen not to certify it.[3]

The Guidance Documents

NFIB has also repeatedly asked in meetings with EPA senior staff for an overhaul of the guidance documents associated with reporting for lead. The guidance documents are needlessly confusing, and must be simplified in order for small entities to be certain what their requirements are. We have suggested a detailed index at the beginning of the document, pointing filers to the appropriate sections in order to give them the precise instructions necessary to properly complete the forms. Also, a "frequently asked questions" or FAQ section would be helpful.

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[3] Comments of NFIB to OMB Office of Information and Regulatory Affairs, Draft Report to Congress on Costs and Benefits of Regulation, 05-23-03, p.3

Burden Reduction Solutions Offered By EPA

In September 2003, the NFIB Legal Foundation commented specifically on issues related to TRI Form R and burden reduction, saying the following:

> We urge EPA to carefully consider concerns raised by small-business stakeholders regarding the reporting burden of Form R. Although EPA claims modifications to Form R will make the reporting task easier for small businesses, serious flaws exist in the current burden reduction proposals...EPA proposes changes to the TRI Form R to allegedly simplify its current structure. Of the 67 "changes" to Section II of Form R, 59 concern previously collected data elements that have been merely rearranged, four new elements represent a subset of a single previous data element, and four elements are simply new sums of previous elements with no additional burden estimated for the need to read the instructions. Although EPA acknowledges that modifications to Form R may prompt some increase in unit reporting burden as facilities become familiar with the new reporting format, it claims the increase should be offset because the modifications are related to presentation of data that has already been compiled by the reporting facility.[4]

The Legal Foundation went on to say:

> EPA's proposed changes to the format of Form R do not afford small businesses a genuine burden reduction. The proposed changes would increase the length of the form and require more detailed breakdowns of quantitative data. Facilities would need additional time to read the new instructions and perform more detailed breakdowns of various quantities. This is valuable time that small-business owners must spend away from the operation of their businesses. EPA does not factor into burden reduction calculations the time required for annual training necessary to comply with new formatting changes.[5]

Similarly, allied organizations have also been vocal about their concerns with the burden imposed by the TRI. In comments to the EPA in September, IPC—The Association Connecting Electronics Industries, said that the agency had failed to: "Substantiate its claim that the TRI reporting burden has been significantly reduced,"[6] and that:

- EPA relied on inadequate and inappropriate survey data to support its contention that the TRI Form R burden is lower than previously estimated.
- EPA's burden estimates fail to account for the substantial increase in TRI burden related to the requirements for reporting lead and other PBT chemicals.
- EPA's burden estimates do not reflect the difficulty of complying with an increasingly complex TRI program. EPA's frequent regulatory and

[4] Comments of NFIB Legal Foundation to EPA, 09-02-03, p.2
[5] Id. at 3
[6] Comments of IPC to EPA, 09-02-03, p.1

> interpretive changes often result in an increase in burden imposed on the reporting community. Each year repeat filers must conduct familiarization and training needed to comply with new directions, interpretations and guidance, as well as adjust their compliance determination and Form R calculations to conform to the new requirements. Many of these changes are de-facto rulemaking that is conducted without public input or an analysis of the economic impact and cost-benefit. [7]

Furthermore, IPC said that EPA had failed to, "Fulfill its commitments under the Paperwork Reduction Act (PRA) to reduce reporting burdens, especially as they pertain to small businesses."[8]

The Office of Advocacy at the Small Business Administration (hereafter "Advocacy") has also been vocal in their concern about TRI impacts:

> During the prior ICR review, EPA did not adequately address the issue of raising the total reportable amount threshold from 500 to 5,000 pounds (alternatively to 1,000 or 2,000 pounds) or the alternate threshold from 1 million to 10 million pounds. The agency stated that any expansion of the Form A eligibility could be inconsistent with the legal requirement that any revised reporting scheme must address the "substantial majority" of releases subject to the original reporting requirements. The agency appears to have overlooked the EPA's 1994 legal interpretation that certifications in Form A automatically ensure that the substantial majority requirement is being met, because the certification itself provides the information through range reporting (also allowed in Form R itself)... Advocacy believes EPA can meet the "substantial majority" requirement through any certification statement, as long as it retains a certification requirement which serves as a form of range reporting,"[9]

Clearly, serious concerns have been voiced in the past regarding what ought to be done to reduce the TRI reporting burden.

Reduced Burden Estimates, But No Real Burden Reduction

NFIB believes that EPA has consistently underestimated the burden associated with completion of paperwork under TRI. The data EPA has relied upon is extremely limited and non-representative, and thus drastically reduces the estimated burden of completing TRI documentation. EPA then relies upon faulty methodology and flawed assumptions to justify the burden reduction.

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[7] Id.
[8] Id.
[9] Letter to Kimberly Nelson from Tom Sullivan, 09-02-03, http://www.sba.gov/advo/laws/comments/epa03_0902.html

For instance, the EPA has done a number of surveys of the burdens associated with filing under TRI, but the conclusions of those surveys have been neither analyzed nor validated. In its "Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory" (Burden Analysis),[10] EPA states that:

> The existing burden estimates for subsequent year compliance determination, Form R calculations and form completion, and recordkeeping/mailing are above the 95th percentile of per form burden reported by actual TRI respondents.

There are serious problems with the validity of this statement. EPA's own documents state that sample size is inadequate and that concerns exist regarding the data's potential to "not accurately represent the universe of reporting facilities." EPA has neglected to perform even basic statistical analysis of the sample such as measures of variability, confidence level, and sample size adjustments.

Furthermore, many of the underlying assumptions regarding business are invalid:

Staff Turnover Burden Assumptions

EPA's burden estimates do not address the fact that staff turnover, experienced by all businesses (especially small businesses), and government agencies such as EPA, requires new employees to become familiar with TRI requirements, even when there are no new regulations. EPA's response to comments for the previous ICR[11] implies that companies have caused this problem by assigning TRI work to "newer, less experienced staff with lower wages." EPA implies that no turnover occurs among experienced, more highly paid staff, a clearly erroneous assumption.

Assumptions Regarding Better Information Leading to Reduced Burden

In the burden analysis,[12] EPA inappropriately assumes a reduction in compliance burden has occurred due to "changes in the availability of information to facility staff." In actuality, the increased availability of information has increased the reporting burden as staff must review the additional information and perform additional calculations in order to comply with the stationary requirement to use available information.

EPA goes on to state, "These sources include information on product composition and impurities from suppliers…" This explanation is also flawed, as it fails to account for the unavailability of information regarding de-minimis concentrations of PBTs for which reporting is required, but supplier notification is not required.

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[10] Estimates of Burden Hours for Economic Analyses of The Toxics Release Inventory Program, Cody Rice, Analytical Support Branch, Environmental Analysis Division, Office of Environmental Information, US EPA, 09-10-02 (Rice Estimates)

[11] Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

[12] Rice Estimates

EPA also cites "...improved and detailed guidance from EPA and trade associations" as an explanation for decreased reporting burdens. As a matter of fact, EPA has published a significant number of rather lengthy guidance documents. For example, the compliance guide for lead reporting is over 200 pages. The 1998 Questions and Answers document, which is referenced in the lead compliance guide, is over 300 pages. Not to mention over a dozen other chemical specific guides and another dozen industry specific guides. The time required to read these guides in order to responsibly complete TRI forms results in significant additional burdens.

EPA further cites, "emissions factors provided by EPA" as contributing to decreased reporting burden. In fact, these emissions factors are extremely limited. Emissions factors presented in the lead compliance guide are mostly air emissions from AP-42. Most industry sectors have not been provided emissions factors of any type.

Flawed Extrapolation of Reporting Patterns

EPA has incorrectly assumed that the current reporting pattern will be replicated in future reporting years. EPA states, "...for the 2000 reporting year, over 60 percent of Form Rs reported releases to a single medium," as a justification for lowering reporting burden estimates based on multi-media reporting. In fact, the promulgation of lowered reporting thresholds for PBTs will require all releases, however minute or de-minimis, to be reported. Thus many more facilities are likely to report small amounts of PBT materials in several different media that were previously not required to be reported. In this changing reporting climate, it would be unwise for EPA to extrapolate single media reporting which occurred under a far different set of regulatory requirements.

Overestimated Benefit of TRI-ME

EPA has also overestimated the value of TRI-ME software. EPA asserts a 25% reduction in burden due to the use of TRI-ME.[13] This extraordinary savings is based on data collected from a, "small sample of facilities that used TRI-ME for the 2000 reporting year as part of a pilot process." It is unclear what statistically valid methodology EPA used to extrapolate this small sample to the entire TRI Universe. In EPA's recent stakeholder dialog on TRI, less than 1/3 of those commenting on TRI-ME found it to be helpful or easy to use. Of those that supported TRI-Me, 75% felt improvements were needed.

Reliance on API Filings in Estimating Burden Reduction

It has come to our attention that the EPA is relying on filings by the American Petroleum Institute (API) in estimating reduced burdens for filers. This is an inherently flawed

[13] Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.06-13-03, pg. 84.

approach. There are very few small entities contained within the API's membership, and small entities (as we will discuss below) are inherently different. This was borne out by recent research conducted by Drs. Crain and Hopkins on behalf of Advocacy. In their research, they discovered that regulatory compliance costs are highest for small firms, especially those under 20 employees. In those instances, costs jump up by at least a third.[14]

Small firms do not have the professional expertise that large firms like those represented by API are able to hire, and they similarly have difficulty hiring outside consultants to assist them in preparation. It is because of these and other reasons that we believe it is faulty to use API's information to determine burden reduction, especially when it comes to small firms.

NFIB's Survey of TRI Participants Among NFIB Members

Because quality data on the actual impact of the TRI program on small businesses is hard to come by, NFIB, the NFIB Legal Foundation and the NFIB Research Foundation conducted an informal survey of our membership. A survey on TRI paperwork was sent to small businesses across industry sectors (including manufacturing, retail, and construction), asking them about their familiarity with the TRI program, the number of chemicals they report on, who fills out the paperwork, and the time and costs involved.

Our survey generally confirmed the conclusions of our small business paperwork impact poll, discussed above. Consistent in the responses of our members was a concern over the complexity of the regulations—our members want to do the right thing, but find themselves hamstrung by having to spend time and energy figuring out just what it is that the government wants.

There were about 50 useable responses to the five-question Research Foundation survey. Respondents were limited to firms with 10 or more employees.

Highlights:

1. One quarter of respondents reported that complying with TRI regulations cost more than $1000 per year. Frequently the paperwork was filled out by consultants charging between $100 and $250 per hour, and required more than 80 hours to complete. (The range of costs in this group varied from $1,000 to over $20,000). For a small firm with few profits, this is an excessive burden.

2. The number of chemicals being reported under TRI for the "high cost" group was surprisingly small, generally fewer than 5 separate chemicals being reported on for each filer. These chemicals included ammonia compounds, styrene, nickel, methylene chloride, nitrates, dioxin, chromium and sodium hydroxide.

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[14] Crain and Hopkins, *Impact of Regulatory Costs on Small Business, http://www.sba.gov/advo/research/rs207tot.pdf*

3. Who fills out TRI paperwork? From our informal survey:

Business owners: 38 percent of the time--time valued at about $50/hour
An employee: 23 percent of the time-time valued at $30/hr-$40hr
Consultants: 17 percent of the time—time valued at $100/hr to $250/hr

4. Compared to the nationally-representative NFIB Paperwork and Record-keeping Poll described above, due to the complexity of the TRI requirements, more business owners themselves (as opposed to employees of the business) fill out TRI paperwork than is generally the case with government paperwork. This means that a) TRI paperwork is more of a financial burden to those responding than other regulations, and b) TRI rules are more likely to take business owners away from their businesses than other regulations. Clearly simplification is necessary.

5. The distribution of the respondents was bi-modal. That is, the most expensive compliance costs frequently involved only one or two chemicals or metals—as the situation is with many small businesses. It would clearly be in the best interests of these small entities and the EPA to investigate the practices used (via focus groups) to expand the cost saving techniques practiced by owners who comply at lower costs.

6. Perhaps the most interesting response from the informal survey was from the business owner who reported that he did not have to comply with TRI filing, but he had to spend "17-40 hours to make sure." Clearly, the EPA needs to use better and more succinct executive summaries in the guidance documents to enable business owners to ascertain relatively quickly whether compliance is in fact required. All of this searching process (at about $50 per hour) is another added cost of perhaps $1000 (20 hours at $50 per hour) to a small business owner.

Specific Recommendations on TRI Burden Reduction

Over the course of its involvement with the TRI Issue, NFIB had made recommendations on how EPA could best minimize the impact of the TRI paperwork burden on small business while still preserving its ability to offer information on chemicals within communities. Though one single recommendation might be best, unfortunately a "one-size fits all" approach will not work here. Therefore, we offer three different approaches for you to consider, hopefully together. Again, the operative theme here is simplicity: the reduction of time and effort necessary to present accurate and helpful data in order to comply with the regulations.

Certification for No Significant Change (Form NS)

The first, and simplest, option is to allow TRI reporters to file a certification of No Substantial Revision (Form NS) from a baseline Form R filing. This option would be open to both PBT and non-PBT reporters who qualify.

In its September letter, Advocacy estimated "that the Form NS would provide burden relief for at least 50% of all reports in a given year, without any significant diminution of the right-to-know information, versus 26% of non-PBT reports currently eligible for Form A reporting." They went on to say the following:

> Even expanding the Form A eligibility threshold to 5000 pounds of reportable waste would only offer relief to 40% of non-PBT reporters. This option would provide relief to a wide range of PBT and non-PBT reporters over and above the relief provided by Form A since use of Form NS would relieve reporters from reportable amount calculations (addition of Form R Sections 8.1 through 8.7) required for Form A.[15]

Under this scenario, a facility filing a Form R in the initial year would then file a Form NS for the following four years. In year five, the facility would once again be required to file Form R to re-establish the proper baseline. Advocacy anticipated that EPA would "utilize the baseline Form R as the placeholder for the Form NS in the TRI database until the next Form R is provided by the facility, so that the TRI data is preserved each year the Form NS is filed, with an indicator that the Form NS was filed in that reporting year, preserving the full right-to-know data for the public."[16]

This form could be used by any facility that does not modify its annual production by more than 10%, as well as not change any processes at the facility. For these facilities, the baseline Form R would be adequately representative of all the activities that would otherwise be reported on subsequent filings.

We believe, though, that a 10% change might be inappropriate for very small releases, Therefore, Form NS ought to also be used by any facility for which the total onsite releases (Form R Section 8.1 plus 8.8) are less than 100 pounds for non-PBT chemicals and 10 pounds for PBT chemicals (except dioxins) in both the base year and the new reporting year. This could also be limited to facilities that do not change any processes at the facility.

Overall, this approach garners significant burden reductions for small entities, and because small businesses face higher reporting costs per form than large firms, the use of the simple Form NS approach would allow each small firm to save more proportionally than large firms. Furthermore, since this option is designed to produce small business burden relief while preserving the integrity of important information, as Advocacy stated, "Form NS would not apply to the largest releases: onsite releases (Form R Sections 8.1 and 8.8) over 10,000 pounds annually. A 10% change in production for a large quantity releaser could be a significant change to the local community."[17]

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[15] Sullivan Letter
[16] Id.
[17] Id.

De-Minimis Exemptions

One concern among our allies is that a number of firms that employ legal expertise in-house might not feel comfortable with a Form NS. Therefore, there ought to be options that would minimize their burdens as well, beyond Form NS. Restoration of De-Minimis exemptions or exclusions would satisfy the reduction in burden, while satisfying legal concerns as well.

When talking about "Relief for Zero Reporters", Advocacy said the following:

> The rationale for removing the reporting requirement is that reports of zero releases provide no practical utility to data users. If data from this class of reporters is desired for purposes other than community right-to-know, a separate data collection request should be submitted to OMB for clearance....A good illustration of the severe justification for burden relief is the situation faced by the petroleum wholesalers in the 2001 reports. One major petroleum firm with 35 terminals filed 213 Form Rs, with 78 zero release reports (37% of the total), including 16 zero lead release reports. These were not simply zero releases onsite, but represented zero releases and zero total wastes.[18]

Expansion of Form A Use

The alternate threshold certification, otherwise known as Form A, is a significant burden reduction option of the TRI program. Unfortunately, EPA has in recent years, significantly decreased the proportion of facilities eligible for this lower burden form of reporting. EPA claims that it would be unable to meet the requirement of EPCRA were it to increase the applicability threshold for Form A, and cited Section 313(f) (2) which states that EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to EPCRA Section 313. To substantiate this claim, EPA referred to their response to OMB's January 18, 2001 Terms of Clearance notice for the ICR renewal of Form A.[19]

But we (and others) believe that EPA has misinterpreted its requirements under the Pollution Prevention Act (PPA).[20] In their response to comments for the previous ICR[21], EPA stated that Section 6607 of the PPA requires reporting of "the amount of the chemical from the facility which is recycled and the process of recycling used." Therefore, EPA concludes that quantities of toxic chemicals recycled by a facility must be included in TRI reporting. EPA does not, however, explain why materials reported

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[18] Id.
[19] EPA 1704.06, OMB 2070-01143.
[20] 42 USC 11071 to 11079.
[21] Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

under the PPA must be included in TRI threshold determinations. There is nothing in either EPCRA or the PPA that requires materials sent off-site for recycling to be included in TRI threshold determinations. Rather, EPA has misused quantities of *recycled* materials included on TRI reports, as per the PPA, to bolster its claims that raising the Form A thresholds would make EPA unable to meet its statutory requirements under EPCRA to capture the substantial majority of *releases*. EPA's supporting analysis exacerbates this error by lumping recycled materials in the general category of "releases." EPA's circular logic should not be permitted as a justification for not raising the Form A thresholds, nor should it be considered justification for not excluding recycled materials from TRI threshold determinations.

Advocacy had the following to say about expansion of Form A:

> By implementing the Enhanced Form A alongside an upward revision of the eligibility thresholds, EPA can accomplish significant burden reduction while increasing data quality over the Form A approach. Advocacy recommends that the Enhanced Form A be available for reporters of PBT chemicals with fewer than 50 pounds of total wastes. We describe below two alternative methods for establishing eligibility for the Enhanced Form A (based on either the current reportable amount, or total onsite release).
>
> The Enhanced Form A has the benefit of carrying burden reduction while substantially preserving the information currently reported by small reporters on Form R. The Enhanced Form A would preserve the practical utility of all reported data by allowing right-to-know users to easily assess the size of releases and waste activities without placing further undue burden on reporters that release insignificant amounts of chemical waste. Reporters would simply check the appropriate range box for each category of on- and offsite releases and each recycling, energy recovery, or transfer activity undertaken. Because those reports that qualify capture by definition small releases, the ranges provide sufficient information for data users. Furthermore, as noted above, range reporting is allowed on Form Rs under appropriate circumstances, thus range reporting in and of itself is not an impairment to data quality.[22]

Clearly, all three approaches have merit and ought to be considered.

Conclusion

The broad distribution across various possible answers to our poll suggests that there is no single paperwork problem. There are many problems and that implies the need for many solutions. The result is that paperwork and record-keeping continue to represent a major aggravation for small-business owners. But it is also a place where they can use sweat equity to save cash. When asked how much they would be willing to pay to have someone take over all the paperwork they must complete, 17 percent said nothing

[22] Sullivan Letter

and 5 percent indicated less than $10 per hour . Still, it is better to neither pay someone to handle paperwork nor to put in this type of sweat equity. That situation would occur if the demands for records were not made in the first place.

Paperwork, therefore, becomes particularly burdensome for those who do not have the resources to hire someone to do the paperwork for them. Among that group are people just starting businesses, those who could use the greatest asset they have, themselves, for higher purposes than completing and maintaining forms.

Simple, easy-to-understand requirements, and fewer of them, are what is key. Agencies that are currently reluctant to fulfill their paperwork reduction requirements must be made to do so. Their hesitation bleeds small businesses dry by diverting precious resources, both in the form of manpower and cash, away from doing their business to working for the federal government. Given the importance of small business job creation to economic health, it is never more important to address this issue than now.

NFIB appreciates the opportunity to comment on the possibility for reducing the paperwork burdens faced by small businesses. Clearly, paperwork represents a costly burden in terms of money spent on reporting, the time taken to fill out forms, and the overall drain on manpower in the process. It is our hope that some significant steps can be taken to reduce this burden, and that EPA and other agencies will adopt some of the recommendations suggested by NFIB. We believe that these suggestions address the issue of simplifying the burden, while still maintaining the integrity of information required by statute and regulation.

Thank you once again for the opportunity to testify on this important issue.

NFIB CORE VALUES

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

An informed, educated, concerned and involved public is the ultimate safeguard.

Members determine the public policy positions of the organization.

Our employees, collectively and individually, determine the success of the NFIB's endeavors, and each person has a valued contribution to make.

Honesty, integrity, and respect for human and spiritual values are important in all aspects of life, and are essential to a sustaining work environment.

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Paperwork and Record-keeping

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National Small Business Poll

Paperwork and Record-keeping

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Executive Summary

- The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners most frequently handle paperwork and record-keeping related to licenses and permits (55% of firms), purchases (46%), and clients/customers (46%). They least frequently deal with financial (27%) and tax (12%) records. Three of four have someone (another firm) outside handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 - 30 percent of firms. Employees are much more likely to do so in larger, small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases.

- The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger, small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time on average is higher.

- The estimated average per hour cost of paperwork and record-keeping for small businesses is $48.72. By subject matter the average per hour cost is: $74.24 for tax-related, $62.16 for financial, $47.96 for licenses and permits, $43.50 for government information requests, $42.95 for customers/clients, $40.75 for personnel, $39.27 for purchases, and $36.20 for maintenance (buildings, machines, or vehicles).

- The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.

- Increased computerization helps small-business owners cope with their paperwork and record-keeping responsibilities. Ninety-two (92) percent of small-business owners use one or more computers in their business. Fifty-eight (58) percent of users employ the Internet regularly for business purposes, and 57 percent of regular users have a high-speed connection.

- About half hold all types of records seven years or more, but two-thirds to three-quarters hold financial and tax records that long.

- Applicable records are typically destroyed in a manner that protects the privacy of individuals. However, between 15 to 20 percent of owners trash paper records (in contrast to shredding or burning them) and about one in four simply delete electronic records. Owners treat personally sensitive records in virtually the same manner that they treat those sensitive to others.

- No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29%). The second most frequently cited difficulty is the volume of paperwork (24%). Duplicate information requests (11%) place third, followed by maintenance of records that ordinarily would not be kept (10%) and requests for inaccessible or non-existent information (9%). Twenty (20) percent could not decide.

Paperwork and Record-keeping

A complex world demands increasing amounts of documentation and record-keeping. But, to small-business owners paperwork remains at best a necessary evil. Properly organized and maintained records often do protect them from misunderstandings — even accusations. They also can help better manage the business by substituting for institutional memory. Yet when generated for no apparent reason, duplicating other information requests, or accompanied by foolish and unproductive complexity, the necessary evil becomes a costly irritant. In fact, little agitates small-business owners more reflexively than the mention of paperwork. Relief from many of the worst excesses has fortunately emerged. The computer has helped small-business owners cope, and will offer increasing assistance over time. However, small-business owners fervently pray that the technology is more than a temporary respite, more than a brief pause in the burden created by the relentless growth in demand for records and documentation. Only time will tell if their prayers have been answered. Meanwhile, this issue of the *National Small Business Poll* addresses paperwork and record-keeping with an emphasis on that demanded by government.

Background

The survey on which this report is based focused on eight types (subjects) of common paperwork and record-keeping: personnel records, financial records, maintenance (equipment, vehicles, and building) records, licenses and permits, records of purchases, government information requests, customer or client records, and tax records. Half of the survey sample addressed four topical areas and the second half addressed the other four.

Most small businesses handle each type of record queried. All prepare and keep tax (Q#9) and financial (Q#3) records. Less than one percent do not keep records of their purchases (Q#6). However, as many as 15 percent do not hold maintenance records of any kind (Q#4); 9 percent do not file or keep (copies of) government requests for information (Q#7), 7 percent, do the same with licenses and permits (Q#5), 3 percent, have no personnel records (Q#2), and 2 percent, no customer/client records (Q#8).

The People Responsible

The person responsible for filling out paperwork and keeping records varies enormously by the subject matter of paperwork completed and the type of records kept. Owners are most likely to fill out the most routine paperwork needs themselves. For example, they handle the paperwork for licenses and permits 55 percent of the time (Q#5). They also frequently do the paperwork and record-keeping associated with purchases (46%) (Q#6) and customers/clients (46%)(Q#8). But small employers infrequently deal with "the books." Just 12 percent do their own tax paperwork and record-keeping (Q#9), though 31 percent take care of the firm's financial records (#Q3).

An employee or employees handle a major, but not dominant share of the paperwork and record-keeping responsibilities. They are most prominent in preparing and keeping maintenance records (56%)(Q#4). More typically, employees prepare and maintain personnel records in 27 percent of small businesses (Q#2) and fill government demands for information in 23 percent of firms (Q#7).

Employee size of firm has a significant association with the people responsible for paperwork. Many of the responsibilities assumed by employers in the smallest firms become the responsibility of employees in larger ones. For example, an employee or employees handle the maintenance paperwork and record-keeping in 17 percent of the businesses employing fewer than 10 people, but in 56 percent of the businesses employing 20 or more. The paperwork and record-keeping for licenses and permits show a similar pattern. In 15 percent of the smallest firms employees handle licenses and permits; in 50 percent of the largest they do.

Outside firms and/or individuals are employed from time to time to perform the paperwork and record-keeping function. But these outsiders dominate finance and taxes. Forty-three (43) percent have their financial record-keeping shipped outside the firm and 74 percent send their tax work out. Firm size differences that often characterize the individuals responsible for paperwork and record-keeping are non-existent in the former and modest in the latter. Outside contractors also do paperwork and record-keeping for government information requests in about one of four businesses (26%) and the personnel work in 18 percent of them.

The stereotypical unpaid family member does the paperwork and record-keeping in no more than 6 to 7 percent of firms, and much less often in the areas of finance and tax. They obviously contribute in individual firms. However, unpaid family members no longer are, if they ever were, involved in the firm's paperwork on a broad scale.

About 5 to 10 percent of small businesses use combinations of people and organizations, for example, owners and accounting firms, to handle their paperwork and record-keeping. This number varies little by subject matter.

The Personnel Cost

The cost of paperwork to the small firm is primarily a function of the number of hours spent times the dollar per hour cost of the personnel working on it. Other costs such as equipment or space for records storage are usually smaller. For small-business owners, the number of hours spent completing a particular type of paperwork and maintaining those records is very difficult to estimate. Cost per hour is easier, and so the survey had respondents focus on cost questions. Despite the fact that 20 - 30 percent usually believed that they could not provide a prudent estimate of hourly costs, the remainder provided reasonable and consistent estimates that are useful for several purposes.

The most transparent paperwork costs are the wages and benefits paid employees who complete and maintain records and the fees charged by outside firms that do the same thing. The two are not directly comparable, however, as the outsider fees include everything from equipment and space to supervision and management. Therefore, as expected, the per hour cost varies notably by the people who performed the services and the subject matter of the paperwork involved.

Small-business owners say that the most expensive help is for tax paperwork and records at an average of $83.69 per hour (Q#9a). The cost rises to an average of more than $100 per hour for those with firms employing 10 or more people. The second most expensive area is financial records at $74.20 per hour (Q#3a). The hourly cost drops substantially in all other areas: $52.43 for license and permits (Q#5a), $46.18 for government information requests (Q#7a), $42.75 for customer/client records (Q#8a), $31.06 personnel (Q#2a), $30.29 maintenance (Q#4a), and $25.90 for purchases (Q#6a). Observe that the costs for government requirements tend to be much higher per hour than they are for commercial functions.

Owners and unpaid family members also spend time on paperwork and record-keeping. The survey asked those who use unpaid family help to estimate the cost if they had to purchase those services in the open market. In other words, how much would it cost

if small-business owners had to hire someone to replace the unpaid family help. Since relatively few use them, the number making the estimate is small (n=57) and the results should be used cautiously. Still, the estimate of $24.87 per hour is reasonable, and is similar to the amount paid employees for doing similar work.

Estimating the hourly cost of the owner was addressed indirectly. The first step asked the policy question whether or not the government should reimburse small-business owners for dealing with the added paperwork and record-keeping it requires of a business. Respondents divided almost equally on the question (47% - 51%) with a few percentage points more in the negative (Q#1). A number of plausible interpretations could explain this rather surprising result. One explanation is that no one should be paid to do something that should not be done in the first place; a second is that record-keeping and information submission is a civic obligation that is just part of being a business owner. Whatever the reason, the question was used as a platform to have small-business owners estimate the cost of their time.

Those who responded that they should be paid to complete government paperwork were subsequently asked how much would be a fair per hour amount to claim for their time and effort. Owner responses were reasonable and consistent. The average per hour amount is $43.30 (Q#1a). The amount rises as the size of firm owned rises. Owners of businesses employing fewer than 10 people say that they should be reimbursed at $37.18 per hour, while owners of firms employing 20 people or more say their worth is $68.36 per hour.

Those who opposed the idea of reimbursement were asked to make a similar estimate assuming the decision was made to provide reimbursement. This group did not play along as well as the first as evidenced by the 12 percent who apparently would refuse to apply for reimbursement (Q#1b). Still, with the exception of those employing 20 or more people, the hourly estimates among those for and against reimbursement are remarkably close. The latter group's estimate is $40.72, just $2.48 lower than the former's. If those who responded "nothing" are eliminated, the average hourly estimate for those believing reimbursement inappropriate is $48.89, $5.59 higher than those who believe they should be reimbursed.

Hourly Cost of Paperwork

A weighted average of direct personnel paperwork costs by subject matter can be calculated by multiplying the percent completing a specific type of paperwork with the hourly cost of that person/firm, and totaling them. The problem with this approach is that the figure would include non-personnel costs when outsiders provide the services and only wages and benefits when provided by those associated with the business.

A review of the cost assigned outsiders compared to that assigned employees shows a ratio of about 2.3:1 for the four paperwork types that had enough cases of each to compare. Outsiders therefore cost a little over twice as much in direct outlays. A significant, but non-identifiable, part of that difference can be attributable to overhead costs in one and not the other; part likely can be attributed to outsider expertise; etc. Assuming (arguably) that about one-third of the differential or $10 per hour can be attributed directly to overhead and the remainder to other factors, and ignoring the often small number of cases in certain cells, calculations were run separating employees from outsiders and adding overhead to employees (effectively increasing the hourly cost of employees by between one-third and one-half), unpaid family, and owners to produce a more representative cost.

The data outlined above yield the average hourly cost for all paperwork and the average hourly paperwork cost for each of the eight topical areas investigated. Small-business owners spend, directly or indirectly, an average of $48.72 per hour on paperwork. The amount varies substantially by topic. Tax-related paperwork and record-keeping cost $74.24 per hour; financial, $62.16 per hour; licenses and permits, $47.96 per hour; government requests for information, $43.50 per hour; customer/client records, $42.95 per hour; personnel, $40.75 per hour; purchases, $39.27 per hour; and $36.20 per hour on maintenance paperwork and record-keeping.

Paper or Electronic

Pencil and paper has given way to keyboard and disk in many small businesses. Still, the old has hardly surrendered to the new. The typical small business today employs a blend of paper and electronic means to create, submit, and record documents and is likely to do so for a long time.

About two-thirds to three-quarters of small employers report that they use some combination of paper and electronic records in nearly every area of paperwork examined. Approximately, three times as many say that they use nothing but paper compared to those who are exclusively (or almost so) electronic. One notable exception to this general rule involves licenses and permits.

Licenses and permits are vastly more paper-oriented than the remainder of subject matter. Fifty-nine (59) percent of small-business owners say that they handle their licenses and permits and keep them exclusively in paper (Q#5b); 38 percent use a combination of paper and electronic and just 2 percent are totally electronic. Licenses and permits are issued by local and state government for the most part. Since this is the paperwork and record-keeping topic where electronic means has penetrated small business far less than any other, the inference is that these governments use computer technology less frequently in dealing with small-business entities than either the Federal government or the private sector.

The subject matter second most dependent on paper is maintenance, in all likelihood because so much of it is completed in the field and away from an office. Still, just 35 percent report that their maintenance paperwork is exclusively in paper (Q#4b); 56 percent is a combination, and 6 percent is electronic only.

The Internal Revenue Service (IRS) at the direction of the Congress is attempting to drive taxpayers, including small-business owners, to file electronically. Nineteen (19) percent of small-business owners report that their tax records are completed and maintained on paper (Q#9b); just 4 percent have them solely in electronic form; the remainder use a combination of paper and electronic. Still, tax records are the paperwork area where the second smallest percentage of small-business owners use paper exclusively. Pressing them to do more therefore appears to be for the convenience of the IRS, not the owners.

The smallest percentage using paper only is found among financial records; just 14 percent complete and keep their financial records on paper exclusively (Q#3b). However, financial records are no more likely to be only in electronic form than are most other types. The record type most frequently all-electronic, though only in 12 percent of firms, is customer/client records (Q#8b).

The use of electronic means to handle paperwork implies the use of computers and the Internet. Over the years, both have increasingly penetrated common practice in smaller firms. Today, 92 percent have one or more computers in their business (Q#13), up from 83 percent in 1999. Another two plus percent who do not have a computer in their business have one in their personal residence that they use for business purposes (Q#13d). Forty-two (42) percent of those who have one or more computers have stand alone PCs, 19 percent have a local area network, and 36 percent have both (Q#13a). Inter-connected computers are more likely to be found in larger, small firms than in smaller, small firms though the difference is less than might have been expected.

Ninety (90) percent of small-business owners with one or more business computers, or more than four in five small employers, are connected to the Internet (Q#13b). More importantly, 58 percent claim to use the Internet regularly though not necessarily to transfer documents and records. The percentage rises to 72 percent in businesses employing 20 or more people. Service is increasingly high-speed. Of those who use the Internet regularly, 57 percent claim to have DSL or cable in contrast to 35 percent who report dial-up (Q#13c). At a minimum, therefore, 25 to 30 percent of all small businesses subscribe to high speed Internet service and the number is undoubtedly somewhat higher.

Maintaining Records

Two major issues in records maintenance are the length of time records are kept (needed) and their accessibility when not in immediate use. A third maintenance issue, destruction of records, will be discussed later.

a. Holding Records

Small-business owners keep their records for long periods on average. About half keep their records on any topic seven years or more. But there is a significant variation both from owner to owner and from subject matter to subject matter. Meaningful averages cannot be calculated because so many either keep their records indefinitely which can also mean a long time or forever, or they could not be specific such as it depends, no schedule for disposal, or they are pitched periodically.

An examination of the way owners treat personnel records is illustrative: just 2 percent dispose of personnel records upon an employee's termination (Q#2c). Another 11 percent get rid of them within two years. But half (49%) keep personnel records seven years or more. Maintenance records offer a similar perspective, though a larger proportion dispose of maintenance records sooner. Ten (10) percent hold them two years or less (Q#4c). Still, half (51%) keep them seven years or longer.

The records most quickly pitched are expired licenses and permits. Twenty-three (23) percent dispose of them within two years (Q#5c). Again, half (51%) keep them seven years or more. Small-business owners also keep customer and client records comparatively briefly.

Tax and financial records are held longest. No one gets rid of tax records in less than two years while 65 percent of small employers retain tax records seven years or more (Q#9c). It is widely believed that old tax records should be kept for a minimum of seven years. But that perception is not necessarily accurate. A shorter period is usually sufficient. Still, small-business owners appear to be playing it safe, consciously or not.

Owners appear to keep financial records even longer than tax records. Yet, the reasonably close relationship between financial and tax records is expected as the two are effectively tied. Seventy-four (74) percent hold their financial records seven or more years (Q#3c). Just two percent say that they dispose of them in two years or less.

b. Accessing Records

Government (or others) can request information and/or records that are faithfully retained, but access to those records can make compliance with seemingly simple requests very difficult. Access can be more or less easy depending on how well files are labeled and organized, and where they are stored. The survey probed storage since organization of files could not be assessed.

Records can be housed where they are readily accessible, such as in files or on shelves; they can be stored on-site, such as in a closet, attic, or basement; or they can be stored off-site. About 40 percent of small-business owners believe that their records are immediately accessible for most types of paperwork held - even two years after they are current. Forty-one (41) percent say that a two-year-old financial record is immediately accessible (Q#3d); 37 percent say the same about maintenance records (Q#4d); 40 percent believe licenses and permits are immediately accessible two years after they have expired (Q#5d); 40 percent believe the same about records of purchases (Q#6d); and, tax records are immediately accessible in 43 percent of cases (Q#9d).

Comparatively few small-business owners choose to store their records off-site, the place that seems to offer them least access. Two years after records are current, between 10 and 15 percent of small-business owners house records from all subject matters off-site. An exception is tax records. Twenty (20) percent store their tax records off-site, most likely under the control of the individual or organization preparing the tax filing. Twenty (20) percent also store records of government requests for information off-site, though the reason for such action on this particular type of record is not obvious (Q#7d).

The type of paperwork and record most closely held, at least in the two years after they are current, is customer/client information. Forty-eight (48) percent have old customer/client records immediately accessible while just 12 percent have them off-site (Q#8d). In contrast, personnel records are least accessible. Just 28 percent of small-business owners have them immediately accessible and 15 percent have them stored off-site (Q#2d). These choices reflect both priorities and personal interests.

Records Destruction and Privacy

Most records will be destroyed at some point even when small-business owners claim that they intend to keep them indefinitely or for a long time. Destruction of records would be of little interest except that if not disposed of properly, privacy issues could arise. The possibility of mishandling documents during their disposal, and hence revealing private information, may be remote, but the potential for suits and violation of laws remain. All types of records do not possess latent problems however, just those types of records that could reveal private information about employees and customers. Thus, the survey only asked questions about destruction of personnel records and customer/client information to be contrasted with the disposal procedures used for information sensitive only to owners.

The most common way to dispose of paper records is to shred them. Sixty (60) percent who have paper records say that they shred personnel records and 7 percent burn them (Q#2e) while 52 percent say that they shred customer/client records and 7 percent burn them (Q#8e). In contrast, 58 percent say that they shred financial records and 7 percent burn them (Q#3e) while 46 percent shred their tax records and 8 percent burn them (Q#9e). Though about 10 percent more are likely to claim that they never dispose of tax records than other types, small-business owners use the least problematic methods to dispose of records with their privacy interests in the same proportions and same manners as records with privacy interest for their employees and their customers.

The most problematic way to dispose of such records is to trash them. Sixteen (16) to 17 percent trash personnel, financial, and tax records. But 28 percent trash customer/client records. Customer/client records range from such sensitive material as medical and personal financial records to Christmas card lists. All customer/client information, therefore, may not have privacy implications. Regardless, a relatively small, but notable, number of small-business owners may employ questionable records disposal policies.

Increasingly, records are held electronically on disk. Respondents opted from among three choices to describe the way they dispose of electronic records. The most satisfactory is either to destroy them or to reformat the disk. Twenty-one (21) percent with electronic records use that option with personnel records while 13 percent retain them (Q#2f). But only 13 percent destroy the disk or reformat it with customer/client records on it while 15 percent retain them (Q#8f). Deleting the files and emptying the recycle bin (in Microsoft) is another satisfactory method. This procedure is employed by 28 percent for the former and 25 percent for the latter. That leaves about one in four who merely delete both types of records. While generally sufficient, simply deleting records may be inadequate when pitted against a snooper with considerable computer skills. Thus, records disposed of by just deleting them leaves the small-business owner in potential jeopardy.

Somewhat less than one in ten claim to dispose of their electronic records in another manner, but the manner is unspecified.

Small-business owners appear to treat the records that are sensitive to them in much the same manner as records that are sensitive to employees and customers/clients. Twenty-two (22) percent simply delete their tax records (and don't empty the recycle bin) (Q#9f) while 18 percent do so with financial records (Q#3f). They are also more reluctant to discuss disposal of these records as evidenced by the greater non-response, particularly regarding tax records.

Finally, a question was posed regarding security and access for both personnel and customer/client records. Eighty-six (86) percent of small-business owners, and 98 percent of those employing 20 or more people, say that they secure personnel records and limit access to them (Q#2g). Eighty-nine (89) percent say that they secure and limit access to customer/client records, though no difference appears by size of firm (Q#8g).

The Problem with Government Paperwork

Small-business owners levy a constant barrage of complaints about government paperwork. An appropriate response to those complaints is a request for specifics. What is the problem?

The aspect of government paperwork more difficult for more owners than any other is not even paperwork per se. Rather,

it is the clarity of the instructions and understanding what the public official wants in response. Twenty-nine (29) percent say that the instructions are the most difficult part of the government paperwork problem (Q#12). Those owning the smallest firms are most likely to register this criticism.

The second most frequent complaint is the volume of paperwork to be completed and submitted. Twenty-four (24) percent identify the volume problem which increases to 36 percent for those employing 20 people or more. Eleven (11) percent point out duplicate requests for the same information as their prime concern. Another 10 percent report maintenance of records that they ordinarily would not keep as theirs. Fewest (7%) cite requests for information that they do not have or is not accessible. Almost 20 percent have another paperwork problem or cannot decide among them.

The broad distribution across various possible answers suggests that there is no single paperwork problem. There are many problems and that implies the need for many solutions.

Final Comments

Computerization has had a positive impact on the paperwork burden of small-business owners and will continue to do so. Unfortunately, the paperwork burden is not a burden that can be entirely alleviated by this technology. Paperwork and record-keeping involve considerably more than filing information request (demand) forms and storing copies. It involves understanding the information needed and the form in which it is required, acquiring the necessary information and organizing it in a useful way, determining what to keep and for how long, etc. And, then there is the cost. Even with the most efficient computer equipment, documentation is not cheap. It requires people to organize and input the necessary data, and people are expensive.

The result is that paperwork and record-keeping continue to represent a major aggravation for small-business owners. But it is also a place where they can use sweat equity to save cash. When asked how much they would be willing to pay to have someone take over all the paperwork they must complete, 17 percent said nothing and 5 percent indicated less than $10 per hour (Q#11). Still, it is better to neither pay someone to handle paperwork nor to put in this type of sweat equity. That situation would occur if the demands for records were not made in the first place. Paperwork, therefore, becomes particularly burdensome for those who do not have the resources to hire someone to do the paperwork for them. Among that group are people just starting businesses, those who could use the greatest asset they have, themselves, for higher purposes than completing and maintaining forms.

Paperwork and Record-keeping

(Please review notes at the table's end.)

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
1. Do you think government should compensate you for dealing with the added paperwork and record-keeping it requires of your business?				
1. Yes	45.1%	53.5%	52.6%	46.7%
2. No	52.7	46.5	46.2	51.4
3. (DK/Refuse)	1.2	—	1.3	0.4
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
1a. What do you think would be a fair per hour amount to claim for your time and efforts? (If "Yes" in Q#1.)				
1. <$10 per hour	7.1%	4.4%	4.9%	6.5%
2. $10 - 19 per hour	21.9	17.8	22.0	21.4
3. $20 - 29 per hour	23.0	24.4	19.5	22.8
4. $30 - 49 per hour	11.3	4.4	7.3	10.0
5. $50 - 99 per hour	11.3	15.6	19.5	12.7
6. $100 per hour or more	7.8	15.6	14.6	9.5
7. (DK/Refuse)	17.7	17.8	12.2	17.1
Total	100.0%	100.0%	100.0%	100.0%
N	180	164	175	383
Ave.	$37.18	$57.71	$68.36	$43.30
1b. If the decision were made to reimburse you, what do you think would be a fair per hour amount to claim for your time and effort? (If "No" in Q#1.)				
1. Nothing	12.6%	10.0%	13.2%	12.4%
2. <$10 per hour	2.9	2.5	2.6	2.8
3. $10 - 19 per hour	17.4	15.0	15.8	17.1
4. $20 - 29 per hour	13.7	22.5	18.4	15.0
5. $30 - 49 per hour	6.0	12.5	2.6	6.3
6. $50 - 99 per hour	14.6	7.5	13.2	8.2
7. $100 per hour or more	7.1	12.5	13.2	8.2
8. (DK/Refuse)	25.7	17.5	21.1	24.5
Total	100.0%	100.0%	100.0%	100.0%
N	163	105	105	373
Ave.	$38.54	$55.20	$43.92	$40.72

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

2. Who does your business's personnel paperwork and record-keeping? Is it:

1. You	42.9%	28.6%	21.4%	39.3%
2. An unpaid family member	8.1	2.4	—	6.7
3. An employee or employees	20.4	45.2	57.1	26.6
4. An outside firm or individuals	18.9	11.9	11.9	17.5
5. (Combinations of people/firms)	5.4	11.9	9.5	6.5
6. (Do not keep that kind of record)	3.6	—	—	2.9
7. (DK/Refuse)	0.6	—	—	0.5
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394

2a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#2.)

1. <$10 per hour	10.2%	5.3%	—%	8.2%
2. $10 - 19 per hour	30.7	31.6	32.0	31.0
3. $20 - 29 per hour	11.8	36.9	28.0	17.0
4. $30 - 49 per hour	7.9	10.5	12.0	8.8
5. $50 - 99 per hour	15.0	—	8.0	12.3
6. $100 or more per hour	1.6	5.3	4.0	2.3
7. (DK/Refuse)	22.8	10.3	16.0	10.5
Total	100.0%	100.0%	100.0%	100.0%
N	65	54	72	190
Ave.	$28.07	$27.64	$46.45	$31.06

2b. Are the business's personnel records kept on paper, electronically, or both? (If keep personnel records in Q#2.)

1. Paper	25.5%	19.0%	16.3%	23.9%
2. Electronically	9.7	7.1	4.7	8.9
3. Both	64.2	73.8	79.1	66.7
4. (DK/Refuse)	0.6	—	—	0.5
Total	100.0%	100.0%	100.0%	100.0%
N	178	100	106	384

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

2c. After an employee leaves, how long do you keep those records before getting rid of them?

1. Upon termination	2.8%	—%	—%	2.3%
2. 2 years or less	11.5	7.1	12.2	11.1
3. 3 - 6 years	23.2	24.7	31.2	24.3
4. 7 years or more	21.6	32.4	24.9	23.0
5. Indefinitely	25.5	31.0	26.8	26.2
6. (Other, depends, periodically toss, etc.)	2.2	2.4	—	2.0
7. (DK/Refuse)	13.1	2.4	4.9	11.1
Total	100.0%	100.0%	100.0%	100.0%
N	178	100	106	384

2d. Two years after an employee leaves, how accessible are their records? Are they:? (If kept 2 years or more in Q#2c.)

1. Immediately accessible	27.9%	32.5%	20.5%	27.6%
2. Stored on-site	50.0	55.0	59.0	51.5
3. Stored off-site	15.3	12.5	17.9	15.3
4. (Gone, disposed off)	0.7	—	—	0.5
5. (DK/Refuse)	6.1	—	2.6	5.1
Total	100.0%	100.0%	100.0%	100.0%
N	163	98	97	358

2e. How do you dispose of personnel records that are on paper? Do you:? (If "Paper" or "Both" in Q#2b.)

1. Trash them	14.9%	18.4%	17.5%	15.6%
2. Burn them	7.3	10.5	5.0	7.4
3. Shred them	61.1	50.0	62.5	60.1
4. (Other)	1.7	10.5	2.5	2.7
5. (Don't dispose of)	5.6	—	2.5	4.6
6. (DK/Refuse)	9.4	10.5	10.0	9.6
Total	100.0%	100.0%	100.0%	100.0%
N	161	93	102	356

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
2f. How do you dispose of electronic personnel records? Do you:? (If "Electronically" or "Both" in Q#2b.)				
1. Delete them	24.5%	18.8%	22.2%	23.6%
2. Delete them and empty the recycle bin	28.3	28.1	25.0	27.9
3. Destroy or reformat the disk	19.4	21.9	27.8	20.7
4. (Other)	3.8	12.5	—	4.3
5. (Don't Dispose of)	11.8	12.5	16.7	12.5
6. (DK/Refuse)	12.2	6.3	8.3	11.1
Total	100.0%	100.0%	100.0%	100.0%
N	132	80	89	301
2g. Do you secure and limit access to personnel records?				
1. Yes	83.8%	92.9%	97.6%	86.2%
2. No	13.7	7.1	2.4	11.9
3. (DK/Refuse)	2.5	—	—	1.9
Total	100.0%	100.0%	100.0%	100.0%
N	178	100	106	384
3. Who does your business's financial paperwork and record-keeping? Is it:				
1. You	29.3%	21.4%	9.8%	26.6%
2. An unpaid family member	3.6	—	—	2.9
3. An employee or employees	12.0	19.0	34.1	14.9
4. An outside firm or individuals	43.4	42.9	39.0	42.9
5. (Combinations of people/firms)	11.7	16.7	17.1	12.7
6. (Do not keep that kind of record)	—	—	—	—
7. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394
3a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#3.)				
1. <$10 per hour	2.2%	—%	—%	1.7%
2. $10 - 19 per hour	9.7	8.3	6.7	9.2
3. $20 - 29 per hour	7.6	12.5	20.0	9.6
4. $30 - 49 per hour	14.6	8.3	13.3	13.8
5. $50 - 99 per hour	21.1	20.8	13.3	20.1
6. $100 or more per hour	13.5	20.8	23.3	15.5
7. (DK/Refuse)	31.4	29.2	23.3	30.1
Total	100.0%	100.0%	100.0%	100.0%
N	96	59	76	231
Ave.	$75.28	$68.52	$72.83	$74.20

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
3b. Are the business's financial records kept on paper, electronically, or both?				
1. Paper	14.2%	11.9%	9.5%	13.5%
2. Electronically	9.9	4.8	9.5	9.4
3. Both	75.0	83.3	81.0	76.4
4. (DK/Refuse)	0.9	—	—	0.7
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394
3c. How long do you keep those records before getting rid of them?				
1. 2 years or less	1.8%	—%	2.4%	1.7%
2. 3 - 6 years	18.7	12.8	22.0	18.4
3. 7 years or more	37.6	38.5	36.6	37.6
4. Indefinitely	35.8	43.6	31.7	36.2
5. (Other, depends, periodically toss, etc.)	3.3	2.6	—	2.9
6. (DK/Refuse)	2.7	2.6	7.3	3.2
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394
3d. If you need a financial record that is two years old, how accessible is it? Is it:?				
1. Immediately accessible	39.3%	47.6%	50.0%	41.2%
2. Stored on-site	45.9	35.7	31.0	43.4
3. Stored off-site	12.9	16.7	13.7	13.7
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	1.8	—	2.4	1.6
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394
3e. How do you dispose of financial records that are on paper? Do you:? (If "Paper" or "Both" in Q#3b.)				
1. Trash them	15.9%	25.0%	15.8%	16.8%
2. Burn them	7.1	10.0	5.3	7.2
3. Shred them	57.4	52.5	65.8	57.8
4. (Other)	4.4	2.5	—	3.7
5. (Don't dispose of)	10.8	7.5	10.5	10.4
6. (DK/Refuse)	4.4	2.5	2.6	4.0
Total	100.0%	100.0%	100.0%	100.0%
N	166	95	96	357

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

3f. How do you dispose of electronic financial records? Do you:? (If "Electronically" or "Both" in Q#3b.)

1. Delete them	17.8%	13.9%	24.3%	18.1%
2. Delete them and empty the recycle bin	28.1	30.6	24.3	28.0
3. Destroy or reformat the disk	18.1	16.7	24.3	18.6
4. (Other)	10.3	13.9	—	9.6
5. (Don't Dispose of)	13.2	8.3	10.8	12.4
6. (DK/Refuse)	12.5	16.7	16.2	13.3
Total	100.0%	100.0%	100.0%	100.0%
N	157	90	95	342

4. Who does your business's maintenance paperwork and record-keeping? Is it:

1. You	44.0%	31.0%	18.6%	40.1%
2. An unpaid family member	9.3	2.4	—	7.6
3. An employee or employees	17.1	45.2	55.8	23.8
4. An outside firm or individuals	6.9	7.1	4.7	6.7
5. (Combinations of people/firms)	3.9	7.1	4.7	4.3
6. (Do not keep that kind of record)	17.4	2.4	11.6	15.3
7. (DK/Refuse)	1.5	4.8	4.6	2.2
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394

4a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#4.)

1. <$10 per hour	—%	—%	—%	0.8%
2. $10 - 19 per hour	—	40.9	30.8	41.7
3. $20 - 29 per hour	—	31.8	30.8	22.0
4. $30 - 49 per hour	—	9.1	15.4	13.4
5. $50 - 99 per hour	—	9.1	7.7	5.5
6. $100 or more per hour	—	—	3.8	5.5
7. (DK/Refuse)	—	9.1	11.5	11.0
Total	100.0%	100.0%	100.0%	100.0%
N	40	51	66	157
Ave.	$33.05	$22.92	$28.11	$30.29

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
4b. Are the business's maintenance records kept on paper, electronically, or both? (If keep maintenance records in Q#4.)				
1. Paper	35.4%	30.0%	37.8%	35.0%
2. Electronically	6.6	2.5	2.7	5.7
3. Both	54.7	62.5	54.1	55.6
4. (DK/Refuse)	3.3	5.0	5.4	3.7
Total	100.0%	100.0%	100.0%	100.0%
N	152	97	96	345
4c. How long do you keep those records before getting rid of them?				
1. 2 years or less	8.1%	12.5%	16.2%	9.5%
2. 3 - 6 years	28.5	24.6	32.0	28.4
3. 7 years or more	23.4	27.9	19.3	23.4
4. Indefinitely	28.7	27.5	21.6	27.8
5. (Other, depends, periodically toss, etc.)	5.9	—	2.7	4.9
6. (DK/Refuse)	5.5	7.5	8.1	6.0
Total	100.0%	100.0%	100.0%	100.0%
N	152	97	96	345
4d. If you need a maintenance record that is two years old, how accessible is it? Is it:? (If 2 years or more in Q#4c.)				
1. Immediately accessible	37.6%	32.5%	41.2%	37.4%
2. Stored on-site	48.9	52.5	44.1	48.8
3. Stored off-site	7.9	10.0	11.8	8.5
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	5.7	5.0	2.9	5.3
Total	100.0%	100.0%	100.0%	100.0%
N	147	96	88	331
5. Who does your business's license and permit paperwork and record-keeping? Is it:				
1. You	59.6%	45.2%	28.6%	55.0%
2. An unpaid family member	5.4	2.4	—	4.6
3. An employee or employees	15.1	31.0	50.0	20.2
4. An outside firm or individuals	8.7	7.1	9.5	8.7
5. (Combinations of people/firms)	4.2	7.1	4.8	4.6
6. (Do not keep that kind of record)	6.6	7.1	7.1	6.7
7. (DK/Refuse)	0.3	—	—	0.2
Total	100.0%	100.0%	100.0%	100.0%
N	186	101	107	394

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

5a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#5.)

1. <$10 per hour	—%	—%	—%	4.2%
2. $10 - 19 per hour	—	—	25.0	33.6
3. $20 - 29 per hour	—	—	29.2	10.9
4. $30 - 49 per hour	—	—	8.3	11.8
5. $50 - 99 per hour	—	—	8.3	13.4
6. $100 or more per hour	—	—	12.5	13.4
7. (DK/Refuse)	—	—	16.7	12.6
Total	100.0%	100.0%	100.0%	100.0%
N	43	39	63	145
Ave.	$49.31	$71.41	$49.38	$52.43

5b. Are the business's license and permit records kept on paper, electronically, or both? (If keep license and permit records in Q#5.)

1. Paper	58.4%	64.1%	56.4%	58.8%
2. Electronically	1.9	—	2.6	1.8
3. Both	38.4	35.9	41.0	38.4
4. (DK/Refuse)	1.3	—	—	1.1
Total	100.0%	100.0%	100.0%	100.0%
N	173	95	100	368

5c. After they expire, how long do you keep those records before getting rid of them?

1. 2 years or less	22.1%	28.9%	20.5%	22.6%
2. 3 - 6 years	19.2	15.4	20.0	18.8
3. 7 years or more	20.6	18.8	18.5	20.3
4. Indefinitely	31.1	28.9	28.2	30.6
5. (Other, depends, periodically toss, etc.)	3.5	5.3	5.1	3.9
6. (DK/Refuse)	3.5	2.6	7.7	3.9
Total	100.0%	100.0%	100.0%	100.0%
N	173	95	100	368

5d. If you wanted to retrieve a license or permit that expired two years ago, how accessible is it? Is it:? (If kept 2 years or more in Q#5c.)

1. Immediately accessible	40.5%	43.8%	36.4%	40.4%
2. Stored on-site	46.4	46.9	48.5	46.6
3. Stored off-site	6.9	6.3	12.1	7.4
4. (Gone, disposed off)	4.2	3.1	3.0	4.0
5. (DK/Refuse)	1.9	—	—	1.5
Total	100.0%	100.0%	100.0%	100.0%
N	146	79	84	309

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

6. Who does your business's purchase paperwork and record-keeping? Is it:

1. You	50.7%	31.0%	25.7%	46.2%
2. An unpaid family member	7.6	2.4	—	6.3
3. An employee or employees	21.4	57.1	62.9	29.1
4. An outside firm or individuals	8.6	2.4	5.7	7.6
5. (Combinations of people/firms)	10.9	7.1	5.7	10.0
6. (Do not keep that kind of record)	0.9	—	—	0.8
7. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363

6a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#6.)

1. <$10 per hour	—%	—%	4.2%	2.2%
2. $10 - 19 per hour	—	34.6	41.7	33.8
3. $20 - 29 per hour	—	34.6	16.7	22.3
4. $30 - 49 per hour	—	7.7	12.5	10.8
5. $50 - 99 per hour	—	3.8	12.5	9.4
6. $100 or more per hour	—	—	—	1.4
7. (DK/Refuse)	—	19.2	12.5	20.1
Total	100.0%	100.0%	100.0%	100.0%
N	48	55	63	166
Ave.	$26.90	$22.69	$25.62	$25.90

6b. Are records of your purchases kept on paper, electronically, or both? (If keep purchase records in Q#6.)

1. Paper	25.2%	16.3%	16.7%	23.4%
2. Electronically	10.3	7.0	5.6	9.5
3. Both	64.5	76.7	77.8	67.1
4. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	167	99	94	360

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
6c. How long do you keep those records before getting rid of them?				
1. 2 years or less	4.3%	7.0%	8.6%	5.0%
2. 3 - 6 years	32.6	33.1	32.3	32.4
3. 7 years or more	37.7	41.3	42.0	38.7
4. Indefinitely	22.0	14.0	11.4	20.1
5. (Other, depends, periodically toss, etc.)	1.3	2.3	—	1.3
6. (DK/Refuse)	2.0	2.3	5.7	2.4
Total	100.0%	100.0%	100.0%	100.0%
N	167	99	94	360
6d. If you wanted to retrieve a purchase record that expired two years ago, how accessible is it? Is it:? (If 2 years or more in Q#6c.)				
1. Immediately accessible	36.6%	27.8%	35.5%	35.4%
2. Stored on-site	48.9	55.6	48.4	49.7
3. Stored off-site	14.5	16.7	16.1	14.9
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	131	85	81	297
7. Who does your business's paperwork and record-keeping for government information requests? Is it:				
1. You	34.1%	18.6%	19.4%	31.0%
2. An unpaid family member	3.9	—	—	3.1
3. An employee or employees	19.3	32.6	47.2	23.4
4. An outside firm or individuals	25.6	27.9	22.2	25.5
5. (Combinations of people/firms)	8.2	18.6	5.6	9.1
6. (Do not keep that kind of record)	8.9	2.3	5.6	7.8
7. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

7a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#7.)

1. <$10 per hour	—%	—%	—%	—%
2. $10 - 19 per hour	23.4	24.0	28.0	24.1
3. $20 - 29 per hour	9.5	20.0	8.0	10.7
4. $30 - 49 per hour	10.9	8.0	16.0	11.2
5. $50 - 99 per hour	12.4	16.0	20.0	13.9
6. $100 or more per hour	8.8	12.0	8.0	9.1
7. (DK/Refuse)	35.0	20.0	20.0	13.0
Total	100.0%	100.0%	100.0%	100.0%
N	74	56	64	194
Ave.	$45.21	$50.94	$45.59	$46.18

7b. Are copies of those information requests kept on paper, electronically, or both? (If keep government information requests in Q#7.)

1. Paper	30.9%	17.5%	20.0%	28.3%
2. Electronically	8.6	5.0	2.9	7.6
3. Both	59.7	77.5	77.1	63.5
4. (DK/Refuse)	0.7	—	—	0.6
Total	100.0%	100.0%	100.0%	100.0%
N	153	95	89	337

7c. How long do you keep those records before getting rid of them?

1. 2 years or more	4.0%	—%	3.0%	3.4%
2. 3 - 6 years	27.1	28.0	31.2	27.6
3. 7 years or more	39.9	47.0	47.6	41.4
4. Indefinitely	22.5	17.5	15.2	21.2
5. (Other, depends, periodically toss, etc.)	0.7	2.5	—	0.9
6. (DK/Refuse)	5.8	5.0	3.0	5.4
Total	100.0%	100.0%	100.0%	100.0%
N	153	95	89	337

7d. If you wanted to retrieve a government information request that was two years ago, how accessible is it? Is it:? (If 2 years or more in Q#7c.)

1. Immediately accessible	38.2%	30.0%	26.5%	36.1%
2. Stored on-site	41.8	45.0	50.0	43.0
3. Stored off-site	18.5	22.5	23.5	19.5
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	1.5	2.5	—	1.4
Total	100.0%	100.0%	100.0%	100.0%
N	152	95	88	335

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

8. Who does your business's customer or client paperwork and record-keeping? Is it:

1. You	51.5%	23.8%	21.6%	45.5%
2. An unpaid family member	6.3	—	—	5.0
3. An employee or employees	19.8	54.8	67.6	28.3
4. An outside firm or individuals	5.0	4.8	2.7	4.7
5. (Combinations of people/firms)	15.5	14.3	5.4	14.4
6. (Do not keep that kind of record)	2.0	2.4	2.7	2.1
7. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363

8a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#8.)

1. <$10 per hour	—%	—%	3.8%	2.4%
2. $10 - 19 per hour	—	34.8	46.2	36.6
3. $20 - 29 per hour	—	30.4	15.4	18.7
4. $30 - 49 per hour	—	17.4	11.5	11.4
5. $50 - 99 per hour	—	8.7	7.7	8.1
6. $100 or more per hour	—	—	—	3.3
7. (DK/Refuse)	—	8.7	15.4	19.5
Total	100.0%	100.0%	100.0%	100.0%
N	40	54	67	161
Ave.	$57.38	$25.90	$23.05	$42.75

8b. Do you keep copies of your customer or client records on paper, electronically, or both? (If keep customer or client records in Q#8.)

1. Paper	23.8%	15.0%	13.9%	21.9%
2. Electronically	11.1	12.5	13.9	11.5
3. Both	65.1	72.5	72.2	66.6
4. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	164	96	92	352

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
8c. How long after someone stops being a customer or client do you keep those records before getting rid of them?				
1. 2 years or less	11.8%	12.2%	17.6%	12.4%
2. 3 - 6 years	34.1	36.0	31.7	34.1
3. 7 years or more	23.7	25.0	33.0	24.6
4. Indefinitely	27.7	22.0	14.7	25.9
5. (Other, depends, periodically toss, etc.)	0.3	2.4	—	0.5
6. (DK/Refuse)	2.4	2.4	2.9	2.4
Total	100.0%	100.0%	100.0%	100.0%
N	164	96	92	352
8d. If you wanted to retrieve a customer or client record that was two years ago, how accessible is it? Is it:? (If 2 years or more in Q#8c.)				
1. Immediately accessible	48.6%	45.9%	43.8%	47.9%
2. Stored on-site	39.6	43.2	37.5	39.8
3. Stored off-site	10.7	10.8	18.8	11.5
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	1.1	—	—	0.9
Total	100.0%	100.0%	100.0%	100.0%
N	154	89	85	328
8e. How do you dispose of customer or client records that are on paper? Do you:? (If "Paper" or "Both" in Q#8b.)				
1. Trash them	28.8%	27.8%	26.7%	28.5%
2. Burn them	7.2	5.6	10.0	7.3
3. Shred them	51.9	50.0	56.7	52.1
4. (Other)	4.5	8.3	—	4.5
5. (Don't dispose of)	5.7	5.6	6.7	5.8
6. (DK/Refuse)	1.9	2.8	—	1.8
Total	100.0%	100.0%	100.0%	100.0%
N	146	84	80	310

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
8f. How do you dispose of electronic customer or client records? Do you:? (If "Electronically" or "Both" in Q#8b.)				
1. Delete them	22.9%	35.3%	35.5%	25.7%
2. Delete them and empty the recycle bin	26.9	23.5	16.1	25.3
3. Destroy or reformat the disk	10.6	17.6	22.6	12.7
4. (Other)	9.3	5.9	3.2	8.2
5. (Don't Dispose of)	17.2	8.8	9.7	15.4
6. (DK/Refuse)	13.2	8.8	12.9	12.7
Total	100.0%	100.0%	100.0%	100.0%
N	124	80	78	282
8g. Do you secure and limit access to customer or client records?				
1. Yes	89.3%	90.2%	82.9%	88.8%
2. No	10.1	9.8	14.3	10.4
3. (DK/Refuse)	0.7	—	2.9	0.8
Total	100.0%	100.0%	100.0%	100.0%
N	164	96	92	352
9. Who does your business's tax records? Is it:				
1. You	13.9%	2.4%	2.8%	11.5%
2. An unpaid family member	2.3	—	—	1.8
3. An employee or employees	5.6	4.8	11.1	6.0
4. An outside firm or individuals	71.6	83.3	83.3	74.0
5. (Combinations of people/firms)	6.6	9.5	2.8	6.6
6. (Do not keep that kind of record)	—	—	—	—
7. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363
9a. What is the approximate hourly cost of such a person, including benefits, or of the firm hired? (If employee, individual or outside firm in Q#9.)				
1. <$10 per hour	—%	—%	—%	—%
2. $10 - 19 per hour	6.8	5.3	6.1	6.6
3. $20 - 29 per hour	9.0	5.3	—	7.5
4. $30 - 49 per hour	11.5	5.3	9.1	10.5
5. $50 - 99 per hour	14.1	15.8	24.2	15.4
6. $100 or more per hour	18.4	34.2	33.3	22.0
7. (DK/Refuse)	40.2	34.2	27.3	38.0
Total	100.0%	100.0%	100.0%	100.0%
N	129	88	88	305
Ave.	$76.71	$103.02	$104.40	$83.69

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
9b. Are your tax records kept on paper, electronically, or both?				
1. Paper	19.7%	19.0%	13.5%	19.0%
2. Electronically	4.6	2.4	2.7	4.2
3. Both	72.5	78.6	81.1	74.0
4. (DK/Refuse)	3.3	—	2.7	2.9
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363
9c. How long do you keep those records before getting rid of them?				
1. 2 years or less	—%	—%	—%	—%
2. 3 - 6 years	23.2	21.3	10.4	19.4
3. 7 years or more	39.7	46.1	59.8	42.3
4. Indefinitely	34.5	27.9	24.3	32.8
5. (Other, depends, periodically toss, etc.)	—	2.3	—	0.3
6. (DK/Refuse)	5.6	2.3	5.4	5.2
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363
9d. If you wanted to retrieve a tax record that is two years old, how accessible is it? Is it:? (If kept 2 years or more in Q#9c.)				
1. Immediately accessible	44.1%	42.9%	41.7%	43.7%
2. Stored on-site	35.5	33.3	25.0	34.3
3. Stored off-site	18.4	23.8	33.3	20.4
4. (Gone, disposed off)	—	—	—	—
5. (DK/Refuse)	1.9	—	—	1.6
Total	100.0%	100.0%	100.0%	100.0%
N	169	99	95	363
9e. How do you dispose of tax records that are on paper? Do you:? (If "Paper" or "Both" in Q#9b.)				
1. Trash them	16.0%	19.5%	14.7%	16.3%
2. Burn them	8.5	7.3	5.9	8.1
3. Shred them	44.9	48.8	52.9	46.1
4. (Other)	8.5	4.9	2.9	7.6
5. (Don't dispose of)	16.7	12.2	17.6	16.3
6. (DK/Refuse)	5.3	7.3	5.9	5.6
Total	100.0%	100.0%	100.0%	100.0%
N	156	96	89	341

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms

9f. How do you dispose of electronic tax records? Do you:? (If "Electronically" or "Both" in Q#9b.)

1. Delete them	21.9%	28.1%	18.8%	22.2%
2. Delete them and empty the recycle bin	19.3	12.5	18.8	18.5
3. Destroy or reformat the disk	9.0	12.5	25.0	11.1
4. (Other)	7.7	6.3	6.3	7.4
5. (Don't Dispose of)	15.5	18.8	15.6	15.8
6. (DK/Refuse)	26.6	21.9	15.6	24.9
Total	100.0%	100.0%	100.0%	100.0%
N	128	79	80	287

10. You indicated that an unpaid family member kept some business records for you. If you had to purchase that service, about how much on a dollars per hour basis, including benefits, would you have to pay for someone else to do it?

1. <$10 per hour	—%	—%	—%	2.2%
2. $10 - 19 per hour	—	—	—	41.2
3. $20 - 29 per hour	—	—	—	14.4
4. $30 - 49 per hour	—	—	—	15.5
5. $50 - 99 per hour	—	—	—	6.7
6. $100 or more per hour	—	—	—	1.1
7. (DK/Refuse)	—	—	—	18.9
Total	100.0%	100.0%	100.0%	100.0%
N	49	6	2	57
Ave.	$24.93	$15.99	$38.50	$24.87

11. If you could pay someone to take over all the paperwork you must complete, how much, on a dollars per hour basis, would you be willing to pay?

1. Nothing	16.8%	18.8%	12.7%	16.6%
2. $1 - 10 per hour	5.3	2.4	2.5	4.8
3. $10 - 19 per hour	28.5	22.4	24.1	27.4
4. $20 - 29 per hour	15.7	22.4	17.7	16.6
5. $30 - 49 per hour	5.7	5.9	7.6	5.9
6. $50 - 99 per hour	5.5	8.2	8.9	6.1
7. $100 or more per hour	3.0	2.4	3.8	3.0
8. (DK/Refuse)	19.5	17.6	22.8	19.6
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
Ave.	$22.39	$21.71	$25.27	$22.58

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
12. What is the most difficult aspect of government paperwork for your business?				
1. Volume of information completed and submitted	21.4%	28.2%	35.9%	23.5%
2. Maintenance of records you ordinarily wouldn't keep	9.1	14.1	15.4	10.3
3. Clarity of the instructions and understanding the requirements	30.3	22.4	20.5	28.5
4. Duplicate requests from various agencies or governments	11.5	10.6	10.3	11.3
5. Requests for information you don't have or is not accessible	7.4	8.2	5.1	7.2
6. (Other)	4.9	3.5	5.1	4.7
7. (DK/Refuse)	15.5	12.9	7.7	14.5
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
13. Do you have one or more computers in your business?				
1. Yes	90.7%	96.5%	96.2%	91.9%
2. No	9.1	3.5	3.8	8.0
3. (DK/Refuse)	0.2	—	—	0.1
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	755
13a. Do you have stand alone PCs, a local area network, or both? (If "Yes" in Q#13.)				
1. Stand alone PCs	47.8%	30.5%	18.4%	42.8%
2. Local area network	18.3	18.3	23.7	18.9
3. Both	31.5	47.6	56.6	35.9
4. (DK/Refuse)	2.4	3.7	1.3	2.4
Total	100.0%	100.0%	100.0%	100.0%
N	319	193	195	707
13b. Does your business use the Internet for business reasons regularly, periodically, or aren't you on the Internet?				
1. Regularly	55.7%	61.0%	72.4%	58.0%
2. Periodically	33.4	29.3	23.7	31.9
3. No Internet access	10.4	8.5	2.6	9.4
4. (DK/Refuse)	0.5	1.2	1.3	0.7
Total	100.0%	100.0%	100.0%	100.0%
N	319	193	195	707

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
13c. How do you reach the Internet? (If "Regularly" in Q#13b.)				
1. Dial-up connection	8.9%	26.5%	21.8%	35.3%
2. DSL	38.3	53.1	36.4	39.8
3. Cable	16.5	16.3	21.8	17.2
4. (Other)	5.0	4.1	14.5	6.1
5. (DK/Refuse)	1.2	—	5.5	0.5
Total	100.0%	100.0%	100.0%	100.0%
N	177	118	139	434
13d. Do you have a computer in your residence that you use for business purposes? (If "No" in Q#13.)				
1. Yes	—%	—%	—%	33.3%
2. No	—	—	—	67.7
3. (DK/Refuse)	—	—	—	—
Total	100.0%	100.0%	100.0%	100.0%
N	35	7	7	49

Demographics

D1. Which best describes your position in the business?

	Employee Size of Firm 1-9 emp	10-19 emp	20-249 emp	All Firms
1. Owner/manager	86.2%	82.4%	76.9%	84.9%
2. Owner but NOT manager	5.5	7.1	6.4	5.8
3. Manager but NOT owner	8.3	10.6	16.7	9.4
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757

D2. Is your primary business activity: (NAICs code)

	1-9 emp	10-19 emp	20-249 emp	All Firms
1. Agriculture, forestry, fishing	2.8%	1.2%	1.2%	2.5%
2. Construction	8.8	8.5	10.0	8.9
3. Manufacturing, mining	8.5	9.8	8.8	8.4
4. Wholesale trade	5.8	4.9	8.8	6.0
5. Retail trade	20.3	26.8	16.3	20.6
6. Transportation and warehousing	1.1	1.2	1.2	1.1
7. Information	0.5	—	1.2	0.5
8. Finance and insurance	4.6	1.2	2.5	4.0
9. Real estate and rental leasing	3.9	6.1	3.8	4.1
10. Professional/scientific/ technical services	12.3	13.4	10.0	12.2
11. Adm. support/waste management services	3.9	2.4	2.5	3.6
12. Educational services	1.6	1.2	—	1.4
13. Health care and social assistance	3.3	4.9	8.8	4.0
14. Arts, entertainment, or recreation	1.4	—	5.0	1.6
15. Accommodations or food service	2.5	9.8	15.0	4.5
16. Other service, incl. repair, personal care	14.8	7.3	3.8	12.9
17. (Other)	3.0	1.2	1.2	2.9
18. (DK/Refuse)	0.8	—	—	0.1
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
D3. Over the last two years, have your real volume sales:?				
1. Increased by 30 percent or more	10.3%	12.9%	11.5%	10.7%
2. Increased by 20 to 29 percent	8.8	11.8	10.3	9.2
3. Increased by 10 to 19 percent	22.7	20.0	30.8	23.2
4. Changed less than 10 percent one way or the other	26.0	30.6	26.9	26.6
5. Decreased by 10 percent or more	25.9	22.4	17.9	24.7
6. (DK/Refuse)	6.3	2.4	2.6	5.5
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
D4. Is this business operated primarily from the home, including any associated structures such as a garage or a barn?				
1. Yes	33.3%	7.1%	5.1%	27.7%
2. No	65.6	91.8	94.9	71.3
3. (DK/Refuse)	1.1	1.2	—	1.0
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
D5. How long have you owned or operated this business?				
1. < 6 years	25.4%	23.5%	15.2%	24.2%
2. 6-10 years	20.8	12.9	20.3	20.0
3. 11-20 years	27.3	24.7	30.4	27.3
4. 21-30 years	18.3	23.5	16.5	18.7
5. 31 years+	6.6	12.9	16.5	8.2
6. (DK/Refuse)	1.6	2.4	1.2	1.6
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
D6. What is your highest level of formal education?				
1. Did not complete high school	2.4%	2.4%	—%	2.1%
2. High school diploma/GED	19.5	17.9	14.1	18.8
3. Some college or an associates degree	26.1	19.0	23.1	25.1
4. Vocational or technical school degree	3.3	3.6	1.3	3.1
5. College diploma	30.3	33.3	42.3	31.8
6. Advanced or professional degree	17.3	22.6	19.2	18.0
7. (DK/Refuse)	1.1	1.2	—	1.0
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
D7. Please tell me your age.				
1. <25	0.6%	—%	—%	0.4%
2. 25-34	8.0	6.0	7.5	7.8
3. 35-44	19.8	21.4	23.8	20.4
4. 45-54	34.1	31.0	32.5	33.6
5. 55-64	26.6	29.8	25.0	26.8
6. 65+	8.6	9.5	8.8	8.8
7. (DK/Refuse)	2.2	2.4	2.5	2.3
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
D8. What is the zip code of your business?				
1. East (zips 010-219)	13.9%	16.3%	20.5%	14.8%
2. South (zips 220-427)	23.8	20.9	17.9	22.9
3. Mid-West (zips 430-567, 600-658)	22.1	18.6	20.5	21.6
4. Central (zips 570-599, 660-898)	22.7	26.7	26.9	23.6
5. West (zips 900-999)	15.5	16.3	12.8	15.3
6. (DK/Refuse)	1.9	1.2	1.3	1.7
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757

	Employee Size of Firm			
	1-9 emp	10-19 emp	20-249 emp	All Firms
D9. Population Density				
1. Highly Urban	8.6%	15.5%	14.1%	9.9%
2. Urban	20.7	17.9	15.4	19.9
3. Fringe Urban	18.4	20.2	23.0	19.0
4. Small Cities and Towns	22.9	15.5	20.5	21.9
5. Rural	23.5	23.8	20.5	23.3
6. No Data	5.8	7.1	6.4	6.0
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757
D10. Sex				
Male	80.8%	83.5%	88.6%	81.9%
Female	19.2	16.5	11.4	18.1
Total	100.0%	100.0%	100.0%	100.0%
N	355	200	202	757

Table Notes

1. All percentages appearing are based on **weighted** data.
2. All "Ns" appearing are based on **unweighted** data.
3. Data are not presented where there are fewer than 50 unweighted cases.
4. ( )s around an answer indicate a volunteered response.

WARNING – When reviewing the table, care should be taken to distinguish between the percentage of the population and the percentage of those asked a particular question. Not every respondent was asked every question. All percentages appearing on the table use the number asked the question as the denominator.

Data Collection Methods

The data for this survey report were collected for the NFIB Research Foundation by the executive interviewing group of The Gallup Organization. The interviews for this edition of the *Poll* were conducted between August 7 - September 6, 2003 from a sample of small employers. "Small employer" was defined for purposes of this survey as a business owner employing no fewer than one individual in addition to the owner(s) and no more than 249.

The sampling frame used for the survey was drawn at the Foundation's direction from the files of the Dun & Bradstreet Corporation, an imperfect file but the best currently available for public use. A random stratified sample design was employed to compensate for the highly skewed distribution of small-business owners by employee size of firm (Table A1). Almost 60 percent of employers in the United States employ just one to four people meaning that a random sample would yield comparatively few larger small employers to interview. Since size within the small-business population is often an important differentiating variable, it is important that an adequate number of interviews be conducted among those employing more than 10 people. The interview quotas established to achieve these added interviews from larger, small-business owners were arbitrary but adequate to allow independent examination of the 10-19 and 20-249 employee size classes as well as the 1-9 employee size group.

Table A1

Sample Composition Under Varying Scenarios

	Expected from Random Sample*		Obtained from Stratified Random Sample			
Employee Size of Firm	Interviews Expected	Percent Distribution	Interview Quotas	Percent Distribution	Completed Interviews	Percent Distribution
1-9	593	79	350	47	355	47
10-19	82	11	200	27	200	27
20-249	75	10	200	27	202	27
All Firms	750	100	750	101	757	101

**Sample universe developed from special runs supplied to the NFIB Research Foundation by the Bureau of the Census (1997 data).*

The Sponsor

The **NFIB Research Foundation** is a small-business-oriented research and information organization affiliated with the National Federation of Independent Business, the nation's largest small and independent business advocacy organization. Located in Washington, DC, the Foundation's primary purpose is to explore the policy related problems small-business owners encounter. Its periodic reports include *Small Business Economic Trends, Small Business Problems and Priorities*, and now the *National Small Business Poll*. The Foundation also publishes ad hoc reports on issues of concern to small-business owners. Included are analyses of selected proposed regulations using its Regulatory Impact Model (RIM). The Foundation's functions were recently transferred from the NFIB Education Foundation.

Mr. OSE. Mr. Langer's testimony begs the question, given Dr. Graham's comments, we really need to think about that since Dr. Graham is reluctant to involve OMB in Treasury's activities, particularly at the IRS. Well, exactly who is the IRS accountable to?

Mr. SCHROCK. That's exactly right.

Mr. OSE. I mean, it just begs that question. I may have to get back to him on that.

Mr. SCHROCK. Are we going to have them in front of us, the IRS, on April 20th?

Mr. OSE. Yes.

Mr. SCHROCK. OK, then we are. That ought to be an interesting hearing.

Mr. OSE. Mr. Igdaloff, I'm looking at this EPA form, pesticide report for pesticide-producing and device-producing establishments, which I believe you filled out on February 17, 2003. You've signed it, and there—I just want to make sure, you have a portfolio of 50 products or 500?

Mr. IGDALOFF. 50.

Mr. OSE. 50. So you have to take—it says this is page 1 of 16. So you've got 16 pages of this thing that you filled out. And, I notice on the different lines——

Mr. IGDALOFF. To go to an instruction sheet and then——

Mr. OSE. Well, my question is amount produced, repackaged or relabeled last year; amount sold or distributed last year, U.S.; amount sold or distributed last year, foreign; and amount to be produced, repackaged, relabeled this year.

I'm trying to figure out if——

Mr. IGDALOFF. They want an annual production report. So, I mean, we just have to put all these things in a column across the top, list the products and just put all that information in a simple sheet.

Mr. OSE. Yet, this is the form they're using, so you have to transcribe it from this one sheet to 16 pages?

Mr. IGDALOFF. Yes, with errors.

Mr. OSE. Can you do this electronically?

Mr. IGDALOFF. Not currently.

Mr. OSE. What happens if you have a product that you have the same amount being produced this year as last year? Can you check a box that says no change from last year?

Mr. IGDALOFF. No. I just have to go and cross these off, re-sort them from my spreadsheet, put the numbers on. And, since nobody can read my writing, give it to my office girl. We have two women in the office that handle sales and everything else, and then she takes 3 or 4 hours to fill them out.

She may miss one sheet or another. Then they call me from Compliance in San Francisco, and we go back over the thing, item by item, to make sure that we have the right "Gs" and the "Ls" and the "Ps."

Mr. OSE. Do you pull this form down electronically off the Web?

Mr. IGDALOFF. No. No. We get this mailed to us, Registered Letter, Certified. We have to sign for it. And, if you don't comply, some of the other companies have been fined $4,000 to $5,000 for not submitting a production report.

Mr. OSE. Well, this is something I find very interesting. I notice on the form that up in the upper right-hand corner, the mailing label is clearly generated from EPA. Sungro Chemicals, Inc.

Now, it seems to me that you turned in one of these last year. Why can't the EPA also enter into these items here the chemical numbers and the amounts produced, U.S., produced, foreign, from last year; and, then, if there's a change, you just scratch it out and put the accurate number.

Mr. IGDALOFF. Yes. The only thing that changes are the numbers here, the other statistical information is essentially the same.

Mr. OSE. I mean, the product name probably doesn't change.

Mr. IGDALOFF. No.

Mr. OSE. And, the EPA product registration number doesn't change?

Mr. IGDALOFF. We submit a similar report to the State of California quarterly, where we pay a mill tax for everything we do. And, so, we get a printout from them, the name of the product and the column just to fill in the numbers, you know, on two pieces of paper.

Mr. OSE. Do you have a copy of that with you?

Mr. IGDALOFF. Not with me, but I can send you one.

Mr. OSE. We want to ask for that. Perhaps we could expedite paperwork at EPA by suggesting they take some of the wisdom from California and bring it here.

[The information referred to follows:]

STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION
PESTICIDE ENFORCEMENT BRANCH
P.O. BOX 4015
SACRAMENTO, CALIFORNIA 95812-4015
CR-ENF-181 (Rev. 07/98)

FOR QUARTER ENDING
December 31, 2003

DELINQUENT
January 31, 2004

REPORT OF PESTICIDE SALES IN CALIFORNIA

SUNGRO CHEMICALS, INC.
P.O. BOX 24632
LOS ANGELES CA 90024-0000

Firm Number
11474

Important Instructions:
For each product listed report total dollar value and total pounds (or gallons, if sold in liquid form) of product sold for use in California. If no product sales were made, enter "None" or zero for product. Check Non-Ag box to indicate products labeled for home, industrial or institutional use only.

	Registration Number	Brand Name	Non Ag	DOLLARS	QUANTITY
1	11474- 1-AA	ALGAE-CON	☑	[redacted]	☐ LBS ☒ GAL [redacted]
2	11474- 15-AA	ALGON ALGAECIDE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
3	11474- 80-AA	EVERSECT III INSECTICIDE CONCENTRATE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
4	11474- 76-AA	KILLER FOR ICE PLANT WEEDS	☐		☐ LBS ☒ GAL
5	11474- 87-AA	KLEEN-WEED	☑	[redacted]	☐ LBS ☒ GAL [redacted]
6	11474- 3-AA	NO-CRAB CRAB GRASS KILLER	☑	[redacted]	☐ LBS ☒ GAL [redacted]
7	11474- 6-AA	NUMB BUG	☑	[redacted]	☐ LBS ☒ GAL [redacted]
8	11474- 13-AA	OVER	☐	[redacted]	☐ LBS ☒ GAL [redacted]
9	11474- 71-AA	PERM II	☐		☐ LBS ☒ GAL
10	11474- 72-AA	POWER RESIDUAL SPRAY	☐		☐ LBS ☒ GAL
11	11474- 14-AA	PURGE WATER TREATMENT MICROBIOCIDE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
12	400- 94-AA- 11474	REDUCE	☐		☐ LBS ☒ GAL
13	11474-20206-AA	ROACH-IT	☑	[redacted]	☒ LBS ☐ GAL [redacted]
14	11474- 4-AA	SELECT-KIL	☐		☐ LBS ☒ GAL
15	11474- 64-AA	SUN-DUST ROACH AWAY	☐	[redacted]	☒ LBS ☐ GAL [redacted]

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	Registration Number	Brand Name	Non Ag	DOLLARS	QUANTITY
16	11474- 63-AA	SUNBUGGER 1-10 CONCENTRATE	☐		☐ LBS ☒ GAL
17	11474- 88-AA	SUNBUGGER 1-6 INSECTICIDE CONCENTRATE	☐		☐ LBS ☒ GAL
18	11474- 42-AA	SUNBUGGER 100 PYRETHRUM	☑	[redacted]	☐ LBS ☒ GAL [redacted]
19	11474- 68-AA	SUNBUGGER 8	☑	[redacted]	☐ LBS ☒ GAL [redacted]
20	11474- 89-AA	SUNBUGGER CARPET DUST	☑	[redacted]	☒ LBS ☐ GAL [redacted]
21	11474- 39-AA	SUNBUGGER III	☑	[redacted]	☐ LBS ☒ GAL [redacted]
22	11474- 45-AA	SUNBUGGER SUPER FOG FOOD PLANT FOGGING INSECTICIDE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
23	11474- 30-AA	SUNBUGGER WATER BASE INSECTICIDE SPRAY	☐		☐ LBS ☒ GAL
24	2217- 850-AA- 11474	SUNDOWNER 18 HERBICIDE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
25	11474- 51-AA	SUNGRO #214 WATER-BASE MULTI-PURPOSE INSECTICIDE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
26	11474- 55-AA	SUNGRO COMBO WATER BASE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
27	100- 456-AA- 11474	SUNGRO DIAZINON SPRAY	☐		☐ LBS ☒ GAL
28	11474- 66-AA	SUNGRO DURSBO	☐		☐ LBS ☒ GAL
29	11474- 53-AA	SUNGRO FLEA-ZY PET SHAMPOO	☐		☐ LBS ☒ GAL
30	11474- 33-AA	SUNGRO KITCHEN AND CAN INSECTICIDE	☐		☐ LBS ☒ GAL

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	Registration Number	Brand Name	Non Ag	DOLLARS	QUANTITY
31	11474- 67-AA	SUNGRO PERMITH WITH PERMANONE	☑	[redacted]	☐ LBS ☒ GAL [redacted]
32	11474- 50-AA	SUNGRO PYRETH	☑	[redacted]	☐ LBS ☒ GAL [redacted]
33	11474- 69-AA	SUNGRO PYRETH #3	☑	[redacted]	☐ LBS ☒ GAL [redacted]
34	11474- 20-AA	SUNGRO RESIDUAL SPRAY	☑	[redacted]	☐ LBS ☒ GAL [redacted]
35	11474- 86-AA	SUNGRO SPRAY & DIP	☐		☐ LBS ☒ GAL
36	11474- 78-AA	SUNGRO WATER BASE FOOD PLANT FOGGING INSECTICIDE	☐		☐ LBS ☒ GAL
37	1839- 101-AA- 11474	SUNKLEEN 16	☑	[redacted]	☐ LBS ☒ GAL [redacted]
38	1839- 95-AA- 11474	SUNKLEEN 45	☑	[redacted]	☐ LBS ☒ GAL [redacted]
39	11474- 22-AA	SUPER NUMB BUG	☐		☐ LBS ☒ GAL
40	2217- 540-AA- 11474	SUPER SELECT WEED & BRUSH KILLER	☑	[redacted]	☐ LBS ☒ GAL [redacted]
41	11474- 70-AA	SYS-SECT	☐		☒ LBS ☐ GAL
42	11474- 26-AA	TREAT-TURF HERBICIDE	☐		☐ LBS ☒ GAL
43	11474- 92-AA	WASP & HORNET KILLER V	☐		☐ LBS ☒ GAL
44	11474- 24-AA	WEED OUT NON SELECT WEED KILLER	☑	[redacted]	☐ LBS ☒ GAL [redacted]
45	11474- 79-AA	WEED-GO II	☑	[redacted]	☐ LBS ☒ GAL [redacted]

Mr. SCHROCK. You should know for the record, he's a Californian.

Mr. OSE. Well, at least it would help one gentleman.

Mr. SCHROCK. You'd better believe it. It would probably help thousands.

Mr. OSE. Mr. Schrock.

Mr. SCHROCK. Let me ask you a question, Mr. Igdaloff. You sell 50 different products?

Mr. IGDALOFF. Right.

Mr. SCHROCK. That means you pay $150,000 a year for maintenance fees?

Mr. IGDALOFF. No. They have a cap of—it's $3,000 a product, but you—once you get to 50, then they have a cap of $50,000. We've got the new law here. So, once you get 16 products, if you have 16 products, there's no way to reduce your costs. Everything from 16 to 50—registrations cost $50,000.

Mr. SCHROCK. What is the maintenance fee? What's it for?

Mr. IGDALOFF. Well, in 1989, Congress passed a law that EPA was to reregister all pesticides within 10 years. I received a letter from the EPA then that the registration fee would never exceed $600 or $36,000 maximum fee per year. Each year——

Mr. SCHROCK. Careful when the Congress says "never."

Mr. IGDALOFF. So, what happened as a result of Congress giving their wisdom to this, 50 percent of the registrations were canceled. People said, we aren't going to pay the fee. So, in order to raise the same $15 million, EPA said, all right, we've got to get twice as much money from every registrant, and thus the fees have been increasing. The legislation that Congress has just passed in this latest document have increased the fees. Our cap for our 50 products for last year was $50,000. We just paid $50,000, for 2004.

It says, for registrants holding not more than 50 registrations, the annual maintenance fee cap for small businesses, which are defined at $60 million a year, at $59,000 for the fiscal year 2004; $61,000, each of the fiscal years 2005 to 2006; $48,000 for 2007; $38,000 for 2008.

Mr. OSE. You're saying that was a law passed by the Congress?

Mr. IGDALOFF. Just came out.

Mr. OSE. What's the number?

Mr. IGDALOFF. The Pesticide Registration Improvement Act that's contained in a conference report to accompany H.R. 2673, the Consolidated Appropriations Act of 2004. And, then they have a whole schedule of service fees which is another subject. There are both the maintenance fee and a service fee.

Mr. OSE. Facts are facts.

Mr. IGDALOFF. Pardon me?

Mr. OSE. I appreciate your candor.

Mr. IGDALOFF. I mean, I've been fighting it for 15 years now.

Mr. SCHROCK. Andrew, thank you. You were here 6 months ago today. I hope you're not busy July 28th. So you'll probably be here again. We have simply got to do something about this stuff.

I'm just surprised Mr. Igdaloff even stayed in business. It's nonsense. By the time the Federal and the State get done with you, what's left?

Mr. IGDALOFF. Well, we thought it was going to sunset 2 years ago, and, someplace in the Indian Affairs Act they put a couple of lines to increase——

Mr. SCHROCK. In the Indian Affairs Act?

Mr. IGDALOFF. Yes.

Mr. SCHROCK. I'm not even going to ask. I have no idea.

Mr. OSE. Mr. Igdaloff, in your testimony on page 4 you talk about ways to eliminate duplication of paperwork and coordinate the due dates and then, you cite the paperwork for filing mandatory emergency plans as an excellent example of the opportunity that exists there.

Would you elaborate on that a little bit? Why is coordinating due dates—why would that reduce your paperwork, for instance?

Mr. IGDALOFF. All right. For example, the report that you have there is due March 1st. We have to submit our maintenance fee schedule to EPA by January 15th with a fee. Now, if those were coordinated, since we don't have on January 15th our production analysis from the prior year, we could use the data from the production report to know which products to include on the maintenance fee report for the following year.

These two reports could be combined into one report that lists all the products—all that is required is the addition of a couple more columns on the maintenance report to include the production and sales data. A duplicate copy could be sent to the regional offices to satisfy their needs. By combining the two reports, we could do the job one time and send the whole thing in.

Mr. OSE. One is a Federal report and one is a State report?

Mr. IGDALOFF. No. One goes to the EPA in Washington, and the production reports go to the regional, the EPA regional office.

Mr. OSE. In San Francisco or in Los Angeles?

Mr. IGDALOFF. Right.

Mr. OSE. Mr. Langer, do you have any suggestions along those lines?

Mr. SCHROCK. We need to get Mr. Igdaloff to the airport.

Mr. OSE. You're right. Mr. Igdaloff, we're going to do something out of the ordinary here, because you've got a 7 o'clock plane.

Mr. Langer, if you'll just hang a minute.

Mr. Igdaloff, I want to thank you for coming, traveling back here at your expense and the like, to visit with us and share with us the association's testimony. We are going to leave the record open, so if we have additional questions, we may send them to you.

Mr. IGDALOFF. Surely.

Mr. OSE. To the extent we can get timely responses, that would be wonderful.

Mr. IGDALOFF. If you could give me a couple extra days, though, because I'll be gone next week.

Mr. OSE. And, we also need that form that you're using with the State of California that's different from this. OK. I see your assistant in the back nodding her head.

Mr. IGDALOFF. We'll put that in and the maintenance form that EPA used.

Mr. SCHROCK. We're going to find that piece of legislation you talked about and work that back and find out how that happened

and why it happened. We have our guesses, but we're going to find out.

Mr. IGDALOFF. Well, I cannot for the record suggest that the large chemical companies are not interested in maintaining the small chemical people in business.

Mr. SCHROCK. Your words, not mine, but you're probably right.

Mr. OSE. We will note that was not for the record, OK? Thank you for coming.

Mr. SCHROCK. Thank you very much.

Mr. IGDALOFF. Thank you for having me.

Mr. OSE. All right, Mr. Langer, you have some suggestions as to where we might look for significant decreases in paperwork for small business?

Mr. LANGER. Yes.

Mr. OSE. Could you step us through those, please?

Mr. LANGER. Well, sure. One of those that we have been talking about, at the very least, to step back for a second, to dovetail onto what Mr. Igdaloff said, eliminating duplicative paperwork is something that NFIB has been talking about for quite some time. The elimination of duplicative paperwork is absolutely essential.

Mr. OSE. When you say duplicative, you mean between Feds and State?

Mr. LANGER. No, between Federal agencies. If you're filing Federal paperwork for, say, EPA, Department of Transportation, or EPA and OSHA, finding some way to streamline that paperwork would be excellent; then, moving onto sort of electronic reporting, we have been supporting the efforts to develop this business gateway, which I helped—was a part of, when it was part of—when it was called the business compliance one-stop.

That's down the road, but something needs to happen in which a small business owner can log onto his computer, type in his NAICS code or enter into some sort of North American Industrial Classification Code; or, more to the point, if there is some sort of a system where you can enter in what kind of business he has, and it will be able to interpret that, and then it will spit out every regulation that this person has to comply with, that would be incredibly helpful. The problem is that it is down the road, and right now, according to our own polling, only 90 percent of small businesses are using computers.

Mr. OSE. Only 90 percent?

Mr. LANGER. Only 90 percent.

For the last few years we have been using the statistic of 80 to 85 percent, so it's improving as the cost of computers come down and more things are being done on line, but, the fact is there will always be a small amount of small businesses that are not on line, in which case, compliance assistance is going to be essential to help those businesses, active outreach on the part of the agencies to help these businesses figure out what they need to do.

As Chairman Schrock said, it is incredibly unfortunate the first time a small business owner finds out about our regulations is when they're being enforced against, and, unfortunately, as you can see the number of binders here and the number of laws on the books, Paul Rosenzweig of the Heritage Foundation is trying to find out a number that carry criminal penalties. He can't get an

answer to that question. So, the fact is it's a constant minefield for the small business owner in terms of trying to find out exactly what they need to do to be in compliance with the law, and they want to comply.

Mr. OSE. So, why is it when I go on the Internet and get to Google or MSN.com and hit search, I can get 250,000 references to some keyword, but we cannot figure out how some person who can survive the winds of fate in the economy—I mean, why is it we cannot have that person go on the Internet and figure out which of these forms they need?

Mr. LANGER. Well, because it gets confusing; I mean, when you are talking about 225,000, the agencies don't make it easy.

When you are an expert in these sorts of things, you know which keywords to use.

The fact is a small businessman can't go on line. He may not know that MSDS stands for material safety data sheet, or he may not know that he ought to look under boric acid under pesticides, I don't know, but there are all sorts of new answers that are out there that your average person does not—your average person does not speak bureaucratese. That is part of the problem, and the career civil servants, unfortunately, do not think in the same way that small business owners do. And, there are ways to get around that and sort of get them to start thinking like small business owners, but there is a lot of training involved, and I can offer up suggestions to that, but——

Mr. OSE. Well, let me ask you a question: How is the case proven that small business owners who can run their own enterprises aren't able to use the NAICS code or something else to sort through to get their forms?

Mr. LANGER. Well, largely because they are not all in the same place. It really comes down to time and effort and really just wanting—being so consumed with getting their businesses up and running and moving forward that, in order to take the time and effort to sort of learn the new answers of the bureaucratic language and to learn where to go in each different place, that is a lot to ask of someone who is working 7 hours a day, you know, running their small dry cleaner or running their auto repair shop, as Congressman Kelly raised.

Mr. OSE. Seems to me that if you constructed—and I just want to explore this a little bit. Seems to me if you constructed a Web site to which I could click through, starting at OMB, with a link that says regulatory whatever, and I can click on that, and that takes me to the NAICS codes, and it says, please select the code most applicable to your enterprise, I ought to be able to figure out which of these codes is most applicable.

Mr. LANGER. I agree with that.

Mr. OSE. OK. So, then, we got to that point; then I click on that thing, and it takes me to the various agencies that might have—or a list of various agencies that might have a regulatory burden applied to that, right?

Mr. LANGER. Yes.

Mr. OSE. Pretty simple so far. I do not think we have Einstein involved yet.

Mr. LANGER. Not yet.

Mr. OSE. So, then I would click on, oh, I don't know, EPA. I go to EPA, and they have a form. OK. Then I click back and I go back to that list, and I click Transportation, and it would click me through to that form. What is so complicated about that?

Mr. LANGER. I mean, I do not want to belabor that point. There are two basic problems with that, because it needs to be simpler than that, if you can believe it.

No. 1, starting at OMB, the average small business owner is not going to think about that. It would have to be business compliance, small business compliance, or small business regulations, or small business rules. You know, that would have to be smallbusinessrules.gov.

It is like right now what they have in sort of e-rulemaking side of things is regulations.gov. That's pre-KISS; keep it simple stupid. That's KISS, simple, right there, and you go to that Web site, and all you have to do is go to regulations.gov and click on the agencies, and it spits out everything that you need, all the new rules that are being proposed.

So, the idea is to do it on the other side. Type in what sort of business you are, and it should spit out everything. There should be no sort of click through, click through, click through, because that takes precious time. Every minute spent clicking through is a small business owner's time wasted, so it should really be that simple. You click in your small dry cleaner in, say, Carmel, CA, and it should just come out and spit out exactly what you need to do to comply with every regulation.

You know, I am an optimist. I don't see why that should be so difficult, though.

Mr. OSE. Well, we can put a computer on Mars with 156—256-bit memory. I don't know why we can't do that.

Mr. LANGER. There you go.

Mr. OSE. Mr. Schrock.

Trying to draw a connection to the reduction in paperwork that would come from that.

I got one other question. I need to find it here.

Mr. Langer, the agency compliance assistance resources and the performance from the agencies, do you have any view as to the degree to which those resources have been helpful or the performance of the agency personnel have been helpful and how we might improve that, if at all?

Mr. LANGER. I don't have a ready answer to that. I think that every effort that the agencies can make to be more helpful is good, but it never, ever goes far enough really. You know, either the agencies themselves do not specifically know what language to put it in to make it small-business-friendly—there is almost always too much small business language in compliance guides. Agencies are sort of reluctant to make it as simple as possible, largely because it covers their own—well, it covers themselves. If they get too specific in how to be helpful, you know, they think that—well, they think that they will not be able to assess fines or go after people, but, you know——

Mr. OSE. Too helpful?

Mr. LANGER. You know, I have always gotten the feeling they do not want to make it too helpful for people. They do not want to

make it simple enough. That way, if there is any political blowback, they can say, well, it was not that specific.

I will give you an example, a case that came out of Texas about 10 years ago in which a large chemical company was given an exemption from complying with the national emission standards for hazardous air pollutants. This chemical company was given an express exemption from having to comply with tenets of this regulation, and several years later EPA came back and said, no, we were wrong. We didn't mean to tell you you were exempt, and we are going to assess you a fine of $40 million, $2,000 per day, per violation.

I have always gotten the feeling that agencies don't want to make it that easy for businesses to comply in just sort of instances like that, where they can go back—if you have a new administration that comes in that may have different priorities for how to enforce, you know, they want to be able to go back and revisit things and change guidance and change interpretation. So I would like to see agencies go further. They can always go further, as far as I am concerned.

In the instance of lead TRI, to give you an example lately, we went through the guidance documents lately with senior EPA officials including, Kim Nelson, and I was met with a great deal of reluctance on the part of EPA to make that more clear. I wanted a specific table of contents which specifically asks questions about lead TRI: Here is where you go to get an answer to that question. The EPA claimed—well, I don't remember what they said, but they were very reluctant to provide that guidance, and, as we all know, many small businesses out there, they reported they had no releases whatsoever, and they still have to continue to fill out this paperwork.

It just seems to me that EPA—there is always room for improvement, and the lead TRI example is a very good object lesson, as far as I am concerned.

Mr. OSE. Anything?

All right. Anything else?

All right. We're going to leave the record open for 10 days in case other Members may have additional questions or we think there is something that we forgot to ask.

Mr. LANGER. Great.

Mr. OSE. I want to thank you.

Mr. LANGER. Thank you very much.

Mr. OSE. For those agencies that are still in the room, we appreciate your taking part today. I think we made a little bit of progress today, and I look forward to working with you in the future.

We are adjourned.

[Whereupon, at 6:12 p.m., the subcommittees were adjourned.]

[Additional information submitted for the hearing record follows:]

Congress of the United States

Washington, DC 20515

February 6, 2004

BY FACSIMILE

The Honorable John Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Dr. Graham:

This letter follows up on the January 28, 2004 joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight, entitled "What is the Administration's Record in Relieving Burden on Small Business?" Please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 and B-363 Rayburn House Office Building and the minority staff in B-350A and B-343C Rayburn House Office Building not later than March 1, 2004. If you have any questions about this request, please call Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Edward L. Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney
The Honorable Donald A. Manzullo

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Q1. Single Points of Contact.

a. Missing Agencies. The June 2002 Small Business Paperwork Relief Act (SBPRA) required each agency to designate a Single Point of Contact (SPOC) by June 28, 2003. The Office of Management and Budget's (OMB's) June 27th listing was incomplete. Therefore, in a September 22nd letter, we asked OMB to publish a revised and complete listing by November 14th.

During the January 28, 2004 hearing, we displayed a chart showing 14 agencies without a SPOC. When will OMB ensure that all remaining agencies still without a SPOC name them? And, when will OMB publish a revised and complete listing?

b. Training. Your written testimony states, "OMB believes each agency is in the best position to train its point of contact" (p. 5). Without government-wide training, how can OMB ensure consistent and responsive performance by all of the SPOCs?

Q2. Compliance Assistance.

a. Missing Agencies. SBPRA required OMB to publish by June 28, 2003, a complete listing of agency compliance assistance resources available to small business. During the January 28, 2004 hearing, we displayed a chart showing 18 agencies still without compliance assistance resources indicated on OMB's website. When will OMB publish this information for the remaining agencies? This is especially important for the General Services Administration (GSA) that procures services from many small businesses.

b. Copies of Forms. Small businesses too often find it difficult to locate a copy of the current version of an OMB-approved paperwork form. In our July 25th post-hearing questions, we asked "Will OMB post downloadable copies of each OMB-approved paperwork requirement/form or links to each agency's website with such downloadable copies?" In your September 11th reply, you declined to do so, citing staffing limitations. As a consequence, we called all 71 agencies and asked them to submit to us a copy of their information collections applicable to small business. Using our notebooks, will OMB now ensure posting of this information? If not, why not?

Q3. Enforcement Reports.

a. Missing Agencies. SBPRA required each agency to submit its initial agency enforcement reports to Congress by December 31, 2003. During the January 28, 2004 hearing, we displayed a chart showing 42 agencies that had not yet submitted these statutorily required reports. Since the Bureau of the Budget was re-named the Office of Management and Budget in 1970, OMB has emphasized its role in managing the Federal Government. When do you expect that the remaining agencies will submit their enforcement reports? What followup has OMB taken since December 31st to this end?

b. Training. Subcommittee staff found that 20 agencies were unaware of the statutorily required enforcement reports. Why did you only notify, on October 23, 2003, the

President's Management Council (PMC) agencies about this statutory obligation instead of the usual OMB practice of notifying all agencies of government-wide statutory requirements?

c. OMB Guidance. What guidance did OMB provide all affected agencies to ensure that their enforcement data could be reconciled with the penalty data included in agency Annual Financial Statements, prepared by agency Chief Financial Officers (CFOs), and agency Semi-Annual Inspector General (IG) Reports?

d. IRS's Enforcement Report. The Treasury Department's Internal Revenue Service (IRS) accounts not only for over 80 percent of all paperwork levied on the public but also for the lion's share of Federal enforcement fines and penalties levied on small business. Its enforcement report shows that IRS directs 66 percent of its enforcement actions against small business and has only reduced or waived 12 percent of its fines and penalties levied on small business. Is OMB willing to meet with IRS about reducing its enforcement penalties on small business? If not, what do you recommend?

And, if IRS is not accountable to OMB, to whom is IRS accountable? Which policy official or organization outside of the Department of the Treasury should our Subcommittees direct questions about IRS's enforcement policies?

Q4. Task Force. As discussed at our July 18, 2003 hearing and in correspondence with OMB both before and after the hearing, the Subcommittees found the initial OMB-chaired task force report to be largely nonresponsive to Congressional intent. Your written testimony reveals that, since OMB's June 27th publication of this report, OMB has convened only one task force meeting – on January 20, 2004 – to develop the final task force report, which is statutorily due June 28th. Will any of the topics that we found not adequately covered in the initial report be re-examined? If so, which? If not, why not?

Q5. Small Business Paperwork Reduction Initiatives from 7/18/03 to 12/31/04. Your written statement identifies three agency paperwork reduction initiatives, including one initiated in fiscal year 2002. What significant paperwork reduction initiatives of at least 100,000 hours (**exclusive of electronic filing**) were accomplished to benefit small businesses since our July 18, 2003 hearing, and what are planned in the rest of 2004? For each, please indicate expected burden reduction hours.

a. How many of these initiatives reduce the frequency of small business reporting?
b. How many introduce thresholds below which reporting is not required?
c. How many raise thresholds to reduce reporting for more small businesses?
d. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?
e. How many create short forms for small businesses?

Q6. Tax Burden Reduction for Small Businesses. Drs. Mark Crain and Thomas Hopkins in their August 2001 Report, commissioned by the Small Business Administration (SBA), found that small firms (with less than 20 employees) spend twice as much on tax compliance as large firms (with over 500 employees): $1,202 per employee versus $562 per employee. Small businesses face more than 200 IRS forms, including more than 8,000 lines, boxes, and data requirements.

What specific paperwork reduction candidates did OMB or IRS pursue for tax paperwork since our July 18, 2003 hearing and will OMB or IRS pursue in the rest of 2004 to actually reduce the paperwork burden on small businesses -- i.e., not electronic filing, guidance documents, notice simplifications, etc.? What is OMB's estimate for the burden reduction hours associated with these initiatives?

Q7. Additional Analysis of Paperwork Reduction Opportunities for Small Business. During the January 28, 2004 hearing, we displayed notebooks (mentioned in Q2b above) revealing the totality of each agency's paperwork applicable to small business. We believe these notebooks are a unique and valuable tool to further small business paperwork reduction. Using these notebooks, will OMB - without or without additional support from other agencies – review the totality of each agency's (or at least the major burden-imposing agencies') paperwork applicable to small business and try to identify additional paperwork reduction opportunities to benefit small business? If not, why not?

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Rec'd 3/1/04

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

MAR 0 1 2004

The Honorable Doug Ose
Chairman, Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
B-377 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for you letter of February 6, 2004, enclosing additional questions as a follow-up to your January 28, 2004 hearing on the Small Business Paperwork Relief Act of 2002 (SBPRA). I appreciated the opportunity to testify before the Subcommittees and share the Office of Management and Budget's (OMB's) views on how we can work with you and the agencies to implement SBPRA in a manner that benefits small business.

Enclosed are OMB's responses to your follow-up questions. If you would like any additional information, please contact me at your convenience.

Sincerely,

John D. Graham, Ph.D.
Administrator
Office of Information
and Regulatory Affairs

Enclosure

cc: The Honorable Thomas M. Davis III
The Honorable John F. Tierney
The Honorable Donald A. Manzullo

Identical Letter Sent to The Honorable Edward L. Schrock

Q1. Single Points of Contact.

a. Missing Agencies. The June 2002 Small Business Paperwork Relief Act (SBPRA) required each agency to designate a Single Point of Contact (SPOC) by June 28, 2003. The Office of Management and Budget's (OMB's) June 27th listing was incomplete. Therefore, in a September 22nd letter, we asked OMB to publish a revised and complete listing by November 14th.

During the January 28, 2004 hearing, we displayed a chart showing 14 agencies without a SPOC. When will OMB ensure that all remaining agencies still without a SPOC name them? And, when will OMB publish a revised and complete listing?

Answer

The Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs provided OMB with status reports on agency single points of contact in the fall of 2003. These status reports prompted us to generate, in December 2003, our own list of agencies that have one or more currently approved information collections that may affect small business. From this list, we were able to verify that, in a few cases, we needed to add an agency to our list. In a few other cases, our list included agencies that do not currently impose paperwork burden on small business. We contacted the missing agencies and asked them to designate a point of contact. These agencies have done so, and we have made these changes to the OMB website. We have also removed those single points of contact from agencies that do not currently impose paperwork burdens on small business. Therefore, we believe the current list on our website provides a single point of contact for each agency that has one or more approved information collections that may affect small business.

We recognize that agencies may periodically change their single point of contact. Indeed, we have made several changes to our website in response to requests from agencies wishing to change their contact information, and we will continue to make such changes when requested to do so. In addition, because we have integrated our contact list with our list of compliance assistance materials, we expect agencies to verify their single point of contact information at least on an annual basis, at the same time they provide updates to their compliance assistance information.

b. Training. Your written testimony states, "OMB believes each agency is in the best position to train its point of contact" (p. 5). Without government-wide training, how can OMB ensure consistent and responsive performance by all of the SPOCs?

Answer

With respect to training, it is important to note that each agency is unique with respect to its paperwork requirements; the burden it imposes on small business; its internal procedures for developing, maintaining, and distributing information collections; and its procedures for enforcing paperwork violations. For these reasons, OMB believes each agency is in the best position to train its point of contact.

Q2. Compliance Assistance.

a. Missing Agencies. SBPRA required OMB to publish by June 28, 2003, a complete listing of agency compliance assistance resources available to small business. During the January 28, 2004 hearing, we displayed a chart showing 18 agencies still without compliance assistance resources indicated on OMB's website. When will OMB publish this information for the 18 missing agencies? This is especially important for the General Services Administration (GSA) that procures services from many small businesses.

Answer

OMB appreciates the considerable assistance the Small Business Administration provided in the gathering and compiling of compliance assistance information from each agency. The list that appears on the OMB website represents months of effort on the part of the contributing agencies, SBA, and OMB. (Despite numerous requests, GSA did not provide compliance assistance information.) We recognize that agencies that are not traditional regulatory agencies may not have much in the way of compliance assistance materials. We also recognize, however, that our list may not contain all available compliance assistance information. OMB will work with SBA this spring to update our list of compliance assistance materials, and we will make a concerted effort to ensure that all agencies that have compliance assistance information are included. We expect to update our compliance assistance list by June 28, 2004.

b. Copies of Forms. Small business too often finds it difficult to locate a copy of the current version of an OMB-approved paperwork form. In our July 25th post-hearing questions, we asked "Will OMB post downloadable copies of each OMB-approved paperwork requirement/form or links to each agency's website with such downloadable copies?" In your September 11th reply, you declined to do so, citing staffing limitations. As a consequence, we called all 71 agencies and asked them to submit to us a copy of their information collections applicable to small business. Using our notebooks, will OMB now post this information? If not, why not?

Answer

An agency that seeks specific information needs to interact directly with the affected member of the public, in terms of making forms available and answering questions about when the forms are required and how to complete them. That is not a role for which OMB has the resources or is suited to perform on a government-wide basis.

We do not believe, from a 'customer service' perspective, the best way to improve the Federal Government's customer service is for OMB to serve as the 'one-stop' place for the public to interact with the Federal Government. Instead, we believe that the line agencies of the Federal Government must continue their efforts, under the President's Management Agenda, to become 'citizen-centered' in their operations and activities. Accordingly, we are working with the agencies to establish the Business Gateway. In addition, OIRA and our e-Government colleagues in OMB will reiterate to the agencies the importance of making their websites as easy to use as possible for those members of the public, such as small businesses, who need or want to obtain information from the agencies.

In testimony before the Subcommittees, OMB stated that it would consider your request to post the information. For the reasons mentioned at the hearing and re-stated here, we do not believe that such a posting would be particularly beneficial.

Q3. Enforcement Reports.

a. Missing Agencies. SBPRA required each agency to submit its initial agency enforcement reports to Congress by December 31, 2003. During the January 28, 2004 hearing, we displayed a chart showing 42 agencies that had not yet submitted these statutorily required reports. Since the Bureau of the Budget was re-named the Office of Management and Budget in 1970, OMB has emphasized its role in managing the Federal Government. When do you expect that the remaining 42 agencies will submit their enforcement reports? What follow-up has OMB taken since December 31st to this end?

Answer

Our efforts to remind agencies of their obligation to submit a regulatory enforcement report focused on agencies that undertake a substantial amount of regulatory enforcement. We therefore focused primarily on cabinet level agencies. All cabinet departments and a few other major regulatory agencies have submitted their regulatory enforcement reports. Of the agencies that have not yet submitted a report, we believe many do not conduct regulatory enforcement and are therefore unlikely to have any statistics to report. We plan to contact each major regulatory enforcement agency that has not yet submitted a report and urge each to send in their report.

b. Training. Subcommittee staff found that 20 agencies were unaware of the required enforcement reports. Why did you only notify, on October 23, 2003, the President's Management Council (PMC) agencies of government-wide statutory requirements?

Answer

The statute does not specify an OMB role with respect to regulatory enforcement reports, nor does it require OMB to issue guidance to agencies regarding other SBPRA obligations. Nevertheless, we notified agencies on October 28th because we thought it would serve as a useful reminder and would help increase the probability that regulatory enforcement reports would be submitted by the December 31, 2003 deadline. OMB also used other mechanisms to ensure that the major regulatory enforcement agencies knew of this statutory requirement. On November 19, 2003, agencies were reminded of this obligation at the SBA Ombudsman's semi-annual interagency meeting. At that meeting, OMB staff told participants that the first regulatory enforcement report is due by December 31, 2003 and that information in this report should be consistent with agency information reported under the authority of the IG Act and the CFO Act. In the first week of December 2003, OMB desk officers sent e-mail reminders to all cabinet-level agencies to reiterate that (1) OMB expects agencies to submit their regulatory enforcement reports on time, and that (2) the information contained in these reports should be consistent with agency reports submitted pursuant to the IG Act and the CFO Act.

c. OMB Guidance. What guidance did OMB provide all affected agencies to ensure that their enforcement data could be reconciled with the penalty data included in agency Annual Financial Statements, prepared by agency Chief Financial Officers (CFOs), and agency Semi-Annual Inspector General (IG) Reports?

Answer

OMB did not issue any written guidance describing how each agency is to reconcile enforcement data with penalty data included in agency Annual Financial Statements. On several occasions (see answer to Question 3b), OMB staff conveyed to agencies that their enforcement reports be consistent with agency reporting under the CFO Act and IG Act.

d. IRS's Enforcement Report. The Treasury Department's Internal Revenue Service (IRS) accounts not only for over 80 percent of all paperwork levied on the public but also for the lion's share of Federal enforcement fines and penalties levied on small business. Its enforcement report shows that IRS directs 66 percent of its enforcement actions against small business and has only reduced or waived 12 percent of its fines and penalties levied on small business. Is OMB willing to meet with IRS about reducing its enforcement penalties on small business? If not, what do you recommend?

Answer

OMB does not have expertise in regulatory enforcement, and OMB does not have expertise in the intricacies of the Internal Revenue Code and its implementing regulations. In addition, OMB does not become involved in IRS tax collection matters, which are adjudications that involve specific parties and concern their highly sensitive and confidential taxpayer information. Accordingly, we believe it would be inappropriate for OMB to meet with IRS to inquire into the factual reasons for why the IRS has instituted particular enforcement actions and for why the IRS has reduced or waived penalties in certain cases but not in others. Instead, OMB recommends that you contact IRS directly about their regulatory enforcement procedures.

Q4. Task Force. As discussed at our July 18, 2003 hearing and in correspondence with OMB both before and after the hearing, the Subcommittees found the initial OMB-chaired task force report to be largely nonresponsive to Congressional intent. Your written testimony reveals that, since OMB's June 27th publication of this report, OMB has convened only one task force meeting – last week on January 20, 2004 – to develop the final task force report, which is statutorily due June 28th. Will any of the topics that we found not adequately covered in the initial report be re-examined? If so, which? If not, why not?

Answer

I want to assure you that OMB and the other agencies on the Task Force strove to be responsive to Congressional intent in our development of the first report. And, we believe that the first report did address the three topics that were required by the statute. Also, OMB and the agencies are dedicated to ensuring, through our ongoing efforts, that the Task Force's final report is also responsive to Congressional intent. To the extent that the Task Force's ongoing work will require us to re-examine the first report, we will of course do so.

Q5. Small Business Paperwork Reduction Initiatives from 7/18/03 to 12/31/04. Your written statement identifies three agency paperwork reduction initiatives, including one initiated in fiscal year 2002. What significant paperwork reduction initiatives of at least 100,000 hours (**exclusive of electronic filing**) were accomplished to benefit small businesses since our July 18, 2003 hearing, and what are planned in the rest of 2004? For each, please indicate expected burden reduction hours.

a. How many of these initiatives reduce the frequency of small business reporting?
b. How many introduce thresholds below which reporting is not required?
c. How many raise thresholds to reduce reporting for more small businesses?

d. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?
e. How many create short forms for small businesses?

Answer

Before I address your specific question, I want to mention that significant efforts are underway to reduce the burden through electronic means. Many small businesses already have computers and internet access, and this number increases every year. Therefore, to continue achieving meaningful burden reduction for small businesses, the Federal government's commitment and focus on using the Internet to facilitate a more efficient means of doing business with the government is extremely important.

In addition to these e-government initiatives, agencies are making efforts to reduce burden through other means, including the various ways you mention. For example, EPA is seeking public comment on alternative thresholds for TRI reporting and on reducing the frequency of reporting. The Department of Labor is using sampling to reduce the number of respondents to its current employment survey.

OMB asks agencies to identify burden reduction initiatives to compile our annual information collection budget. When the 2004 report is completed this Spring, we expect to have new initiatives to share with Congress.

With respect to the actual number of initiatives that reduced the frequency of reporting, changed thresholds, created short forms, or introduced sampling as opposed to universe reporting, our database of PRA transactions does not keep track of this information.

Q6. Tax Burden Reduction for Small Businesses. Drs. Mark Crain and Thomas Hopkins in their August 2001 Report, commissioned by the Small Business Administration (SBA), found that small firms (with less than 20 employees) spend twice as much on tax compliance as large firms (with over 500 employees): $1,202 per employee versus $562 per employee. Small businesses face more than 200 IRS forms, including more than 8,000 lines, boxes, and data requirements.

What specific paperwork reduction candidates did OMB or IRS pursue for tax paperwork since our July 18, 2003 hearing and will OMB or IRS pursue in the rest of 2004 to actually reduce the paperwork burden on small businesses -- i.e., not electronic filing, guidance documents, notice simplifications, etc.? What is OMB's estimate for the burden reduction hours associated with these initiatives?

Answer

I think we all share the long term goal of tax simplification. IRS continues to pursue a broad program directed toward small business taxpayer burden reduction. This involves expanding the use of electronic filing, simplifying forms and instructions, and improving compliance guidance, all of which will contribute to reducing the taxpayer's paperwork burden. As you know, we consider the detail contained in the Tax Code to be the number one impediment to burden reduction for all taxpayers.

OMB is interested in identifying opportunities for IRS burden reduction. We asked small business for specific examples of such opportunities in the context of the February 9 public meeting held in connection with the SBPRA Task Force report. We have also asked the public, in the context of our draft 2004 cost-benefit report, to recommend specific IRS paperwork requirements that can and should be reduced to lessen the burden on small business. By reaching out to small business for specific examples, we hope to focus on those IRS paperwork requirements that are particularly burdensome for small business and provide an opportunity for significant burden reduction.

Q7. Additional Analysis of Paperwork Reduction opportunities for Small Business. During the January 28, 2004 hearing, we displayed notebooks (mentioned in Q2b above) revealing the totality of each agency's paperwork applicable to small business. We believe these notebooks are a unique and valuable tool to further small business paperwork reduction. Using these notebooks, will OMB – with or without additional support from the agencies – review the totality of each agency's (or at least the major burden-imposing agencies') paperwork applicable to small business and try to identify additional paperwork reduction opportunities to benefit small business? If not, why not?

Answer

OMB uses a variety of mechanisms to identify and reduce paperwork burden. Our collection-by-collection reviews occur regularly under the Paperwork Reduction Act, and our annual effort to catalogue information collection burden across the Federal Government helps us identify trends and focus agency attention on opportunities for burden reduction. To complement these existing mechanisms, OMB seeks information directly from small businesses on IRS burden reduction opportunities (see answer to the previous question). By reaching out to small business for specific examples, we hope to focus on those IRS paperwork requirements that are particularly burdensome for small business and provide an opportunity for significant burden reduction. We believe these ongoing efforts are appropriate to identify burden reduction opportunities.

Congress of the United States

Washington, DC 20515

February 6, 2004

BY FACSIMILE

The Honorable Patrick Pizzella
Assistant Secretary for Administration
and Management
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Pizzella:

This letter follows up on the January 28, 2004 joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight, entitled "What is the Administration's Record in Relieving Burden on Small Business?" As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 and B-363 Rayburn House Office Building and the minority staff in B-350A and B-343C Rayburn House Office Building not later than March 1, 2004. If you have any questions about this request, please call Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Edward L. Schrock
Chairman
Subcommittee on Regulatory
Reform and Oversight

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney
The Honorable Donald A. Manzullo

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Q1. Waiver/Reduction Policies for First-Time Violations by Small Business.

a. What is your agency's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

b. Has your policy changed since the June 2002 enactment of the Small Business Paperwork Relief Act (SBPRA)? If so, how? If not, did your agency's policy change after the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which required agencies to develop plans for waiving and/or reducing fines, as appropriate, on small business. If so, how? If not, why not?

c. Does your agency have different policies for first-time violations by small business of **paperwork** requirements vs first-time violations by small business of **regulatory** requirements? If so, please explain.

d. Does your agency track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

Q2. DOL Policies for Small Business.

a. OSHA. The Occupational Safety and Health Administration (OSHA) reduced or waived 78 percent of all enforcement dollars reduced or waived by the various agencies within the Department of Labor (DOL) from October 1, 2002 to September 30, 2003: $40.5 million of the $51.6 million. DOL reported that 67 percent of OSHA's enforcement actions against small entities involved some reduction or waiver. What percent of these involved first-time violations? Does OSHA employ different criteria for small business? If so, please explain. If not, why not?

b. MSHA. The Mine Safety and Health Administration (MSHA) took 47,150 enforcement actions against small entities – 72 percent of DOL's total – but DOL's report states, "MSHA is not authorized to waive civil penalties" (p. 2). What can DOL do to help small businesses in this area? Is a regulatory or statutory change needed? If so, will DOL seek such a change? If not, why not?

Q3. Enforcement Data Systems.

a. SBPRA Implementation. When did your agency begin to adjust its existing data systems to collect the enforcement data required by the June 2002 SBPRA law to be initially reported to Congress on 12/31/03?

b. DOL Systems for Enforcement Data. DOL's December 30, 2003 report states: (1) "for some agencies, there are no mechanisms to calculate reductions in civil penalties for small entities," (2) "OSHA's data collection system does not capture precisely what is being requested under the Act," and (3) "there may be differences with [OSHA's] reports issued under the authority of the Inspector General and Chief Financial Officer."

Why didn't DOL revise its data systems to be able to report the enforcement information statutorily required in the June 2002 law? Will DOL be doing so? If so, will the data be ready for the next enforcement report due December 31, 2004? And, will that report present data that are consistent with the data in the IG's Semi-Annual Reports and the CFO's annual financial statement? If not, why not?

Q4. Small Business Paperwork Reduction Initiatives.

a. 5/22/95 PRA to Present. Your written testimony states, "DOL has decreased the paperwork burden ... in seven out of the eight years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments" (p. 1). Since the 1980 enactment of the Paperwork Reduction Act (PRA), OMB has factored out adjustments, since they are not due to any agency action, in all claimed burden reduction accomplishments. As a consequence, what portion of DOL's 40 percent decrease figure is solely due to agency action (i.e., program increases or program decreases but not correction-errors, correction-reestimates, or changes in use)? Please provide details for each burden reduction accomplishment over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

b. 6/28/02 SBPRA to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (**exclusive of electronic filing**) were accomplished by your agency to benefit small businesses since the June 28, 2002 enactment of SBPRA, and what are planned in the rest of 2004?

   i. How many of these initiatives reduce the frequency of small business reporting?
   ii. How many introduce thresholds below which reporting is not required?
   iii. How many raise thresholds to reduce reporting for more small businesses?
   iv. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?
   v. How many create short forms for small businesses?

Q5. OSHA Recordkeeping Threshold. During and after the Ose Subcommittee's April 11, 2003 paperwork hearing, we asked OSHA Administrator John Henshaw, "In your testimony, you mention that employers with 10 or fewer employees are not required to compile injury-illness logs (p. 5). In its December 2003 enforcement report, DOL used 25 as the threshold for OSHA's small business enforcement actions and penalties. As a consequence, why can't DOL raise this threshold to 25 employees? If not, is DOL considering other reductions for small business in this burdensome requirement? If so, please describe them.

Congress of the United States

Washington, DC 20515

February 6, 2004

BY FACSIMILE

The Honorable Patrick Pizzella
Assistant Secretary for Administration
and Management
Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Pizzella:

This letter follows up on the January 28, 2004 joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight, entitled "What is the Administration's Record in Relieving Burden on Small Business?" As discussed during the hearing, please respond to the enclosed followup questions for the record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 and B-363 Rayburn House Office Building and the minority staff in B-350A and B-343C Rayburn House Office Building not later than March 1, 2004. If you have any questions about this request, please call Barbara Kahlow on 226-3058.

Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Edward L. Schrock
Chairman
Subcommittee on Regulatory
Reform and Oversight

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney
The Honorable Donald A. Manzullo

PRINTED ON RECYCLED PAPER

Q1. Waiver/Reduction Policies for First-Time Violations by Small Business.

a. What is your agency's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

b. Has your policy changed since the June 2002 enactment of the Small Business Paperwork Relief Act (SBPRA)? If so, how? If not, did your agency's policy change after the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which required agencies to develop plans for waiving and/or reducing fines, as appropriate, on small business. If so, how? If not, why not?

c. Does your agency have different policies for first-time violations by small business of **paperwork** requirements vs first-time violations by small business of **regulatory** requirements? If so, please explain.

d. Does your agency track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

Q2. DOL Policies for Small Business.

a. OSHA. The Occupational Safety and Health Administration (OSHA) reduced or waived 78 percent of all enforcement dollars reduced or waived by the various agencies within the Department of Labor (DOL) from October 1, 2002 to September 30, 2003: $40.5 million of the $51.6 million. DOL reported that 67 percent of OSHA's enforcement actions against small entities involved some reduction or waiver. What percent of these involved first-time violations? Does OSHA employ different criteria for small business? If so, please explain. If not, why not?

b. MSHA. The Mine Safety and Health Administration (MSHA) took 47,150 enforcement actions against small entities – 72 percent of DOL's total – but DOL's report states, "MSHA is not authorized to waive civil penalties" (p. 2). What can DOL do to help small businesses in this area? Is a regulatory or statutory change needed? If so, will DOL seek such a change? If not, why not?

Q3. Enforcement Data Systems.

a. SBPRA Implementation. When did your agency begin to adjust its existing data systems to collect the enforcement data required by the June 2002 SBPRA law to be initially reported to Congress on 12/31/03?

b. DOL Systems for Enforcement Data. DOL's December 30, 2003 report states: (1) "for some agencies, there are no mechanisms to calculate reductions in civil penalties for small entities," (2) "OSHA's data collection system does not capture precisely what is being requested under the Act," and (3) "there may be differences with [OSHA's] reports issued under the authority of the Inspector General and Chief Financial Officer."

Why didn't DOL revise its data systems to be able to report the enforcement information statutorily required in the June 2002 law? Will DOL be doing so? If so, will the data be ready for the next enforcement report due December 31, 2004? And, will that report present data that are consistent with the data in the IG's Semi-Annual Reports and the CFO's annual financial statement? If not, why not?

Q4. Small Business Paperwork Reduction Initiatives.

a. 5/22/95 PRA to Present. Your written testimony states, "DOL has decreased the paperwork burden ... in seven out of the eight years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments" (p. 1). Since the 1980 enactment of the Paperwork Reduction Act (PRA), OMB has factored out adjustments, since they are not due to any agency action, in all claimed burden reduction accomplishments. As a consequence, what portion of DOL's 40 percent decrease figure is solely due to agency action (i.e., program increases or program decreases but not correction-errors, correction-reestimates, or changes in use)? Please provide details for each burden reduction accomplishment over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

b. 6/28/02 SBPRA to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (**exclusive of electronic filing**) were accomplished by your agency to benefit small businesses since the June 28, 2002 enactment of SBPRA, and what are planned in the rest of 2004?

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Q5. OSHA Recordkeeping Threshold. During and after the Ose Subcommittee's April 11, 2003 paperwork hearing, we asked OSHA Administrator John Henshaw, "In your testimony, you mention that employers with 10 or fewer employees are not required to compile injury-illness logs (p. 5). In its December 2003 enforcement report, DOL used 25 as the threshold for OSHA's small business enforcement actions and penalties. As a consequence, why can't DOL raise this threshold to 25 employees? If not, is DOL considering other reductions for small business in this burdensome requirement? If so, please describe them.

Rec'd 3/3/04

Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

MAR 0 3 2004

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources, and Regulatory Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Ose:

This letter is in response to your letter of February 6, 2004, in which you pose several questions regarding my testimony on January 28, 2004 before the House Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs and the House Small Business Subcommittee on Regulatory Reform and Oversight. This letter also responds to several questions that were asked in that hearing, which I had requested to respond to in writing.

Please do not hesitate to call me at (202) 693-4040 if you have any questions or need additional information.

Sincerely,

Patrick Pizzella
Assistant Secretary for Administration and Management,
Chief Information Officer

Enclosure

Responses to the follow-up questions from the January 28 testimony of Assistant Secretary and Chief Information Officer Patrick Pizzella before the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, and the Small Business Subcommittee on Regulatory Reform and Oversight.

The Department of Labor's FY 2003 Regulatory Enforcement Report required by the Small Business Paperwork Relief Act presented data on DOL agency enforcement actions in which a civil penalty was assessed. Within the Department of Labor, four agencies, the Employee Benefits Security Administration (EBSA), the Employment Standards Administration (ESA), the Mine Safety and Health Administration (MSHA), and the Occupational Safety and Health Administration (OSHA) reported enforcement actions in this report. These four agencies are quite different in their statutory authority and the type of regulations they enforce. As such, in addressing the committee's questions, agency responses differ.

Q1. Waiver/Reduction Policies for First-Time Violations by Small Business.

a. What is your agency's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

OSHA
OSHA's penalty policies provide that, in the vast majority of cases where a violation is classified as "other-than-serious," no penalty will be proposed. Moreover, OSHA's current penalty-reduction policy permits significant reductions in penalties based upon employer size, good faith, and previous history of violations.

OSHA also has a quick-fix penalty reduction of 15% that applies to employers of all sizes who immediately abate hazards found during an OSHA inspection. The quick-fix reduction does not apply to violations classified as high- or medium-gravity serious, willful, repeat or failure-to-abate violations.

MSHA
MSHA is required by statute to propose a civil penalty for every violation. The penalties for paperwork-type violations are usually single penalty assessments, which are currently set at $60. A mine operator is eligible for a single penalty assessment when the violation is one not reasonably likely to result in a serious injury and must be abated within the time set by the inspector. However, a mine operator with a history of excessive violations is not eligible for the single penalty assessment.

EBSA
In general, civil penalty enforcement actions undertaken by EBSA involve a significantly lower penalty amount for small plans. The nature of the violation and the past compliance history of the penalized party are also taken into account.

ESA – Wage and Hour Division

Criteria for waiving or reducing civil money penalties are largely dependent on the statutory and regulatory civil money penalty provisions of each Act. The Wage and Hour Division (WHD) has the authority to assess civil money penalties for minimum wage, overtime, and child labor violations under the Fair Labor Standards Act, and for violations of the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the H-1C, H-1B and H-2A immigration programs, the Family and Medical Leave Act, and the field sanitation and housing provisions of the Occupational Safety and Health Act. While the agency may assess a civil money penalty for a first-time violation by a small business under any of the statutes, it would be uncommon to assess a penalty for a first-time violation that does not have "the potential to cause serious harm" to affected workers. In general, Wage and Hour considers the size of the establishment and the seriousness or gravity of the violation before a civil money penalty is assessed. The assessment, and any subsequent reduction or waiver of a civil money penalty, must be considered in light of the individual circumstances of each case – including the statute violated, the size of the business, the seriousness of the violations and their impact on workers' safety and health, and whether the violations were repeat or willful.

b. Has your policy changed since the June 2002 enactment of Small Business Paperwork Relief Act (SBPRA)? If so, how? If not, did your agency's policy change after the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which required agencies to develop plans for waiving and/or reducing fines, as appropriate, on small business? If so, how? If not, why not?

OSHA

OSHA is assessing possible modifications to its data-collection system in light of the SBPRA. With regard to SBREFA, OSHA's policy, before as well as after the 1996 enactment of this Act, is to take the employer's size of business into consideration in proposing any civil penalty, as required by Section 17 of the OSH Act. The Agency has always had detailed procedures in place to implement this policy; they are currently embodied in Chapter IV, paragraph C.w.i.(5)(a) of the Field Inspection Reference Manual (FIRM). This policy was amended by a memorandum dated March 23, 1995, "FIRM change: Minimum Serious Willful Penalty," which gives an even greater reduction to the smaller employers for willful penalties, since those penalties can be quite high. It mainly minimizes penalties for employers with 50 or fewer employees. OSHA believes that its penalty policies are in full accordance with SBREFA.

Since the mid 1970s, OSHA also has been precluded by two provisions of the DOL Appropriations Act from undertaking certain enforcement activities in businesses where 10 or fewer are employed. The first concerns small farms that do not have a temporary labor camp. The second applies to small businesses that fall in a Standard Industrial Classification code with a Lost Workday Injury Rate below the national average, according to the most recent Bureau of Labor Statistics information. The details of these enforcement exemptions and limitations under the Appropriations Act may be found in OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J).

MSHA

MSHA's policy was not changed following enactment of SBREFA in 1996 or SBPRA in 2002. The issuance of citations and orders and the issuance of civil penalties are mandated by the Federal Mine Safety and Health Act of 1977 (Mine Act). However, MSHA has an ongoing compliance assistance program for small mine operators to help them correct violations before they are cited during an inspection, thus avoiding a potential penalty.

MSHA is not authorized to waive civil penalties. Therefore, none were waived during fiscal 2003. The Mine Act sets forth the criteria for determining proposed penalties and 30 C.F.R. Part 100 implements the statutory provisions. In determining penalties, MSHA is required to consider six criteria specified in the Mine Act: (1) history of previous violations; (2) size of the operator's business; (3) negligence of the operator; (4) gravity of the violation; (5) good faith shown by the operator in trying to promptly correct the violation; and (6) the effect of the penalty on the operator's ability to continue in business.

The size of the business is considered during the civil penalty determination process and affects the proposed penalty amounts. However, this is not a civil penalty reduction process. Reductions are only allowed under Section 100.3(h) after a civil penalty has been established by MSHA, delivered to the mine operator, and a review of financial status if requested by the operator.

When a penalty is proposed, MSHA presumes that the operator's ability to continue in business will not be affected by the penalty. Within 30 days of receipt of a proposed penalty, an operator may submit a written request to MSHA for review of its financial status, including an explanation of how payment of the civil penalty would affect the operator's ability to continue in business. The operator's complete financial information is also required. MSHA reviews the information and makes the final determination as to whether a penalty adjustment is warranted.

EBSA

Yes. Since the 2002 enactment of SBPRA, EBSA has put in place procedures that are designed to encourage sensitivity towards small plans in connection with civil penalty proceedings and to more closely monitor its policies towards small plans. Also, since the 1996 enactment of SBREFA, EBSA's Delinquent Filer Voluntary Compliance Program's civil penalty structure has been revised to greatly reduce the "dollar cap" on the civil penalty amount that can be assessed against small plans.

ESA – Wage and Hour Division

WHD policies have taken business size into consideration, when appropriate, since before enactment of either SBPRA or SBREFA. WHD reviewed its policies again with the implementation of each Act and no changes in the policies were deemed necessary.

c. Does your agency have different policies for first-time violations by small business of paperwork requirements vs. first-time violations by small business of regulatory requirements? If so, please explain.

OSHA
OSHA does not have a specific policy for first-time violations. OSHA's policy for paperwork and written program requirement violations, as stated in OSHA Instruction CPL 02-00-111 (formerly OSHA Instruction CPL 2.111), allows for no citations to be issued in certain circumstances, and where citations are issued, for no penalty or a reduced penalty. OSHA recognizes that in some situations, violations of certain standards, which require the employer to have a written program to address a hazard, or to make a written certification (e.g., hazard communication, personal protective equipment, permit-required confined spaces, and others), are "paperwork deficiencies" rather than critically important implementation problems. However, in other circumstances, violations of such standards have a significant adverse impact on employee safety and health. OSHA's CPL 02-00-111 provides guidance for consistent and effective enforcement of OSHA's standards, where technical violations involve employer obligations for posting, recordkeeping, and documentation of performance, and have no adverse impact on worker safety and health.

MSHA
MSHA does not have different policies. MSHA considers the gravity of the violation and its effect on miners' safety and health when determining the proposed penalty.

EBSA
Not specifically. As indicated in the answer to Q1.a, EBSA considers the nature of a violation as well as the compliance history of the penalized party in determining appropriate enforcement action.

ESA – Wage and Hour Division
The decision to assess a civil money penalty in any case is based on the totality of the facts in the case. The agency provides regulatory and procedural guidelines for penalty assessments, waivers and recommendations. The statutory and regulatory-based guidelines are applied to the facts of the particular situation, which determine the actual assessment and any subsequent reduction or waiver. Civil money penalties are assessed for violations of statutory or regulatory provisions. Civil money penalties can be assessed for violations of statutory or regulatory recordkeeping requirements; however, WHD typically would not assess penalties for first-time violations of recordkeeping-only violations. Agency procedures – at both the recommendation and actual assessment stages – typically consider many factors including the type of violation, business size, seriousness of the violation, and whether the violation was willful or repeated.

d. Does your agency track first-time violations by small business of either paperwork

requirements or regulatory requirements or both? If not, will you begin to do so?

OSHA
The history of an employer who has been cited with a violation of OSHA's regulations is kept in OSHA's databases. Furthermore, a violation can be tracked or searched by a particular regulation or standard.

MSHA
MSHA's data systems capture information related to violations issued and civil penalties assessed including the date issued and the standard violated. Other data captured by MSHA include information on mine size and mine ownership. Therefore, we can later determine if a citation is the first issued to an operator and whether it is a record-keeping violation. By analyzing the data, we can identify the first-time violations for operations and group them by business size.

EBSA
EBSA is redesigning its tracking database to identify repeat violators. A repeat violator would be identified if its "employer identification number" (EIN) appears more than once in the database. Therefore, EBSA would be able to determine a first-time violator if their EIN appears only once in the database.

ESA – Wage and Hour Division
WHD's case management information system maintains and tracks information on investigations, including the nature of the violations, the size of the employer, and whether the investigation is a reinvestigation of the same employer. This data enables the agency to report on whether first-time violations by a small business were either violations of the paperwork requirements or regulatory requirements or both.

Q2. DOL Policies for Small Business.

a. OSHA. The Occupational Safety and Health Administration (OSHA) reduced or waived 78 percent of all enforcement dollars reduced or waived by the various agencies within the Department of Labor (DOL) from October 1, 2002 to September 30, 2003: $40.5 million of the $51.6 million. DOL reported that 67 percent of OSHA's enforcement actions against small entities involved some reduction or waiver. What percent of these involved first-time violations? Does OSHA employ different criteria for small business? If so, please explain. If not, why not?

OSHA
OSHA's data-collection system does not track statutory penalty amounts for first-time violations. Reductions based on size, good faith and history are applied, when appropriate, before a citation is issued. OSHA does track the proposed penalties, which are called "initial penalties" in OSHA's Integrated Management Information System (IMIS). These initial monetary amounts

are determined after potential reductions have been applied.

b. MSHA. The Mine Safety and Health Administration (MSHA) took 47,150 enforcement actions against small entities – 72 percent of DOL's total – but DOL's report states, "MSHA is not authorized to waive civil penalties" (p. 2). What can DOL do to help small businesses in this area? Is a regulatory or statutory change needed? If so, will DOL seek such a change? If not, why not?

In mining, fatal accidents are more prevalent among smaller operating mines. For the past several years, the fatal injury incidence rate at the smallest mining operations (five or fewer miners) has been more than double the rate for larger mines. MSHA must use all available tools to assure that miners at small mines receive the full protection of the Mine Act. MSHA balances its enforcement program at small mines with other available tools, such as technical support, training and education, and compliance assistance – a part of everything the Agency does. MSHA recognizes the concern about the impact of its programs on small mines and has taken many steps to assist small mine operators in understanding their obligations and implementing safety and health practices before an MSHA inspection. In 2002, MSHA established an Office of Small Mine Safety and Health to address the specialized needs of mines with five or fewer miners. The Small Mines Office has developed specialized training materials tailored to small mines and is focusing compliance assistance and training visits to mines that do not have their own safety and training departments or cannot use web-based resources. Last year, MSHA visited more than 1600 of the approximately 6500 mines with five or fewer miners and these visits are continuing. They are separate from MSHA's inspection effort; no citations are issued or penalties proposed. MSHA help mine operators identify potential hazards at their mine, correct existing problems, and develop and maintain an effective safety and health program.

MSHA also distributes a "Get to Know MHSA" kit to new metal and nonmetal mine operators, providing all the information needed to be in compliance, and provides courtesy inspections prior to production at new metal and nonmetal mines and at intermittent or seasonal mines about to resume production. Although these services are available to mines of all sizes, they are used mostly by the 75% of metal and nonmetal mines that have fewer than 20 miners.

Q3. <u>Enforcement Data Systems.</u>

a. SBPRA Implementation. When did your agency begin to adjust its existing data systems to collect the enforcement data required by the June 2002 SBPRA law to be initially reported to Congress on 12/31/03?

<u>OSHA</u>
Please see response to Question 3b.

MSHA
It was not necessary for MSHA to change its Enforcement Data Systems. The MSHA systems already collected the required data.

EBSA
EBSA began working on plans to adjust its tracking databases to collect the enforcement data required by SBPRA to be initially reported to Congress in the Fall of 2002.

ESA – Wage and Hour Division
WHD already maintained and tracked the required information, so no adjustment was necessary. Electronic data on civil money penalties have been available beginning with assessments made in fiscal year 1997.

b. **DOL Systems for Enforcement Data. DOL's December 30, 2003 report states: (1) "for some agencies, there are no mechanisms to calculate reductions in civil penalties for small entities," (2) "OSHA's data collection system does not capture precisely what is being requested under the Act," and (3) "there may be differences with [OSHA's] reports issued under the authority of the Inspector General and Chief Financial Officer." Why didn't DOL revise its data systems to be able to report the enforcement information statutorily required in the June 2002 law? Will DOL be doing so? If so, will the data be ready for the next enforcement report due December 31, 2004? And, will that report present data that are consistent with the data in the IG's Semi-Annual Reports and the CFO's annual financial statement? If not, why not?**

OSHA
Under its current penalty-tracking system, OSHA can and has accurately met the requirements of Section 4(3)(A), (B), and (C) of the Small Business Paperwork Relief Act. OSHA has provided its best estimate of the total monetary amount asked for in Section 4(3)(D) for the December 31, 2003 report. Staff have begun to examine ways of adjusting the Agency's databases to calculate a more exact total for Section 4(D), which would be included in the final report due December 31, 2004.

EBSA
EBSA has revised its system to come into compliance with the statutory requirements and fully expects that the data for the next enforcement report due December 31, 2004 will accurately reflect such requirements. In addition, the data will be consistent with the data reported by EBSA to the Department for its report to other federal agencies.

This question does not apply to MSHA and ESA - Wage and Hour Division.

Q4. Small Business Paperwork Reduction Initiatives.

a. 5/22/95 PRA to Present. Your written testimony states, "DOL has decreased the paperwork burden ...in seven out of the eight years under the 1995 PRA, yielding a nearly 40% decrease. This decrease includes both program changes and adjustments"(p.1). Since the 1995 enactment of the Paperwork Reduction Act (PRA), OMB has factored out adjustments, since they are not due to any agency action, in all claimed burden reduction accomplishments. As a consequence, what portion of DOL's 40 percent decrease figure is solely due to agency action (i.e., program increases or program decreases but not correction-errors, correction-reestimates, or changes in use)? Please provide details for each burden reduction accomplishment over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

Please see Attachment A, "DOL Paperwork Reduction Under the PRA."

b. 6/28/02 SBPRA to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (exclusive of electronic filing) were accomplished by your agency to benefit small businesses since the June 28, 2002 enactment of SBPRA, and what are planned in the rest of 2004?

i. How many of these initiatives reduce the frequency of small business reporting?

ii. How many introduce thresholds below which reporting is not required?

iii. How many raise thresholds to reduce reporting for more small businesses?

iv. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?

v. How many create short forms for small businesses?

Please see Attachment B, "DOL Paperwork Reduction Initiatives."

Q5. OSHA Recordkeeping Threshold. During and after the Ose Subcommittee's April 11, 2003 paperwork hearing, we asked OSHA Administrator John Henshaw, "In your testimony, you mention that employers with 10 or fewer employees are not required to compile injury-illness logs (p. 5). In its December 2003 enforcement report, DOL used 25 as the threshold for OSHA's small business enforcement

actions and penalties. As a consequence, why can't DOL raise this threshold to 25 employees? If not, is DOL considering other reductions for small business in this burdensome requirement? If so, please describe them.

OSHA is not, at this time, considering further burden reductions associated with the injury and illness recordkeeping regulation. As discussed in the response to the April, 2003, hearing, by exempting employers of ten or fewer workers, OSHA successfully cuts paperwork burden for the vast majority of U. S. workplaces —75 percent of all employers nationwide. Another 11 percent, many of whom are also small employers, are exempted because they are doing business in lower hazard retail and service industries. As a result, less than 15 percent of employers are required to keep these records.

OSHA proposed extending the size exemption to employers with 19 or fewer workers outside of the construction industry in its recordkeeping rule proposed in 1996. However, although it would have eliminated 770,000 workplaces from having to keep injury & illness logs, it would have also severely restricted the ability of employers, employees, OSHA, the National Institute for Occupational Safety and Health (NIOSH), and other researchers, from collecting valuable data about many of the most hazardous industries in the country. Past fatality data have shown that the more dangerous worksites are usually made up of small, even very small, employers. Therefore, although raising the size exemption to 19 employees was part of the proposed rule in 1996, it was not included in the final rule.

OSHA has also developed a large number of outreach products to help smaller businesses comply with these requirements. OSHA's Web Site includes FAQs, downloadable forms, slide shows, and a web-based video presentation. Over 30 OSHA Education Centers across the country offer half-day courses in recordkeeping. OSHA also helps small businesses when they call OSHA, an OSHA-approved state plan, or a state-based consultation service for assistance.

At the January 28, 2004 hearing, the Committees posed several questions to Assistant Secretary Pizzella that he requested to respond to in writing. The questions are paraphrased below.

CHAIRMAN OSE

Does OSHA conduct the same enforcement of small business as large business? Is there a difference in enforcement when it comes to the size of the business?

All employers must comply with the standards that address hazards that may be found in their establishments. However, businesses of a larger size have a greater probability of being inspected than do small businesses, due to various Agency policies that affect enforcement. For example, OSHA's Site-Specific Targeting program can only be used in businesses with fewer than 40 employees if their injury and illness rates meet a minimum threshold, and cannot be applied to businesses with fewer than ten employees. Furthermore, OSHA must provide a compelling reason in a written directive to try to include a business with ten or fewer employees in any Local Emphasis Program (LEP) for possible inspection.

The specific enforcement actions that OSHA may take with regard to an individual business will vary greatly depending on the nature of the business and the hazards that may be found there. Size of business can be a factor, but not as great a factor as the nature of the work. Some comparatively small businesses (such as logging operations) may be very hazardous, while others present few serious hazards.

Since the mid 1970's, OSHA also has been precluded by two provisions of the DOL Appropriations Act from undertaking certain enforcement activities in businesses where 10 or fewer are employed. The first concerns small farms that do not have a temporary labor camp. The second applies to small businesses that fall in a Standard Industrial Classification code with a Lost Workday Injury Rate below the national average, according to the most recent Bureau of Labor Statistics information. The details of these enforcement exemptions and limitations under the Appropriations Act may be found in OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J).

Is it easy for a business to get access to the forms it needs to be in compliance on your Web Site?

OSHA

All of the forms employers need can be downloaded from the OSHA Web Site. The OSHA poster (English and Spanish versions) and OSHA's recordkeeping forms can be downloaded from the publication page. The recordkeeping forms can also be downloaded from the recordkeeping page. On this page, employers can also download the Microsoft Excel template, which can be converted to other formats, for those employers that wish to keep their recordkeeping forms

electronically.

MSHA

MSHA has online filing for most of the commonly used forms. Copies of all forms can be downloaded from the MSHA Web Site.

EBSA

Yes. EBSA's Web Site includes a quick link to all of the forms that employee benefits plans must file with the Department of Labor.

ESA - Wage and Hour Division

WHD's Web Site contains a quick link to most commonly-used forms.

Why is there not a standard designation for the size of a small business across agencies and departments?

See the response to Chairman Schrock's closely related question below.

What paperwork reductions did DOL get for a recision in the ergonomics rule?

The change in the requirement to record ergonomic injuries in recordkeeping logs resulted in OMB noting a reduction of 40,582,309 burden hours in its inventories for December, 2000; January, 2001; and February, 2001. However, because the increase and decrease occurred within the same fiscal year, this contributed no net change in the Department's paperwork burden reported for that fiscal year.

CHAIRMAN SCHROCK

Why is there not a standard designation for the size of a small business across agencies and departments? What is the reason for the designation of the size of a small business for each agency at DOL?

SBPRA requires information related to small entities and allows the reporting agencies to use discretion when defining "small entity". Therefore, by virtue of allowing agencies to use their own definitions of "small entity," Congress recognized that there are various ways to define a small entity. The approaches of the different DOL agencies are described below.

OSHA

In analyzing potential small business impacts of its proposed safety and health standards, OSHA uses SBREFA's definition of small business and the Small Business Administration's "size

standards." SBREFA defines "small business" as follows: "...'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register[.]"

Under the Small Business Act, SBA does not use one single definition of "small business." Instead, in its regulations, SBA has developed tables of "size standards." These "size standards" categorize businesses for each industry sector as "small businesses" based on the number of employees or gross sales for the business. Since OSHA's standards virtually always address a combination of industry sectors, OSHA uses the SBA size standards as its criteria for analyzing small business impacts in each of those sectors.

MSHA

MSHA has designated mines as "small" for rulemaking purposes based on three separate sets of criteria:

1. The first is SBA's definition of a small entity in the mining industry, which is a mine with 500 or fewer workers. MSHA uses this definition for all rules and in the SBPRA report.

2. The second is MSHA's traditional definition of a small mine, which is one with fewer than 20 workers. This definition is based on the history of these mines having much higher injury and fatality rates than mines with more workers. In addition, mines with fewer than 20 workers tend to differ from larger mines in economies of scale in material produced, in the type and amount of production equipment, and in compliance cost impacts. MSHA uses this definition for all rules and in the SBPRA report.

3. The third is any rule-specific cost or compliance factor associated with mine size. For example, for MSHA's HazCom final rule, MSHA's requirements and economic analysis took separate notice of very small mines, those with five or fewer employees. For some rules, MSHA develops special small mine definitions as appropriate for that specific rulemaking.

In addition, MSHA's Small Mines Office focuses on mines with five or fewer employees.

EBSA

EBSA has jurisdiction over employee benefit plans and thus, a small entity in EBSA's regulated community would be a small employee benefit plan, which ERISA itself defines for some purposes (including the SBPRA report) as a benefit plan with fewer than 100 participants.

ESA – Wage and Hour Division

For purposes of reporting under SBPRA, WHD has used its traditional performance definition of "small entity." WHD has responsibility for a number of difference statutes with various coverage

criteria; therefore, the agency has historically defined a small business as any business enterprise (as opposed to establishment) in which total employment is 50 or fewer employees. WHD has consistently used this definition in its program planning and strategic goal development.

What is the difference between a waiver and a reduction?

MSHA
The Mine Act mandates that MSHA assess a fine for every violation. Therefore, MSHA is precluded from "waiving" or "reducing" penalties. However, MSHA does give adequate consideration to the gravity of a violation and the size (number of employees) of the mine when assessing penalties. A simple first-time paperwork violation is usually a "single penalty assessment", which is currently set at $60.

OSHA
OSHA enforcement does not use the term "waiver." The term "reduction" is used to refer to the decrease in the civil penalty the Agency gives to the original base-penalty based upon an employer's size of business, employer's history of previous violations, and employer's good faith. In the case of violations classified as "other-than-serious," however, in most cases OSHA's policies call for proposing no penalty (or $0).

EBSA
For purposes of this statutory reporting requirement, a reduction occurs when EBSA assesses, on individuals or entities associated with an employee benefit plan, a civil penalty that is less than the maximum allowable under the law and discharges the plan's obligation to pay the full penalty. A waiver occurs when the Agency sets aside the entire civil penalty amount and completely discharges the plan's obligation to pay the penalty.

ESA – Wage and Hour Division
For purposes of the civil money penalty report, "reduced or waived" was defined as any post-assessment adjustment to the assessed civil money penalty amount. It does not include pre-assessment adjustments, which are made at the discretion of WHD field managers before a civil money penalty is assessed against an employer. It also does not include reductions or waivers built into the calculation of civil money penalties at the assessment stage pursuant to regulatory criteria such as that set forth in 29 CFR 578.4 and 29 CFR 579.5. These provisions are based on the statute and state that the agency will consider the size of the employer's business and the seriousness or gravity of the violations in determining the amount of the penalty to be assessed. The "reduced or waived" amount also will not include any reductions or waivers that may occur in open cases after the date of this report. These reductions or waivers may result when pending litigation or negotiations are finalized.

A reduced civil money penalty would represent a reduction in the amount assessed while a waiver would set aside the total assessed amount.

CONGRESSMAN KING

When there is a reduction or waiver for a penalty for a business, is there a distinction/difference when it comes to a small business?

OSHA
The only difference in a reduction of penalty for a small business is the size of the reduction. The penalty-reduction factor is greater for smaller businesses. Chapter IV, paragraph C.w.i.(5)(a) of the FIRM provides for the following rates of reduction:

Number of Employees	Percent Reduction
1-25	60
26-100	40
101-250	20
251 or more	none

The memorandum to Regional Administrators, dated March 23, 1995, "FIRM change: Minimum Serious Willful Penalty" provides for the following reductions:

Number of Employees	Percent Reduction
10 or less	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101-250	10
251 or more	0

MSHA
MSHA uses a system to determine civil penalties that automatically considers the business size in the initial assessment of penalties. However, a mine operator of any size can request a penalty reduction based only on the mine operator's ability to continue in business. MSHA does not have a formula for determining reductions. Normally, when a reduction is determined to be warranted, MSHA's past practice has been to reduce outstanding civil penalties by half. MSHA does not give waivers.

EBSA
Yes. In general, for the vast majority of civil penalties assessed by EBSA, there is a cap on the

penalty amount for small plans that is significantly lower than the cap for large plans.

ESA – Wage and Hour Division

Wage and Hour typically considers the size of the establishment and the seriousness or gravity of the violation before a civil money penalty is assessed. The reduction or waiver of a civil money penalty is considered in light of the individual circumstances of each case – including the statute violated, the size of the business, the seriousness of the violations and their impact on workers' safety and health, and whether the violations were repeat or willful.

Attachment A:
DOL Paperwork Reduction Under the PRA

The following table summarizes the changes in the Department's Information Collection Budget (paperwork burden) due to agency actions.

Fiscal Year	Program Changes due to Agency Actions	Percentage Change from the 1995 Baseline of 266 M Hours
1995	**	
1996	**	
1997	**	
1998	+11,870,000*	+4.46 %
1999	+ 570,000*	+.21 %
2000	-417,043	-.15 %
2001	-2,410,000*	-.89 %
2002	+2,403,471	+.89 %
2003	-107,698	-.04 %

* Reports for these years combine both changes due to agency action and changes due to statutory changes.
** Prior to 1998, these figures were not reported.

The following table describes the Department's burden reduction accomplishments over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

FY 2003 Reductions

OMB#:	1218-0092
Title:	Lead in General Industry
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	The purpose of this collection is to provide protection for employees from the adverse health effects associated with occupational exposure to lead in general industry.

How Reduction Achieved: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The current lead standard requires that employers inform each employee in writing of their exposure-monitoring results (§ 1910.1025(d)(8)). The NPRM proposed to revise this provision to allow employers the option of either posting their employee exposure-monitoring results, or to individually inform each employee of their results.

Change in Burden: -51,401 hours

OMB#: 1218-0189

Title: Lead in Construction 1926.62

DOL Agency: Occupational Safety and Health Administration

Purpose of the Collection: The purpose of this collection is to provide protection for employees from the adverse health effects associated with occupational exposure to lead in construction.

How Reduction Achieved: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The current lead standard requires that employers inform each employee in writing of their exposure-monitoring results (§ 1926.62(d)(8)). The NPRM proposed to revise this provision to allow employers the option of either posting their employee exposure-monitoring results, or to individually

inform each employee of their results. This resulted in a 28,493 burden hour reduction.

In addition, the NPRM proposed to reduce the frequency employers must review their written compliance program from semi-annually to annually. Written compliance plans explain how employers will reduce employee exposures to or below the Standard's permissible exposure limits (PELs) by means of engineering and work practice controls. Allowing employers to review their plans annually instead of semi-annually reduced the burden hours by 108,172 hours.

Change in Burden: -136,665 hours

OMB #: 1205-0219

Title: Standard Job Corps Request for Proposal and Related Contractor Information Gathering

DOL Agency: Employment and Training Administration

Purpose of the Collection: The Standard Request for Proposals for the Operation of Job Corps centers provides the Government's expectations to potential contractors for the development of proposals to operate Job Corps centers. Information collection activities required of Job Corps center contractors serve to ensure proper operation of the Job Corps program.

How Reduction Achieved: Implementation of electronic reporting.

Change in Burden: -22,579 hours

OMB #: 1205-0407

Title: State Unified Plan Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998

DOL Agency: Employment and Training Administration

Purpose of the Collection: Section 501 of the Workforce Investment Act (Public Law 105-220, August 7, 1998) provides the Governor of the State the option to submit to the Secretary a unified plan in place of a standalone plan to be eligible for WIA funds.to be eligible to receive an allocation under section 127 or 132 or to receive financial assistance under the Wagner-Peyser Act. The State plan outlines a 5-year strategy for the statewide workforce investment system of the State and that meet the requirements of Section 501. State Plans have been received; therefore, the current collection of information deals with modifications to these Plans as required by the Workforce Investment Act (20 CFR 661.230 and 661.240).

How Reduction Achieved: The burden hours associated with the submission of an initial five-year plan has been eliminated -- all 57 grantees have submitted the required 5-year plan. Therefore, only plan modifications are required on an as needed basis.

Change in Burden: -17,670 hours

OMB #: 1219-0006

Title: Quarterly Mine Employment and Coal Production Report

DOL Agency: Mine Safety and Health Administration

Purpose of the Collection: Employment and production data when correlated with accident, injury and illness data provide information that allows the Mine Safety and Health Administration (MSHA) to improve its safety and health enforcement programs, focus its education, training, and technical assistance efforts. The information collected allows MSHA to direct increased resources towards areas with developing hazardous trends.

How Reduction Achieved: In an effort to streamline the Department's information collections, this collection of information was consolidated with the OMB control number 1219-0007.

Change in Burden: -41,155 hours

OMB #: 1220-0109

Title: National Longitudinal Survey of Youth 1979

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: Data are used by the Department of Labor, other agencies, academic researchers, the news media, and the general public to understand the employment experiences and life-cycle transitions of men and women born in the years 1957 to 1964 and living in the United States when the survey began in 1979.

How Reduction Achieved: This was a biennial survey that expired.

Change in Burden: -13,297 hours

FY 2002

OMB#: 1220-0011

Title: Report on Employment, Payroll, and Hours

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: The Current Employment Statistics program provides current monthly statistics on employment, hours and earnings by industry. The statistics are fundamental inputs in economic processes at all

levels of government, private enterprise, and organized labor.

How Reduction Achieved: Burden hours have decreased due to the introduction of a probability based sample. This redesign reduces the number of reports.

Change in Burden: -88,530 hours

OMB#: 1220-0171

Title: Survey of Respirator Use and Practices

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: Survey of United States employers regarding the use of respiratory protective devices.

How Reduction Achieved: Survey is completed and expired on 7/31/2002. No burden hours for Fiscal Year 2003

Change in Burden: -20,000 hours

OMB#: 1218-0241

Title: Steel Erection -- Subpart R, 29 CFR 1926.750 through 1926.761

DOL Agency: Occupational Safety and Health Administration

Purpose of the Collection: These provisions ensure that designated parties, especially steel erectors, receive notice that building material components, steel structures, and fall protection equipment are safe for specific uses; and employees exposed to fall hazards receive the required training in the recognition and control of fall protection.

How Reduction Achieved:	Decrease occurred because OSHA removed burden hours for employers to develop a certification record of the pre-shift inspection of hoisting equipment; this requirement is not in the final Subpart.
Change in Burden:	-56,848 hours
Statute Title and PL#:	Occupational Safety and Health Act of 1970, Public Law 91-596

FY 2001

OMB#:	1215-0072
Title:	OFCCP Record-Keeping and Reporting Requirements.
DOL Agency:	Employment Standards Administration
Purpose of the Collection:	The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal opportunity program prohibiting employment discrimination and requiring affirmative steps to ensure equal employment opportunity. All record-keeping, forms, and reporting requirements originate from the regulations implementing these programs. The OFCCP regulations implementing these programs impose a record-keeping and a reporting burden on Federal contractors. Federal contractors must develop, update, and maintain Affirmative Employment plans. Federal contractors also must file the annual required EEO-1 Report.
How Reduction Achieved:	Streamlining regulations.
Change in Burden:	-2,835,510 hours:

OMB#:	1205-0308
Title:	Planning and Reporting Requirements for JTPA, Section 401, Indian and Native America Grantees (Both Title IV-A and Title 11-B)
DOL Agency:	Employment and Training Administration
Purpose of the Collection:	Used to evaluate the overall progress of the program and to ensure compliance with applicable laws and regulations.
How Reduction Achieved:	Program Change – Job Training Partnership Act Program Expired.
Change in Burden:	-95,935 hours

OMB#:	1210-0114
Title:	Disclosures by Insurers to General Account Policy holders
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	The Purpose of the information collection included in the regulation at 29 CFR 2550.401c-1 is to clarify which assets held by insurers constitute assets of the plan for purposes of Part 4 of Title 1 of ERISA.
How Reduction Achieved:	The Small Business Job Protection Act of 1996 amended the Employee Retirement Income Security Act of 1974 (ERISA) by adding a new section 401(c), which clarified the application of ERISA to insurance company general accounts. The new provision required that certain steps be taken by insurance companies that offer and maintain policies for private sector employee benefit plans where assets are held in the general account, and required the Department to issue interpretive

	guidance. The final rule requires that certain disclosures be provided at the outset of the contract and annually, and that other disclosures be provided at the outset of the contract and annually, and that other disclosures be provided on request. The burden reduction reflects the fact that the one-time disclosures required by the January 5, 2000 final rule would have been completed. The remaining burden is for ongoing disclosure requirements.
Change in Burden:	- 737,702

OMB#	1218-0245
Title:	Ergonomic Program Standard – (29 CFR 1910, Subpart Y)
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	Collection discontinued.
How Reduction Achieved:	Under the Congressional Review Act, Congress passed and President signed, Public Law 107-5, disapproving OSHA's final Ergonomics Program
Change in Burden:	-40,582,309 hours (Note that this was offset during the same year, so no net increase or decrease occurred.)
Statute Title and PL#:	Congressional Review Act, Public Law 107-5

OMB#:	1205-0360
Title:	Evaluation of the Impact of Job Corps on Participants' Post-program Labor Market and Related Behaviors, Follow-up Questionnaire.

DOL Agency:	Employment and Training Administration
Purpose of the Collection:	Questionnaires will be used to measure impacts of Job Corps participants' earnings and related behavior. Data used to estimate the benefits and cost of Job Corps.
How Reduction Achieved:	Program Change - Evaluation completed 10/2000.
Change in Burden:	-26,512 hours

OMB#:	1220-0032
Title:	Annual Re-filing Survey (ARS) (formerly called the Standard Industrial Classification (SIC) forms)
DOL Agency:	Bureau of Labor Statistics
Purpose of the Collection:	To verify the accuracy of industry codes for business establishments covered by State Unemployment Insurance (U.I.) programs.
How Reduction Achieved:	Fewer establishments were surveyed in Fiscal Year 2001 because the survey was limited in scope.
Change in Burden:	-60,299 hours

OMB#:	1220-0042
Title:	Report on Occupational Employment
DOL Agency:	Bureau of Labor Statistics
Purpose of the Collection:	The Report on Occupational Employment is a Federal/State sample survey of employment and wages by occupation of non-farm establishments

	that is used to produce data on current occupational employment and wages. The survey is a component in the development of employment and training programs and occupational information.
How Reduction Achieved:	The decrease in hours was due to a small decrease in the survey sample compared to previous years and the elimination of the Response Analysis Survey (RAS).
Change in Burden:	-24,861 hours

FY 2000

OMB #:	1210-0016 and 1210-0110
Title:	Form 5500 - Annual Report/Return of Employee Benefit Plan
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	The form 5500 serves as a disclosure document for plan participants, as well as the principal source of information and data available to the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation in their enforcement, research, and policy formulation programs. The form 5500 is also the primary source of data on employee benefit plans for federal agencies, Congress, and the private sector.
How Reduction Achieved:	The reduction results from streamlining and simplifying the form, eliminating unnecessary elements, and addressing elements known to generate confusion or errors.
Change in Burden:	- 313,850 hours

OMB #:	1210-0039
Title:	Summary Plan Description Requirements under the Employee Retirement Income Security Act
DOL Agency:	Employee Benefits Security Administration

Purpose of the Collection: Statutory provisions and related regulations provide plan administrators with guidance on information required to be furnished to participants and beneficiaries of employee benefit plans so that they may be informed about the provisions of the plan and protected in their rights under the plan.

How Reduction Achieved: PWBA now considers disclosures made through electronic media to satisfy existing disclosure requirements. Burden reductions reflect savings plan administrators may achieve by distributing information electronically.

Change in Burden: - 170,516 hours

OMB #: 1219-0037

Title: Noise Data Report Form and Calibration Records

DOL Agency: Mine Safety and Health Administration

Purpose of the Collection: Require underground and surface coal mine operators to conduct initial, periodic, and supplemental noise exposure surveys; conduct noise level measurements; and report and certify to MSHA the environmental noise levels to which miners are exposed.

How Reduction Achieved: Removed from inventory and made part of the final rule on Noise (1219-0120) which removed MSHA Form 2000-168.

Change in Burden: - 67,798 hours

OMB #: 1220-0164

Title: National Compensation Survey

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection:	Survey of employee salaries, wages, and benefits. (The NCS replaces three existing BLS surveys: Employment Cost Index (ECI), Occupational Compensation Survey Program (OCSP), and Employee Benefits Survey (EBS).).
How Reduction Achieved:	Three year average; there is no SCA funding for Fiscal Year 2000.
Change in Burden:	-15,161 hours

FY 1999

OMB #:	1210-0039
Title:	Summary Plan Description Requirements Under Employee Retirement Income Security Act (ERISA).
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	This information provides plan administrators with guidance on informing participants and beneficiaries of employee benefit plans so that they are aware of their benefits and rights under the plan.
How Reduction Achieved:	The Pension and Welfare Benefits Administration (now the Employee Benefits Security Administration) published a proposed regulation concerning the use of electronic technologies for disclosure under ERISA. The paperwork reductions are the estimated savings that plan administrators may achieve by distributing information electronically.
Change in Burden:	-68,046 hours.

OMB#:	1210-0040

Title:	Summary Annual Report Requirements Under ERISA
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	Employee benefit plans are required to submit an annual report to the Secretary of Labor describing the plan's financial condition and operations. This information collection provides benefit plan participants and beneficiaries a summary of that annual report.
How Reduction Achieved:	The Pension and Welfare Benefits Administration (now the Employee Benefits Security Administration) published a proposed regulation (64 FR 4506) concerning the use of electronic technologies for disclosure under ERISA. The paperwork reductions are the estimated savings that plan administrators may achieve by distributing information electronically.
Change in Burden:	-560,043 hours.

FY 1998

OMB #:	1210-0039
Title:	Summary Plan Description Requirements Under Employee Retirement Income Security Act (ERISA).
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	This information provides plan administrators with guidance on informing participants and beneficiaries of employee benefit plans so that they are aware of their benefits and rights under the plan.
How Reduction Achieved:	Continuing the reductions from FY 1997, DOL has eliminated certain filing requirements for pension

	and health plans pursuant to the Taxpayer Relief Act of 1997 resulting in a 188,000 burden hour reduction.
Change in Burden:	-188,000 hours.

OMB #:	1218-0200
Title:	Process Safety Management Standard
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	The Process Safety Management of Highly Hazardous Chemicals, (PSM Standard) contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals. These releases may result in fire or explosive hazards.
How Reduction Achieved:	Employers completed the final implementation phase for the requirements of the Process Safety Management Standard. As of May 1997, all employers covered by the Standard had completed the process hazard analysis and process safety portions of the Standard.
Change in Burden:	-14,500,000 hours.

Notes: Much of this data is drawn from the consolidated Information Collection Budgets as compiled by OMB. These contain representative burden reductions, not a complete list. Additionally, changes in reporting requirements, particularly in the early years of the PRA, mean that some burden reduction accomplishments are not described in this table. The Department can continue to attempt to construct a complete accounting of these programs if so requested by the Committees.

The above table also includes several reductions that resulted from the planned expiration of collections that experience a period of dormancy (for example a biennial survey) or for programs that are to be suspended temporarily. This accounting practice is in accordance with OMB guidelines to provide for the most accurate representation of the collection burden being imposed.

Rec'd 3/3/04

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

MAR 0 3 2004

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources, and Regulatory Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Ose:

This letter is in response to your letter of February 6, 2004, in which you pose several questions regarding my testimony on January 28, 2004 before the House Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs and the House Small Business Subcommittee on Regulatory Reform and Oversight. This letter also responds to several questions that were asked in that hearing, which I had requested to respond to in writing.

Please do not hesitate to call me at (202) 693-4040 if you have any questions or need additional information.

Sincerely,

Patrick Pizzella
Assistant Secretary for Administration and Management,
Chief Information Officer

Enclosure

Responses to the follow-up questions from the January 28 testimony of Assistant Secretary and Chief Information Officer Patrick Pizzella before the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, and the Small Business Subcommittee on Regulatory Reform and Oversight.

The Department of Labor's FY 2003 Regulatory Enforcement Report required by the Small Business Paperwork Relief Act presented data on DOL agency enforcement actions in which a civil penalty was assessed. Within the Department of Labor, four agencies, the Employee Benefits Security Administration (EBSA), the Employment Standards Administration (ESA), the Mine Safety and Health Administration (MSHA), and the Occupational Safety and Health Administration (OSHA) reported enforcement actions in this report. These four agencies are quite different in their statutory authority and the type of regulations they enforce. As such, in addressing the committee's questions, agency responses differ.

Q1. Waiver/Reduction Policies for First-Time Violations by Small Business.

a. What is your agency's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

OSHA
OSHA's penalty policies provide that, in the vast majority of cases where a violation is classified as "other-than-serious," no penalty will be proposed. Moreover, OSHA's current penalty-reduction policy permits significant reductions in penalties based upon employer size, good faith, and previous history of violations.

OSHA also has a quick-fix penalty reduction of 15% that applies to employers of all sizes who immediately abate hazards found during an OSHA inspection. The quick-fix reduction does not apply to violations classified as high- or medium-gravity serious, willful, repeat or failure-to-abate violations.

MSHA
MSHA is required by statute to propose a civil penalty for every violation. The penalties for paperwork-type violations are usually single penalty assessments, which are currently set at $60. A mine operator is eligible for a single penalty assessment when the violation is one not reasonably likely to result in a serious injury and must be abated within the time set by the inspector. However, a mine operator with a history of excessive violations is not eligible for the single penalty assessment.

EBSA
In general, civil penalty enforcement actions undertaken by EBSA involve a significantly lower penalty amount for small plans. The nature of the violation and the past compliance history of the penalized party are also taken into account.

ESA – Wage and Hour Division

Criteria for waiving or reducing civil money penalties are largely dependent on the statutory and regulatory civil money penalty provisions of each Act. The Wage and Hour Division (WHD) has the authority to assess civil money penalties for minimum wage, overtime, and child labor violations under the Fair Labor Standards Act, and for violations of the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the H-1C, H-1B and H-2A immigration programs, the Family and Medical Leave Act, and the field sanitation and housing provisions of the Occupational Safety and Health Act. While the agency may assess a civil money penalty for a first-time violation by a small business under any of the statutes, it would be uncommon to assess a penalty for a first-time violation that does not have "the potential to cause serious harm" to affected workers. In general, Wage and Hour considers the size of the establishment and the seriousness or gravity of the violation before a civil money penalty is assessed. The assessment, and any subsequent reduction or waiver of a civil money penalty, must be considered in light of the individual circumstances of each case – including the statute violated, the size of the business, the seriousness of the violations and their impact on workers' safety and health, and whether the violations were repeat or willful.

b. Has your policy changed since the June 2002 enactment of Small Business Paperwork Relief Act (SBPRA)? If so, how? If not, did your agency's policy change after the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which required agencies to develop plans for waiving and/or reducing fines, as appropriate, on small business? If so, how? If not, why not?

OSHA

OSHA is assessing possible modifications to its data-collection system in light of the SBPRA. With regard to SBREFA, OSHA's policy, before as well as after the 1996 enactment of this Act, is to take the employer's size of business into consideration in proposing any civil penalty, as required by Section 17 of the OSH Act. The Agency has always had detailed procedures in place to implement this policy; they are currently embodied in Chapter IV, paragraph C.w.i.(5)(a) of the Field Inspection Reference Manual (FIRM). This policy was amended by a memorandum dated March 23, 1995, "FIRM change: Minimum Serious Willful Penalty," which gives an even greater reduction to the smaller employers for willful penalties, since those penalties can be quite high. It mainly minimizes penalties for employers with 50 or fewer employees. OSHA believes that its penalty policies are in full accordance with SBREFA.

Since the mid 1970s, OSHA also has been precluded by two provisions of the DOL Appropriations Act from undertaking certain enforcement activities in businesses where 10 or fewer are employed. The first concerns small farms that do not have a temporary labor camp. The second applies to small businesses that fall in a Standard Industrial Classification code with a Lost Workday Injury Rate below the national average, according to the most recent Bureau of Labor Statistics information. The details of these enforcement exemptions and limitations under the Appropriations Act may be found in OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J).

MSHA

MSHA's policy was not changed following enactment of SBREFA in 1996 or SBPRA in 2002. The issuance of citations and orders and the issuance of civil penalties are mandated by the Federal Mine Safety and Health Act of 1977 (Mine Act). However, MSHA has an ongoing compliance assistance program for small mine operators to help them correct violations before they are cited during an inspection, thus avoiding a potential penalty.

MSHA is not authorized to waive civil penalties. Therefore, none were waived during fiscal 2003. The Mine Act sets forth the criteria for determining proposed penalties and 30 C.F.R. Part 100 implements the statutory provisions. In determining penalties, MSHA is required to consider six criteria specified in the Mine Act: (1) history of previous violations; (2) size of the operator's business; (3) negligence of the operator; (4) gravity of the violation; (5) good faith shown by the operator in trying to promptly correct the violation; and (6) the effect of the penalty on the operator's ability to continue in business.

The size of the business is considered during the civil penalty determination process and affects the proposed penalty amounts. However, this is not a civil penalty reduction process. Reductions are only allowed under Section 100.3(h) after a civil penalty has been established by MSHA, delivered to the mine operator, and a review of financial status if requested by the operator.

When a penalty is proposed, MSHA presumes that the operator's ability to continue in business will not be affected by the penalty. Within 30 days of receipt of a proposed penalty, an operator may submit a written request to MSHA for review of its financial status, including an explanation of how payment of the civil penalty would affect the operator's ability to continue in business. The operator's complete financial information is also required. MSHA reviews the information and makes the final determination as to whether a penalty adjustment is warranted.

EBSA

Yes. Since the 2002 enactment of SBPRA, EBSA has put in place procedures that are designed to encourage sensitivity towards small plans in connection with civil penalty proceedings and to more closely monitor its policies towards small plans. Also, since the 1996 enactment of SBREFA, EBSA's Delinquent Filer Voluntary Compliance Program's civil penalty structure has been revised to greatly reduce the "dollar cap" on the civil penalty amount that can be assessed against small plans.

ESA – Wage and Hour Division

WHD policies have taken business size into consideration, when appropriate, since before enactment of either SBPRA or SBREFA. WHD reviewed its policies again with the implementation of each Act and no changes in the policies were deemed necessary.

c. Does your agency have different policies for first-time violations by small business of paperwork requirements vs. first-time violations by small business of regulatory requirements? If so, please explain.

OSHA
OSHA does not have a specific policy for first-time violations. OSHA's policy for paperwork and written program requirement violations, as stated in OSHA Instruction CPL 02-00-111 (formerly OSHA Instruction CPL 2.111), allows for no citations to be issued in certain circumstances, and where citations are issued, for no penalty or a reduced penalty. OSHA recognizes that in some situations, violations of certain standards, which require the employer to have a written program to address a hazard, or to make a written certification (e.g., hazard communication, personal protective equipment, permit-required confined spaces, and others), are "paperwork deficiencies" rather than critically important implementation problems. However, in other circumstances, violations of such standards have a significant adverse impact on employee safety and health. OSHA's CPL 02-00-111 provides guidance for consistent and effective enforcement of OSHA's standards, where technical violations involve employer obligations for posting, recordkeeping, and documentation of performance, and have no adverse impact on worker safety and health.

MSHA
MSHA does not have different policies. MSHA considers the gravity of the violation and its effect on miners' safety and health when determining the proposed penalty.

EBSA
Not specifically. As indicated in the answer to Q1.a, EBSA considers the nature of a violation as well as the compliance history of the penalized party in determining appropriate enforcement action.

ESA – Wage and Hour Division
The decision to assess a civil money penalty in any case is based on the totality of the facts in the case. The agency provides regulatory and procedural guidelines for penalty assessments, waivers and recommendations. The statutory and regulatory-based guidelines are applied to the facts of the particular situation, which determine the actual assessment and any subsequent reduction or waiver. Civil money penalties are assessed for violations of statutory or regulatory provisions. Civil money penalties can be assessed for violations of statutory or regulatory recordkeeping requirements; however, WHD typically would not assess penalties for first-time violations of recordkeeping-only violations. Agency procedures – at both the recommendation and actual assessment stages – typically consider many factors including the type of violation, business size, seriousness of the violation, and whether the violation was willful or repeated.

d. Does your agency track first-time violations by small business of either paperwork

requirements or regulatory requirements or both? If not, will you begin to do so?

OSHA
The history of an employer who has been cited with a violation of OSHA's regulations is kept in OSHA's databases. Furthermore, a violation can be tracked or searched by a particular regulation or standard.

MSHA
MSHA's data systems capture information related to violations issued and civil penalties assessed including the date issued and the standard violated. Other data captured by MSHA include information on mine size and mine ownership. Therefore, we can later determine if a citation is the first issued to an operator and whether it is a record-keeping violation. By analyzing the data, we can identify the first-time violations for operations and group them by business size.

EBSA
EBSA is redesigning its tracking database to identify repeat violators. A repeat violator would be identified if its "employer identification number" (EIN) appears more than once in the database. Therefore, EBSA would be able to determine a first-time violator if their EIN appears only once in the database.

ESA – Wage and Hour Division
WHD's case management information system maintains and tracks information on investigations, including the nature of the violations, the size of the employer, and whether the investigation is a reinvestigation of the same employer. This data enables the agency to report on whether first-time violations by a small business were either violations of the paperwork requirements or regulatory requirements or both.

Q2. DOL Policies for Small Business.

a. OSHA. The Occupational Safety and Health Administration (OSHA) reduced or waived 78 percent of all enforcement dollars reduced or waived by the various agencies within the Department of Labor (DOL) from October 1, 2002 to September 30, 2003: $40.5 million of the $51.6 million. DOL reported that 67 percent of OSHA's enforcement actions against small entities involved some reduction or waiver. What percent of these involved first-time violations? Does OSHA employ different criteria for small business? If so, please explain. If not, why not?

OSHA
OSHA's data-collection system does not track statutory penalty amounts for first-time violations. Reductions based on size, good faith and history are applied, when appropriate, before a citation is issued. OSHA does track the proposed penalties, which are called "initial penalties" in OSHA's Integrated Management Information System (IMIS). These initial monetary amounts

are determined after potential reductions have been applied.

b. MSHA. The Mine Safety and Health Administration (MSHA) took 47,150 enforcement actions against small entities – 72 percent of DOL's total – but DOL's report states, "MSHA is not authorized to waive civil penalties" (p. 2). What can DOL do to help small businesses in this area? Is a regulatory or statutory change needed? If so, will DOL seek such a change? If not, why not?

In mining, fatal accidents are more prevalent among smaller operating mines. For the past several years, the fatal injury incidence rate at the smallest mining operations (five or fewer miners) has been more than double the rate for larger mines. MSHA must use all available tools to assure that miners at small mines receive the full protection of the Mine Act. MSHA balances its enforcement program at small mines with other available tools, such as technical support, training and education, and compliance assistance – a part of everything the Agency does. MSHA recognizes the concern about the impact of its programs on small mines and has taken many steps to assist small mine operators in understanding their obligations and implementing safety and health practices before an MSHA inspection. In 2002, MSHA established an Office of Small Mine Safety and Health to address the specialized needs of mines with five or fewer miners. The Small Mines Office has developed specialized training materials tailored to small mines and is focusing compliance assistance and training visits to mines that do not have their own safety and training departments or cannot use web-based resources. Last year, MSHA visited more than 1600 of the approximately 6500 mines with five or fewer miners and these visits are continuing. They are separate from MSHA's inspection effort; no citations are issued or penalties proposed. MSHA help mine operators identify potential hazards at their mine, correct existing problems, and develop and maintain an effective safety and health program.

MSHA also distributes a "Get to Know MHSA" kit to new metal and nonmetal mine operators, providing all the information needed to be in compliance, and provides courtesy inspections prior to production at new metal and nonmetal mines and at intermittent or seasonal mines about to resume production. Although these services are available to mines of all sizes, they are used mostly by the 75% of metal and nonmetal mines that have fewer than 20 miners.

Q3. <u>Enforcement Data Systems.</u>

a. SBPRA Implementation. When did your agency begin to adjust its existing data systems to collect the enforcement data required by the June 2002 SBPRA law to be initially reported to Congress on 12/31/03?

<u>OSHA</u>
Please see response to Question 3b.

MSHA
It was not necessary for MSHA to change its Enforcement Data Systems. The MSHA systems already collected the required data.

EBSA
EBSA began working on plans to adjust its tracking databases to collect the enforcement data required by SBPRA to be initially reported to Congress in the Fall of 2002.

ESA – Wage and Hour Division
WHD already maintained and tracked the required information, so no adjustment was necessary. Electronic data on civil money penalties have been available beginning with assessments made in fiscal year 1997.

b. **DOL Systems for Enforcement Data. DOL's December 30, 2003 report states: (1) "for some agencies, there are no mechanisms to calculate reductions in civil penalties for small entities," (2) "OSHA's data collection system does not capture precisely what is being requested under the Act," and (3) "there may be differences with [OSHA's] reports issued under the authority of the Inspector General and Chief Financial Officer." Why didn't DOL revise its data systems to be able to report the enforcement information statutorily required in the June 2002 law? Will DOL be doing so? If so, will the data be ready for the next enforcement report due December 31, 2004? And, will that report present data that are consistent with the data in the IG's Semi-Annual Reports and the CFO's annual financial statement? If not, why not?**

OSHA
Under its current penalty-tracking system, OSHA can and has accurately met the requirements of Section 4(3)(A), (B), and (C) of the Small Business Paperwork Relief Act. OSHA has provided its best estimate of the total monetary amount asked for in Section 4(3)(D) for the December 31, 2003 report. Staff have begun to examine ways of adjusting the Agency's databases to calculate a more exact total for Section 4(D), which would be included in the final report due December 31, 2004.

EBSA
EBSA has revised its system to come into compliance with the statutory requirements and fully expects that the data for the next enforcement report due December 31, 2004 will accurately reflect such requirements. In addition, the data will be consistent with the data reported by EBSA to the Department for its report to other federal agencies.

This question does not apply to MSHA and ESA - Wage and Hour Division.

Q4. Small Business Paperwork Reduction Initiatives.

a. 5/22/95 PRA to Present. Your written testimony states, "DOL has decreased the paperwork burden ...in seven out of the eight years under the 1995 PRA, yielding a nearly 40% decrease. This decrease includes both program changes and adjustments"(p.1). Since the 1995 enactment of the Paperwork Reduction Act (PRA), OMB has factored out adjustments, since they are not due to any agency action, in all claimed burden reduction accomplishments. As a consequence, what portion of DOL's 40 percent decrease figure is solely due to agency action (i.e., program increases or program decreases but not correction-errors, correction-reestimates, or changes in use)? Please provide details for each burden reduction accomplishment over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

Please see Attachment A, "DOL Paperwork Reduction Under the PRA."

b. 6/28/02 SBPRA to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (exclusive of electronic filing) were accomplished by your agency to benefit small businesses since the June 28, 2002 enactment of SBPRA, and what are planned in the rest of 2004?

i. How many of these initiatives reduce the frequency of small business reporting?

ii. How many introduce thresholds below which reporting is not required?

iii. How many raise thresholds to reduce reporting for more small businesses?

iv. How many introduce sampling instead of requiring universe reporting so fewer small businesses will need to report?

v. How many create short forms for small businesses?

Please see Attachment B, "DOL Paperwork Reduction Initiatives."

Q5. OSHA Recordkeeping Threshold. During and after the Ose Subcommittee's April 11, 2003 paperwork hearing, we asked OSHA Administrator John Henshaw, "In your testimony, you mention that employers with 10 or fewer employees are not required to compile injury-illness logs (p. 5). In its December 2003 enforcement report, DOL used 25 as the threshold for OSHA's small business enforcement

actions and penalties. As a consequence, why can't DOL raise this threshold to 25 employees? If not, is DOL considering other reductions for small business in this burdensome requirement? If so, please describe them.

OSHA is not, at this time, considering further burden reductions associated with the injury and illness recordkeeping regulation. As discussed in the response to the April, 2003, hearing, by exempting employers of ten or fewer workers, OSHA successfully cuts paperwork burden for the vast majority of U. S. workplaces —75 percent of all employers nationwide. Another 11 percent, many of whom are also small employers, are exempted because they are doing business in lower hazard retail and service industries. As a result, less than 15 percent of employers are required to keep these records.

OSHA proposed extending the size exemption to employers with 19 or fewer workers outside of the construction industry in its recordkeeping rule proposed in 1996. However, although it would have eliminated 770,000 workplaces from having to keep injury & illness logs, it would have also severely restricted the ability of employers, employees, OSHA, the National Institute for Occupational Safety and Health (NIOSH), and other researchers, from collecting valuable data about many of the most hazardous industries in the country. Past fatality data have shown that the more dangerous worksites are usually made up of small, even very small, employers. Therefore, although raising the size exemption to 19 employees was part of the proposed rule in 1996, it was not included in the final rule.

OSHA has also developed a large number of outreach products to help smaller businesses comply with these requirements. OSHA's Web Site includes FAQs, downloadable forms, slide shows, and a web-based video presentation. Over 30 OSHA Education Centers across the country offer half-day courses in recordkeeping. OSHA also helps small businesses when they call OSHA, an OSHA-approved state plan, or a state-based consultation service for assistance.

Attachment A:
DOL Paperwork Reduction Under the PRA

The following table summarizes the changes in the Department's Information Collection Budget (paperwork burden) due to agency actions.

Fiscal Year	Program Changes due to Agency Actions	Percentage Change from the 1995 Baseline of 266 M Hours
1995	**	
1996	**	
1997	**	
1998	+11,870,000*	+4.46 %
1999	+ 570,000*	+.21 %
2000	-417,043	-.15 %
2001	-2,410,000*	-.89 %
2002	+2,403,471	+.89 %
2003	-107,698	-.04 %

* Reports for these years combine both changes due to agency action and changes due to statutory changes.
** Prior to 1998, these figures were not reported.

The following table describes the Department's burden reduction accomplishments over 10,000 hours, including precisely what actions DOL took and the reduction hours associated with each of these actions.

FY 2003 Reductions

OMB#:	1218-0092
Title:	Lead in General Industry
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	The purpose of this collection is to provide protection for employees from the adverse health effects associated with occupational exposure to lead in general industry.

How Reduction Achieved: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The current lead standard requires that employers inform each employee in writing of their exposure-monitoring results (§ 1910.1025(d)(8)). The NPRM proposed to revise this provision to allow employers the option of either posting their employee exposure-monitoring results, or to individually inform each employee of their results.

Change in Burden: -51,401 hours

OMB#: 1218-0189

Title: Lead in Construction 1926.62

DOL Agency: Occupational Safety and Health Administration

Purpose of the Collection: The purpose of this collection is to provide protection for employees from the adverse health effects associated with occupational exposure to lead in construction.

How Reduction Achieved: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The current lead standard requires that employers inform each employee in writing of their exposure-monitoring results (§ 1926.62(d)(8)). The NPRM proposed to revise this provision to allow employers the option of either posting their employee exposure-monitoring results, or to individually

inform each employee of their results. This resulted in a 28,493 burden hour reduction.

In addition, the NPRM proposed to reduce the frequency employers must review their written compliance program from semi-annually to annually. Written compliance plans explain how employers will reduce employee exposures to or below the Standard's permissible exposure limits (PELs) by means of engineering and work practice controls. Allowing employers to review their plans annually instead of semi-annually reduced the burden hours by 108,172 hours.

Change in Burden: -136,665 hours

OMB #: 1205-0219

Title: Standard Job Corps Request for Proposal and Related Contractor Information Gathering

DOL Agency: Employment and Training Administration

Purpose of the Collection: The Standard Request for Proposals for the Operation of Job Corps centers provides the Government's expectations to potential contractors for the development of proposals to operate Job Corps centers. Information collection activities required of Job Corps center contractors serve to ensure proper operation of the Job Corps program.

How Reduction Achieved: Implementation of electronic reporting.

Change in Burden: -22,579 hours

OMB #: 1205-0407

Title: State Unified Plan Planning Guidance for State Unified Plans Submitted Under Section 501 of the Workforce Investment Act of 1998

DOL Agency: Employment and Training Administration

Purpose of the Collection: Section 501 of the Workforce Investment Act (Public Law 105-220, August 7, 1998) provides the Governor of the State the option to submit to the Secretary a unified plan in place of a standalone plan to be eligible for WIA funds.to be eligible to receive an allocation under section 127 or 132 or to receive financial assistance under the Wagner-Peyser Act. The State plan outlines a 5-year strategy for the statewide workforce investment system of the State and that meet the requirements of Section 501. State Plans have been received; therefore, the current collection of information deals with modifications to these Plans as required by the Workforce Investment Act (20 CFR 661.230 and 661.240).

How Reduction Achieved: The burden hours associated with the submission of an initial five-year plan has been eliminated -- all 57 grantees have submitted the required 5-year plan. Therefore, only plan modifications are required on an as needed basis.

Change in Burden: -17,670 hours

OMB #: 1219-0006

Title: Quarterly Mine Employment and Coal Production Report

DOL Agency: Mine Safety and Health Administration

Purpose of the Collection: Employment and production data when correlated with accident, injury and illness data provide information that allows the Mine Safety and Health Administration (MSHA) to improve its safety and health enforcement programs, focus its education, training, and technical assistance efforts. The information collected allows MSHA to direct increased resources towards areas with developing hazardous trends.

How Reduction Achieved:	In an effort to streamline the Department's information collections, this collection of information was consolidated with the OMB control number 1219-0007.
Change in Burden:	-41,155 hours

OMB #:	1220-0109
Title:	National Longitudinal Survey of Youth 1979
DOL Agency:	Bureau of Labor Statistics
Purpose of the Collection:	Data are used by the Department of Labor, other agencies, academic researchers, the news media, and the general public to understand the employment experiences and life-cycle transitions of men and women born in the years 1957 to 1964 and living in the United States when the survey began in 1979.
How Reduction Achieved:	This was a biennial survey that expired.
Change in Burden:	-13,297 hours

FY 2002

OMB#:	1220-0011
Title:	Report on Employment, Payroll, and Hours
DOL Agency:	Bureau of Labor Statistics
Purpose of the Collection:	The Current Employment Statistics program provides current monthly statistics on employment, hours and earnings by industry. The statistics are fundamental inputs in economic processes at all

levels of government, private enterprise, and organized labor.

How Reduction Achieved: Burden hours have decreased due to the introduction of a probability based sample. This redesign reduces the number of reports.

Change in Burden: -88,530 hours

OMB#: 1220-0171

Title: Survey of Respirator Use and Practices

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: Survey of United States employers regarding the use of respiratory protective devices.

How Reduction Achieved: Survey is completed and expired on 7/31/2002. No burden hours for Fiscal Year 2003

Change in Burden: -20,000 hours

OMB#: 1218-0241

Title: Steel Erection -- Subpart R, 29 CFR 1926.750 through 1926.761

DOL Agency: Occupational Safety and Health Administration

Purpose of the Collection: These provisions ensure that designated parties, especially steel erectors, receive notice that building material components, steel structures, and fall protection equipment are safe for specific uses; and employees exposed to fall hazards receive the required training in the recognition and control of fall protection.

How Reduction Achieved:	Decrease occurred because OSHA removed burden hours for employers to develop a certification record of the pre-shift inspection of hoisting equipment; this requirement is not in the final Subpart.
Change in Burden:	-56,848 hours
Statute Title and PL#:	Occupational Safety and Health Act of 1970, Public Law 91-596

FY 2001

OMB#:	1215-0072
Title:	OFCCP Record-Keeping and Reporting Requirements.
DOL Agency:	Employment Standards Administration
Purpose of the Collection:	The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal opportunity program prohibiting employment discrimination and requiring affirmative steps to ensure equal employment opportunity. All record-keeping, forms, and reporting requirements originate from the regulations implementing these programs. The OFCCP regulations implementing these programs impose a record-keeping and a reporting burden on Federal contractors. Federal contractors must develop, update, and maintain Affirmative Employment plans. Federal contractors also must file the annual required EEO-1 Report.
How Reduction Achieved:	Streamlining regulations.
Change in Burden:	-2,835,510 hours:

OMB#:	1205-0308
Title:	Planning and Reporting Requirements for JTPA, Section 401, Indian and Native America Grantees (Both Title IV-A and Title 11-B)
DOL Agency:	Employment and Training Administration
Purpose of the Collection:	Used to evaluate the overall progress of the program and to ensure compliance with applicable laws and regulations.
How Reduction Achieved:	Program Change – Job Training Partnership Act Program Expired.
Change in Burden:	-95,935 hours

OMB#:	1210-0114
Title:	Disclosures by Insurers to General Account Policy holders
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	The Purpose of the information collection included in the regulation at 29 CFR 2550.401c-1 is to clarify which assets held by insurers constitute assets of the plan for purposes of Part 4 of Title 1 of ERISA.
How Reduction Achieved:	The Small Business Job Protection Act of 1996 amended the Employee Retirement Income Security Act of 1974 (ERISA) by adding a new section 401(c), which clarified the application of ERISA to insurance company general accounts. The new provision required that certain steps be taken by insurance companies that offer and maintain policies for private sector employee benefit plans where assets are held in the general account, and required the Department to issue interpretive

	guidance. The final rule requires that certain disclosures be provided at the outset of the contract and annually, and that other disclosures be provided at the outset of the contract and annually, and that other disclosures be provided on request. The burden reduction reflects the fact that the one-time disclosures required by the January 5, 2000 final rule would have been completed. The remaining burden is for ongoing disclosure requirements.
Change in Burden:	- 737,702

OMB#	1218-0245
Title:	Ergonomic Program Standard – (29 CFR 1910, Subpart Y)
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	Collection discontinued.
How Reduction Achieved:	Under the Congressional Review Act, Congress passed and President signed, Public Law 107-5, disapproving OSHA's final Ergonomics Program
Change in Burden:	-40,582,309 hours (Note that this was offset during the same year, so no net increase or decrease occurred.)
Statute Title and PL#:	Congressional Review Act, Public Law 107-5

OMB#:	1205-0360
Title:	Evaluation of the Impact of Job Corps on Participants' Post-program Labor Market and Related Behaviors, Follow-up Questionnaire.

DOL Agency: Employment and Training Administration

Purpose of the Collection: Questionnaires will be used to measure impacts of Job Corps participants' earnings and related behavior. Data used to estimate the benefits and cost of Job Corps.

How Reduction Achieved: Program Change - Evaluation completed 10/2000.

Change in Burden: -26,512 hours

OMB#: 1220-0032

Title: Annual Re-filing Survey (ARS) (formerly called the Standard Industrial Classification (SIC) forms)

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: To verify the accuracy of industry codes for business establishments covered by State Unemployment Insurance (U.I.) programs.

How Reduction Achieved: Fewer establishments were surveyed in Fiscal Year 2001 because the survey was limited in scope.

Change in Burden: -60,299 hours

OMB#: 1220-0042

Title: Report on Occupational Employment

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: The Report on Occupational Employment is a Federal/State sample survey of employment and wages by occupation of non-farm establishments

	that is used to produce data on current occupational employment and wages. The survey is a component in the development of employment and training programs and occupational information.
How Reduction Achieved:	The decrease in hours was due to a small decrease in the survey sample compared to previous years and the elimination of the Response Analysis Survey (RAS).
Change in Burden:	-24,861 hours

FY 2000

OMB #:	1210-0016 and 1210-0110
Title:	Form 5500 - Annual Report/Return of Employee Benefit Plan
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	The form 5500 serves as a disclosure document for plan participants, as well as the principal source of information and data available to the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation in their enforcement, research, and policy formulation programs. The form 5500 is also the primary source of data on employee benefit plans for federal agencies, Congress, and the private sector.
How Reduction Achieved:	The reduction results from streamlining and simplifying the form, eliminating unnecessary elements, and addressing elements known to generate confusion or errors.
Change in Burden:	- 313,850 hours

OMB #:	1210-0039
Title:	Summary Plan Description Requirements under the Employee Retirement Income Security Act
DOL Agency:	Employee Benefits Security Administration

Purpose of the Collection: Statutory provisions and related regulations provide plan administrators with guidance on information required to be furnished to participants and beneficiaries of employee benefit plans so that they may be informed about the provisions of the plan and protected in their rights under the plan.

How Reduction Achieved: PWBA now considers disclosures made through electronic media to satisfy existing disclosure requirements. Burden reductions reflect savings plan administrators may achieve by distributing information electronically.

Change in Burden: - 170,516 hours

OMB #: 1219-0037

Title: Noise Data Report Form and Calibration Records

DOL Agency: Mine Safety and Health Administration

Purpose of the Collection: Require underground and surface coal mine operators to conduct initial, periodic, and supplemental noise exposure surveys; conduct noise level measurements; and report and certify to MSHA the environmental noise levels to which miners are exposed.

How Reduction Achieved: Removed from inventory and made part of the final rule on Noise (1219-0120) which removed MSHA Form 2000-168.

Change in Burden: - 67,798 hours

OMB #: 1220-0164

Title: National Compensation Survey

DOL Agency: Bureau of Labor Statistics

Purpose of the Collection: Survey of employee salaries, wages, and benefits. (The NCS replaces three existing BLS surveys: Employment Cost Index (ECI), Occupational Compensation Survey Program (OCSP), and Employee Benefits Survey (EBS).).

How Reduction Achieved: Three year average; there is no SCA funding for Fiscal Year 2000.

Change in Burden: -15,161 hours

FY 1999

OMB #: 1210-0039

Title: Summary Plan Description Requirements Under Employee Retirement Income Security Act (ERISA).

DOL Agency: Employee Benefits Security Administration

Purpose of the Collection: This information provides plan administrators with guidance on informing participants and beneficiaries of employee benefit plans so that they are aware of their benefits and rights under the plan.

How Reduction Achieved: The Pension and Welfare Benefits Administration (now the Employee Benefits Security Administration) published a proposed regulation concerning the use of electronic technologies for disclosure under ERISA. The paperwork reductions are the estimated savings that plan administrators may achieve by distributing information electronically.

Change in Burden: -68,046 hours.

OMB#: 1210-0040

Title:	Summary Annual Report Requirements Under ERISA
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	Employee benefit plans are required to submit an annual report to the Secretary of Labor describing the plan's financial condition and operations. This information collection provides benefit plan participants and beneficiaries a summary of that annual report.
How Reduction Achieved:	The Pension and Welfare Benefits Administration (now the Employee Benefits Security Administration) published a proposed regulation (64 FR 4506) concerning the use of electronic technologies for disclosure under ERISA. The paperwork reductions are the estimated savings that plan administrators may achieve by distributing information electronically.
Change in Burden:	-560,043 hours.

FY 1998

OMB #:	1210-0039
Title:	Summary Plan Description Requirements Under Employee Retirement Income Security Act (ERISA).
DOL Agency:	Employee Benefits Security Administration
Purpose of the Collection:	This information provides plan administrators with guidance on informing participants and beneficiaries of employee benefit plans so that they are aware of their benefits and rights under the plan.
How Reduction Achieved:	Continuing the reductions from FY 1997, DOL has eliminated certain filing requirements for pension

	and health plans pursuant to the Taxpayer Relief Act of 1997 resulting in a 188,000 burden hour reduction.
Change in Burden:	-188,000 hours.

OMB #:	1218-0200
Title:	Process Safety Management Standard
DOL Agency:	Occupational Safety and Health Administration
Purpose of the Collection:	The Process Safety Management of Highly Hazardous Chemicals, (PSM Standard) contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals. These releases may result in fire or explosive hazards.
How Reduction Achieved:	Employers completed the final implementation phase for the requirements of the Process Safety Management Standard. As of May 1997, all employers covered by the Standard had completed the process hazard analysis and process safety portions of the Standard.
Change in Burden:	-14,500,000 hours.

Notes: Much of this data is drawn from the consolidated Information Collection Budgets as compiled by OMB. These contain representative burden reductions, not a complete list. Additionally, changes in reporting requirements, particularly in the early years of the PRA, mean that some burden reduction accomplishments are not described in this table. The Department can continue to attempt to construct a complete accounting of these programs if so requested by the Committees.

The above table also includes several reductions that resulted from the planned expiration of collections that experience a period of dormancy (for example a biennial survey) or for programs that are to be suspended temporarily. This accounting practice is in accordance with OMB guidelines to provide for the most accurate representation of the collection burden being imposed.

Attachment B, "DOL Paperwork Reduction Initiatives"

During the period of June 28, 2002 to December 31, 2003, DOL had one paperwork burden initiative that yielded a reduction in excess of 100,000 hours that did not result from electronic filing. The Information Collection Budget reporting process does not provide for a separate accounting of paperwork burden for small businesses. However, we can state that in general small businesses will benefit as we eliminate or simplify paperwork requirements for businesses of all sizes.

On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, Notice of Proposed Rulemaking. OSHA proposed to revise the number of health provisions in its standards for general industry, shipyard employment and construction. As part of the NPRM, OSHA proposed to allow employers covered by §1926.62 Lead in Construction to post employee exposure monitoring results instead of individually informing each employee of their exposure-monitoring results. In addition, the Agency proposed to reduce the frequency of updating the compliance plans from semi-annually to annually. As a result of these proposed changes the Agency estimated the burden hours would be reduced by 136,665 burden hours. The Agency is currently developing the Final rule.

Burden Reduction Initiatives Summary Reports:

INITIATIVE 3:

Initiative Title: Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II).

Summary Status: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The comment period closed on December 30, 2002. However, on January 8, 2003, OSHA extended the comment period until January 31, 2003 (68 FR 1023). OSHA held public hearing on July 8, 2003. The post-hearing comment period closed September 8, 2003. The Agency expects to publish a final in the second quarter FY 2004.

This initiative is a continuing project. In December, 2002, OMB approved reductions in twelve information collection requests, totalling 207,892 hours, of which the following one exceeded the 100,000 threshold:

OMB#: 1218-0189

Title: Lead in Construction 1926.62

Purpose of the Collection: The purpose of this collection is to provide protection for employees from the adverse health effects associated with occupational exposure to lead in construction.

How Reduction Achieved: On October 31, 2002, OSHA published the Standards Improvement Project—Phase II, notice of proposed rulemaking (NPRM) (67 FR 66493). The NPRM proposed to revise a number of health provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent. The current lead standard requires that employers inform each employee in writing of their exposure-monitoring results (§ 1926.62(d)(8)). The NPRM proposed to revise this provision to allow employers the option of either posting their employee exposure-monitoring results, or to individually inform each employee of their results. This resulted in a 28,493 burden hour reduction.

In addition, the NPRM proposed to reduce the frequency employers must review their written compliance program from semi-annually to annually. Written compliance plans explain how employers will reduce employee exposures to or below the Standard's permissible exposure limits (PELs) by means of engineering and work practice controls. Allowing employers to review their plans annually instead of semi-annually reduced the burden hours by 108,172 hours.

Change in Burden: -136,665 hours

U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210

FEB 9 2004

The Honorable Tom Davis
Chairman
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20510

Dear Chairman Davis:

The U.S. Department of Labor is filing an addendum to the Department's Regulatory Enforcement Report for October 1, 2002 through September 30, 2003, dated December 30, 2003. In the Regulatory Enforcement Report, filed pursuant to the Small Business Paperwork Relief Act of 2002, the Occupational Safety and Health Administration (OSHA) reported "initial proposed federal penalties" and "total federal current penalties." The enclosed addendum includes the amount of reductions or waivers granted by OSHA, which is the difference between the two amounts that were reported.

Please do not hesitate to call me at (202) 693-5990 if you have any questions or need additional information.

Sincerely,

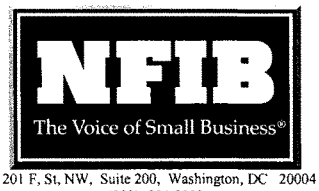
David Gray
Acting Assistant Secretary for Policy

Enclosure

Addendum to the Department of Labor's Small Business Paperwork Relief Act of 2002, Regulatory Enforcement Report for October 1, 2002 through September 30, 2003

In the U.S. Department of Labor's FY 2003 Regulatory Enforcement Report, the Occupational Safety and Health Administration (OSHA) reported "initial proposed federal penalties" and "total federal current penalties." This chart also includes the amount of reductions or waivers granted by OSHA, which is the difference between the two amounts that were reported.

Business Size	Initial Proposed Penalties	Current Penalties	Amount Reduced or Waived
All businesses	$ 115,543,117	$ 75,085,617	$ 40,457,500
Less than 250 employees	80,456,504	51,774,351	28,682,153
Less than 25 employees	35,158,341	22,720,979	12,437,362



1201 F. St. NW, Suite 200, Washington, DC 20004
(202) 554-9000

February 3, 2004

Hon. Doug Ose, Chairman
United States House of Representatives
Committee on Government Reform
Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs
B-377 Rayburn House Office Building
Washington, DC 20515

Hon. Ed Schrock, Chairman
United States House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Ose and Chairman Schrock:

Thank you once again for the opportunity to testify before your subcommittees on January 28, 2004, on the subject of the Office of Management and Budget's efforts to reduce paperwork for small businesses. I am writing to supplement my testimony, and correct a mistake contained within my written submission.

On page 4 of my written testimony, I state, "the IRS has no mandate to reduce paperwork burdens, as there exists a Memorandum of Understanding between IRS and the OMB regarding the application of SBREFA to the tax collecting agency." That statement is incorrect. At the time my testimony was written, I had not had an opportunity to review the memoranda governing the relationship between the OMB and the Department of the Treasury (those documents were not, to my knowledge, a matter of public record at the time). My statement was based on conversations with a number of administration personnel regarding the relationship and the MOU, and was led to believe that this was in fact the case.

I have now reviewed what I believe to be the relevant memoranda. There are three of them, written between 1983 and 1993, and they lay out an agreement as to the role that OMB will play regarding Treasury and IRS operations. They do not deal with

paperwork, and as they were written long-before the passage of SBREFA, that law is not implicated at all. I do not believe, at this time, that there is any agreed-to mandate between Treasury and OMB regarding oversight of paperwork reduction efforts or for SBREFA in general.

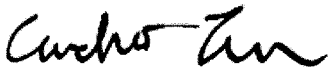
Unfortunately, however, the substance of the memoranda does set out to severely limit OMB's involvement in Treasury's development of new regulations. This has created a relationship in which OMB can claim that its hands are tied in discharging its small-business protection responsibilities with regards to Treasury and IRS. The long-standing arms-length relationship ought to be the subject of re-examination, at the very least to ensure that the laws enacted to safeguard small-businesses are taken seriously by the IRS.

Right now they believe they have no reason or incentive to do so.

I apologize for my error and any misunderstanding that my error might have caused. I hope that the record will reflect this correction.

Thank you for your consideration of my correction and my apology. Please do not hesitate to contact me if you have any questions, or require additional information.

Sincerely,



Andrew M. Langer
Manager, Regulatory Policy

AML/slf

Rec'd 3/5/04

SUNGRO
Chemicals, Incorporated
P.O. Box 24632, Los Angeles. California 90024
Phone: 213-747-4125 - Fax 213-747-0942

Plant: 810 E. 18th Street
Los Angeles, California 90021

February 19, 2004

Congress of United States, House of Representatives
Congressman Doug Ose, Chairman, Subcommittee on Energy Policy, Natural Resources and Regulatory Reform, Committee on Government Reform
Congressman Edward I. Schrock, Chairman, Subcommittee on Regulatory Reform and Oversight Committee on Small Business

Subject: Small Business Maintenance Fee Caps "The Pesticide Improvement Act of 2003"

Dear Congressmen Ose and Schrock,

Thank you for the opportunity to appear before your subcommittees. As a follow-up to my presentation relative to the oppressive pesticide product maintenance fees opposed on the smaller of small businesses, I would like to offer the following comments and recommendation relative to these fee caps. Below is a summary of the fee caps in the act.

"**Small Business Maintenance Fee Caps are Revised:**
For a registrant holding not more than 50 registrations, the annual **maintenance fee cap** is set at $ 59,000 for fiscal year 2004; $61,000 for each of fiscal years 2005 and 2006; $48,000 for fiscal year 2007; and $38,500 for fiscal year 2008.
For a registrant holding more than 50 pesticide registrations, the maintenance fee cap is set at $102,000 for fiscal year 2004; $106,000 for each of fiscal years 2005 and 2006; $82,000 for fiscal year 2007; and, 66,500 for fiscal year 2008.

Small businesses qualify for a 50% reduction in the **registration service fee.**
Small businesses with $10 million or less in global pesticide sales are exempt from registration service fees."

There are two kinds of fees, **Maintenance Fees and Service Fees.** (a copy of the full summary is attached). Congress, in its wisdom, recognized a subclass of smaller businesses doing less than $10,000,000 in sales, by providing relief from the **Service Fee** portion, but did not make any provision for relief for these smaller companies from the excessive burden imposed by the **Maintenance Fee** schedule.

Because of this excessive upfront fee a significant number of product registrations have been and are being cancelled and many smaller companies have been forced to withdraw their pesticide products from the market place or have gone out of the business entirely.

My recommendation for providing relief to the smaller business entity would be to simply amend the provision relative to small business with $10,000,00 or less in sales to read "Small businesses with $10 million or less in global pesticide sales are exempt from registration service fees and ___ % of the annual maintenance fee."

I suggest a figure in the range of 50-70% for the exemption, retroactive to January 1, 2004, if possible. Such action will allow many of the smaller enterprises to remain in or, in the future, enter the pesticide market place.

Thank you in advance for your consideration.

Sungro Chemicals, Inc.
Harold B. Igdaloff, President
HBI:bh
Enc: The Pesticide Registration Improvement Act of 2003 - Summary of Small Business Provisions
cc: Karen Brown, Director, USEPA Small Business Division, Small Business Ombudsman.
Molly Brogan, Manager Regulatory Affairs, National Small Business Association

Pesticide Fee Categories

	A	B	C	D	E	F	G	H
1			Decision Times (months)					
2	Div.	Action /1/	FY04	FY05	FY06	FY07	FY08	Fee
47	AD	New use, non-food, outdoor, other uses	24	15	15	15	15	$25,000
48	AD	New use, non-food, indoor, FIFRA §2(mm) uses	FIFRA §3(h) decision times					$10,000
49	AD	New use, non-food, indoor, other uses	20	12	12	12	12	$10,000
50	AD	EUP	9	9	9	9	9	$5,000
51	AD	New product, me-too, fast track	3	3	3	3	3	$1,000
52	AD	New product, non-fast track, FIFRA §2(mm) uses	FIFRA §3(h) decision times					$4,000
53	AD	New product, non-fast track, other uses	8	6	6	6	6	$4,000
54	AD	New manufacturing-use product, old ai, selective citation	24	18	12	12	12	$15,000
55	AD	Amendment, non-fast track /3/	6	4	4	4	4	$3,000
56	RD	New ai, food use /2/	38	34	24	24	24	$475,000
57	RD	New ai, food use, reduced risk /2/	32	26	21	21	21	$475,000
58	RD	New ai, food use, with EUP request (decision time for EUP and temp tolerance same as below) /2/	38	34	24	24	24	$525,000
59	RD	New ai, food use, EUP, set temp. tolerance, (submitted before new ai package; $300K credited toward new ai registration)	32	28	18	18	18	$350,000
60	RD	New ai, food use, submitted post-EUP (decision time begins after EUP and temp. tolerance are granted) /2/	28	24	14	14	14	$175,000
61	RD	New ai, non-food use, outdoor /2/	32	28	21	21	21	$330,000
62	RD	New ai, non-food use, outdoor, reduced risk /2/	26	22	18	18	18	$330,000
63	RD	New ai, non-food use, outdoor, with EUP request (decision time for EUP same as below) /2/	32	28	21	21	21	$365,000
64	RD	New ai, non-food use, outdoor, EUP (submitted before complete new ai package, $210K credited toward new ai	27	23	16	16	16	$245,000
65	RD	New ai, non-food use, outdoor, submitted post-EUP (decision time begins after EUP has been granted) /2/	24	20	12	12	12	$120,000
66	RD	New ai, non-food use, indoor /2/	30	26	20	20	20	$190,000
67	RD	New ai, non-food use, indoor, reduced risk /2/	26	22	17	17	17	$190,000
68	RD	First food use, indoor food/food handling /2/	30	24	21	21	21	$150,000
69	RD	New use, indoor food/food handling	30	24	21	15	15	$35,000
70	RD	New use, first food use /2/	32	26	21	21	21	$200,000
71	RD	New use, first food use, reduced risk /2/	28	22	18	18	18	$200,000
72	RD	New food use, each	38	30	22	15	15	$50,000
73	RD	New food use, reduced risk, each	36	28	20	12	12	$50,000
74	RD	New food uses, bundled, 6 or more	38	30	22	15	15	$300,000
75	RD	New food uses, reduced risk, bundled, 6 or more	36	28	20	12	12	$300,000
76	RD	New food use, EUP, temp tolerance (no credit toward new use registration)	35	27	19	12	12	$37,000
77	RD	New food use, EUP, crop destruct	8	8	6	6	6	$15,000
78	RD	New use, non-food, outdoor	28	24	20	15	15	$20,000
79	RD	New use, non-food, outdoor, reduced risk	26	22	18	12	12	$20,000
80	RD	New use, non-food, outdoor, EUP (no credit toward new use registration)	8	8	6	6	6	$15,000
81	RD	New use, non-food, indoor	24	18	12	12	12	$10,000
82	RD	New use, non-food, indoor, reduced risk	22	16	9	9	9	$10,000
83	RD	Import tolerance, new ai or first food use /2/	38	30	21	21	21	$250,000
84	RD	Import tolerance, new food use	38	30	22	15	15	$50,000
85	RD	New product, me-too, fast track	3	3	3	3	3	$1,000
86	RD	New product, non-fast track (includes reviews of product chemistry, acute toxicity, public health pest efficacy)	10	8	6	6	6	$4,000
87	RD	New product, non-fast track, new physical form (excludes selective citations)	16	14	12	12	12	$10,000
88	RD	New manufacturing-use product, old ai, selective citation	24	18	12	12	12	$15,000

Pesticide Fee Categories

	A	B	C	D	E	F	G	H
1			Decision Times (months)					
2	Div.	Action /1/	FY04	FY05	FY06	FY07	FY08	Fee
3	BPPD	New ai, food use, microbial/biochemical, w/tolerance /2/	18	18	18	18	18	$40,000
4	BPPD	New ai, food use, microbial/biochemical, w/exemption /2/	16	16	16	16	16	$25,000
5	BPPD	New ai, non-food use, microbial/biochemical /2/	12	12	12	12	12	$15,000
6	BPPD	EUP, food use; microbial/biochemical, w/temp. tol. exemp.	9	9	9	9	9	$10,000
7	BPPD	EUP, non-food use, microbial/biochemical	6	6	6	6	6	$5,000
8	BPPD	New use, first food use, microbial/biochemical, w/exemption	12	12	12	12	12	$10,000
9	BPPD	New use, first food use, microbial/biochemical, w/tolerance /2/	18	18	18	18	18	$15,000
10	BPPD	New use, non-food, microbial/biochemical	6	6	6	6	6	$5,000
11	BPPD	New product, me-too, fast track, microbial/biochemical	3	3	3	3	3	$1,000
12	BPPD	New product, non-fast track, microbial/biochemical	6	6	4	4	4	$4,000
13	BPPD	Amendment, non-fast track, microbial/biochemical /3/	6	6	4	4	4	$4,000
14	BPPD	SCLP, new ai, food use or non-food use /2/	6	6	6	6	6	$2,000
15	BPPD	SCLP, EUP (new ai or new use)	6	6	6	6	6	$1,000
16	BPPD	SCLP, new product, me-too, fast track	3	3	3	3	3	$1,000
17	BPPD	SCLP, new product, non-fast track	6	6	4	4	4	$1,000
18	BPPD	SCLP, amendment, non-fast track /3/	6	6	4	4	4	$1,000
19	BPPD	PIP, EUP, non-food/feed or crop destruct, no SAP (submitted before new ai package, $25K credit toward new ai registration)	12	12	6	6	6	$75,000
20	BPPD	PIP, EUP, set temp. tolerance/exemption, no SAP (submitted before new ai package, $50K credit toward new ai registration)	12	12	9	9	3	$100,000
21	BPPD	PIP, EUP, new ai, non-food/feed or crop destruct, SAP required (submitted before new ai package, $75K credit toward new ai registration)	15	15	12	12	12	$125,000
22	BPPD	PIP, EUP, new ai, set temp. tolerance/exemption, SAP required (submitted before new ai package, $100K credit toward new ai registration)	18	18	15	15	15	$150,000
23	BPPD	PIP, register new ai, non-food/feed, no SAP	18	18	12	12	12	$125,000
24	BPPD	PIP, register new ai, non-food/feed, SAP required	24	24	18	18	18	$225,000
25	BPPD	PIP, register new ai, temp. tolerance/exemption exists, no SAP	18	18	12	12	12	$200,000
26	BPPD	PIP, register new ai, temp. tolerance/exemption exists, SAP required	24	24	18	18	18	$300,000
27	BPPD	PIP, register new ai, set tolerance/exemption, no SAP	21	21	15	15	15	$250,000
28	BPPD	PIP, register new ai, with EUP request, set tolerance/exemption, no SAP	21	21	15	15	15	$300,000
29	BPPD	PIP, register new ai, set tolerance/exemption, SAP required	24	24	21	21	21	$350,000
30	BPPD	PIP, register new ai, with EUP request, set tolerance/exemption, SAP required	24	24	21	21	21	$400,000
31	BPPD	EUP, food use, PIP, amendment /3/	6	6	6	6	6	$10,000
32	BPPD	PIP, new use /4/	9	9	9	9	9	$30,000
33	BPPD	PIP, new product /5/	12	12	9	9	9	$25,000
34	BPPD	PIP, amendment, seed production to commercial registration	15	15	12	9	9	$50,000
35	BPPD	PIP, amendment, non-fast track (except 34 above) /3/	6	6	6	6	6	$10,000
36	AD	New ai, food use, exemption /2/	35	24	24	24	24	$90,000
37	AD	New ai, food use, tolerance /2/	35	24	24	24	24	$150,000
38	AD	New ai, non-food use, outdoor, FIFRA §2(mm) uses /2/	FIFRA §3(h) decision times					$75,000
39	AD	New ai, non-food use, outdoor, other uses /2/	31	21	21	21	21	$150,000
40	AD	New ai, non-food use, indoor, FIFRA §2(mm) uses /2/	FIFRA §3(h) decision times					$50,000
41	AD	New ai, non-food use, indoor, other uses /2/	29	20	20	20	20	$75,000
42	AD	New use, first food, exemption /2/	29	21	21	21	21	$25,000
43	AD	New use, first food, tolerance /2/	29	21	21	21	21	$75,000
44	AD	New use, food, exemption	24	15	15	15	15	$10,000
45	AD	New use, food, tolerance	24	15	15	15	15	$25,000
46	AD	New use, non-food, outdoor, FIFRA §2(mm) uses	FIFRA §3(h) decision times					$15,000

Pesticide Fee Categories

	A	B	C	D	E	F	G	H
1			Decision Times (months)					
2	Div.	Action /1/	FY04	FY05	FY06	FY07	FY08	Fee
89	RD	Amendment, non-fast track, (includes changes to precautionary label statements, source changes to an unregistered source) /3/	6	5	4	4	4	$3,000
90	RD	amendment, non-fast track (changes to REI, PPE, PHI, rate & no. of applications; add aerial application; modify GW/SW advisory statement) /3/	20	16	12	8	8	$10,000
91	RD	Amendment, non-fast track, isomers	22	20	18	18	18	$240,000
92	RD	Cancer reassessment, applicant-initiated	22	20	18	18	18	$150,000

93

/1/ Abbreviations: AD = Antimicrobial Division; ai = active ingredient; BPPD = Biopesticide and Pollution Prevention Division; EUP = experimental use permit; fast track = qualifies for expedited processing under FIFRA §3(c)(3)(B)(i)(I); me-too = new product registration of already registered active ingredient; GW/SW = ground water/surface water; PHI = pre-harvest interval; PIP = plant-incorporated protectan; PPE = personal protective equipment; RD = Registration Division; REI = restricted entry interval; SAP = FIFRA Science Advisory Panel meeting; SCLP = straight-chain lepidopteran pheromone.

94

/2/ All uses (food and non-food) included in any orginal application or petition for a new active ingredient or a first food use are covered by the base fee for that application.

95

96 /3/ EPA-initiated amendments shall not be charged fees.

102 /4/ Example: transfer of existing PIP trait by traditional breeding, such as from field corn to sweet corn.

103 /5/ Example: stacking PIP traits within a crop using traditional breeding techniques.

01/27/2004 15:18 FAX 2028728543 NSBU 002
01/27/2004 15:44 FAX 202 566 2848 EPA 002

The Pesticide Registration Improvement Act of 2003
(as contained in the conference report to accompany H.R. 2673, the Consolidated Appropriations Act of 2004)

Summary of Small Business Provisions

- The legislative language revises the definition of a "small business" as it is currently defined at Section 4(i)(4)(D)(iii) of FIFRA. Specifically, the proposal changes the small business definition to include any company (including parent and subsidiary affiliates) with **$60 million or less in global gross revenue from pesticides** and **500 or fewer employees**, as opposed to the current definition, which defines a small business as a company with **$40 million or less in gross revenue from chemicals** and employees of **150 or fewer**. The adjustment in dollar amount is necessary to account for inflationary changes affecting the value of money. Furthermore, the change from "gross revenue from chemicals" to "global gross revenue from pesticides" will better protect small pesticide registrants that also sell fertilizers, adjuvants and inert ingredients, which are currently considered chemical sales, and are included when determining whether a company is a small business. Finally, the increase in the threshold for the number of employees from 150 to 500 makes the FIFRA definition of a small business consistent with how the U.S. Small Business Administration (SBA) defines a small business (i.e., SBA uses a threshold of 500 employees for determining whether a company qualifies as a small business).

- Small Business Maintenance Fee Caps are Revised:

  - For a registrant holding not more than 50 registrations, the annual maintenance fee cap is set at $ 59,000 for fiscal year 2004; $61,000 for each of fiscal years 2005 and 2006; $48,000 for fiscal year 2007; and $38,500 for fiscal year 2008.

  - For a registrant holding more than 50 pesticide registrations, the maintenance fee cap is set at $102,000 for fiscal year 2004; $106,000 for each of fiscal years 2005 and 2006; $82,000 for fiscal year 2007; and, $66,500 for fiscal year 2008.

- Small businesses qualify for a 50% reduction in the registration service fee. Small businesses with $10 million or less in global pesticide sales are exempt from registration service fees.

Conference Report on H.R. 2673, Consolidated Appropriations Act of 2004 (as published in the *Congressional Record* on November 25, 2003)

Small Business Fee Waiver/Reduction Provisions Contained in Pesticide Fees Language:

"(F) **SMALL BUSINESSES.**--

"(i) **IN GENERAL.**--The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

"(ii) **WAIVER OF FEES.**--The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity--

"(I) is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

"(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

"(iii) **FORMATION FOR WAIVER.**--The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

"(iv) **DOCUMENTATION.**--An entity requesting a waiver under this subparagraph shall provide to the Administrator--

"(I) documentation demonstrating that the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

"(II) if the entity is requesting a waiver of all registration service fees payable under this section, documentation demonstrating that the entity has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

Conference Report on H.R. 2673, Consolidated Appropriations Act of 2004 (as published in the *Congressional Record* on November 25, 2003)

Small Business Maintenance Fee Caps as Revised by Pesticide Fees Language:

"(E) **MAXIMUM AMOUNT OF FEES FOR SMALL BUSINESSES.--**
"(i) **IN GENERAL.**—For";
(ii) by indenting the margins of subclauses (I) and (II) of clause (i) appropriately; and
(iii) in clause (i)--
(I) subclause (I), by striking "shall be $38,500; and" and inserting "shall be--
"(aa) for fiscal year 2004, $59,000;
"(bb) for each of fiscal years 2005 and 2006, $61,000;
"(cc) for fiscal year 2007, $48,000; and
"(dd) for fiscal year 2008, $38,500; and"; and
(II) in subclause (II), by striking "shall be $66,500." and inserting "shall be--
"(aa) for fiscal year 2004, $102,000;
"(bb) for each of fiscal years 2005 and 2006, $106,000;
"(cc) for fiscal year 2007, $82,000; and
"(dd) for fiscal year 2008, $66,500.".

7kl

United States Environmental Protection Agency
Instructions for Completing EPA Form 3540-16
Pesticide Report for Pesticide-Producing and
Device-Producing Establishments - Reporting Year 2003

Electronic copies of these instructions and EPA Form 3540-16 can be downloaded from
http://www.epa.gov/pesticides/regulating/establishments/est_forms.htm

It is unlawful to knowingly falsify all or part of any pesticide production information reported on EPA Form 3540-16. (Section 12(a)(2)(M) of FIFRA).

GENERAL INSTRUCTIONS

1. Each page of EPA Form 3540-16 has space to enter production for only three products. If you produce more than three products **make photocopies of the form as necessary.**

2. Complete report by printing in ink or typing.

3. **"Produce"** means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide, (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).
"Produce" also means to "manufacture, prepare, propagate, compound or process any pesticide, including any pesticide product pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device." (EPA regulations at 40 CFR § 167.3)

4. **Establishments with Zero Production in 2003.**
If your establishment did not produce or distribute products subject to this report in 2003 complete Blocks 1-15, and write "NO PRODUCTION" in Block 16. **The report is complete. Submit the report as directed on Page 4.**

5. **Closed Establishments (Out of business/ceased production)**
   - Enter all production and distribution information for 2003. If there was none, write "NO PRODUCTION" in Block 16.
   - State on the report that the company/establishment is no longer in business.
   - If you wish to inactivate your establishment registration number, please attach your request on company letterhead.

6. A company **official must sign** the report in Block 15.

7. For all pages, **complete, at the bottom: "This is Page _____ of _____."**

8. **DO NOT REPORT:**
   - Production or distribution or sale of products NOT produced by your establishment, e.g., no changes are made to the product formulation, container, or label;
   - Products shipped from your supplier directly to your customer;
   - Any products for which lines 25-27 are zero.
   - Custom-blended products (See Common Questions and Answers - Question 7)
   - Pesticides that are **applied by your establishment.**

9. **Submit completed reports** as directed on Page 4.

10. **Initial Reports:** Section 7 of FIFRA requires all registered establishments to submit a report to the US EPA **30 days** after receipt of notification of establishment registration. Failure to file the Initial report is an unlawful act and may result in termination of the establishment's registration.

REPORT DUE DATE: On or before March 1, 2004, even if there has been no production.
Incomplete reports may be returned to the establishment for correction or completion.

INSTRUCTIONS - COMPLETING THE REPORT

Blocks 1-16. Name and Location of Company Headquarters and Producing Establishment

Blocks 1-4. Enter the Company Headquarters *mailing* address of the producing establishment, unless it is a foreign establishment. Foreign establishments should enter the US mailing address of the company headquarters or US agent.
Block 5. Enter name of establishment official signing report (should match Block 15)
Block 6. Enter title of establishment official signing report (should be the title of person signing Block 15)
Block 7. Date report is signed
Blocks 8-13. A label showing the establishment SITE address should appear in Blocks 8-13.
Block 14. Telephone number of establishment official responsible for the report.
Block 15. Signature of establishment official signing report.
Block 16. Use this block to report NO PRODUCTION, if this is the case, for 2003. **If there was No Production, the report is complete.** Do not list products which you did not produce.

Block 17 - Product Code

Enter "1" - product is registered with EPA
Enter "2" - product registration is pending
Enter "3" - product is an Experimental Use Permit
Enter "4" - product is a pesticide device, an unregistered pesticide, or a Special Local Need (SLN) registration

Block 18 - EPA Product Registration No.

Product Code 1 - Enter EPA Registration No. (as it appears on product label) (See NOTE below on reporting production of distributor registrations.)
Product Code 2 - Enter EPA File Symbol assigned
Product Code 3 - Enter the Experimental Use Permit number
Product Code 4 - For **DEVICES**, leave Block 18 blank
For **UNREGISTERED PESTICIDES**, leave Block 18 blank, and attach the chemical formulation of the product, showing the product's active and inert ingredients, their common names, their CAS Registry numbers (if available), and the percentage, by weight of each ingredient (must total 100%). Multiple formulations may appear on the same page; clearly identify each by product name.
For stand-alone **SLN REGISTRATIONS**, enter the SLN registration number in Block 18, e.g. SLN-CA-890022. A "stand-alone" SLN is one for which there are no uses other than the 24(c) uses.

NOTE: Reporting Distributor Registrations. If you produce multiple pesticide products under the same basic EPA registration number (such as distributor products):
- Report the total quantities for all distributor products under the basic EPA registration number, and add "and supplementals" following the product name. On a separate paper, list the basic registration number with each distributor company number and brand name, and attach it to the report.

Block 19 - Product Name. List the most common brand name. If marketed under alternate brand names, add the wording "and alternate brand names" and report total production under all names for the formulation.

Block 20 - Product Classification

Classifications for Devices

14 Water Purifier - Point of Use	15 Water Purifier - Small System	13 Device

Classifications for Pesticides

01 Insecticide	02 Fungicide	03 Rodenticide
04 Herbicide	05 Algaecide	06 Nematocide
07 Plant Regulator	08 Defoliant, Desiccant	09 Disinfectant, Germicide, Sanitizer
10 Antifouling Paint	11 Animal Repellant	12 Other Pesticides (includes Insect Repellants & Slug Baits)
21 Insecticide-Fungicide	44 Herbicide-Fungicide	

16 Multi-Use Active Ingredient (Chemicals that have both pesticidal and non-pesticidal uses.) Producers are required to register both the product and their establishment(s) and report production on an annual basis under Section 7 of FIFRA. If a producer has actual or constructive knowledge that a chemical or substance they produce is used or intended for use as an active ingredient in the manufacture of a pesticide. These producers are required to report only the amount of the chemical or substance manufactured and distributed/sold for pesticidal purposes. These chemicals do not have an EPA Reg. No. (This Classification is rarely appropriate.)

Block 21 - Product Type. Describe the type of product:
Enter 1 - Technical material or active ingredient for Manufacturing Use Only
Enter 2 - End-use product; this includes products where the formulation has been blended, diluted, or changed;
Enter 3 - Repackaged or relabeled (does not include any blending, dilution or change in the formulation)
Enter 4 - Device

Block 22 - Market Sold/Distributed To
Domestic Establishments
Enter 1 - All product was marketed in the United States
Enter 2 - Product was marketed both *in* the United States and *exported*
Enter 3 - All product was exported
Foreign Establishments
Enter 1 - Product was marketed in/exported to the United States. *DO NOT REPORT products that were sold to countries other than the United States.*

Block 23 - Use Classification
Enter 1 - Product label states RESTRICTED USE PESTICIDE
Enter 2 - All other pesticides and devices

Block 24 - Unit of Measure

G = Gallons	(liquid chemical product)
P = Pounds	(dry or solid chemical product)
L = Liters	(liquid chemical product)
K = Kilograms	(dry or solid chemical product)
T = Tons	(short ton = 2,000 lbs. or 907.2 kilograms) (dry or solid chemical product)
U = Units	(devices and pesticides that the label does not declare as gallons, pounds, liters, kilograms, or tons)

Block 25 - Amount Produced Last Year (2003)
- Round all quantities *to the nearest whole number*
- **Do not include amounts which are custom blended or custom applied by you**

Block 26 - Amount Distributed/Sold Last Year (2003) - United States
- Enter only those products distributed/sold *which were produced by your establishment, regardless when the product was produced;*
- **Do not include amounts which are custom blended or custom applied by you;**
- Foreign producers should enter only the amount of product or number of devices exported to the United States.
- Round all quantities *to the nearest whole number.*

Block 27 - Amount Distributed/Sold Last Year (2003) to Foreign Markets (Exported)
- Enter the quantity exported from the United States in 2003, regardless when the product was produced;
- ***Foreign establishments should leave Block 27 blank;***
- Round all quantities *to the nearest whole number.*

Block 28 - Amount (Estimated) to be Produced in 2004
- Enter an estimate of the quantity to be produced in 2004.
- Round all quantities *to the nearest whole number.*

Confidentiality. Under FIFRA Section 7(d) [7 U.S.C. § 136e], information reported in Items 25, 26, 27, and 28 of EPA Form 3540-16 will be treated as business confidential, subject to the provisions of FIFRA Section 10 [7 U.S.C. § 136h]. You are not required to assert a claim of confidentiality on this information.

If you wish to assert a claim of confidentiality for other information you have provided on this form, you must identify by the box number(s) information for which you are asserting a claim of confidentiality. Information so designated will be disclosed by the EPA only to the extent allowed by, and by means of, the procedures set forth in 40 CFR Part 2. If you do not claim the information as confidential upon submission of the report, it may be made available to the public without further notice to you.

Public Reporting Burden. The time required to complete this report is estimated to average one hour and 26 minutes, per response, including reviewing instructions, searching data sources, gathering and maintaining data needed, and completing review and collection of information. Send comments regarding this burden estimate or other aspects related to this information collection, including suggestions for reducing this burden, to: Director, OP/ORMI Regulatory Information Division (2137), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Attention: Desk Officer for EPA, *and* to the Paperwork Reduction Project, Office of Information and Regulatory Management Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503.

EPA

United States
Environmental Protection Agency
Washington, DC 20460

FORM APPROVED
OMB NO. 2070-0057

Pesticide Report for Pesticide-Producing and Device-Producing Establishments

Section 7, Federal Insecticide, Fungicide, and Rodenticide Act, (7 U.S.C. 136e)

Note: Read all instructions before completing. Production and distribution/sales volumes information reported on this form is treated as business confidential

1. Mailing Address: Sungro Chemicals, Inc. 810 E.18th,Street
2. City: Los Angeles
3. State or Country: Ca.
4. Zip Code: 90021
5. Name of Establishment Officer: Harold B. Igdaloff
6. Title: President
7. Date (Mo., Day, Year): 2-17-03

011474-CA-001 ANNUAL
SUNGRO CHEMICALS INC
810 E 18TH ST
LOS ANGELES CA 90021

14. Telephone Number: (213) 747-4125
15. Signature of Establishment Officer: Harold B. Igdaloff

PESTICIDE PRODUCTION INFORMATION

17. Product Code (If "4" and chemical, attach formulation per instructions. If "4" and Device, go to item 19)	1
18. EPA Product Registration Number	11474-22
19. Product Name	Super Numb Bug
20. Product Classification	8 1
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K=Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

17. Product Code (If "4" and chemical, attach formulation per instructions. If "4" and Device, go to item 19)	1
18. EPA Product Registration Number	11474-24
19. Product Name	Weed-Out Non Select Weed Killer
20. Product Classification	8 4
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K=Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

17. Product Code (If "4" and chemical, attach formulation per instructions. If "4" and Device, go to item 19)	1
18. EPA Product Registration Number	11474-20
19. Product Name	Sungro Residual Spray and Supplementals
20. Product Classification	8 1
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K=Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged, or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

CONTINUED ON ATTACHED SHEET ( ) THIS IS PAGE 1 OF 16

EPA Reviewer	EPA Office	Date Received	Date Reviewed	29. Reporting Year 2002

EPA Form 3540-16 (Rev. 08-01) Previous editions are obsolete.

Jan 23 04 12:14p HAROLD IGDALOFF 13104723147 p.2

EPA

United Sates
Environmental Protection Agency
Washington, DC 20460

FORM APPROVED
OMB NO. 2070-0126

Pesticide Report for Pesticide-Producing and Device-Producing Establishments

Section 7, Federal Insecticide, Fungicide, and Rodenticide Act, (7 U.S.C. 136e)

Note: Read all instructions before completing. Production and distribution/sales volumes information reported on this form is treated as business confidential

1. Mailing Address: Sungro Chemicals, Inc. 810 E.18th.Street
2. City: Los Angeles
3. State or Country: Ca.
4. Zip Code: 90021
5. Name of Establishment Officer: Harold B.Igdaloff
6. Title: President
7. Date (Mo., Day, Year): 2-17-03
14. Telephone Number: (213) 747-4125
15. Signature of Establishment Officer: Harold B. Igdaloff

011474-CA-001 ANNUAL
SUNGRO CHEMICALS INC
810 E 18TH ST
LOS ANGELES CA 90021

PESTICIDE PRODUCTION INFORMATION

17. Product Code (If "4" and chemical, attatch formulation per instructions. If "4" and Device, go to Item 19)	1
18. EPA Product Registration Number	11474-22
19. Product Name	Super Numb Bug
20. Product Classification	P I
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K= Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

17. Product Code (If "4" and chemical, attatch formulation per instructions. If "4" and Device, go to Item 19)	1
18. EPA Product Registration Number	11474-24
19. Product Name	Weed-Out Non Select Weed Killer
20. Product Classification	P I
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K= Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

17. Product Code (If "4" and chemical, attatch formulation per instructions. If "4" and Device, go to Item 19)	1
18. EPA Product Registration Number	11474-20
19. Product Name	Sungro Residual Spray and Supplementals
20. Product Classification	P I
21. Product Type	2
22. Market Sold To	1
23. Use Classification	2
24. Unit of measure: P=Pound G=Gallons K= Kilograms L=Liters T=Tons U=Units	G
25. Amount Produced, Repackaged, or Relabeled Last Year	[2002] [redacted]
26. Amount Sold or Distributed Last Year - US	[2002] [redacted]
27. Amount Sold or Distributed Last Year - Foreign	[2002]
28. Amount To Be Produced, Repackaged, Relabeled This Year	[2003] [redacted]

CONTINUED ON ATTACHED SHEET ( ) THIS IS PAGE 1 OF 16

EPA Reviewer	EPA Office	Postmark Date	Date Reviewed	29. Reporting Year 2002

EPA Form 3540-16 (Rev. 08-01) Previous editions are obsolete.

7649

PESTICIDE REGISTRATION MAINTENANCE FEES

EPA Company Number: 11474
SUNGRO CHEMICALS, INC.
P. O. BOX 24632
LOS ANGELES CA 90024

December, 2003

This listing includes all your active and suspended registrations, under either section 3 or section 24(c) of FIFRA, according to EPA's computer records in early December, 2003. On each line circle one of the four keywords to the left of the Registration Number (PAY, CAN, TRN, or ERR) to show whether you wish to (1) pay the fee to maintain the registration, (2) ask EPA to cancel the registration, (3) report a transfer of the registration to someone else, already approved in writing by EPA, or (4) report an erroneous entry.

When you finish each page, count the times you've circled each response keyword, and record this count at the bottom of each column Transfer the sum of these counts from all pages of this listing to lines C1 through C4 of the Maintenance Fee Filing Form.

Line	Response Keywords	Reg-No	Product Name	Company Receiving Transfer
1	ERR TRN CAN PAY	11474-1	ALGAE-GON	
2	ERR TRN CAN PAY	11474-3	NO-CRAB CRABGRASS KILLER	
3	ERR TRN CAN PAY	11474-4	SELECT-KIL HIGH CONCENTRATE	
4	ERR TRN CAN PAY	11474-6	NUMB BUG FOGGING AND CONTACT SPRAY	
5	ERR TRN CAN PAY	11474-13	OVER GRASS & WEED KILLER	
6	ERR TRN CAN PAY	11474-14	PURGE WATER TREATMENT MICROBIOCIDE	
7	ERR TRN CAN PAY	11474-15	ALGON ALGAECIDE	
8	ERR TRN CAN PAY	11474-20	SUNGRO RESIDUAL SPRAY	
9	ERR TRN CAN PAY	11474-22	SUPER NUMB BUG	
10	ERR TRN CAN PAY	11474-24	WEED OUT NON SELECT WEED KILLER	
11	ERR TRN CAN PAY	11474-26	SUNGRO TREAT-TURF HERBICIDE	
12	ERR TRN CAN PAY	11474-30	SUNBUGGER WATER BASE INSECTICIDE SPRAY	
13	ERR TRN CAN PAY	11474-33	SUNGRO KITCHEN AND CAN INSECTICIDE	

Counts ___ ___ ___ 13

Please read Paperwork Reduction Act Notice in instructions.

Form Approved. OMB No. 2070-0100

United States Environmental Protection Agency

EPA Pesticide Registration Maintenance Fee Filing Form

A. Registrant Identification:

EPA COMPANY NUMBER: 011474
SUNGRO CHEMICALS, INC.

P. O. BOX 24632
LOS ANGELES CA 90024

Please enter address correction here.

B. EPA Company Number(s): 11474, 54089, 11440, 9754

C. Maintenance Fee Calculation:

1. Number of registrations on printout you will support by paying the fee: 49
2. Number of registrations on printout already approved by EPA for transfer to another registrant: -0
3. Number of registrations on printout previously canceled, or which you want EPA to cancel: 2
4. Number of registration on printout not counted in lines C1, C2, or C3: 0
5. Number of active registrations omitted from the printout you will support by paying the fee: 0
6. Total number of registrations you will support by paying the fee (C1 + C5): 49
7. Amount due, from fee table in instructions: $ 49,000
8. Check, bank draft, or money order number: 11210

Important! Registrations For Which The Fee Is Not Paid Will Be Canceled!

D. Authorized Company Representative or Agent:

I certify that the statements that I have made on this form and all attachments thereto are true, accurate, and complete. I acknowledge that any knowingly false or misleading statements may be punishable by fine or imprisonment or both under applicable law.

Name	Signature
LARRY MACKSON	Larry Mackson
Title	**Telephone** / **Date**
MANAGER	213-947-4725 / 1-9-4

Send Filing Form and Check to:

U.S. EPA: Headquarters Accounting
Operations Branch
Pesticide Maintenance Fees
P.O. Box 952491
St. Louis, MO 63195-2491

Send Filing Form and Annotated Printout to:

U.S. Environmental Protection Agency
Office of Pesticide Programs (7504C)
Document Processing Desk (MFEE)
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-0001

EPA Form 8570-30 (Rev. 9-03)