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

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 BUSINESS

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JULY 20, 2004

Committee on Government Reform

Serial No. 108–255

Committee on Small Business

Serial No. 108–74

Printed for the use of the Committees on Government Reform and Small Business

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

U.S. GOVERNMENT PRINTING OFFICE

98–121 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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WHAT IS THE ADMINISTRATION'S RECORD IN RELIEVING BURDEN ON SMALL BUSINESS?—PART II

TUESDAY, JULY 20, 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 p.m., in room 2154, Rayburn House Office Building, Hon. Doug Ose (chairman of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs) and Hon. Edward L. Schrock (chairman of the Subcommittee on Regulatory Reform and Oversight) co-presiding.

Present: Representatives Ose, Schrock, Tierney, Bartlett, and Velazquez.

Staff present: Barbara F. Kahlow and Rosario Palmieri, staff directors; Lauren Jacobs, clerk; Megan Taormino, press secretary; Krista Boyd, minority counsel; Russell Orban, minority professional staff member; and Earley Green, minority chief clerk.

Mr. OSE. While we are waiting, I just want to share with you the good news that we have a number of items on the Floor that are being debated right now that will probably come to a vote in very short order. There are a total of three votes, so it's probably going to be somewhere around 55 minutes. That's assuming we don't have a motion to recommit. So, sometime here in the next hour, the bells will ring, we'll recess for that period of time it takes to have the votes and then come back.

We're going to go ahead and start. I want to welcome you all to today's hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, being held jointly with the Small Business Subcommittee on Regulatory Reform and Oversight. Today's subject is What is the Administration's Record in Relieving the Burden on Small Business?—Part II.

Small businesses remain a critical part of our economy. They represent more than 99 percent of all employers and provide two-thirds to three quarters of the net new jobs in this country. Hours and compliance dollars spent and penalties paid affect productivity, jobs and economic growth. Small businesses are especially concerned about penalties levied by Federal agencies for innocent first-time violations of ever-changing Federal paperwork and regulatory requirements.

As a former owner of small businesses, I am especially aware of the need to relieve paperwork, regulatory and enforcement burdens on small business. This is my 10th hearing as a Government Reform Subcommittee chairman toward that end.

The problem is also important to this administration. Point No. 4 in President Bush's six point economic growth plan is "streamlining regulations and reporting requirements." Today, our subcommittees will focus on the progress in the administration's implementation of the June 2002 Small Business Paperwork Relief Act, which is Public Law 107–198, that has occurred since our last joint hearing in January. This law requires the Office of Management and Budget to take certain actions by June 28, 2003 and 2004, and each Federal agency to take additional actions by December 31, 2003 and 2004.

OMB estimates the Federal paperwork burden on the public to be 8.3 billion hours. In its June 2003 Small Business Paperwork Reduction Act report, OMB estimated that the price tag for all paperwork imposed on the public to be $320 billion a year. This is obviously a huge burden, especially on small businesses.

In 1980, Congress established an Office of Information and Regulatory Affairs in the Office of Management and Budget. OIRA's principal responsibility is paperwork reduction. In 1995, 1998, 2000 and 2002, Congress enacted additional legislation with the objective of decreasing the paperwork burden. Nonetheless, to our great chagrin, paperwork has increased in each of the last 8 years. The chart on display shows progressive Small Business Paperwork Relief Act implementation compliance from June 2003 to June 2004 for each agency, including naming a single point of contact to act as a liaison between small business and the agency, identifying compliance assistance resources available to small businesses, and submitting its first enforcement report.

Non-compliance includes incomplete or completely absent enforcement information for four cabinet departments, those being Defense, Homeland Security, Justice and Veterans Affairs and several key independent agencies, such as the Tennessee Valley Authority. Because of OMB's role in governmentwide management generally and the Small Business Paperwork Relief Act specifically, we asked OMB to discuss today the reason for each non-compliance by Federal agency.

We also asked two agencies, the Department of the Treasury, which levies the most penalties on small businesses, and the General Services Administration, which has the governmentwide lead on civilian procurement and has not yet identified its compliance assistance resources, to discuss their Small Business Paperwork Relief Act implementation.

The Small Business Paperwork Relief Act further required an OMB-led interagency task force to perform certain analyses. In year one the task force was to analyze how to: integrate paperwork requirements across Federal agencies and programs; consolidate paperwork requirements within an agency; and publish a list of paperwork requirements applicable to small business. In year two the task force was to recommend how to improve electronic dissemination and develop an interactive, governmentwide internet program.

Along with other chairmen, Chairman Schrock and I submitted letters critical of OMB's two draft reports as being largely non-responsive to congressional intent. For example, OMB's first report did not address how to consolidate paperwork requirements and recommended against a list organized by NAICS codes, by industrial sector description, or in any other manner. And, the principal actions in OMB's second report have not yet taken place, including completion of all three phases of the Business Gateway Project and the two pilot burden reduction programs, one on trucking and the other on surface coal mining. We asked OMB to discuss today each specific accomplishment resulting from the task force's 2 years of effort.

I believe that the administration can do more to fully comply with the Small Business Paperwork Relief Act and to reduce burdens significantly on small business. Congress wants, and America's small business deserve, results—fewer hours spent on Government paperwork and lower compliance costs.

I want to welcome our witnesses today. They include Dr. John D. Graham, Administrator of OIRA at the Office of Management and Budget; Mr. Jesus Delgado-Jenkins, the Acting Assistant Secretary for Management and Budget, and Chief Financial Officer at the Department of the Treasury; Mr. Felipe Mendoza, Acting Administrator for the Office of Small Business Utilization at the General Services Administration. That is our first panel.

Our second panel has as witnesses Mr. Joseph Acker, who is the president of the Synthetic Organic Chemical Manufacturers Association; Anita Drummond, director of Legal and Regulatory Affairs at Associated Builders and Contractors, Inc.; and, Mr. John DiFazio, assistant general counsel for legal and regulatory affairs at the Consumer Specialty Products Association.

You heard the bells go off so, as I indicated earlier, we are going to recess. When we get back Chairman Schrock will offer his opening statement. Mr. Tierney will offer his. We'll enter any others into the record for the purpose of expediting the hearing. Like I said, this is likely to be about 50 minutes. So, we stand in recess for that period of time.

[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? – Part II
July 20, 2004

Small businesses are a critical part of our economy. They represent more than 99 percent of all employers, and provide two-thirds to three-quarters of the net new jobs in our country. Hours and compliance dollars spent and penalties paid affect productivity, jobs and economic growth. Small businesses are especially concerned about penalties levied by Federal agencies for innocent first-time violations of ever-changing Federal paperwork and regulatory requirements.

As a former owner of small businesses, I am especially aware of the need to relieve paperwork, regulatory, and enforcement burdens on small business. This is my 10th hearing as a Government Reform Subcommittee Chairman towards this end. This problem is also important to this Administration. Point #4 in the President's 6-Point Economic Growth Plan is "[s]treamlining regulations and reporting requirements."

Today, the Subcommittees will focus on the progress in the Administration's implementation of the June 2002 Small Business Paperwork Relief Act (SBPRA, P.L. 107-198) since our last joint hearing in January. This law required the Office of Management and Budget (OMB) to take certain actions by June 28th of 2003 and 2004, and each Federal agency to take additional actions by December 31st of 2003 and 2004.

OMB estimates the Federal paperwork burden on the public to be 8.3 billion hours. In its June 2003 SBPRA report, OMB estimated that the price tag for all paperwork imposed on the public to be $320 billion a year. This is a huge burden, especially on small businesses.

In 1980, Congress 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 eight years.

The chart on display shows progressive SBPRA implementation compliance from June 2003 to June 2004 for each agency's: (1) naming a single point of contact (SPOC) to act as a liaison between small business and the agency (statutorily due June 28, 2003), (2) identifying compliance assistance resources available to small businesses (due the same date), and (3) submitting its first enforcement report (due December 31st). Noncompliance includes incomplete or completely absent enforcement information for four Cabinet departments – Defense, Homeland Security, Justice, and Veterans Affairs – and several key independent agencies, such as the Tennessee Valley Authority.

Because of OMB's role in government-wide management generally and SBPRA specifically, we asked OMB to discuss today the reason for each noncompliance by a Federal agency. We also asked two agencies – the Department of the Treasury, which levies the most penalties on small businesses, and the General Services Administration (GSA), which has the government-wide

lead on civilian procurement and has not yet identified its compliance assistance resources – to discuss their SBPRA implementation.

SBPRA further required an OMB-led interagency task force to perform certain analyses. In year one, the task force was to analyze how to: integrate paperwork requirements across Federal agencies and programs, consolidate paperwork requirements within an agency, and publish a list of paperwork requirements applicable to small business. In year two, the task force was to recommend how to improve electronic dissemination and develop an interactive government-wide Internet program. Along with other Chairmen, Chairman Schrock and I submitted letters critical of OMB's two draft reports as being largely nonresponsive to Congressional intent.

For example, OMB's first report did not address how to consolidate paperwork requirements, and recommended against a list organized by NAICS codes, by industrial sector description, or in another manner. And, the principal actions in OMB's second report have not yet taken place, including completion of all three phases of the Business Gateway Project and the two pilot burden reduction programs (on trucking and surface coal mining). We asked OMB to discuss today each specific accomplishment resulting from the task force's two years of effort.

I believe that the Administration can do more to fully comply with SBPRA and to reduce burdens significantly on small business. Congress wants and America's small businesses deserve results – fewer hours spent on government paperwork and lower compliance costs.

I want to welcome our witnesses today. They include: Dr. John D. Graham, Administrator, OIRA, OMB; Jesus Delgado-Jenkins, Acting Assistant Secretary for Management and Budget & Chief Financial Officer, Department of the Treasury; Felipe Mendoza, Associate Administrator, Office of Small Business Utilization, GSA; Joseph Acker, President, Synthetic Organic Chemical Manufacturers Association; Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Inc.; and, John DiFazio, Assistant General Counsel - Legal/Regulatory Affairs, Consumer Specialty Products Association.

Congress of the United States

Washington, DC 20515

Corrected Version

July 13, 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 July 20, 2004 Hearing, "What is the Administration's Record in Relieving Burden on Small Business? – Part II"

On Tuesday, July 20, 2004, at 2:00 p.m., in Room 2154 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 further implementation of the Small Business Paperwork Relief Act of 2002 (SBPRA). It follows up on the Subcommittees' July 18, 2003 joint hearing entitled, "What is OMB's Record in Small Business Paperwork Relief?," and the January 28, 2004 joint hearing entitled, "What is the Administration's Record in Relieving Burden on Small Business?" The hearing is entitled, "What is the Administration's Record in Relieving Burden on Small Business? – Part II."

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

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Report 107-575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

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. In its February 13, 2004 draft seventh regulatory accounting report, OMB included only a 2-page impacts analysis on small business. In post-hearing questions after the Government Reform Subcommittee's April 20th 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 identified only a few non-e-government initiatives to reduce burden on small businesses, i.e., 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" (SBPRA, 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.

During the first year, 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 specified three more reporting requirements to Congress by December 2003, June 2004, and December 2004. The two December reporting requirements related to agency enforcement actions in which civil penalties were assessed for paperwork, regulatory or other violations. The first set of agency reports, due December 31, 2003, covered the 1-year period

beginning on October 1, 2002. The December reports were required to 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.

SBPRA required OMB's second year task force report, due in June 2004, to: (a) make recommendations to improve electronic dissemination, and (b) recommend a plan for the development of an interactive governmentwide Internet program to identify applicable Federal requirements and facilitate compliance.

Implementation of P.L. 107-198

On May 9, 2003, OMB published its draft task force report. On May 21st, four Chairmen -- Senate Governmental Affairs Subcommittee Chairman George Voinovich, House Small Business Committee Chairman Donald Manzullo, House Government Reform Subcommittee Chairman Doug Ose, 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 an incomplete listing of compliance assistance resources and contact information for agency single points of contact (SPOCs). In total, 33 of the 71 agencies with federally-approved paperwork had not yet identified a SPOC and OMB did not include compliance assistance resource information for 21 agencies. As of OMB's June 28, 2004 followup listing, some agencies are still without a SPOC (including OMB, which has paperwork clearance for its SF-LLL, Disclosure of Lobbying Activities) or have incomplete or totally missing compliance assistance resource information. For example, the Department of the Treasury has no compliance assistance information for several of its principal bureaus (such as the Alcohol and Tobacco Tax and Trade Bureau, which has 116 OMB-approved paperwork requirements and which took 16,203 enforcement actions in FY 2003 against small entities) and the General Services Administration (GSA) has no compliance assistance information whatsoever.

OMB's second June 27, 2003 document was a notice of availability of its final task force report. This document 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).

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, 30 of the 69 applicable agencies have not yet submitted their enforcement reports. This includes incomplete or totally missing information for four Cabinet departments - Defense, Homeland Security, Justice, and Veterans Affairs – and several key independent agencies, such as GSA and Federal Energy Regulatory Commission.

On May 5, 2004, OMB published its draft second task force report. On June 3rd, three Chairmen – House Small Business Committee Chairman Donald Manzullo, House Government Reform Subcommittee Chairman Doug Ose, and House Small Business Subcommittee Chairman Edward Schrock - submitted the attached comment letter to OMB. On June 28th, OMB published a notice of availability of its second final task force report.

The second year's draft task force report did not provide an update on the followup actions, if any, taken by the Administration to effectuate the findings in the first year's task force report. The three Chairmen asked OMB to include such a discussion in the second year's final report; OMB's final report did not include this requested information. Also, most of the recommended actions had not yet taken place and the two with scheduled completion dates were both after the June 28, 2004 deadline for the final report. The two forthcoming dates were: September 2004 for Phase I (a business "metasite" with links to various Federal websites rather than a true portal) of the Business Gateway project and October 2004 for the completion of the two pilot burden reduction programs (on trucking and surface coal mining). The three Chairmen asked OMB to include anticipated completion dates for expected followup actions, including for Phases II (a true business portal) and III (a portal with small business content and services in a common technology platform) of the Business Gateway project. OMB's final report did not include this requested information.

Witnesses

The invited witnesses for the July 20, 2004 hearing are: Dr. John D. Graham, Administrator, OIRA, OMB; Jesus Delgado-Jenkins, Acting Assistant Secretary for Management and Budget & Chief Financial Officer, Department of the Treasury; Felipe Mendoza, Associate

Administrator, Office of Small Business Utilization, GSA; Joseph Acker, President, Synthetic Organic Chemical Manufacturers Association; Anita Drummond, Director of Legal and Regulatory Affairs, Associated Builders and Contractors, Inc.; and, John DiFazio, Assistant General Counsel - Legal/Regulatory Affairs, Consumer Specialty Products Association.

Attachment

Congress of the United States

Washington, DC 20515

June 3, 2004

BY FACSIMILE

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Bolten:

This letter provides our comments on the "Draft Report of the Small Business Paperwork Relief Act Task Force," which was published on May 5, 2004, by the Office of Management and Budget (OMB) for public comment. The Small Business Paperwork Relief Act of 2002 (SBPRA, Pub. L. 107-198) established an interagency task force, chaired by OMB, and required OMB to submit reports on the task force's analysis to Congress by June 28, 2003 and June 28, 2004.

The law required the task force to examine integration and consolidation of paperwork requirements within and across agencies so that small businesses "may submit all information required by the agency – (A) to 1 point of contact in the agency; (B) in a single format, such as a single electronic reporting system, with respect to the agency; and (C) with synchronized reporting for submissions having the same frequency." OMB's May 9, 2003 draft report stated, "Our review indicates that while each of these options outlined in the law may be desirable and feasible under the appropriate circumstances, there are several barriers that need to be addressed" (68 FR 25172). Congress intended that OMB use the task force's analysis to relieve small businesses of paperwork burdens. As you know, in a May 21st letter, four Chairmen asked you to remove such barriers and move ahead with the needed simplification for small businesses.

The law also required the task force to examine the feasibility and benefits to small businesses of OMB's publishing a list of small business paperwork "organized – (A) by North American Industry Classification System code; (B) by industrial sector description; or (C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply." OMB's May 9th draft report discussed a variety of technical issues and concluded by stating, "Neither approach – a listing by NAICS code or a listing using multiple categories [e.g., an industry sector identification] – would fully meet small business needs" (68 FR 25174).

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OMB's conclusion answers a question that Congress did not ask, namely that OMB use this analysis to "fully meet" the needs of small business. Rather, Congress intended only that OMB identify and implement a means of organizing and publishing small business paperwork requirements that would allow small businesses to "more easily identify [paperwork] requirements." A system that does not "fully meet" the needs of small business may, nevertheless, help them "more easily identify" applicable requirements. As you know, four Chairmen also asked you to find an organizational structure for OMB's listing to assist small business compliance.

Despite that letter, OMB's June 27, 2003 final task force report was largely nonresponsive to Congressional intent. For example, it recommended against a list organized by NAICS codes, by industrial sector description, or in another manner by which small business concerns can more easily identify applicable requirements. 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." On July 22nd, we held a joint hearing on the disappointing first year final report.

The second draft task force report is also disappointing. First, it does not provide an update on the followup actions, if any, taken by the Administration to effectuate the findings in the first year's task force report. We ask that you include such a discussion in the second year final report.

Second, most of the recommended actions have not yet taken place and the two with scheduled completion dates are both after the June 28, 2004 deadline for the final report. The two forthcoming dates are: September 2004 for Phase I (a business "metasite" with links to various Federal websites rather than a true portal) of the Business Gateway project and October 2004 for the completion of the two pilot burden reduction programs (on trucking and surface coal mining). The draft states, "The timeline for subsequent phases are to be determined" (69 FR 25153). In the final version, please include expected completion dates for Phases II (a true business portal) and III (a portal with small business content and services in a common technology platform) of the Business Gateway project. In addition, please include expected completion dates for any other expected followup actions.

Third, in the final report, please identify the 43 departments and agencies that are expected to have their Federal forms included in the "single point of entry for 'Government to Business' (G2B) and 'Government to Citizen' (G2C) Federal forms and forms systems" (69 FR 25154). Also, please send us a copy by June 16, 2004 of each agency's SBPRA implementation plan, which the draft report recommends for augmentation (69 FR 25151).

If you have any questions about this letter, please contact Barbara Kahlow at 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
House Committee on Government Reform

Edward L. Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight
House Committee on Small Business

Donald A. Manzullo
Chairman
House Committee on Small Business

cc: The Honorable Tom Davis
The Honorable John Tierney
The Honorable Nydia M. Velazquez

SBPRA IMPLEMENTATION

BY AGENCIES WITH OMB-APPROVED PAPERWORK

Incomplete Agency Compliance	June 2003	December 2004	June 2004
No Single Point of Contact	33	14	9
Missing Compliance Assistance Resources	21	18	18
No Enforcement Report	-	45	30

Prepared for Congressman Doug Ose

[Recess.]

Mr. OSE. I am pleased to recognize the gentleman from Virginia for the purpose of an opening statement.

Mr. SCHROCK. Thank you, Mr. Chairman. It never fails, we don't vote all day and then we get ready to start something important and we vote. I guess that's just the way it is up here.

The President has said in several speeches that government regulation of paperwork continues to be a problem. In May, he said, "We need fewer mandates and fewer unnecessary regulations from Washington. Companies like [the one he was visiting] should be able to spend their time building the business and adding jobs, not filling out a lot of useless government paperwork."

Last week in Michigan, the President made a strong case for why this is so important. He said, "Now, the best way to make sure this economy continues to grow is to make sure America is the best place for people to risk capital; to make sure the entrepreneurial spirit is strong; to have less regulation and less taxes for the small business people of America."

Vice President Cheney has been saying the same thing. Last month in New York he said, "We also need to continue stripping away the needless mandates and regulations that burden small businesses. The Small Business Administration estimates that regulations cost small businesses some $7,000 per worker per year. This discourages hiring, stifles innovation, and often without any benefit to the public interest. So, we streamlined tax reporting tax requirement for small businesses, saving them more than 50 million hours of unproductive work. We must continue those efforts. America's entrepreneurs should spend their time building businesses and creating jobs, not filling out a lot of useless government paperwork." I think the President and the Vice President have mADE MY opening statement for me. It is very clear where we stand on providing relief to small businesses from the burden of regulation and paperwork. Our regulatory review office, under Dr. Graham, believes the same thing, and has shown us through his careful stewardship of new regulations.

But, the efforts to combat the legacy of regulations and paperwork requirements that have existed before this administration that came to office are incomplete. I've said these numbers before, over 500 million hours spent by small businesses to comply with tax paperwork, over 8 billion hours of paperwork imposed by the Federal Government in total, and over $800 billion that regulation costs our economy. It is imperative to ensure America's continued global competitiveness that we get these costs under control, and in fact reduce them.

Congress tried to help get the ball rolling in 2002, when we passed the Small Business Paperwork Relief Act. It asked for some simple things, like providing a single point of contact for small businesses in each agency and publishing a list of all compliance assistance resources.

But, it also did a big thing. That was to get multiple agencies to talk to each other about regulation government-wide, and about reducing the costs and burdens of regulation government-wide. The reason it was so important was that government agencies just don't think that way. They think about their individual agency's man-

date. Very few of them, unless they are forced to, think about how a proposed regulation might impact businesses already regulated by several other agencies. OMB has traditionally served that role through interagency reviews, comments and return letters.

But, we had hoped that the task force created by the law would bring a new outlook and a new way of thinking to regulation and burden reduction. Sadly, the two reports of the task force bear little resemblance to my hopes. We may have missed a golden opportunity to do something great for the small businesses of America.

I hope that through our dialog today, with OMB, GSA and the Department of the Treasury, we can re-ignite some of that thinking. I hope we can leave here today with the continued mandate of the President, the Vice President, these committees and the Congress to streamline and eliminate unnecessary paperwork and regulatory requirements that are a needless drag on our economy.

I look forward to our hearing today and to hearing from our witnesses. Thank you, Mr. Chairman.

[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
July 20, 2004

Good afternoon, ladies and gentlemen. The President has said in several speeches that government regulation and paperwork continues to be a problem. In May he said,

> We need fewer mandates, and fewer unnecessary regulations from Washington. Companies like [the one he was visiting] should be able to spend their time building the business and adding jobs, not filling out a lot of useless government paperwork.

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> Now, the best way to make sure this economy continues to grow is to make sure America is the best place for people to risk capital; to make sure the entrepreneurial spirit is strong; to have less regulation and less taxes for the small business people of America.

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I think the President and Vice President have made my opening statement for me. It is very clear where they stand on providing relief to small businesses from the burden of regulation and paperwork. Our regulatory review office under Dr. Graham believes the same thing and has shown us that through his careful stewardship of new regulations. But the efforts to combat the legacy of regulations and paperwork requirements that have existed since before this administration came to office are incomplete.

I've said these numbers before: over 500 million hours spent by small businesses to comply with tax paperwork, over 8 billion hours of paperwork imposed by the federal government in total, over $800 billion that regulation costs our economy. It is imperative

to ensure America's continued global competitiveness that we get these costs under control and, in fact, reduce them.

Congress tried to help get the ball rolling in 2002 when we passed the Small Business Paperwork Relief Act. It asked for some simple things like providing a Single Point of Contact for small businesses in each agency and publishing a list of all compliance assistance resources. But it also did a big thing. That was to get multiple agencies to talk to each other about regulation "government-wide" and about reducing the costs and burden of regulation "government-wide." The reason it was so important was that government agencies just don't think that way. They think about their individual agency's mandate. Very few of them, unless they are forced to, think about how a proposed regulation might impact businesses already regulated by several other agencies.

OMB has traditionally served that role through interagency review, comments, and return letters. But we had hoped that the task force created by the law would bring a new outlook and a new way of thinking to regulation and burden reduction. Sadly, the two reports of the task force bear little resemblance to my hopes. And we may have missed a golden opportunity to do something great for the small businesses of America.

I hope that through our dialogue today with OMB, GSA, and the Department of Treasury we can reignite some of that thinking. I hope we can leave here today with the continued mandate of the President, the Vice President, these committees, and the Congress to streamline and eliminate unnecessary paperwork and regulatory requirements that are a needless drag on the economy.

I look forward to hearing from all of our witnesses today.

Thank you, Chairman Ose.

Mr. OSE. I thank the gentleman.

I'm pleased to recognize my friend from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman, I say that with all sincerity, and Chairman Schrock, for holding this hearing on the riveting subject of the regulatory process.

There are tens of thousands of small businesses in my district, and it's essential that the Federal Government make it easier for small businesses there and across America to comply with regulations. We recently hosted a conference for small businesses in the Sixth District of Massachusetts pertaining to their doing business with the Federal Government. The conference was held with the General Services Administration through the e-Strategy Web site, and small business owners heard directly from GSA representatives as well.

Small business owners also heard from representatives from the Small Business Administration and the Procurement Technical Assistance Center. The purpose of the conference, and those that will be hosted in the future, is to explain and simplify the process of doing business with the Federal Government. Many of our small businesses could benefit tremendously by gaining access to the government procurement process. The problem is, they either perceive that the process is too complicated or they've experienced the process as costly and burdensome.

The Small Business Paperwork Relief Act required the task force set up by the act to address two specific provisions in their second final report that was released last month. One provision asked for recommendations on how to make it easier for small businesses to get information electronically from the Federal Government. The other provision asked for a recommended plan for an interactive government-wide internet program that would help small businesses understand what information they are required to submit to the government and make it easier for businesses to submit that information.

These provisions were included in the act because the government spends taxpayer dollars to collect information, and much of that information can only be beneficial if it's made available and accessible. The task force includes in its report comments from small business representatives. One comment made by a representative from the National Federation of Independent Businesses says, "in some cases it costs a small business owner more money to find out if it had to comply than actually spent complying."

I'm a little disappointed with the task force report. The recommendation for a government-wide interactive program is the Business Gateway Program, but the only deadline that's been set is for phase one of the project that involves linking the user to other agency Web sites. This phase is not set for completion until September. Phases two and three of the program, when the Business Gateway will actually become a singular, separate program, has no deadlines or target dates for implementation.

I look forward to hearing from all of our witnesses today. I particularly look forward to hearing from Dr. Graham and his recommendations on what Congress and the administration can do to

make it easier for small business owners and the Federal agencies that serve them to make the best use of technology.

Once again, I thank you, Chairman Ose and Chairman Schrock. I look forward to our witnesses' testimony.

Mr. OSE. I thank the gentleman. I'm pleased to recognize the gentleman from Maryland for the purpose of an opening statement.

Mr. BARTLETT. Thank you very much. It was about the third week of May that America finished paying her taxes. But, it was not until just a few days ago that any wage earner in America earned any money that they could keep for their needs. Because from about the third week in May until the sixth or seventh of July, every American worked full time to pay for the most regressive tax we have, a tax that the poorest of the poor pay, they get no exemption from it, no deduction from that tax. This is unfunded Federal mandates.

What we're talking about today is a part of that deplorable picture that occupied nearly 2 months of the time of all working Americans. The average American now works about 52 percent of his or her time to support government. I submit that's too close to that 100 percent of taxation where clearly we'll collect no taxes. Obviously you collect no taxes if the tax rate is zero. You'll also collect no taxes if the tax rate is 100 percent, because nobody will work.

So, somewhere between that zero and 100 percent is that magic number where we will not depress the economy, but where we will collect the most taxes. I think that taking 52 percent of the working time of Americans is far too much. What we're addressing today is a part of that. In a former life, I was a small business person, so I'm very interested that we reduce the burdens on small business.

Thank you for coming today.

Mr. OSE. I thank the gentleman.

As you all may realize, our normal practice here in Government Reform is to swear in all of our witnesses. It is not judgmental, it's just our practice. So, if you would all please rise. The people who might help you also need to rise.

[Witnesses sworn.]

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

Our first witness on the first panel is someone with whom we have met before and has appeared here regularly. That would be Dr. John Graham, who is the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. Sir, we have received your testimony, it has been made part of the written record. It is a pleasure to have you here again, and you're recognized for 5 minutes.

STATEMENTS OF JOHN D. GRAHAM, ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET; JESUS H. DELGADO-JENKINS, ACTING ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET, DEPARTMENT OF THE TREASURY; AND FELIPE MENDOZA, ASSOCIATE ADMINISTRATOR, OFFICE OF SMALL BUSINESS UTILIZATION, GENERAL SERVICES ADMINISTRATION

Mr. GRAHAM. Thank you very much, Mr. Chairman.

My understanding is this may be one of our last opportunities to chat with you on the subject of paperwork reduction, though I am aware we may have additional ones. But, it could be the last one, so we thought at OIRA we would chat a little bit about your accomplishments as Chair of this subcommittee. In addition to some thank yous, we have to engage in a little bit of embarrassment, of course, and that is remembering you as the champion of paperwork reduction. But, that seemed more straightforward, so we looked for a more interesting analogy. We've decided that it's in the movie, The Last Samurai.

Mr. OSE. Dr. Graham, you'd better be careful here. [Laughter.]

Mr. GRAHAM. If you haven't seen The Last Samurai, we urge you to do so. But, we want to reassure you that there are a few flaws in our analogy. One of them is that it is paperwork and not human beings that these swords are addressed to in the eyes of Chairman Ose. And, second of all, that you are not literally the last samurai. There is another one working behind you to carry forward the banner, and I'm happy Chairman Schrock is here today.

So, thank you very much, Chairman Ose, if this proves to be the last opportunity I have to thank you for your leadership on the subject of paperwork reduction.

You have my written testimony. I just want to make a few brief comments on the subject of the Business Gateway. I was pleased Mr. Tierney introduced that conversation in his opening remarks. I have a few slides I'd like to put up for people to get a feel for what progress we're making on the Business Gateway, but also quite candidly the substantial challenges we face and a lot of the work that we still have to do on this important project.

I think it was Lauren, the clerk, who was going to help me with these slides, and if she could go ahead and put the first one up. The first one is a concept slide, what is the Business Gateway all about. The basic idea is, a business person would have one electronic place they could go to for information about forms, compliance, other types of information from government that are helpful or necessary in nurturing or developing a small business. That information, that idea used to be a concept. Starting I believe in May of this year, it has become a partial reality in the form of Business.gov. And, that's the point of the first handout or slide you have available to you.

Turning to the second one, this is literally for those of you who haven't hopped on the computer already and done your Business.gov. This is actually the initial screen shot of Business.gov, with the eight different categories of information that you could access: business development, financial assistance, taxes, laws and regulations, international trade, workplace issues, buying and sell-

ing and forms. Of course, the buying and selling of forms focuses on the procurement aspects of information for businesses.

Turning to the third of the handouts, this is the so-called forms catalog of Business.gov, which is the electronic compilation of all the various forms from Federal agencies, organized by form number, by agency and alphabetized from A to Z by the initial letter in each form title. I'm still needling my staff on how it is that they think the alphabetized listing by the title of the form is necessarily going to be helpful, but they have some interesting arguments in favor of that, which if we have time we can talk more about.

One of the important things about this handout is that, notice, you can actually cross-link this information with a topic about forms, whether it be coal mining, surface mining, whatever your example is, and cross-link that with this information to get more specific information relevant to you as a particular small business.

The fourth handout refers to form number. If you have a colleague in your business sector who happens to have a copy of the form and can refer to the form number, you can just type in the form number and then it will create access for you to have that particular form.

On No. 5, it refers to all the various agencies. I would like to testify to you today that all Federal agencies are now operational as part of Business.gov, but I can't do that. I think it's only, 20 plus agencies that are now in. We're working to get as many as we can added to that list and we have the Internal Revenue Service scheduled to be in completely by the end of this summer.

The final one is the forms by the alphabet. You know the title of the form, but you don't know the number, just the title of the form will get you through this to the particular form you're interested in.

In conclusion, the good news is we're making progress. The candid news is we have a long way to go. The challenge is one, if businesses actually submit information in this format, how do we protect the privacy interests of small businesses in cases where some agencies are entitled to access but other agencies are not. We need to design the submission software to allow that protection to occur.

Two, we need some automatic updating mechanism. If an agency updates a form, based upon an OMB approval, we need an automatic update on Business.gov. Problem: each of the agencies is using different software. We need to have some sort of consolidation or at least integration of software to make this happen.

Third, this Business.gov currently has information about forms. But, how about recordkeeping requirements and equipment and investment requirements? There are links here to compliance assistance but we don't want to send a signal to the small businesses that all you have to do is fill out this form and you're done because you may also have recordkeeping requirements. You may have to install and maintain equipment. We have a lot more additional information that has to be made available.

Finally, perhaps most importantly, we need to use this tool as a way to achieve more consolidation of forms in the pilot projects on coal mining and trucking. They are literally working on an element

by element basis to establish this. I'm sorry to be a minute over time, but I wanted to thank you all for joining us today and giving me an opportunity to say a few words about a modest step in the right direction called Business Gateway.

[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

July 20, 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 (the Act). I have enjoyed working with you and the Subcommittees to reduce the paperwork burden that Federal requirements impose on small businesses.

By way of introduction, the Act imposes two specific requirements on OMB. First, 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.

In addition, the Act also requires certain Federal agencies to establish one point of contact to act as liaison between the agency and small businesses; submit an initial regulatory enforcement report to Congress by December 31, 2003, and a final report to Congress by December 31, 2004; and make efforts to further reduce the information collection burden for small businesses with fewer than 25 employees.

In my testimony today, I will provide a status report on these SBPRA requirements, with emphasis on the final Task Force report and our annual list of compliance assistance information, both of which were issued on June 28, 2004.

Task Force Reports

The Act requires OMB 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 was due by June 28, 2004.

In the first report, which was delivered to the Congress on June 26, 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 concluded 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

businesses. Since the first Task Force report was released, the Business Compliance One-Stop Initiative has been renamed the Business Gateway initiative.

For the second Task Force report, the Act requires the Task Force (1) to make recommendations to improve the electronic dissemination of information collected under Federal requirements, and (2) to 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.

Earlier this year, the SBA Office of Advocacy convened a meeting for the small business community to provide comment and input on each of the two issues to be addressed in the second Task Force report. That meeting was held on Monday, February 9, 2004. The input from that meeting was used by the Task Force to write the draft report, which was published for comment in the Federal Register on May 5, 2004.

On June 28, 2004, OMB published a Federal Register notice announcing the availability of the final report. The report can be accessed through the OMB website at: http://www.whitehouse.gov/omb/inforeg/sbpr2004.pdf.

With respect to improving the first task regarding electronic dissemination of information, the Task Force makes several recommendations to agencies:

- augment small business outreach plans,
- improve the organization and classification of information,
- improve outreach to small businesses,
- broaden and improve partnerships among agencies with similar or overlapping information collections,
- use the e-government cross-agency initiatives to improve dissemination of information,
- determine customer needs,
- explore public/private partnerships with web services companies, and
- don't forget the human interface

The report includes several examples of cross-agency initiatives that embody these recommendations. Such cross-agency initiatives leverage the knowledge of leading agencies in an efficient and effective manner.

With respect to the development of a plan for an interactive Government-wide system, available through the Internet, to allow each small business to better understand and comply with Federal requirements, the Task Force recommended the development of the Business Gateway. This initiative is designed specifically to meet the Act's objective of reducing the paperwork burden on America's small businesses. The initiative, directed by an interagency governance board led by SBA, accomplishes this by:

- providing a single Web point of access for relevant regulatory information and Federal government forms that involve businesses and citizens, and

- harmonizing industry-specific information collection requirements to collect information once and use it many times and reduce the overall number of forms to be completed.

The Business Gateway, using the Internet as a service delivery channel, will assist citizens and small businesses in their compliance with government regulations, and save them millions of dollars which can be reinvested in the growth of our economy.

Compliance Assistance Information

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 were published in the Federal Register on June 28, 2004, and are also available on the OMB website (http://www.whitehouse.gov/omb/inforeg/infocoll.html#sbpra). (There are slight differences in format between the Federal Register notice and the list posted on the OMB website, but the information is the same.)

Compilation of the 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 website is testimony to their long-standing interest in this issue.

The SBA's National Ombudsman significantly aided OMB in the compilation of the initial list of 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.

In your letter of invitation, you asked me to provide a reason for each agency that does not have compliance assistance resource information on the consolidated OMB listing. Since we received your letter, OMB has asked each agency without any listed compliance assistance information to provide us with an explanation (the explanation could be that the agency does not impose any requirements on small businesses, and therefore the agency has not developed any compliance assistance resources). Once we receive and compile this information, we will provide it to the Subcommittees.

Point of Contact Information

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 effect changes to their point of contact information. 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 responded to these concerns. For example, we re-posted our compliance assistance list and point of contact list in HTML format, which facilitates quicker access. In addition, we 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 businesses. 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 contact to our list. In a few other cases, our list included agencies that do not currently impose paperwork burden on small businesses. We removed from our list those agencies that do not currently have any approved information collections that affect small businesses, and added points of contact information for those agencies that were missing.

OMB updates the point of contact information upon notification from an agency. We want this list to remain timely and accurate to ensure that small businesses can obtain information quickly and easily.

Regulatory Enforcement Reports

The Act requires each agency to develop two regulatory enforcement reports for submission to congressional committees and the Small Business and Agriculture Regulatory Enforcement Ombudsman. 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

- (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).

In my October 28, 2003 memorandum to the President's Management Council (PMC), I noted that 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 to the PMC 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.

Even though the deadline for the initial regulatory enforcement report has passed, OMB continues to take advantage of opportunities to remind agencies of their SBPRA obligations. On March 18, 2004, I attended the SBA Ombudsman's interagency meeting to underscore the Administration's commitment to small business paperwork reduction and SBPRA implementation. I thanked the agencies in attendance for their hard work in implementing the Act, and urged them to continue their efforts. My staff used that occasion to remind delinquent agencies to submit their initial regulatory enforcement reports, and urged all agencies to begin work on their final regulatory enforcement reports.

On July 2, 2004, OMB reminded each agency by e-mail of its obligation to submit a final regulatory enforcement report by December 31, 2004. Because this statutory requirement may involve changes to current agency recordkeeping practices, we sent this reminder to agencies six months in advance of the statutory deadline, in order to ensure

ample time for compliance. We made clear to each agency that figures presented in the report should be consistent with agency reporting under the CFO Act and the IG Act.

In your letter of invitation, you asked me to provide the reason for each agency that did not submit a regulatory enforcement report. As stated in my previous testimony, OMB has not required that agencies submit to us a copy of their reports to Congress, and our efforts to date have focused on ensuring submission by the major regulatory agencies. Nevertheless, since receiving your letter, OMB has requested that each agency that has not submitted a regulatory enforcement report provide us with an explanation (the explanation could be that the agency does not have any regulatory enforcement activities). Once we receive and compile this information, we will provide it to the Subcommittees.

Agency Efforts to Reduce Burden on Very Small Businesses

The Act directs agencies to "make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees." For the purposes of our annual information collection budget (ICB), OMB last Fall 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). As a result of this request, the FY 2004 Information Collection Budget included a chapter describing efforts by OMB

and agencies to implement the Act. That chapter included planned or ongoing initiatives identified by agencies to reduce the paperwork burden on a substantial number of small businesses.

Implementation of Task Force Recommendations

There are a number of recommendations contained in the initial and final Task Force reports. To ensure that these recommendations are being implemented and managed, the Administration is undertaking various interagency efforts. The Administration believes that existing interagency efforts represent the best means to achieve the goals developed by the Task Force. For example, the Task Force recommendation of Business Gateway is being implemented through a government-wide electronic government initiative led by a governance board chaired by the Small Business Administration. Many of the Task Force's recommendations relating to information dissemination are being addressed by the Interagency Committee on Government Information, an interagency group, co-chaired by the Department of Commerce and OMB.

In your letter of invitation, you requested specific paperwork reduction accomplishments resulting from the two Task Force reports. It is important to note that the Task Force recommendations are incremental to current ongoing efforts by agencies to reduce paperwork burden. It is also important to note that the Task Force

recommendations relate to process changes that will be implemented over time. For these reasons, it is not possible to accurately attribute specific paperwork burden reduction accomplishments to recommendations in the Task Force reports. Changes in paperwork burden reflect a confluence of factors, including statutory requirements, agency initiatives, and Administration oversight.

Specific Reductions in Paperwork Burden

In your letter of invitation, you asked for specific reductions in reporting and recordkeeping requirements of at least 100,000 hours accomplished since January 28, 2004, or planned for 2004 for small business. To respond to this request, I refer the Subcommittee to the OMB fiscal year 2004 report, *Managing Information Collection: Information Collection Budget of the United States Government*. 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 2004 report—may result in actions to reduce small business paperwork burden:

- The Environmental Protection Agency plans to significantly reduce the paperwork burden imposed under the Resource Conservation and Recovery Act (RCRA). EPA wants 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 2002, and public comment was solicited on new burden reduction items in 2003.

- OSHA plans 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 Agency expects to publish a final rule in the second quarter of 2004.

We expect to receive updates on these initiatives for inclusion in our 2005 report to Congress. In addition, other examples from the 2004 ICB might also meet your criteria.

In addition to agency initiatives planned for 2004, OMB has taken action on Information Collection Requests that result in reduction in burden for small businesses. For example, OMB recently approved an information collection request in which the Department of Health and Human Services reduced, by 406,780 hours, the paperwork burden imposed on clinical laboratories. This reduction was achieved through modification of existing regulations governing the certification of clinical laboratories.

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.

Conclusions

In conclusion, SBPRA implementation is on schedule. OMB has fulfilled its statutory requirement to issue two Task Force reports and to publish an annual list of compliance assistance resources. Agencies have established single points of contact, and the major regulatory enforcement agencies have submitted their initial regulatory enforcement reports to Congress.

Task Force recommendations are being implemented through several inter-agency efforts, such as the Business Gateway Initiative, managed by SBA, and the Interagency Committee for Government Information, co-chaired by the Department of Commerce and OMB.

The Administration has and will continue its efforts to ensure the accuracy and completeness of agency SBPRA information. 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 and compliance assistance

resources 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.

Mr. OSE. Thank you, Dr. Graham.

Our next witness is Acting Assistant Secretary for Management and Budget at the Department of the Treasury, Mr. Jesus Delgado-Jenkins. Sir, your statement has been entered into the record. You are recognized for 5 minutes to summarize.

Mr. DELGADO-JENKINS. Thank you, Mr. Chairman. Chairman Ose and Chairman Schrock, members of the subcommittees, thank you for the opportunity to testify on the Department of the Treasury's implementation of the Small Business Paperwork Relief Act of 2002. It is my pleasure to be here today and I am honored to have been asked to testify.

As Acting Assistant Secretary, I report to the Deputy Secretary and I am responsible for managing the Department's budget, emergency preparedness, Treasury headquarters operations, human resources, financial management and various other management functions for the Department. Before beginning my service to the Department, I worked for a number of years in the private sector. Prior to my Federal service, I was a managing director and entrepreneur in a small business. I fully appreciate the challenges small businesses face every day in complying with the Federal, State and local regulatory requirements. My experience in business has demonstrated to me on many occasions that time is money. Doing business with the Federal Government should not waste precious resources of either the Government or small businesses. If our customers cannot readily find the information they need to comply with the laws, their government has not served them well.

The Treasury Department works to impose the least amount of burden necessary for small business owners to meet their obligations to the government, whether they are tax obligations or other regulatory requirements. Secretary Snow has referred to small businesses as the backbone and engine of our economy. I could not agree more with that statement.

From a departmental standpoint, IRS actions represent the vast majority of enforcement actions taken that involve small entities or small businesses, by the IRS as well as the Tobacco, Tax and Trade Bureau, referred to as TTB. These two account for most of the penalties assessed against small businesses by the Department of the Treasury and it is captured in the reports that we submitted to you in January and March of this year.

Requirements of the act. As requested in your invitation to testify before the subcommittees, I would like to briefly address our compliance and implementation of the Small Business Paperwork Relief Act. First, establishment of an agency point of contact. The Treasury Department's single contact is posted as required on the OMB Web site. The Department's page on the OMB Web site also includes an IRS contact to facilitate small businesses finding the resources they need with respect to fulfilling their tax requirements.

The Department believes that this additional resource helps taxpayers find what they need more quickly. If a taxpayer contacts the Treasury single point of contact, this office is also able to properly refer the taxpayer to the appropriate IRS office or other office with the Treasury Department that best meets his or her needs.

Regarding compliance assistance resources, resources to specifically help small businesses understand their obligations and more easily comply with the requirements are also posted on the internet, including information on the Department's efforts to reach out to small businesses which want to do business with the Treasury Department.

As reported to the committee by IRS Commissioner Everson in January 2004, the IRS abated over 1.7 million of the 15 million assessments a year, or about $1.8 billion of the total $5.5 billion in penalties assessed against small businesses. As I examined these statistics in preparation for this hearing, I was struck by the large portion of overall penalty assessments attributed to small businesses. Fifteen of the 23 million total assessments were all for small business. For this reason, I asked for additional data to help me understand the story behind these numbers.

In short, the numbers reflect the fact that small businesses account for 33 percent of all taxpayers. But, they make up for 66 percent of the filing transactions within the IRS. As a result, every time one of these transactions is completed there is an opportunity for the small business to make a mistake, increasing the potential for small businesses to be exposed to a penalty for not filing, for filing late, or for not paying on time. These facts help explain the number of penalties assessed against small businesses.

The IRS Commissioner testified in April of this year regarding activities in the IRS Office of Taxpayer Burden Reduction and its aggressive implementation of the burden reduction initiatives to significantly reduce the hours a small business needs in order to comply with our tax laws. You have heard about the many electronic service initiatives that take paper out of the process, and ease both information reporting and the payment of taxes. While the IRS will continue to progress and make improvements, I believe they now have a number of initiatives which are reducing the burden and hopefully will make life easier for small business taxpayers. For example, the IRS waives the entire Federal tax deposit penalty charge on the first tax period following a change in deposit requirements. Taxpayers also receive notification of the FTT penalty waiver via an IRS notice. Along with this, the IRS also made an administrative decision to abate the entire penalty for the first quarter following a change in an employer's deposit requirement.

Regarding the Tax and Trade Bureau of Alcohol and Tobacco, which is the newest agency in the Department of the Treasury, we also enforce and administer the laws governing the production and distribution of alcohol and tobacco products. TTB's revenue collection program uses analysis to target non-compliant industry members and establishes a presence with the industries to encourage voluntary compliance, which is critical to collecting over $15 billion in tax revenues.

TTB has compliance assistance resource centers established to assist small business in complying with the statutes and regulations that TTB enforces. It also offers guidance by telephone, mail and e-mail to small business taxpayers. The TTB National Revenue Center responds to approximately 80,000 phone calls a year. TTB also maintains an automated late return reporting system that notifies taxpayers of late filed return or insufficient payment, helping

taxpayers to resolve problems early to avoid additional penalties and interest.

As reported in the Treasury Report to Congress in March 2004, of the 16,289 penalties assessed by TTB, all of them were against small businesses. According to TTB, the high percentage of enforcement actions involving small businesses is due to the fact that the vast majority of TTB taxpayers are small entities.

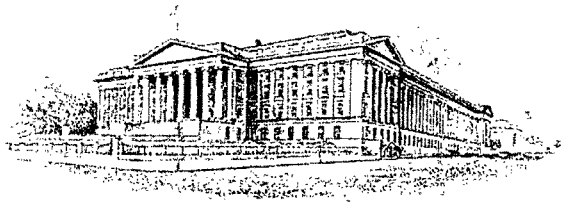
Mr. OSE. Mr. Delgado-Jenkins, you are over your time here. I'm going to give you 30 seconds to wrap up.

Mr. DELGADO-JENKINS. Thank you.

In conclusion, I believe that the Department continues to demonstrate progress in balancing compliance and service with burden reduction on small businesses. As the Department's largest interface with small businesses, the Internal Revenue Service is doing great work on a number of fronts to reach out with information and assistance to small businesses to help them navigate the complex requirements of the tax code.

Thank you, sir.

[The prepared statement of Mr. Delgado-Jenkins follows:]



DEPARTMENT OF THE TREASURY
OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL 2:00 PM
July 20, 2004

Contact: Brookly McLaughlin
(202) 622-2960

Written Statement of Jesus H. Delgado-Jenkins
Acting Assistant Secretary for Management

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

Introduction
Chairman Ose and Chairman Schrock, Members of the Subcommittees, thank you for the opportunity to testify on the Department of the Treasury's implementation of the Small Business Paperwork Relief Act of 2002.

My name is Jesus Delgado-Jenkins, Acting Assistant Secretary for Management. I joined the Treasury Department in May of 2003 as a senior advisor, and served as Deputy Assistant Secretary for Management and Budget from October of 2003 until I was named Acting Assistant Secretary for Management this past February. As Acting Assistant Secretary, I report to the Deputy Secretary, and I am responsible for managing the Department's budget, emergency preparedness, Treasury headquarters operations, human resources, financial management, and other various management responsibilities for the Department.

Before beginning my service to the Department, I worked for a number of years in the private sector. Prior to my federal service, I was an entrepreneur in a small start-up business. I fully appreciate the challenges small businesses face every day in complying with the myriad of federal, state, and local regulatory requirements. My experience in business has demonstrated to me time and time again that time is money. Doing business with the federal government should not waste the precious resources of either the government or small businesses, which can least afford to deal with unnecessary process steps and red tape. In addition, if small businesses cannot readily find the information they need to comply with the laws, or readily seek relief if appropriate when penalties are imposed, their government has not served them well.

The Treasury Department works to impose the least amount of burden necessary for small business owners to meet their obligations to the government, whether they are tax obligations, or other regulatory requirements. Secretary Snow has spoken numerous times about small businesses operating as the backbone and the engine of our economy. I could not agree with that more based on my own experiences in business. Small businesses are the essence of the American entrepreneurial spirit.

From a Departmental standpoint, IRS actions represent the vast majority of enforcement actions taken that involve small entities. The IRS defines small businesses as all business entities (corporations, partnerships, and sole proprietorships) with net assets below $10 million. Penalties imposed on small businesses by the IRS and the Alcohol and Tobacco Tax and Trade Bureau account for most of the penalties assessed against small businesses by the Department of the Treasury as captured in the reports filed with Congress in January and March of this year. The Office of Foreign Assets Control, the Office of the Comptroller of the Currency, and the Financial Crimes Enforcement Network account for a relatively small number of penalties.

Requirements of the Small Business Paperwork Relief Act

As requested in your invitation to testify before the Subcommittees, I would like to address the Treasury Department's compliance and implementation of the Small Business Paperwork Relief Act of 2002.

- Establishment of an Agency Point of Contact: The Treasury Department's single contact is posted as required on the OMB website. This individual is the Director of the Office of Small and Disadvantaged Business Utilization, and reports directly to the Deputy Secretary. The Department's page on the OMB site also includes an IRS contact to facilitate small businesses finding the resources they need with respect to fulfilling their tax requirements. The Department believes that this additional resource helps taxpayers find what they need more quickly. However, if a taxpayer contacts the Treasury single-point-of-contact, this office is able to properly refer the taxpayer to the appropriate IRS office, or other office within the Treasury Department to best meet their needs. While we have found that customers use a number of channels to communicate and get the information they need, we believe the single-point-of contact is a useful option for customers who do not know where to turn for information. I will point out that the Treasury web portal, which provides information on small business contracting, is active, logging some 16,000 visits in the 2nd quarter of this year
- Compliance Assistance Resources: Resources to specifically help small businesses understand their obligations and more easily comply with requirements are posted on the Internet, including information on the Department's efforts to reach out to small businesses who want to do business with the Treasury Department. The IRS devotes resources to specifically helping small businesses understand their requirements and comply, helping them avoid late or non-filing penalties
- Regulatory Enforcement Reports to Congress: IRS sent a report to Congress on January 12 and the Department sent a report on March 5 containing the required information relative to the number of total enforcement assessments, abatements, and dollar values for all entities and for small businesses. We regret that these reports were late in being sent to

Congress. I will work to ensure that the final Treasury report is submitted on time this year.

Internal Revenue Service

As was reported to the Committee by IRS Commissioner Everson in January of 2004, the IRS abated 1.7 million of 15 million assessments last year, or about $1.8 billion of a total of $5.5 billion in penalties assessed against small businesses. As I examined these statistics in preparation for this hearing, I was struck by the large portion of overall penalty assessments attributed to small businesses—15 of 23 million total assessments (by number of tax modules). For this reason, I asked for additional data from the IRS to help me better understand these statistics, to examine the story behind the numbers. In short, these numbers reflect the fact that small businesses account for about 33% of all taxpayers and make up about 66% of all tax filings (including income tax returns and information returns). A small business, and indeed any business with employees, is required to file not only an annual tax return, but 5 employment tax returns, W-2 information reports, and to make regular federal tax deposits. Every time one of these is filed, there is an opportunity for the small business to make a mistake, increasing the potential for small businesses to be exposed to a penalty for not filing, for filing late, or for not paying on time. These facts help to explain the number of penalties assessed against small businesses. The IRS knows that most of the penalties assessed against small businesses (by tax module) relate to failure to file tax returns in a timely manner (failure to file), and failure to deposit employment taxes (failure to deposit) in a timely manner. The following discussion relates to the assessment and abatement of these particular penalties.

In general, the Internal Revenue Code authorizes the IRS to abate a penalty for the failure to file or the failure to deposit when a taxpayer can demonstrate that non-compliance was due to reasonable cause. The existence of reasonable cause depends on the facts and circumstances of each particular case. There are situations in which a small business may be able to demonstrate reasonable cause while a large business would not be able to do so. For example, depending on the circumstances, the illness of the owner of a small business may constitute reasonable cause for non-compliance, while the illness of the CEO of a larger business more likely would not constitute reasonable cause.

The IRS Commissioner testified in April of this year regarding activities in the IRS Office of Taxpayer Burden Reduction and their aggressive implementation of burden reduction initiatives to significantly reduce the number of hours a small business needs to comply with the tax laws. You have heard about the many electronic service initiatives that take paper out of the process and ease both information reporting and the payment of taxes. Providing for the electronic filing of quarterly 941 returns and annual 940 returns I believe reduces burden on small businesses by providing more filing and payment options, including a federal-state filing component. Corporate returns and Exempt Organization returns are also being added to the electronic filing inventory of services. Providing electronic options reduces the paperwork and eases compliance headaches.

While the IRS has a long way to go, I believe they have a number of initiatives which are reducing the burden and hopefully making life easier for small business taxpayers.

For employment tax periods (Forms 941) beginning January 1, 2001, IRS began to systemically waive the entire Federal Tax Deposit (FTD) penalty charge on the first tax period following a change in the FTD deposit requirements. Taxpayers receive notification of the FTD penalty waiver via an IRS notice. For deposits required to be made after January 18, 1999 under the IRS Restructuring and Reform Act of 1998, penalties are waived on the first deposit a taxpayer is required to make after a required change in the frequency of payroll deposits. The IRS made an administrative decision, which is a good one, to abate the entire penalty for the first quarter following a change in an employer's deposit requirement.

For tax periods beginning January 1, 1999, IRS began to systemically waive the entire penalty for first time depositors of employment taxes. In addition, beginning in January 2004, IRS began issuing a notice on the 1st quarter return, to inform monthly deposit taxpayers who had a change in tax deposit frequency (e.g., required to deposit more frequently) that they may have made a mistake. Although the penalty will be systemically waived in the first quarter, the early notification will inform the taxpayer in enough time to deposit correctly for the second quarter filing.

For return periods beginning January 1, 2001, the systemic tolerance waiver was increased from $100 to $250, and the de minimis threshold for depositing from $1,000 to $2,500. This means that a business entity that accrued $2,500 or less in quarterly Federal Tax Deposits would not be required to make a deposit but would be able to pay when filing the tax return.

IRS is working on an initiative that would allow small business entities to file the quarterly employment tax return (Form 941) on an annual basis. This option would be available for taxpayers who owe less than $2500 in total tax liability quarterly, demonstrate compliance for eight consecutive quarters, and use the electronic federal tax payment system.

IRS is also offering a one-time Federal Tax Deposit penalty refund incentive to business taxpayers who are not required to use the Electronic Federal Tax Payment System but elect to use the system.

Treasury believes these are steps in the right direction toward reducing burdens on small businesses, as well as reducing the potential for penalties for non-compliance.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

The Alcohol and Tobacco Tax and Trade Bureau is the newest agency in the Department of the Treasury, but its functions are not new. The Homeland Security Act of 2002 divided the functions of the former Bureau of Alcohol, Tobacco, and Firearms into two new organizations with separate functions. The Act created a new Alcohol and Tobacco Tax and Trade bureau within the Department of the Treasury, and shifted other law enforcement functions of ATF to the Department of Justice.

Under Administrator Art Libertucci's leadership, TTB enforces and administers the laws governing the production and distribution of alcohol and tobacco products. TTB collects alcohol, tobacco, firearms and ammunition excise taxes; collects occupational taxes on

producers, wholesalers, and retailers of alcohol beverage products as well as producers of tobacco products and cigarette papers and tubes and export warehouse proprietors; ensures that alcohol beverages are labeled, advertised, and marketed in accordance with the law; and administers the laws and regulations in a manner that protects the revenue, protects the consumer, and promotes voluntary compliance.

TTB's revenue collection program uses analysis to target non-compliant industry members and establishes a presence within the industries that encourages voluntary compliance, which is key to collecting some $15 billion annually.
TTB has compliance assistance resources established to assist small businesses in complying with the statutes and regulations TTB enforces. TTB issues guidance through various publications such as industry circulars and rulings, private letter rulings issued to individual entities, website links that answer frequently asked questions and provide guidance, industry seminars, and taxpayer hotlines. TTB also offers guidance by telephone, mail, and email to small business taxpayers. The TTB National Revenue Center responds to approximately 80,000 taxpayer calls per year.

TTB also maintains an automated late return reporting system that notifies taxpayers of a late-filed return or insufficient payment, helping taxpayers resolve problems early to avoid additional penalties and interest. TTB also sends out yearly notices to remind taxpayers of their filing and payment responsibilities.

TTB assessed over 16,000 civil penalties last year, waiving or reducing 1135 of them. Of the 1135 waived or reduced, 1093 (96 percent) of those involved small entities. TTB collects taxes, assesses penalties, and abates penalties as authorized by the Internal Revenue Code. As with the IRS, TTB is authorized to abate penalties based on reasonable cause criteria. In determining whether a failure to file or pay was due to reasonable cause, TTB considers whether the taxpayer demonstrated ordinary business care and prudence, or whether unusual circumstances prevented the taxpayer from complying.

As reported in the Treasury report to Congress in March of 2004, of the 16,289 penalties assessed by TTB last year, almost all of them were against small businesses. According to TTB, the high percentage of enforcement actions involving small entities is due to the fact that the vast majority of TTB taxpayers are small entities. TTB has approximately 345,000 Special Occupational Tax taxpayers, most of which are small businesses, as well as approximately 5,000 excise taxpayers, most of which are also small businesses. While there is some overlap, about 99% of all TTB taxpayers are small business Special Occupational Tax taxpayers, who consequently are responsible for the great majority of the delinquencies. TTB advises that the reason more penalties were not waived is due to the fact that the taxpayer did not request a waiver, or the taxpayer could not demonstrate reasonable cause, which is the only authority TTB has to waive a failure to file or failure to pay penalty. It may also be due in part to the fact that penalties assessed against Special Occupational Tax taxpayers averages only $68.75, which is roughly equivalent to a speeding ticket.

While TTB maintains an active outreach program in promoting its compliance assistance resources, and TTB taxpayers have relied on them heavily, TTB is currently assembling

information on those resources to send to OMB for formal publication in the Federal Register and on its website.

Conclusion

Chairman Ose, Chairman Schrock, in conclusion, I believe that the Department continues to demonstrate progress in balancing compliance and service with burden reduction on small businesses. As the Department's largest interface with small businesses, the Internal Revenue Service is doing great work on a number of fronts to reach out with information and assistance to small businesses to help them navigate the complex requirements of the tax code. Reducing tax law complexity is one key to reducing the burden on small businesses, and will go a long way toward truly reducing the burdens of complying.

For now, the Department is looking at the recommendations of the Small Business Paperwork Relief Act Task Force Report of June 2004. I believe we can do a better job of providing waiver information to small businesses who may have been penalized for the first time. The Department has just hired a new small business director with extensive experience in the small business arena, who will be looking into ways the Department can better reach out to small businesses who want to do business with us. Finally, I believe we can always learn more about customer needs and the market environment in which our customers live and work. I learned this first hand in working with companies to improve their market share and more effectively market their products.

We can use this information more effectively to reach out to provide small businesses with the information they need from us, and to let them know about the resources available to them.

I thank the subcommittees for the opportunity to testify on this important topic and to hear first hand your guidance in this area. I would be happy to respond to any questions you might have.

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Mr. OSE. I thank the gentleman.

Our third witness on the first panel I believe joins us for the first time. That would be Mr. Felipe Mendoza, who is the Associate Administrator for the Office of Small Business Utilization at the U.S. General Services Administration. Sir, welcome. We've received your testimony, it's been made part of the record. You are recognized for 5 minutes to summarize.

Mr. MENDOZA. Good afternoon, Chairman Ose and Chairman Schrock.

I'd like to thank you and the other members here for inviting me to appear before you to discuss GSA's implementation of the Small Business Paperwork Relief Act. As you stated, my name is Felipe Mendoza, I'm the Associate Administrator for the Office of Small Business at GSA. Accompanying me today are several GSA associates sitting right behind me.

Before addressing the act, I would like to share some information with you regarding the positive impact GSA is having in promoting Federal Government contracting opportunities within the small business community. GSA's mission is to help Federal agencies to better serve the public by offering, at best value, superior workplaces, expert solutions, acquisition services and management policies. To effectively fulfill this mission, the Office of Small Business Utilization frequently conducts training within the agency to keep contract staff apprised of recent changes in procurement policies, procedures and regulations.

In order to reach as many small businesses as possible, and provide small businesses information on how best to navigate the Federal procurement process, GSA conducts various outreach activities. During this fiscal year, we have targeted Native American/Alaskan Native-owned, service disabled veteran, of which I am a member, small businesses. We have also joined Members of Congress in hosting small business events around the country. GSA constantly seeks ways to make doing business with the Federal Government easier for Federal businesses. GSA recently launched "eOffer," a tool to submit contract offers and contract modification requests to Federal supply schedules on-line. Offerors interested in getting on the information technology schedule now have an opportunity to submit their offer electronically. This significantly reduces the paperwork burden. Offerors are guided through each step of the solicitation. GSA developed the program and is currently adapting the program to process modifications electronically as well. We expect to reduce the cycle time for awarding contracts with the help of this new program. The program will be rolled out to other centers in the Office of Commercial Acquisition within the year.

In regard to the Small Business Paperwork Relief Act, the committee's invitation to testify requested that we address specific topics or issues. One was the implementation of the act, compliance assistance resources, regulatory enforcement report and single point of contact. Specifically in regard to the submission of regulatory enforcement reports, this act imposes a duty upon Federal agencies to report to Congress and to the Small Business and Agriculture Regulatory Enforcement Ombudsman those regulatory enforcement actions in which a civil penalty is assessed. Further,

Federal agencies must report the number of actions in which such penalties are assessed against small businesses. The act states that the report should include a definition of enforcement actions as determined by the reporting agency.

GSA did not submit an initial report because we did not initiate enforcement actions on which civil penalties are assessed. There are no enforcement actions to report. For the December 31, 2004 reporting period, as required by the act, GSA will submit a report that so states. The core missions of our agency are procurement and property management. Under our enabling legislation, the Federal Property and Administrative Services Act of 1949, GSA supplies executive agencies with personal property and non-personal services and maintains and operates government-owned and leased buildings. Our regulatory expertise involves guidance to branch agencies regarding procurement regulations, the GSA acquisition manual and property and travel. Pursuant to discussions with the Office of Management and Budget, and the subcommittee, we have submitted a list of compliance assistance resources to OMB. A more extensive list of resources will be submitted by the end of September of this year. While the GSA single point of contact listed is currently an associate with the OSBU, the Agency's plan of action is to transfer this function to the staff person within the GSA's Chief Information Office. This should be accomplished by September 30, 2004. Additionally, not later than October 1, 2004, GSA will have a dedicated toll free telephone number available to the small business community for assistance with the act inquiries. The staff person delegated these responsibilities will be knowledgeable of the act and will respond to small business inquiries. As required by the statute, GSA participated in the task force that studied the feasibility of streamlining collection of information requirements to small businesses. GSA recognizes that the purpose of the Small Business Paperwork Relief Act is to reduce the challenges faced by small businesses in complying with the government information collection requirements. Where applicable, GSA intends to continue to do its part in addressing this issue. This concludes my testimony. Again, I appreciate having the opportunity to appear before you today, and I will be pleased to answer any questions you might have. Thank you.

[The prepared statement of Mr. Mendoza follows:]

STATEMENT OF

FELIPE MENDOZA
ASSOCIATE ADMINISTRATOR
OFFICE OF SMALL BUSINESS UTILIZATION

U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE

Government Reform Subcommittee on Energy Policy,
Natural Resources and Regulatory Affairs
and the
Small Business Subcommittee on Regulatory Reform
and Oversight

July 20, 2004

UNITED STATES HOUSE OF REPRESENTATIVES

Hearing on GSA's Implementation of the Small Business Paperwork Relief Act Public Law 107-198

Good Afternoon Chairman Ose and Chairman Schrock. I would like to thank you and the other members here, for inviting me to appear before you to discuss GSA's implementation of the Small Business Paperwork Relief Act. My name is Felipe Mendoza, and I am the Associate Administrator for the Office of Small Business Utilization (OSBU), of the U. S. General Services Administration (GSA).

Before addressing the Act, I would like to share some information with you regarding the positive impact GSA is having in promoting Federal government contracting opportunities within the small business community.

GSA's mission is to help Federal Agencies better serve the public by offering, at best value, superior workplaces, expert solutions, acquisition services and management policies. To effectively fulfill this mission, the Office of Small Business Utilization frequently conducts training within the agency to keep the contracting staff apprised of recent changes in procurement policies, procedures and regulations.

GSA and Small Business

In order to reach as many small businesses as possible, GSA conducts outreach activities on a national and regional level. One example includes the "2004 Native American Conference – Doing Business with the Government", held in Albuquerque, New Mexico. This conference was held to promote Federal contracting with Native American/Alaska Native-Owned Businesses. The event had over 600 registrants. Another example includes GSA's "Opening Doors for America's Heroes", held in Washington, D.C. This conference, with over 700 registrants, was held to promote contracting opportunities with the Service-Disabled Veteran-Owned Small Business community. In addition, within the past year, GSA joined efforts with Congressman Tom Davis, and local members of Congress, to host small business events around the country. Senior officials from GSA and other Federal agencies participated in these events. These events provide small businesses with direction on how to best navigate the Federal government procurement process. We are actively planning more of these events.

GSA constantly seeks ways to make doing business with the Federal government easier for small business. The GSA Information Technology (IT) Acquisition Center recently launched "eOffer", a tool to submit contract offers and contract modification requests to FSS online. The eOffer tool provides offerors interested in getting on the IT Schedule with an opportunity to submit their offer electronically, thereby significantly reducing paperwork burden. This electronic

proposal process guides users through each step of the solicitation, using the latest in digital authentication technology to ensure the integrity of the data, and provide for the electronic signature of the proposal. The Office of Acquisition Management's Systems Management Center developed the program and is currently adapting the program to process modifications electronically as well. The IT Acquisition Center expects to reduce its cycle times for awarding contracts with the help of this new program. The program will be rolled out to other centers in the Office of Commercial Acquisition within the year. You may visit the site at http://eoffer.gsa.gov.

Small Business Paperwork Relief Act of 2002

With regard to the Small Business Paperwork Relief Act, the Committee's invitation to testify requested that we address the following issues:

1. GSA's implementation of this Act,

2. GSA's explanation for failure to publish its compliance-assistance resources for small business – due June 28, 2003,

3. GSA's explanation for failure to submit a regulatory enforcement report - due December 31, 2003,

4. GSA's experience with the Office of Small Business Utilization as the agency's single point of contact.

As you are aware, this law has four requirements: agency publication of compliance-assistance resources; the submission of agency regulatory enforcement reports; the establishment of an agency point of contact in respect to collection of information and the control of paperwork; and agency

participation in a task force to study the feasibility of streamlining collection requirements for small business concerns.

Regulatory Enforcement Report

Specifically, in regard to the submission of the regulatory enforcement reports, this Act imposes a duty upon Federal agencies to report to Congress, and to the Small Business and Agriculture Regulatory Enforcement Ombudsman, those regulatory enforcement actions in which a civil penalty is assessed. Further, Federal agencies must report the number of actions in which such penalties are assessed against small businesses. The Act states that the report shall include a definition of "enforcement actions" as determined by the reporting agency. GSA did not submit an initial report; because we do not initiate enforcement actions in which civil penalties are assessed. However, for the December 31, 2004 reporting period, GSA will submit a report that so states.

The core missions of our agency are procurement and property management. Under our enabling legislation, the Federal Property and Administrative Services Act of 1949, GSA supplies executive agencies with personal property and nonpersonal services and maintains and operates government-owned and leased buildings. Our regulatory expertise involves guidance to Executive Branch agencies regarding procurement of goods and services (the Federal Acquisition Regulation and the General Services Administration Acquisition Manual), property (Federal Management Regulation), and travel (the Federal

Travel Regulation.) GSA's procurement guidance is subject to the direction of the Office of Federal Procurement Policy. In addition to the direction provided by these offices, GSA complies with the requirements of applicable statutes that are in accord with this Act's goal of reducing paperwork burden on small business.

Compliance-Assistance

Pursuant to discussions with the Office of Management and Budget (OMB) and the subcommittees, we are in the process of compiling a list of compliance-assistance resources to be submitted to OMB. A partial list has already been provided to OMB. We plan to post a more extensive list of resources by September 30, 2004.

Agency Single Point of Contact

While the GSA single point of contact listed is currently within the OSBU, the Agency's plan of action is to transfer this function to a staff person within the GSA's Chief Information Office. This should be accomplished by September 30, 2004. Additionally, not later than October 1, 2004, GSA will have a dedicated toll free telephone number available to the small business community for assistance with SBPRA inquiries. The staff person delegated these responsibilities will be knowledgeable of the SBPRA and will respond to small business inquiries.

Task Force Representation

As required by statute, GSA participated in the task force that studied the feasibility of streamlining collection of information requirements for small businesses.

GSA recognizes that the purpose of the Small Business Paperwork Relief Act is to reduce the challenges faced by small businesses in complying with government information-collection requirements. Where applicable, GSA intends to continue to do its part in addressing this issue.

This concludes my testimony. Again, I appreciate having the opportunity to appear before you today. I would be pleased to answer any questions the Committees may have.

Mr. OSE. I thank the gentleman.

I want to welcome the ranking member from the Small Business Committee. I do appreciate her willingness to attend, and we will enter your statement for the record at the appropriate spot.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I would like to ask unanimous consent.

Mr. OSE. Without objection.

The way this works is, we'll now go to a round of questions. Each Member will be given 5 minutes for questions. If Members after the first round have determined they need additional time, we'll have a second round of questions. I'm going to go first.

Dr. Graham, one of the things we've talked about in the past has been the threshold number of employees over which reports are required. I believe in your testimony you cited companies with fewer than 25 employees. I think the Treasury used a threshold of $10 million in assets or less. I'm trying to determine whether or not any consideration has been given to raising that fewer than 25 employees threshold for reporting purposes on certain items?

Mr. GRAHAM. I don't have any concrete proposal in that area, but I'm happy to look into it if you'd like me to.

Mr. OSE. I know we've talked about it in the past, and I've never been able to quantify the impact of raising from, say, a threshold of fewer than 25 employees for certain reporting periods to say, fewer than 35 employees or fewer than 50. Obviously you don't want to go to fewer than 5,000, because then you'd get hardly anything. But, I would be very interested in the paperwork impact from your perspective of raising that threshold.

Mr. GRAHAM. I definitely think it's worth looking at.

Mr. OSE. Mr. Delgado-Jenkins, Treasury has a standard, I think in your testimony it talked about $10 million in assets or fewer.

Mr. DELGADO-JENKINS. That's correct, yes, sir.

Mr. OSE. Why do you have a $10 million asset threshold for certain reporting requirements, or more appropriately, why does your threshold differ from this fewer than 25 employees threshold? Why do we have different thresholds across the board here?

Mr. DELGADO-JENKINS. My belief is that's probably driven by the IRS' enforcement mechanisms. I would have to rely on Commissioner Everson to answer that. But, I cannot synch up the two differences. I think they're driven by the agency requirements to meet what their needs are.

Mr. OSE. Do you have any information that you can provide us relative to the number of employee hours that would be affected positively by raising the threshold from, say, fewer than 25 to fewer than 35?

Mr. DELGADO-JENKINS. I don't have that here, but I'm sure we can provide those numbers.

Mr. OSE. We'll put that to you in writing for that purpose.

Mr. DELGADO-JENKINS. Yes, sir.

Mr. OSE. Now, I went through each of your testimonies, and, Dr. Graham, I find yours very informative. One of the things I wanted to dwell on was these task force meetings. I wasn't clear in your testimony whether the task force meetings that were required by statute, did you delegate the convening of that to the SBA Office of Advocacy?

Mr. GRAHAM. Delegate the convening?

Mr. OSE. Yes.

Mr. GRAHAM. They certainly were host, I believe, to some of the meetings. But, I remember myself doing the kickoff meeting for task force report one. So, we were certainly involved heavily through the whole process.

Mr. OSE. Could we get a copy of the attendance roster for that?

Mr. GRAHAM. Sure.

Mr. OSE. I would appreciate that. As far as task force meeting No. 2, the second task force report number, I would appreciate having the same information, accordingly.

Mr. GRAHAM. OK.

Mr. OSE. Now, the gateway initiative here, you have some things here that I find interesting. I want to applaud you for this. While I haven't been to the actual Web site, this looks very streamlined in its implementation. I'm curious, there are some agencies that you indicated you had not received either the link from or the participation of in setting this up yet?

Mr. GRAHAM. Yes, we don't have all their forms yet in the form catalog.

Mr. OSE. Is that a function of their having not sent it to you, or it hasn't been scanned in and put into the Web site or what?

Mr. GRAHAM. I think it's a little bit of both. Quantitatively, I don't know how much is which. But, I think there's probably some in our court, and I think there are a lot of agencies that it's still in their court.

Mr. OSE. Would it help you if the committee were to send you a letter asking you for the agencies or departments that have not given you that information?

Mr. GRAHAM. That would be fine, sir.

Mr. OSE. OK. That way we can play good cop, bad cop.

Mr. GRAHAM. Absolutely.

Mr. OSE. OK. Now, on page five of your testimony you talked about information collection requirements using the internet. The particular one that I found most interesting, you've got a bullet point here, harmonizing industry specific information collection requirements to collect information once and use it many times, thereby reducing the overall number of forms to be completed. So, I presume you're talking about information that would be useful across various agencies.

Mr. GRAHAM. Or within a single agency on the subject you're referring to.

Mr. OSE. Give us an example of how that would work, please.

Mr. GRAHAM. Well, I'm not sure exactly which part you're referring to. But, one concrete example that we've discussed at previous hearings is, if you are a submitter of information, for example, to the Environmental Protection Agency on the toxic release inventory, and you have zero emissions in 1 year, and you come to the next year and you'd like to report that you have no significant difference, there should be a streamlined way to make that reporting. We currently have proposals out, we're taking comments to make that a more streamlined reporting exercise.

Mr. OSE. We're talking about a box on the form that would say, no change from last year?

Mr. GRAHAM. That's one of the kinds of options we're talking about.

Mr. OSE. Is one of the options, or does one of the options that you're considering allow for the use of that information by multiple agencies or departments, so that, if I turn it in in one place, I don't have to turn it in to 100 different places?

Mr. GRAHAM. Yes. In fact, the two pilot groups that I mentioned, one is working in the mining sector, and one's working in the trucking sector. They are literally going through, for selected agencies, all of the forms where they ask for information from mining companies and from trucking companies and looking at each of the data elements on each of the forms identifying where the common data elements are and trying to determine what the opportunity for consolidation is.

The advantage of doing that through Business Gateway, as opposed to doing it through each of those notebooks, is you can have search engines that can go into the data elements and pull those out for you, rather than having to manually go through each agency's notebook of collections. So, we're hopeful that Business Gateway is actually going to be a big plus, and the effort to identify where these duplicative and common data elements are and how they can be consolidated.

Mr. OSE. So you'll be able to data mine submittals to one agency, one agency will be able to date mine submittals to another agency kind of deal?

Mr. GRAHAM. You will have this one place where you can submit your forms and hopefully they will be designed in such a way that information serves multiple agencies' needs. You don't have to separately fill that out for different agencies.

Mr. OSE. The gentleman from Massachusetts.

Mr. TIERNEY. Thank you, Mr. Chairman.

Dr. Graham, while I have you here, since you may or may not be visiting us again soon, I think you know I've had some concerns about OIRA's attempts to influence Federal agencies' rulemaking decisions. In the past, I have expressed that. I think obviously, while we can agree that Congress delegates the authority to issue rules to regulatory agencies, such as the EPA, but not necessarily to the White House, if we consider EPA's ongoing rulemaking that's supposed to regulate emissions of toxic mercury from power plants, there's extensive public concern in my State and I think elsewhere, even an outrage in some cases over the direction in which this rulemaking is going. My State of Massachusetts obviously has strong controls of mercury emissions, but we feel we need a national rule to stop the mercury that's blown into Massachusetts from other States.

I would be interested in OIRA's role in the next big decision that EPA is trying to make on this mercury rule. As you know, EPA failed to even analyze any mercury control options other than the ones that the administration proposed. In fact, EPA refused to do the analysis recommended by its own public advisory group on this rule, which included recommendations from the States, industry and environmental advocates. Responding to public criticism on this, Administrator Leavitt promised that the EPA would conduct more analysis, but that was back in March. Right through today,

we have not heard anything being done on this analysis. It seems that EPA is refusing to answer congressional inquiries about its schedule for doing additional analysis.

EPA Assistant Administrator Jeffrey Holmstead has repeatedly refused to analyze the range of options recommended by the advisory group, but, in one statement, he indicated that he had consulted on this with both you and Mr. Connaughton who is the chairman of the Council on Environmental Quality. So, my question to you is, have you been involved in the EPA's consideration of what additional analysis to conduct to support a decision on the mercury rule?

Mr. GRAHAM. Yes, sir.

Mr. TIERNEY. What has been your role?

Mr. GRAHAM. We reviewed the proposed rule, prior to its release for public comment.

Mr. TIERNEY. Have you been giving EPA advice on matters of legal interpretation of their statutory authorities?

Mr. GRAHAM. We may have been. I don't recall.

Mr. TIERNEY. You don't recall whether you gave——

Mr. GRAHAM. I don't remember. It wouldn't surprise me if our General Counsel's office was involved in providing advice.

Mr. TIERNEY. Would you be good enough to provide the committee with a more direct answer on that, as to whether or not you were involved in doing that?

Mr. GRAHAM. Let me see what I can do on that.

Mr. TIERNEY. Is that a yes?

Mr. GRAHAM. I'll see—the best I can do.

Mr. TIERNEY. Well, if you have it, will you present it to the committee?

Mr. GRAHAM. Absolutely.

Mr. TIERNEY. OK. Are you attempting to tell the EPA what types of control technology are or are not commercially available?

Mr. GRAHAM. I do recall that in the effort that's being made with the proposed rule there are two basic approaches to reducing mercury, one that would require technology based requirements at each coal-fired power plant, and one that would provide a national cap on the overall amount of mercury emissions. We favor this latter approach because it will reduce emissions by 70 percent and do so at less cost than a technology based approach, which is the alternative that was analyzed in the proposed rule.

Mr. TIERNEY. So, would it be your testimony that you're saying you are constraining your opinions on EPA on this strictly to the policy and the cost-benefit analysis and not broader than that?

Mr. GRAHAM. We evaluate the technologies for cost and for effectiveness. We evaluate the material that EPA presents to us. We evaluate it, make comments and suggestions. They take some of them. They don't take other ones.

Mr. TIERNEY. But, you constrain your recommendations to them strictly on a cost-benefit analysis and no other policy terms?

Mr. GRAHAM. Actually, the principles of the executive order that govern our activities, they include cost-benefit, but they include a variety of other principles as well.

Mr. TIERNEY. What would be your expertise in matters outside of the economic analysis, the cost-benefit?

Mr. GRAHAM. Our staff has a broad range of expertise in engineering, in science, in toxicology, epidemiology, as well as economics, statistics and so forth.

Mr. TIERNEY. You're telling us that you think it's OIRA's responsibility to give that kind of advice, or advice touching on those matters, to the EPA in this matter, instead of having EPA rely on its expertise in this area?

Mr. GRAHAM. It prepares the initial draft. The EPA scientists have the pen. We then make comments and suggestions, and, if we have a disagreement, we discuss that out and proceed as appropriate.

Mr. TIERNEY. Does OIRA support or oppose conducting the analyses that were recommended by EPA's advisory group?

Mr. GRAHAM. I am not sure which recommendations you're referring to, sir.

Mr. TIERNEY. Any of them.

Mr. GRAHAM. Pardon?

Mr. TIERNEY. They made a range of recommendations. Do you support analyzing those recommendations or not?

Mr. GRAHAM. I don't know. I haven't looked at them.

Mr. TIERNEY. You haven't taken a look at them in all this time?

Mr. GRAHAM. No, I haven't seen them.

Mr. TIERNEY. My understanding is that your main role is in just encouraging them to assess the potential costs and benefits of the rule. I would think that you would make that assessment on all of the items that advisory group be reviewed.

Mr. GRAHAM. Yes, our role at OMB is not to review the work of the advisory committee. Our role is to review the work of EPA. It developed two proposals to us, one a technology-based program, one a national cap and trade program, and those are the two policies that we evaluated.

Mr. TIERNEY. Have you checked to determine whether or not they have in fact analyzed all of the recommendations that were made to them by the advisory group?

Mr. GRAHAM. No, sir.

Mr. TIERNEY. Well, I'd just be concerned if I find that OIRA is overstepping what I think is OIRA's bounds and getting into the EPA policy considerations on this. I think the Clean Air Act is pretty precise on what needs to be done. I have a concern that this was not a political decision the White House should be involved in, but one where the EPA had certain responsibilities under the Clean Air Act. I would like to think that's what EPA is following.

I would also appreciate it if you would followup with the information that you said you'd provide.

Mr. GRAHAM. Certainly. And we're very proud of the 70 percent reduction in mercury emissions, the first time the coal industry will be regulated for mercury emissions.

Mr. TIERNEY. We can be prouder if States like Massachusetts didn't have it blowing in from other places where it wasn't regulated enough.

Mr. OSE. All right, here's our situation. We have two votes on the Floor, one a 15 and one a 5. After conversing with Mr. Schrock, what we're going to do is we're going to recognize Ms. Velazquez for the purpose of asking one question, then we're going to recess,

and recessing with great respect, and I apologize for doing this, because otherwise you're going to be here real late. We're going to go ahead and dismiss this panel. We will submit our questions to you in writing. Then, when we come back, we will have our second panel.

Gentlemen, I'm sorry, you came down here, you prepared, I know you're all ready to give us what-for. But, circumstances moved against us.

Ms. Velazquez. Thank you, Mr. Chairman.

Dr. Graham, I have to tell you, I'm really quite disappointed in the work that you have done so far since we passed the Small Business Paperwork Relief Act. You come here today, you present a report, you provide to us a report. Two years later after we passed this law, you say that you have a long way to go. Just answering questions from the chairman, you say that you have delegated, basically, your responsibility to SBA and then to the Office of Advocacy to convene meetings. What message are we sending to small businesses which are suffering so much?

The Federal Register, that is the publication that lists all proposed and enacted regulations by agency, says that it increased to 75,000 in 2002, more than 1,000 pages above both the previous record set in 2000. And, it represents an annual regulatory burden nearly of $7,000 per employee, almost 60 percent higher than that of firms with 500 employees or more. This is all you have to present to us?

Mr. GRAHAM. Well, I'm pleased to report that we have achieved in this administration a sharp reduction in the growth of the Federal regulatory burden on the private sector and especially of small businesses, quantified in my testimony on the order of 70 percent, compared to the previous administration, and compared to the Bush 41 administration. It's a very unusual time for me to be criticized for having too many regulations out there, but we are in fact making substantial progress.

Ms. VELAZQUEZ. Regarding the Government Accountability Office study that pointed out that there were a number of good internet based ideas for regulatory management in using the Federal Government and State and local government, the report recommends that you meet with agencies to share information about best practices for putting information systems in place. It also said that OIRA should set up a system to discuss and share good ideas between agencies regularly. Did you ever do anything to implement those recommendations?

Mr. GRAHAM. In fact, the task force that was mandated by the law we're discussing had representation from a number of those agencies. They discussed alternative ways of implementing electronic approaches to burden reduction for small businesses and the Business Gateway initiative that I discussed in my oral testimony is the outcome of that activity.

Ms. VELAZQUEZ. Your participation with the task force?

Mr. GRAHAM. Absolutely. I'm co-chair of the task force. I'm sure the agencies will tell you they had just a few e-mails and phone calls from OMB during the last 2 years on this task force——

Ms. VELAZQUEZ. How many meetings?

Mr. GRAHAM [continuing]. Almost as many as Chairman Ose's staff had with these agencies?

Ms. VELAZQUEZ. How many meetings the task force has conducted, sir?

Mr. GRAHAM. There were, I believe two meetings in person in each of the first and second years.

Ms. VELAZQUEZ. In 2 years.

Mr. GRAHAM [continuing]. And a variety of conference calls and——

Ms. VELAZQUEZ. In 2 years? Thank you, Mr. Chairman.

Mr. OSE. The gentleman from Maryland? OK, we're going to go ahead and recess. Again, this will be two votes. Gentleman, thank you. We'll send our questions in writing. We appreciate your showing up. I apologize for the circumstances. We're in recess for 25 minutes.

[Recess.]

Mr. OSE. We will reconvene the hearing.

Our second panel is composed of three witnesses. We're pleased to be joined today by Mr. Joseph Acker, who is the President of the Synthetic Organic Chemical Manufacturers Association; Ms. Anita Drummond, who is the Director of Legal and Regulatory Affairs for Associated Builders and Contractors, Inc.; and by Mr. John DiFazio, who is the Assistant General Counsel for Legal, Regulatory and Scientific Affairs, at the Consumer Specialty Products Association.

As you saw in the first panel, we swear all of our witnesses in. So, if you would please rise.

[Witnesses sworn.]

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

Our first witness in the second panel, as I introduced them, is Mr. Joseph Acker. He is the president of the Synthetic Organic Chemical Manufacturers Association. Sir, we've received your testimony. It's been entered into the record. You're recognized for 5 minutes for summary.

STATEMENTS OF JOSEPH ACKER, PRESIDENT, SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION; ANITA DRUMMOND, DIRECTOR, LEGAL AND REGULATORY AFFAIRS, ASSOCIATED BUILDERS AND CONTRACTORS, INC.; AND JOHN DI-FAZIO, ASSISTANT GENERAL COUNSEL, CONSUMER SPECIALTY PRODUCTS ASSOCIATION

Mr. ACKER. Thank you. Mr. Chairman, members of the committee, I appreciate the invitation to speak with you today regarding paperwork burdens on small businesses, and in particular the Small Business Paperwork Relief Act of 2002. I am the President of the Synthetic Organic Chemical Manufacturers Association, or SOCMA, a trade association that represents specialty chemical manufacturers. Before becoming the President of SOCMA, I spent over 30 years in industry, most recently as the President and CEO of Danchem Technologies, Inc., in Danville, VA.

Many SOCMA member companies, by virtue of being small businesses, are at an inherent disadvantage. The Federal Government typically approaches regulations in a one size fits all manner, not

recognizing the differences between small and large businesses. Unlike larger companies in the highly regulated chemical industry, small businesses usually do not have the internal support mechanisms dedicated to regulatory compliance. Employees, especially those working in environment, safety and health, often wear multiple hats and have fewer resources than their counterparts in larger companies. These conditions make it more expensive and more difficult to understand and comply with the myriad Federal, State and local regulations that affect the chemical industry.

In my written testimony, I distinguish between two manufacturing process, batch processing and continuous processing. Batch processing does not utilize equipment dedicated to a specific product line, while continuous processing does. Batch processors are flexible and produce chemicals on customer demand. Consequently, a small batch company's product lines will fluctuate throughout the year and may include several hundred different products. Regulatory requirements associated with each product or process, therefore, add significant paperwork burdens to batch manufacturers, which tend to be smaller companies.

The point that I am trying to emphasize is that the size of the company versus the number of regulations is not a linear relationship. Consider my former company as an example to illustrate this point. Danchem Technologies is a single facility specialty batch manufacturer with approximately 100 employees, only one of whom is assigned full time to ensuring compliance with environment, safety and health regulations. This one facility is subject to more than 150 environmental regulatory conditions. Even more relevant to today's hearing is that the company is required to submit more than 38 reports relating to these regulations each year to Federal, State and local officials, and up to 100 reports if you include other regulatory requirements. This is an enormous and an unwieldy burden, and it is a significant drag on productivity.

I am particularly interested in discussing the concept of a single agency point of contact. We have had some experiences with the single contact concept, and I'd like to share some of the positives and negatives that we have observed. The Environmental Protection Agency serves as an excellent example here. EPA has a small business ombudsman that serves to facilitate communications between the small business community and EPA. The EPA ombudsman does serve a valuable role. But, as was stated in the task force report, the single point of contact concept has certain limitations. Because there are so many small business interests with very diverse characteristics, the ombudsman cannot effectively address every industry-specific concern. In this era of specialized regulations designed to address very specific problems, that becomes quite important.

SOCMA has also been involved with the Sector Strategies Division in EPA's Office of Policy, Economics and Innovation. Through this program, particular industries have been identified and assigned a staff contact who serves as the Agency's expert on that particular industry's sector of which specialty batch chemical manufacturing is one. This program has been very successful. Through the sector contact, we are connected to the agency staff who works on issues impacting our industry. Our contact is able to focus on

detailed issues and attends many intra-agency meetings, ensuring that she is kept well informed. Consequently, there is constant communication between SOCMA and relevant EPA staff.

One of the more frustrating burdens that I encountered during my time in industry is the numerous instances of overlapping jurisdiction and regulation by various agencies, both within the Federal Government and between the Federal, State and local authorities. The task force specifically recommended broadening and improving partnerships among agencies with similar or overlapping information requirements. These partnerships would play a valuable role in eliminating overlapping requirements among various agencies and between the Federal, State and local governments. This improved coordination would reduce the paperwork burden on the regulated community and promote increased collaboration among these agencies.

It would be great if EPA's sector program could be replicated in other agencies, then the various agency representatives for a particular sector could meet regularly and eliminate regulatory overlap and industry would still have a single point of contact specifically for its sector.

In closing, if regulators can take more time to learn about the industries they are regulating, and, if they reach out to interested parties as early as possible, then there will be opportunities to reduce burden and eliminate regulatory overlap. Thank you for your support and leadership in addressing a critical problem. We look forward to working with this committee and with any government official to try to reduce paperwork and other burdens. I'll be pleased to answer any questions.

[The prepared statement of Mr. Acker follows:]

Written Statement of
Joseph Acker
President
Synthetic Organic Chemical Manufacturers Association
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
July 20, 2004

Introduction

Mr. Chairman, members of the Committee, I appreciate the invitation to speak with you today regarding paperwork burdens on small businesses, and in particular the Small Business Paperwork Relief Act of 2002. I am the president of the Synthetic Organic Chemical Manufacturers Association, or SOCMA, a trade association that represents specialty chemical manufacturers. Our members have chemical manufacturing facilities across the United States, making raw materials and ingredients used in a wide array of products, including pharmaceuticals, agricultural products, food products, plastics, textiles, and more. SOCMA member companies are entrepreneurs in the truest sense of the word.

There are two common methods used to make chemicals: batch processing and continuous processing. SOCMA companies are mainly involved in batch processing, in which chemists mix discreet quantities of chemicals under very specific conditions to yield a desired compound. By contrast, continuous processes use constant, around-the-clock feeds of the reactant chemicals to yield a continuous stream of a desired substance, usually a commodity chemical bought and used in bulk. The batch process is completed on a relatively small scale and may require multiple steps. Batch processing allows manufacturers to produce highly functionalized and specialized chemicals using complex chemistry that is not amenable to continuous production. Another benefit of batch processing is that unlike other types of chemical companies, batch producers can make hundreds of different compounds in a single year.

SOCMA members make many of the specialized and technically-complex molecules that larger chemical companies use as key building blocks for their products. Approximately seventy per cent of our 280 members are small businesses as defined by the Small Business Administration. As small businesses operating in a very competitive economy, SOCMA members also bear a disproportionate share of regulatory requirements. The Paperwork Relief Act establishes significant steps towards reducing a

number of the burdens felt by the small business community. Ensuring the viability of small businesses is crucial to our economic growth. As Department of Commerce Secretary Evans said recently, small businesses create seventy percent of all new jobs.

SOCMA has always been actively involved in matters that affect small businesses. SOCMA staff regularly attend and present at Small Business Administration roundtables focusing on environmental and employee safety issues. SOCMA annually hosts a breakfast for the House Small Business Committee and representatives of the small business community. We support implementation of the Small Business Paperwork Relief Act of 2002 because it requires federal agencies to take steps not only to reduce paperwork burdens, but to address the burdens that fall on small businesses in particular.

The Problem Defined

I'd like to relate what I have said about the paperwork burden on small businesses by relating some of my own personal experiences. Before becoming the president of SOCMA, I spent over thirty years in industry, most recently as president and CEO of Danchem Technologies, a small custom chemical manufacturing company in Danville, VA. We made custom chemicals on a contract basis in addition to a line of textile chemicals. We had approximately twenty million dollars per year in sales, and employed just over 100 workers, many of whom were highly skilled and well-compensated. Having been in their shoes for much of my career, I clearly appreciate our members' concerns about the regulatory burden.

Our member companies, by virtue of being small businesses, are at an inherent disadvantage. Unlike many companies in our highly-regulated industry, they often have no support from a large corporate structure. In many cases the company, corporate offices and manufacturing processes, are at a single site. If they want legal or technical advice, they almost always have to hire outside assistance. Further, the plant employees, especially those working in environment, safety and health, will often wear multiple hats and will have fewer resources with which to work than will the larger companies. These conditions make it more expensive and more difficult to understand and comply with the many federal, state, and local regulations that apply to the chemical industry.

The reason I earlier highlighted the distinction between batch and continuous manufacturing is that batch manufacturers bear a special burden associated with their process flexibility. Batch manufacturing is a flexible industry – a company's customer base shifts regularly. Consequently, a company's product lines will fluctuate throughout the year, and may include dozens, or even hundreds, of different products. Regulatory requirements associated with each product or process, therefore, add significant paperwork burdens to batch manufacturing For example, under the Toxic Substances and Control Act (TSCA), SOCMA member companies will be more likely to file numerous inventory update reports than would a much larger company that focuses its manufacturing on the same few products year after year.

The point that I am trying to emphasize is that the size of the site versus number of applicable regulations is not a linear relationship. Consider again my former company as an example to illustrate this point. Danchem is a single-facility specialty-batch manufacturer with approximately 110 employees, only one of whom is assigned full-time to ensuring compliance with environment, safety and health regulations. This one facility is subject to more than 150 environmental regulatory conditions. Even more relevant to today's hearing is that the company is required to submit more than thirty-eight reports relating to these regulations each year to federal, state, and local officials. This is an enormous and unwieldy burden, and it is a significant drag on productivity.

Implementation of the Act

The Act establishes some positive initiatives that, as implemented, will improve agency coordination and communication, and will ultimately increase awareness of the problem of paperwork burden. There are several specific aspects of the Act and the recently released report of the Small Business Paperwork Relief Act Task Force that I would like to focus on for the remainder of my time.

I am particularly interested in the establishment of a single agency point of contact to act as a liaison between the agency and small business concerns, which is discussed in both the 2002 Act and in the Task Force report. We have had some experiences with the single-contact concept, and I'd like to share some of the positives and negatives that we have observed. The Environmental Protection Agency serves as an excellent example here. As I'm sure you are aware, EPA has a small business ombudsman that serves as a conduit between the small business community and EPA, a role very similar to what is described in the Act.

The EPA ombudsman has been very effective in disseminating information to a broad audience and in facilitating meetings between small business interests and Agency officials on key EPA initiatives. But, as was stated in recommendation four of the Task Force Report, the single-point-of-contact concept has certain limitations. Because there are so many small business interests with very diverse characteristics, the ombudsman has not been as effective at addressing industry-specific concerns. In this era of specialized regulations designed to address very specific problems, that becomes quite important.

SOCMA has also been involved with the Sector Strategies Division in EPA's Office of Policy, Economics, and Innovation. Through this program, particular industries have been identified and assigned a staff contact who serves as the Agency's "expert" on that particular industry sector. In that role, the contact works with program offices and with the industry sector representatives to open the lines of communication, and to ensure that the sector specific characteristics and concerns are addressed right from the beginning of the rulemaking process. Specialty batch chemical manufacturing is one of these sectors and has been since the program began. This has been a very positive experience for us so far. One of our biggest successes with the sector program was a joint workshop held in September 2002, which brought representatives of the specialty

batch chemical industry together with staff from several different offices within EPA, to educate them on our industry niche, the associated characteristics, and the special hurdles we face. It was clear that many agency staff members were unaware of the significant distinctions between specialty batch manufacturing and the continuous processes used at large commodity chemical manufacturers. Education is a key component of our advocacy, and to reach so many regulators at one time was an invaluable experience. That workshop has led to a number of other successful efforts.

For example, SOCMA just finished collaborating with the EPA on an Environmental Management System guidance for specialty batch manufacturing that will serve as an integral part of the Responsible Care Management System. These management systems foster continuous improvement in the processes and actions that a facility undertakes to meet its environmental, safety and health obligations. EPA also assembled a catalog of available voluntary programs that may be available to SOCMA members. In return, SOCMA provided EPA with valuable data on our sector and has helped make the rulemaking process more collaborative and less contentious. Not only are rule writers aware of our sector, but we are able to engage in the rulemaking process right from the start. This obviously goes far beyond the scope of paperwork reduction, but it demonstrates the real benefits that can be achieved by establishing these points of contact.

One of the more frustrating burdens that I encountered during my time in industry is the numerous instances of overlapping jurisdiction and regulation by various agencies, both within the federal government, and between the federal, state, and local authorities. This problem often arises when a company needs further information regarding its obligations and it is unclear which agency is responsible. I specifically remember instances of confusion on my staff regarding EPA regulations that seemed to overlap with those from Department of Transportation. Companies end up spending a lot of time and money trying to clarify the requirements and jurisdictional questions. These resources would be much better spent on research and development or newer equipment. Proposed laws such as HM-223, which will concede to local authorities Department of Transportation jurisdiction over segments of hazardous materials shipping, and will only add to the existing confusion. Even more frustrating is when a company is forced to report the same information in multiple reports to multiple regulators, a point I will return to momentarily.

The Small Business Paperwork Relief Act Task Force specifically recommended broadening and improving partnerships among agencies with similar or overlapping information requirements. These partnerships would play a valuable role in eliminating duplicative reporting and overlapping requirements among various agencies, and between the federal government and state and local governments. This improved coordination would substantially reduce the paperwork burden on the regulated community. It would also promote increased collaboration among these agencies. It would be great if EPA's sector program could be replicated in other agencies. Then, the various agency representatives for a particular sector could meet regularly and eliminate regulatory overlap.

One example where EPA has taken positive steps to assess the burden of regulation and relieve that burden is under the Resource Conservation and Recovery Act. In its burden reduction proposal, EPA has put forth some very good, albeit rather limited, initiatives to eliminate redundancy and extraneous reporting within the program. For example, this proposal would eliminate duplicative training requirements between OSHA and EPA. It would also eliminate the need to maintain non-essential records on employee training, it reduces record retention provisions for some records – very beneficial to sites with limited storage capacity, and it streamlines reporting requirement for several other provisions. This proposal is a positive step because EPA is reviewing and re-thinking old regulations to eliminate unnecessary requirements. SOCMA is encouraging EPA to finalize this rule, and we would also encourage similar reviews of other dated regulations.

Another of the Task Force's recommendations, simplifying and unifying electronic forms, is a good one, but any initiatives must be implemented with the small business user in mind. A cautionary tale might be found in EPA's attempts in a past proposed rule to reduce the paperwork burden by establishing voluntary procedures for electronic recordkeeping and reporting. Other problems aside, in order to make use of electronic recordkeeping and reporting, facilities would have to adhere to very demanding and, in many cases, infeasible computer hardware and software requirements. All records would have had to be maintained in a form that could not be altered without detection. There is no readily available commercial product that can achieve this. Records would have needed to include traceable audit trails, another difficult-to-find feature that is not available on programs currently in use. The technology requirements for reporting information to EPA was equally daunting. While this was intended to be a voluntary program, the point is that it is far from accessible to small businesses. In requiring sophisticated tracking and encryption capabilities, EPA priced a potentially large burden reduction opportunity right off the market for most small businesses. As another example, EPA is attempting to create a uniform hazardous waste manifest system that harmonizes current state and federal systems and eliminates extraneous data that is currently being collected. Again, technology and affordability concerns must be addressed in order to ensure widespread use among small businesses. The burden of regulation cannot be assessed on the basis of resources available at large multi-national companies. One size does not fit all.

Room for Improvement

Much has been done to help focus regulators' attention on the costs of new rules to small businesses through the Regulatory Flexibility Act, the Small Business Regulatory Enforcement and Fairness Act, and associated Executive Orders, but the applicability language in these rules require that a new rule "may have a significant economic impact on a substantial number of small entities ..." Undefined terms like "significant impact" and "substantial number" give the agencies a lot of leeway in applying RFA. Further, many new rules are tailored to address specific issues, and so the chances that a rule is going to have a significant impact or affect a substantial number of

entities is greatly reduced. This means that a number of rulemakings escape RFA scrutiny, even though, as demonstrated by the oft-cited Crain and Hopkins analysis, many of these rules will adversely affect small businesses in ways far greater than they would affect larger businesses in the same industry.

This study titled, "The Impact of Regulatory Costs on Small Firms", was sponsored by the Small Business Administration in 2001. It found that environmental and tax regulations in particular had disproportionate impacts on small businesses.[1] It also found that the gap between small and large firms in cost-per-employee of complying with these regulations is growing.

Another recent study prepared for the National Association of Manufacturers attempted to measure how costs of regulatory compliance affect the competitiveness of U.S. companies.[2] This study found that the total compliance burden, including environmental, economic, workplace, and tax compliance, amounted to a twelve percent excise tax on manufacturing production. Though it addressed costs beyond those associated with paperwork, this study is a reminder that we need to be cognizant of the impact that regulatory actions, which inevitably include paperwork requirements, have on the U.S. economy. One recommendation from the study was to implementing results-based regulations that allow manufacturers flexibility in determining how best to comply – a principle that SOCMA fully supports.

An additional area for improvement relates to what I was speaking about earlier. One phenomenon that we have come across is that when agencies are engaged in rulemaking and they opt to go on site visits to educate themselves about those that they intend to regulate, they will often visit the larger companies. This is not so surprising, as the larger companies are the ones with more recognizable names, they are more likely to have staff in Washington to work with the agencies on developing rulemakings, and they are the ones with more on-site resources to devote to hosting a visit from a regulator. The problem is that we often end up with a rule that addresses the particular concerns of larger companies, but consequently either does not address the distinct concerns of small businesses, or even ends up working against them.

Finally, an increase in resources allocated to compliance assistance would address numerous problems, paperwork reduction among them. SOCMA, like the majority of our members, is a small business. We have limited staff and financial resources that we can allocate toward providing compliance assistance. But increasingly complex and technical rules require examples and explanations to help the regulated community understand their obligations. Small businesses require compliance assistance, but, like anything else, assistance providers must keep their needs in mind. Too often the

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[1] W. Mark Crain and Thomas D. Hopkins, The Impact of Regulatory Costs on Small Firms, RFP No. SBAHQ-00-R-0027 (2001).

[2] Jeremy A. Leonard, How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness, prepared for The Manufacturing Institute of the National Association of Manufacturers (2003).

compliance assistance is longer than the rule, little help to an overworked environment, safety and health technician.

In closing, if regulators can take more time to learn about the industries they are regulating, and if they reach out to interested parties as early as possible, then there will be opportunities to reduce burden and eliminate regulatory overlap. Thank you for your support and leadership in addressing a critical problem. We look forward to working with this Committee and with any government official to try to reduce paperwork and other burdens.

I will be pleased to answer any questions you might have.

Mr. OSE. I thank the gentleman.

Our next witness is Ms. Anita Drummond, who is the Director of Legal and Regulatory Affairs for the Associated Builders and Contractors. Welcome, your statement has been entered into the record. You are recognized for 5 minutes to summarize.

Ms. DRUMMOND. Thank you, Mr. Chairman. I would like to keep my comments very straightforward and simple. In this process, I've been working on paperwork on basically this side of the table for 15 years. I've seen the agencies really in many ways have good intentions trying to eliminate paperwork burdens.

But, what it comes down to is there's no comprehensive, strategic way that the government evaluates paperwork. I think that this legislation was exactly on point with that intention, and the outcomes have not really reached the point that we would like. I have two main comments as a result of those reports and their efforts. One is that a business that's trying to identify all the laws that apply to them at a Federal level needs a mechanism to look at the government as a whole, some type of decision tree. I would believe that the act is an obvious beginning to that. What classification are they? How many employees do they have? What are their assets? What are their annual receipts—which is some legislation is the trigger—and, go through the series of questions, procurement. That would help identify what would apply to them.

The next question is how do we answer that question? The burden should really be on the Federal agencies. It's interesting, we've turned this on its head. We've said, businesses, you go out and figure out which laws apply to you. If you look at the bottom line intent of the Regulatory Flexibility Act, it was to identify if there was a significant impact on a substantial number of small businesses. If agencies had complied with that act to begin with, they would have this type of critical information. They would know which sectors it applies to, how large are those industries, what if we change the size of business that it applies to, how much is it going to cost. They have not done that. They have found every way possible not to answer those questions in a transparent manner. I believe that one of the first things they should do is go back and identify answers to questions such as those.

Then going forward, I think every time a regulatory flexibility analysis is completed, at the proposed rule stage, they have to put on the record in their analysis what that impact is based on those questions. That will drive what kind of policies they make. It will also drive what kind of compliance assistance fits.

The other outcome of that analysis is that, if the government did go back and answer these questions, you as policymakers would have a rational answer to the question you had earlier: why is it 25 employees, why is that the cutoff? Well, many times it's driven by statute. You look at the COBRA. Under COBRA, if you have 25 or more employees, you must provide continuous insurance after their termination or other critical events. There's new notice provisions that just came out from the Department of Labor. That type of thing is driven by statute in part and by the agency in part. It's a new paperwork requirement. If the Government took this seriously and did an analysis on that basis, you would have better answers to your questions.

The second part of the outcome of these OMB reports that's very disappointing is how to make the information better available. A very easy answer that the Federal Government has engaged in is, oh, it's up on our Web site. Someone's testimony indicated there is something like 40 million Government Web sites. That's astronomical to a business. I absolutely believe they need to seriously consider how businesses get their information. The most simple way to get information is to use the agency they always go to, which is their licensing agency. State governments, it depends on the State, some States you have to get a license, or you at least register with the State. I'm not calling for unfunded mandates. I'm talking about doing some type of partnership. If we had one central Web site, one single Web site, where you would have triggered a decision tree, that's all you would send them to. I look at the report, and as I said, I've been looking at this stuff for 15 years.

I'm overwhelmed by the number of Web sites that keep cropping up. Well, it's really Business.gov, no, it's really e-Regulations. No, it's really this. Which one is it? To the everyday business, they don't know which one to go to and which one to trust. So, if it was one central location that was driven by a decision tree, you could use one Web site, and Business.gov seems a logical one, where you would get partnerships with State governments, the agencies, and that's usually the Secretary of the Commonwealth in Virginia, for example, that licenses or registers a business and says, here's your registration and here's a Web site to find out what laws you have to comply with. The second is, they've completely ignored media. I don't mean just simply TV media. I mean Web site media. There's a whole world out there that businesses rely on, and they didn't even begin to crack that. That is the conclusion of my comments.

[The prepared statement of Ms. Drummond follows:]

Statement of Associated Builders and Contractors

U.S. House of Representatives

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

Committee on Small Business
Subcommittee on Regulatory Reform and Oversight

July 20, 2004

"Small Business Paperwork Relief Act of 2002"

The Voice of the Merit Shop

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Associated Builders and Contractors (ABC) would like to thank to Chairman Ose and Chairman Schrock for your invitation to submit ABC's views regarding progress on the "Small Business Paperwork Relief Act of 2002".

ABC is a national trade association representing 23,000 merit shop contractors, subcontractors, material suppliers and construction-related firms in 80 chapters throughout the United States and Guam. The association was started in 1950 when contractors gathered to form an association built on the shared belief that construction projects should be awarded based on merit, to the most qualified and responsible bidder. Their dedication to the merit shop philosophy spread rapidly; in 1970 only 30 percent of the nation's construction was performed by merit shop contractors, yet today merit shop contractors account for more than 75 percent of all construction across the country.

ABC's members and those in the construction industry are overwhelmingly small businesses. They face a plethora of rules that govern their business operations. Labor, procurement, environmental and tax laws are a short list that fails to show the long list of laws that apply to construction firms. The purpose of this testimony is to provide practical suggestions for the next steps to further the efforts of Office of Management and Budget. OMB has documented in a comprehensive way what businesses need to know and what information they can receive for federal purposes.

The reports from OMB generally address the resources available to small businesses to help them comply with laws. The listed published in the Federal Register shows those efforts of the federal government have sincere. However, the next steps should address these questions:

1) how do we determine which laws apply to which businesses in a useful manner?
2) how do we truly reach small businesses with that assistance?

Which Law Applies?

ABC recommends that the next step in achieving some relief for paperwork and providing compliance assistance is an investment of government time and resources into developing a decision-tree program, modeled on the Department of Labor's elaws. The Department's program provides businesses with a series of questions about their business (e.g., number of employee, whether they do government contracting, type of business, etc.) and provides a results page that guides them to the laws that apply to them. The site

goes further and gives businesses reference to state compliance assistance. A sample result is attached to this testimony.

To fully implement this program, the Small Business Regulatory Enforcement Fairness Act should be amended to require agencies to complete this analysis for the purposes of compliance at the time of a proposed and final rule as part of the Regulatory Flexibility Act, and for all existing rules within a given time, e.g. two years. If the agency does not know who must comply, how could a small business? Second

How Do Businesses Learn About Compliance Assistance?

Efforts to date have been very limited in reaching small businesses. While efforts of federal agencies to reach small businesses through trade associations is valuable, the government should consider make a much greater investment in reaching the everyday business owner.

Several tactics should be considered. General media has gone largely unused by the federal government. The Small Business Administration grants media awards each year to local and national media reporters that assist small businesses. The federal government, in a strategic manner, should seek out educating the larger group of media that serve this audience. This includes printer, radio, television and web-based media. Hit-and-miss media coverage by individual agency efforts is not effective is serving the greater needs of business: comprehensive information on the laws impacting their business. Distributing information on the eregulations and other pages would seem worthwhile to this audience.

A second tactic not used is local government. Businesses must maintain a license, usually issued on an annual basis. As result, the most direct route to businesses is through state and local licensing authorities. The federal government should seek out partnerships on a wide-range with these agencies to simply put a few key websites in the information sent by the governments.

ABC appreciates the opportunity to present its views on this important an essential issue, and we hope our practical ideas are helpful.

Mr. OSE. I thank the gentlelady for her comments. We'll come back with questions, I'm sure.

Our third witness is Mr. John DiFazio, who is the assistant general counsel for legal, regulatory and scientific affairs at the Consumer Specialty Products Association. Sir, you're certainly welcome here. Your written statement has been entered into the record. You're recognized for 5 minutes to summarize.

Mr. DIFAZIO. Thank you, and good afternoon. I welcome the opportunity to testify on behalf of the Consumer Specialty Products Association, now in our 90th year representing formulators, packagers and marketers of household and commercial consumer specialty products, such as cleaning products, disinfectants and polishes.

About one-third of our 240 member companies are small businesses. I'd like to discuss briefly some of our interactions with EPA on the toxics release inventory after I present our thoughts on the report of the Small Business Paperwork Relief Act Task Force, issued June 28th.

CSPA generally supports the primary recommendations described in the report's executive summary—specifically, improving the organization and classification of information, and providing a single Web point of access for relevant regulatory information on all Federal forms. Clearly, the 20,000 separate Federal Government home pages and 40 million Federal Government Web pages as of 4 years ago present a formidable burden for any business to process and function efficiently or effectively. We certainly agree with the issues identified by the SBA's Office of Advocacy earlier this year and cited in the report.

The report's vision of a Business Gateway is logical and feasible, building the infrastructure to provide useful regulatory information and compliance assistance tools in one place, while eliminating redundant data collection is an ambitious but worthwhile and ultimately achievable task. To allow small businesses to submit information common to multiple forums one time and have it re-used many times will increase productivity meaningfully.

The report properly notes the greater role that trade associations can play in assisting with classification of Federal information to improve accessibility. Along those lines, CSPA strongly supports the cross agency approach to outreach discussed in the report, as well as the determination of ways that associations can become viable and trusted collection and dissemination points. Unfortunately, the report misses the opportunity to facilitate the growth or association membership and thus expedite those processes. Thus, an addendum to this report addressing the specific topic of promoting association growth certainly would be appropriate.

Further, the report focuses on only a portion of the problem: how to get information efficiently from the Federal Government. It fails to ask the fundamental question, does each Federal agency really need to collect all the information it does? To that end, we recommend that your committees investigate ways of putting each Federal regulatory agency on notice to reduce unnecessary paperwork.

EPA's implementation of the toxics release inventory is a prime example of unnecessary burden. CSPA has been working to allevi-

ate unnecessary TRI reporting burdens since 1992. Though we achieved some success with the promulgation of the Form A in 1994, the doubling of the list of TRI chemicals and the subsequent facility expansion served to nearly double the overall TRI reporting burden from 4.9 million hours in 1992 to 9.5 million hours in 2000.

Compounding the predicament are the numerous State and local piggyback requirements, taxes, fees, pollution prevention plans and the like imposed on Form R submissions, no matter how insubstantial the releases in all or part of 37 States, which neither EPA nor OMB takes into account when determining the financial impact of TRI reporting. CSPA has filed comments with both EPA and OMB on each of the five subsequent TRI information collection requests and watched as OMB established meaningful terms of clearance only to have them in large part ignored by EPA and unenforced by OMB.

Despite 10 public comment periods on the five ICRs in the past 8 years, EPA chose to create two online dialogs over the past 2 years on possible burden reduction scenarios. We are not expecting a proposed regulation on TRI burden reduction until next year, and have been advised by EPA staff it will likely be 18 months from proposal until a final rule is promulgated. Thus, under the present scenario the regulated community, including the small businesses that desperately need relief would see no burden reduction until reporting in 2007. In addition, we have no assurances that any burden reduction would be meaningful.

Furthermore, EPA's current enforcement practice of finding a violation when a Form A was filed in good faith, although upon further review a Form R should have been submitted, has discouraged use of the Form A. Utilization of the Form A has decreased in each of the last 4 years for which data are available. Ending this enforcement practice likely would reverse that trend.

CSPA commends your leadership in tackling these matters that too often go unrecognized by those with the authority to remedy them. We support your efforts to remove unnecessary barriers to improving productivity and growing the economy, while maintaining corporate accountability and data integrity.

Thank you.

[The prepared statement of Mr. DiFazio follows:]

TESTIMONY OF JOHN DiFAZIO
ASSISTANT GENERAL COUNSEL

ON BEHALF OF

BEFORE A JOINT HEARING ON

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

BY THE SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS
OF THE HOUSE GOVERNMENT REFORM COMMITTEE

AND

THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
OF THE HOUSE SMALL BUSINESS COMMITTEE

JULY 20, 2004

Good afternoon, Chairmen, Ranking Members, and members of the Subcommittees. I welcome the opportunity to testify on behalf of the Consumer Specialty Products Association (CSPA), now in our 90th year representing formulators, packagers, and marketers of household and commercial consumer-specialty products. Our 240 member companies -- one-third of which are small businesses -- are organized into seven divisions: aerosol products; air care products; antimicrobial products; automotive and industrial products; cleaning products; pest management products; and polishes and floor maintenance products.

Though we interact frequently with several federal agencies and an increasing number of state agencies, most of our dealings are with the United States Environmental Protection Agency (EPA) and the United States Consumer Product Safety Commission (CPSC), the primary regulators of our members' products. I would like to discuss briefly some of our interactions with them after I present our thoughts on the *Report of the Small Business Paperwork Relief Act Task Force (Report)* issued June 28 and related documents.

SBPRA Task Force Final Report

CSPA generally approves of and supports the primary findings described in the executive summary:

- improving the organization and classification of information and establishing a partnership between agencies and the small business community
- providing a single web point of access for relevant regulatory information on all federal forms and harmonizing industry-specific information collection requirements.

Clearly, the 20 thousand separate federal-government homepages and 40 million federal-government web pages (as of four years ago) present a formidable burden for businesses to process and function efficiently or effectively. We certainly agree with the following issues identified by the SBA's Office of Advocacy earlier this year and cited in the *Report* (p. 7):

- Federal agency web sites need to be customer-centric and organized by topic area
- There needs to be a single source for federal information
- Federal-government information must be made search-engine friendly
- There needs to be a contact person or hotline to assist in obtaining information
- Web-site information should indicate date of preparation or posting

The *Report's* vision of a Business Gateway is logical and feasible (p. 16). Building the infrastructure to provide useful regulatory information and compliance-assistance tools in one place while eliminating redundant data collection is an ambitious but worthwhile and ultimately achievable task. To allow small businesses to submit information common to multiple forms one time and have it reused many times will increase productivity meaningfully. We await the results this fall of the pilot programs with

hopeful anticipation. We trust, however, that these efforts will be closely managed and adequately funded.

The *Report* properly notes the greater role that trade associations can play in assisting with classification of federal information to improve its accessibility (p. 12). Along those lines, CSPA strongly supports the cross-agency approach to outreach discussed in the *Report* (p. 13), as well as the determination of ways that associations can become viable and trusted collection and dissemination points (p. 15).

Unfortunately, the *Report* misses the opportunity to facilitate the growth in association membership and thus expedite those processes. CSPA posts important information on both the public and members-only sections of our web site. We email biweekly an electronic newsletter to all of our members. We have maintained minimum dues for our smallest members at the same level for several years. CSPA provides insurance through a risk-retention group, in which many of our smaller member companies participate. Through our product stewardship efforts, we have developed a voluntary code of management practice entitled Product Care[sm] that provides our member companies, including our smaller ones, a framework of guidelines for developing, manufacturing, distributing and marketing products. A few years ago we reinvigorated our Small Business Resource Council, a committee required under our bylaws, and have had two small-business champions -- the EPA Small Business Ombudsman (SBO) and counsel from the SBA Office of Advocacy -- among others, address that group on critical issues. Thus, an addendum to this *Report* addressing the specific topic of promoting association growth certainly would be appropriate and productive.

Further, the *Report* focuses on only a portion of the problem: how to get information efficiently from the federal government. It fails to ask the fundamental question: does each federal agency really need to collect all the information that it does? Will a significant number of citizens be disadvantaged in any meaningful way if each agency collected half the data it currently does?

To that end, we recommend that your committees investigate ways of putting each federal regulatory agency on notice to reduce unnecessary paperwork and instead to foster productivity.

Previous Testimony

CSPA takes note of especially pertinent testimony at your previous hearings on this matter. A year ago Senator Voinovich cited the staggering costs of federal paperwork requirements -- more than 7 billion hours and nearly $200 billion annually -- in urging expeditious consolidation of all reporting into a single format using a single electronic reporting system. We agree with the Committees' Chairmen that OMB's notion to place 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 is not in the best interests of such firms.

Earlier this year Dr. Graham noted that the Small Business Paperwork Relief Act (the Act) required agencies to make efforts to further reduce the information collection burden for small businesses with fewer than 25 employees. Though OMB did send a bulletin to agencies last December merely requesting information on such initiatives, a more aggressive posture is needed. CSPA recommends that OMB initiate a one-year suspension of all federal-agency reporting requirements, excluding tax-related items, for businesses with fewer than 25 employees, unless such reporting is required by law. Concurrently, we would ask Congress to legislate that change where necessary.

CSPA concurs with the NFIB testimony of last January in its emphasis on simplicity in instructions and requirements and reduction in the amount of paperwork and completion time. We also agree that unnecessary federal regulation and paperwork burdens discriminate against small businesses, as the NSBA asserted in January. One of NSBA's solutions -- additional staff in OIRA dedicated to facilitating agencies' reduction of paperwork burden on small businesses -- is a small but meaningful and immediate step that can be taken.

EPA's Toxics Release Inventory

EPA's well-meaning but fundamentally flawed implementation of the Toxics Release Inventory (TRI) is a prime example of unnecessary burden. CSPA is aware that several of those who have testified previously -- especially NFIB -- have addressed this program, but we feel compelled to make some additional points as evidence of federal failures in burden reduction.

CSPA has been working to alleviate unnecessary TRI-reporting and related burdens since 1992, when we co-founded a 24-association small-business coalition in support of an SBA petition to EPA for a low-release exemption from TRI reporting. Though we achieved a modicum of success with promulgation of the Form A in 1994, the concomitant doubling of the list of TRI chemicals and subsequent facility expansion served to nearly double the overall TRI-reporting burden --from 4.9 million hours in 1992 to 9.5 million hours in 2000 -- according to EPA's own estimates four years ago. The agency has since backed away from its own numbers. Compounding the predicament are the numerous state and local "piggyback" requirements -- taxes, fees, pollution-prevention plans, and the like -- imposed on Form R submissions, no matter how insubstantial the releases, in all or part of 37 states at last report, which neither EPA nor OMB take into account when determining the financial impact of TRI reporting.

CSPA has filed comments with both EPA and OMB on each of the five subsequent TRI Information Collection Requests (ICRs) and watched as OMB established meaningful terms of clearance, only to have them ignored by EPA and unenforced by OMB. Despite 10 public-comment periods on the five ICRs in the past eight years, EPA chose to create two on-line dialogues over the past two years on possible burden-reduction scenarios. We are not expecting a proposed regulation on TRI burden reduction until next year and have been advised by EPA staff that it will likely be 18 months from proposal until a final rule is promulgated, despite the fact that it took EPA only half that

time from proposal to promulgation in 1994. Thus, under the present scenario, the regulated community -- including the small businesses that desperately need relief -- would see no burden reduction until reporting in 2007.

In addition, we have absolutely no assurance that any burden reduction will be meaningful. Unless the threshold for the annual reportable amount (ARA) is raised from 500 to 5,000 pounds and serious consideration is given to excluding amounts dedicated to recycling and/or energy recovery, CSPA member companies will derive little benefit. Such a change would significantly reduce burden while also maintaining data integrity. As we have advised EPA, based on the agency's data, current Form A use still results in TRI reporting of 99.995 percent of total waste generated and 99.94 percent of releases. Increasing the ARA from 500 to 5,000 pounds would capture about 99.9 percent of total waste generated and 99.7 percent of releases. Increasing the ARA to 5,000 pounds and excluding data elements related to recycling and energy recovery from its calculation, which would provide additional incentive for those environmentally beneficial practices, still would require reporting of more than 90 percent of total waste generated and 99.5 percent of releases

Furthermore, EPA's current enforcement practice of finding a violation when a Form A was filed in good faith although, upon further review, a Form R should have been submitted has discouraged use of the Form A. According to EPA figures, utilization of the Form A has decreased in each of the last four years for which data are available. Ending this enforcement practice would reverse that trend.

Consumer Product Safety Commission

Under its current chairman, CPSC has been proactive in personally addressing our committees, our Board, and our general membership on issues of importance to our companies and their customers. CPSC is publicly supportive of Product Care, as one non-regulatory means of assuring continual improvement in our members' products and procedures. CPSC has established a centralized web site for recalls -- www.recalls.gov -- which CSPA supports and links to, as a service to consumers. Although it operates under a different legislative structure, CPSC has been cognizant of our member companies' resources and responsibilities.

Conclusion

CSPA commends your leadership in tackling these matters that too often go unrecognized by those with the authority to remedy them. We support your efforts to remove unnecessary barriers to improving productivity and growing the economy, while maintaining corporate accountability and data integrity.

Mr. OSE. I thank the gentleman for his testimony.

Mr. Schrock, would you like to proceed first?

Mr. SCHROCK. Thank you, Mr. Chairman, and thank you all for being here, Mr. Acker, Mr. DiFazio, thank you for your first time visits. And, we've seen Anita Drummond several times and are glad to have her back.

I think two of you said it best when you said 20,000 separate Federal Government home pages and 40 million Federal Government Web pages. How any business big or small could deal with any of that is a mystery to me. We'll be creating acts here one of these days to reduce those as well, because it's just absolutely out of control.

If I had had an opportunity to ask Dr. Graham a question, I was going to ask him, and I'd like all of you to comment on it, if I put each of you in a position of responsibility and said, eliminate $50 billion in regulatory compliance costs and 1 billion hours per year of paperwork, what would you do? That's a loaded question, I guess.

Mr. DIFAZIO. Who are you asking? Any of us?

Mr. SCHROCK. All of you.

Mr. DIFAZIO. I really think each agency should take a good hard look at what they really need as far as data collection. I think they can cut reporting requirements in half quite easily. Too often they're unsure of the congressional direction, so they ask for three times as much as what they really need to accomplish congressional intent.

Even in the Form A, for example, it only requires 17 reporting data elements for the report. I looked at it said, you can do this in nine. So, even the short forms can be reduced in half in our opinion.

Mr. SCHROCK. It's amazing, I think you hit the nail on the head. They interpret the way they want to interpret it. We think we're doing one thing and they go out and interpret and say, well, this is the way we've interpreted what you said, and I don't know how you come to grips with that. Maybe we don't speak in plain English up here. In fact, most times we don't.

Mr. DIFAZIO. Perhaps the Government Accountability Office should be let loose maybe a little bit more often to check on that.

Mr. SCHROCK. Yes. Mr. Acker.

Mr. ACKER. Mr. Congressman, until rules are simplified and redundancies eliminated, there will be no reduction. At the company that I ran, we had one professional, and he spent three to 4 hours every day keeping regulatory paperwork up to date. You have to go back and you have to eliminate the redundancies in every agency, and every agency has to work on it.

The problem is that the industry, small businesses are so diverse that I really believe that the sector approach is essential to attacking this problem. The issues that the chemical industry deals with are not the same issues that the transportation industry deals with, they're not the same issues that the mining industry deals with. I think you have to, you have to approach this by sectors and by the individual agencies.

Mr. SCHROCK. As you probably know, I think there's a move afoot to try to even regulate more the chemicals industry based on some

of the things I've heard over the weekend. I was watching a TV show with one of our Congressman, and the last thing they need to do is that. That just makes a bad problem even worse.

You came from Danville to here?

Mr. ACKER. Yes, Danville. I've been in Washington a little over a year.

Mr. SCHROCK. You have sacrificed greatly to come from Danville to here. You are to be admired, believe me. Danville's great.

Mr. ACKER. Well, I found it amusing today when I came, this is my first opportunity to speak before the subcommittee, and it happened to be on one paperwork reduction. I had to bring 100 copies of my testimony. [Laughter.]

Mr. SCHROCK. Shot well deserved.

Ms. Drummond.

Ms. DRUMMOND. I would say that, I would not single out any particular rules as much as the process of doing a full scale analysis, which is what you've asked OMB to really do. Because you may find the duplications, I would reiterate the comments about EPA and DOT's overlaps, particularly.

But, even in Department of Labor, there's a lot of various elements picking up different information. The compliance office is also doing the same thing as the Solicitor under its responsibility of Davis Bacon Act and the Service Contracts Act. So there is a lot of room to consolidate information.

I do want to say one thing about information collection that I support, and that is the business census that's done. The business census, a lot of businesses grumble, why do I have to complete this information. It's some of the best information we get about the size of business by receipts, payroll, employees, that can guide Congress and agencies about what the makeup of businesses really are. That's also true to some extent of the Bureau of Labor Statistics.

So, that's one piece of information, which as collected, is a burden, but it's limited.

There's one other thing on information collection. The way the system currently works, when there's a proposed rule, the information request comment period does not coincide with the proposed rule. OMB goes out separately. As a result, you get very limited comments. It is a bifurcated system. I've never understood why OMB interpreted it that way. I think it would make a lot more sense to do information collection analysis at the same time as you're doing proposed rule analysis.

Mr. SCHROCK. Thank you. Thank you, Mr. Chairman.

Mr. OSE. I want to touch on a couple of things. Have any of you gone to the Business Gateway that Dr. Graham was talking about? Mr. Acker, no. Ms. Drummond?

Ms. DRUMMOND. I've gone to it, but I have to say I did it in anticipation of the last meeting that we had with the task group. It was up at that time, and it was my understanding, that's my recollection, and we looked at the paperwork. It's overwhelming. At the time it was, the paperwork was overwhelming, on how much you had to go through and sort through and identify what was required of you.

Mr. OSE. So it's really not, the bumps or curves have not been leveled out here in terms of making it flow easily?

Ms. DRUMMOND. It didn't at that time, and that would have been in, before the last report was issued.

Mr. OSE. Like 3 or 4 months?

Ms. DRUMMOND. Right.

Mr. OSE. Mr. DiFazio, have you been on it?

Mr. DIFAZIO. I have not, no.

Mr. OSE. OK. In your everyday dealings, either yourself or your membership, have you experienced any reductions in paperwork burden by the Bush administration? What I'm referring to is, I know that it's either proposed or it's already been done, is that the quarterly reporting for payroll deductions? If you're aggregated below $2,500, I think, you don't have to do it except for on an annual basis. Have you seen any such things of that nature come through to affect either yourselves or your members? Mr. Acker.

Mr. ACKER. Mr. Chairman, unfortunately very little. But I would say, in our industry, the EPA and OSHA probably issue more regulations than any other agency. There are numerous rules that should be revisited. There are rules that have been proposed that would reduce paperwork significantly, but they have yet to be finalized. That's the RCRA burden reduction proposal and the hazardous waste generator initiative. Those are two examples of rules that would significantly reduce paperwork for small businesses that need to be finalized.

Mr. OSE. Those are pending now?

Mr. ACKER. They are pending now.

Mr. OSE. All right. Ms. Drummond.

Ms. DRUMMOND. I can't think of any off the top of my head, to be honest. In fact, for OSHA, I hate beating up on OSHA, because they're not always comfortable with it, but right now they have, what is it, six, seven new proposed rules that we're dealing with instead of less rules. The list is long and they're very busy. Many of those rules will, in fact, have new paperwork requirements.

Hexavalent chromium, which is driven by the courts, still has provisions within it for medical monitoring. Silica is expected to have medical monitoring. Beryllium is supposed to have medical monitoring. And, these are very paperwork intensive and not necessarily a good connection between the risks that are identified through the paperwork and that which they are trying to supposedly solve. So, OSHA, I would say is one that we hear a lot about. And, mostly that's driven by health standards versus safety standards.

Mr. OSE. Mr. DiFazio, how about your members?

Mr. DIFAZIO. Nothing as of yet. Earlier this year, Congress passed the Pesticide Registration Improvement Act. Some of our members make pesticide products. EPA has not had the opportunity to implement any of those provisions yet. We're hopeful by the end of this year perhaps we'll see some burden reduction in that area, but nothing as of yet.

Mr. OSE. Mr. Acker, you suggested that, a couple places for improvement in terms of the rulemaking. In fact, you cited two pending rules that need to be finalized. Are there others, in addition to those, that you would cite?

Mr. ACKER. I'm sure there are, and I would like to get back to you.

Mr. OSE. All right. We'll put a question to you accordingly.

Ms. Drummond, other than OSHA and the six or seven that you say are pending, are there specific ones that come to mind?

Ms. DRUMMOND. No. To be honest, that's probably been the most active, none that are really, there has been a slowdown.

Mr. OSE. In terms of the?

Ms. DRUMMOND. Increased rate.

Mr. OSE. Rate of increase has fallen?

Ms. DRUMMOND. New paperwork. In our industry, you have to consider that we're an industry that's pretty stable in terms of its operating systems. There's not such a dynamic change that there are new paperwork requirements that they think of.

However, the largest portion of things that change tend to be occupational regulations, safety regulations. So it's the dynamic of our industry.

Mr. OSE. Mr. DiFazio, anything you want to add?

Mr. DIFAZIO. No.

Mr. OSE. The gentleman from Virginia.

Mr. SCHROCK. Thank you, Mr. Chairman.

Mr. Acker, you cited an interesting problem. I'm glad regulators are actually doing a good job in visiting facilities that regulations will affect. But, how do we get these same regulators to visit small facilities, small business facilities where regulations have a far more negative impact than on others? How do we get them to do that?

Mr. ACKER. Congressman, I believe that it has to start with an awareness from the agencies and then working through trade associations. At Danchem, we actually had the EPA, about 10 people from the EPA, come and visit the site and learn about batch chemical manufacturing. That was the first time they had ever been in a small chemical facility. It was a real learning experience for them, as well as for us. There are a lot of hurdles to get over when you do this.

My vice president of manufacturing said to me, Joe, I can't believe you actually invited the EPA to come in to visit. He was astonished. But, it's something that I think businesses are very willing to do. I think they are more open to it than they have been in the past. And, I think the agencies have to become more aware that they have small businesses that they need to pay attention to as well.

Mr. SCHROCK. Do you think there's a reluctance on the part of small business to do what you did, invite people in?

Mr. ACKER. I believe in the past there was. Because——

Mr. SCHROCK. Fear?

Mr. ACKER. Absolutely. Whenever you invited government, whenever a government agency shows up at your door, it's usually not good news.

Mr. SCHROCK. It's not a good day.

Mr. ACKER. But, as I said, I really think that the chemical industry has done a lot of work to move beyond that, and a lot of credit I give to the EPA and other agencies in being proactive.

Mr. SCHROCK. Good. Ms. Drummond, you mentioned the success of the Department of Labor's e-Laws site. Do you know how much

time or what resources were required to produce it and whether it would be easy to duplicate in other agencies or government-wide?

Ms. DRUMMOND. I am not naive to believe it would be easy. But, I do believe it's their responsibility. The Department of Labor spent, I would say, a good 12 months trying to find out the common elements, and that's not an official number, obviously, I'm not a representative for them. But, to find the common elements among all the statutes and regulations. That is an important thing, you need to know what questions you need to ask. That will make it very difficult, Federal-wide.

But, I do believe that they should, agencies should be able to identify what are the triggers for their law to cover a business, and using different types, I was using an OSHA regulation that covers the manufacture, exposure of a chemical. But, a business that's of a certain size doesn't have to comply for 3 years after those of a larger size. I mean, those are the kinds of questions that are nuances that the agency needs to understand, this law doesn't apply to you today, but it will in 3 years.

So, that process is time consuming. But, I think, if they had been doing it right to begin with, they would have this information available.

Mr. SCHROCK. Clearly, Department of Labor was the first agency to do this. They were the ground breakers, they were breaking new ground. But, couldn't other agencies or government-wide entities use that as a template from which to create their own, which would cut the time line down dramatically and benefit everybody?

Ms. DRUMMOND. Absolutely, yes.

Mr. SCHROCK. I wonder why they won't do that.

Ms. DRUMMOND. Well, agencies tend to be silos. Or, let me say this, departments tend to be silos. The Department of Labor has cut across those silos and made all their agencies talk the same language, at least to an extent. It's a first step. I would not say that necessarily happens, say, at the Department of Transportation, where you have, they regulate all types of industries. But, that does not mean a particular agency, excuse me, industry, is not regulated by a number of agencies.

So, I would say Department of Transportation would be a next good goal, because they do have good information on their programs. Both to break it down and find common elements among them.

Mr. SCHROCK. OK, thank you, Mr. Chairman. I yield back.

Mr. OSE. Ms. Drummond, you talked about a number of members you said, I think you said 240, of which one-third were smaller. I don't remember exactly.

Ms. DRUMMOND. Most construction firms, outside of ABC even, most construction firms are small. What do we mean by small? Even less than 20 employees. We're talking about 85 percent of the industry.

Mr. OSE. I'm trying to figure out, you heard me ask Dr. Graham about the threshold of fewer than 25, what the impact would be if it was fewer than 35 or fewer than 50?

Ms. DRUMMOND. Right.

Mr. OSE. One way to reduce paperwork is to raise the threshold below which you don't have to report.

If 85 percent of your members are 20 or fewer, that's really not going to have a big bang in terms of the construction industry.

Ms. DRUMMOND. Right.

Mr. OSE. Mr. Acker, I'm wondering over on your side of things whether or not that threshold issue would have a huge impact?

Mr. ACKER. That would have a very large impact. It was interesting to note that the threshold for GSA was $10 million, for OMB it was 25 employees. In the chemical industry, a company with revenues of $10 million would probably have 100 employees, or I'm sorry, would probably have around 50 employees. Danchem was a $20 million business and we had about 100 employees. It sort of goes that way.

So, that's just an example.

Mr. OSE. Mr. DiFazio, how about over in your area?

Mr. DIFAZIO. Yes, unfortunately with EPA, which is a large regulator of our members, a lot of times, statute by statute the thresholds are different. So, a company needs to pick and choose where on the continuum they are as to exactly which regulations they need to follow. At TRI it's 10 employees or more, you're subject to reporting.

Mr. OSE. But is that statutory or regulatory?

Mr. DIFAZIO. Statutory.

Mr. OSE. It's specified in the law?

Mr. DIFAZIO. Yes.

Mr. OSE. Ten or more. OK.

Mr. DIFAZIO. So, not only does each regulatory agency have to take a look at that, but the Congress also needs to look at the thresholds for each of the statutes.

Mr. OSE. Mr. Acker, is this the linear relationship, you said, if I recall correctly that there wasn't necessarily a linear relationship between size and reporting requirements?

Mr. ACKER. That's true, particularly in environmental and safety regulations. You have to fill out the paperwork, you have to send in the reports regardless of the size of your business.

Mr. OSE. Give me an example. I want to make sure I understand your comment about a lack of a linear relationship.

Mr. ACKER. The TSCA reporting, as an example, regardless of the size of your company, if you have certain chemicals that you're using, you have to report that to the EPA. OSHA, as an example, you have to fill out your form 200 reports for OSHA. The size of the company is not an issue.

Mr. OSE. Because it's one or more employees is basically the threshold?

Mr. ACKER. Yes. That's correct.

Mr. OSE. You also talked about a regulatory overlap. I presume that means that information you've submitted to one agency is also requested by a second agency?

Mr. ACKER. That's correct.

Mr. OSE. Give me an example of that and how we might go about streamlining that.

Mr. ACKER. My experience has dealt with regulations between EPA and the DOT. It takes a lot of time for companies just to determine jurisdiction and in some areas you have to submit duplicate reports. I can get you specific examples. I don't know right off.

Mr. OSE. All right. Mr. DiFazio, do your members have a similar situation?

Mr. DIFAZIO. Yes, they do.

Mr. OSE. From a regulatory standpoint, they're making substantially or at least significantly the same report to one agency as to the next?

Mr. DIFAZIO. Oftentimes even within a single agency, for example, EPA requires a lot of the same information on TSCA reports and TRI reporting, for example.

Mr. OSE. What is the impediment to making one report out of two? It would seem to me that if——

Mr. DIFAZIO. Data entered into completely separate systems. They can't talk to each other, so the information is maintained separately by each office within an agency.

Mr. OSE. It's a piece of paper as opposed to an electronic form?

Mr. DIFAZIO. They're switching more and more to electronic reporting. But, there are still issues with sharing information.

Mr. OSE. Ms. Drummond, you talked about periodic information collection budget requirements versus analyses of rules. How do rules get proposed that are not necessarily aligned with what's being asked for in terms of the information collection budget?

Ms. DRUMMOND. What occurs is, when an agency proposes a rule, they at the same time publish a regulatory flexibility analysis. They maybe in that rule, they explain there's going to be an information collection. Once that occurs, it goes to OMB. OMB does a second notice saying, we have an information collection request, meaning an agency is asking to collect this information or asking for a business to collect information from a third party.

In that process, they separate out information collection and that analysis is often missed in the comment period, because the agency hasn't gone through in its own analysis, it hasn't conferred with OMB at the early stages about what the real costs are, how many hours it's going to take, how much of the cost is going to be associated with it, how many businesses are going to be affected by it. That information collection request analysis by OMB occurs after the rule is essentially finalized. It's a very convoluted process.

Mr. OSE. That seems backward.

Ms. DRUMMOND. It is. It is backward.

Mr. OSE. Is that continuum, is that sort of defined by statute?

Ms. DRUMMOND. When the statute was written for the Paperwork Reduction Act, there was a lot of debate within interagency about exactly what the time line would be when this information collection request approval would occur. The information collection approval is occurring after the rule is finalized. It goes to OMB to finalize.

But, it seems logical that information collection approval process could occur at the time the rule is proposed, or at least information specific to that approval gets published at the same time. So, the public is not in the position of having to comment, a second time when OMB puts this notice out, without reference to what might have been said during the proposed rule stage. OMB comes later in approving the information.

But, what the criteria is and what OMB puts out should be done. OMB should do the work sooner, so the proposed comment rule pe-

riod, they can comment on that. It is statutory and it is convoluted. But, there are ways the agency could do a better job so that OMB's process isn't a novice process; it's already been discussed in the public record.

Mr. OSE. I want to ask each of you this question in turn. Mr. Acker testified, in his written testimony stated, too often compliance assistance is longer than the rule. That's on page 12 of your testimony. I'm a little bit curious about your respective views of agency compliance resources and performance.

Mr. DiFazio, have those been helpful, intrusive or otherwise a means of backdoor enforcement?

Mr. DIFAZIO. I think the intentions are good. But again, you start with the legislation, which is fairly narrow, fairly focused, it starts expanding with the regulation and the preamble to the regulation which contains extra legal information. Then, you get into guidance documents and compliance assistance. You really don't know where on the continuum you are. Again, if the agencies focus on just gathering what they needed when they first come out with the regulation implementing the legislation, I think there would be less need for guidance documents and less need for compliance assistance.

Mr. OSE. Are you saying there's mission creep on this stuff?

Mr. ACKER. Well put, yes.

Mr. OSE. Or information creep? Maybe that's better.

Mr. ACKER. Both.

Mr. OSE. Ms. Drummond, do you agree with that?

Ms. DRUMMOND. My answer would be, it depends. If the statutes are very clear, then the regulations should be clear and self-evident. On the other hand, there are times when the agencies read ambiguities into the statute and, therefore, have had to expand upon it. The ambiguity in and of itself might be as simple as the OSH Act, it is a pretty open-ended regulation, to regulate safety and health.

So, as a result, there's this tremendous leeway to try to explain what they want, even if the regulation says, well, you need to regulate beryllium. But, what if beryllium, how do you do that, what are some of the measures? That's one instance of the compliance, it can get way out of hand because it wasn't straightforward to begin with.

Interestingly, OSHA has just spent a tremendous amount of time developing a draft guidance document on hazardous communications. The actual regulation in column form, I looked it up, it's about 20 pages long, that addresses hazard communication. But, the compliance document, which did include a lot of Power Point presentations for your employees and so forth, was close to 200 pages long.

So, the compliance got out of hand. The intent was good, but the compliance is a little out of hand. Assistant Secretary Henshaw has decided to pull back and try to identify a more effective way to help businesses with that.

But, another compliance assistance problem is, when an agency goes about regulating things that are not in the regulation by form of advice. OSHA has proceeded to develop ergonomic guidelines. Those guidelines are a measure of trying to say, our general duty

clause, we couldn't get an ergonomics regulation, and our general duty clause, which is a vague regulation, which is open-ended, allows us to regulate this. As a result, we're going to give you compliance assistance. But, they don't call it that. They call it guidance.

As a result, the compliance assistance is larger than the regulation, because the regulation is about one paragraph long.

Mr. OSE. Your members are aware that guidance is not binding?

Ms. DRUMMOND. We are aware of that. But, the reality of it is that the compliance officer walks in, and I would say that we are probably not the industry that's targeted as those that have more repetitive elements, such as the poultry industry, the nursing industry, those industries where they have repetitive motions. They are the ones that are getting cited. You can see the citations that are ergonomics. The way the agency is trying to say, hey, if you don't want to get cited under the general duty clause, use these guidance documents.

Mr. OSE. Mr. Acker, is that what you're referring to as the nightmare that Ms. Drummond has highlighted for us?

Mr. ACKER. Yes, it is. I would say that mission creep is an excellent example.

I would also add another example, the MTSA, the Marine Transportation Safety Act that was passed I believe at the end of last year. The guidance documents for that, which are extensive, came out after you had to be in compliance with the regulation. So, obviously, that was not very helpful.

The only other point I would make is that, and folks have said it before, the clarity of the regulations is very important. These agencies have to work with industry at the beginning so that these things can be understood and be simplified and clarified.

Mr. OSE. The gentleman from Virginia.

Mr. SCHROCK. I have no further questions now, Mr. Chairman.

Mr. OSE. Mr. Schrock and I have a number of questions, but given the hour, we're going to submit them to you in writing. We would appreciate a timely response. The record of this hearing will be left open for 10 days. That would be to allow us to get you the questions so you can make timely response to them. There may be Members who were not in attendance today or who were here and had to leave who may have questions for you. So we'll make sure we get those organized and off to you.

I have nothing further, and with that, we're going to go ahead and adjourn the hearing. Thank you for attending.

[Whereupon, at 5 p.m., the subcommittees were adjourned.]

[Additional information submitted for the hearing record follows:]

Congress of the United States

Washington, DC 20515

July 23, 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 July 20, 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 OMB's Record in Small Business Paperwork Relief? – Part II." 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 August 13, 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
The Honorable Charles A. Gonzalez

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SBPRA IMPLEMENTATION

Our invitation asked for your written testimony to address three specific subjects. The first is:

- the status of implementation of each Small Business Paperwork Relief Act (SBPRA) deliverable, including the reason for: (a) each agency still without a single point of contact (SPOC), (b) each agency still without listed agency compliance assistance resources, and (c) each missing agency enforcement report

Q1. Agency Noncompliance with SBPRA.

a. Single Points of Contact. SBPRA required each agency to designate a SPOC by June 28, 2003. The Office of Management and Budget's (OMB) June 2003 and June 2004 listings were incomplete. Our records show nine agencies still without a SPOC.

- OMB has at least one form applicable to small business – its SF-LLL, Disclosure of Lobbying Activities. As a consequence, why hasn't OMB named a SPOC for itself?

- What reason(s) apply to the other eight agencies still without a SPOC?

b. Compliance Assistance. SBPRA required OMB to publish, by June 28, 2003, a complete listing of agency compliance assistance resources available to small business. OMB's June 2003 and June 2004 listings were incomplete. Our records show 18 agencies missing from OMB's latest listing. Your written statement said, "Since we received your [7/6/04] letter, OMB has asked each agency without any listed compliance assistance information to provide us with an explanation" (p. 6).

- What is the reason(s) for noncompliance by each of the following: (1) the General Services Administration, (2) OMB, (3) US International Trade Commission, (4) Office of the US Trade Representative, and (5) the Federal Energy Regulatory Commission?

- When will the agencies with incomplete compliance assistance information – such as for the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau - be supplemented?

c. Enforcement Reports. SBPRA required each agency to submit its initial agency enforcement report to Congress by December 31, 2003. During our January 28, 2004 hearing, you promised to followup with each of the then 42 noncompliant agencies. Our records now show 30 agencies without enforcement reports submitted to Congress. Your written statements said, "since receiving your [7/6/04] letter, OMB has requested that each agency that has not submitted a regulatory enforcement report provide us with an explanation" (p. 11).

- What specific followup has OMB taken since our January 28, 2004 hearing with each of the noncompliant agencies?

- What is the reason(s) for noncompliance by each of the following: the (1) Department of Defense, (2) Department of Homeland Security (for the missing bureaus), (3) Department of Justice (for the missing bureaus), (4) Department of Veterans Affairs (for the missing bureaus), and (5) Tennessee Valley Authority?

Our invitation asked for your written testimony to address three specific subjects. The second is:

- the specific paperwork reduction accomplishments from the June 2003 and June 2004 final reports of the OMB-led task force

Q2. Task Force. As discussed at our July 18, 2003 hearing and in correspondence with OMB both before and after the hearing, the Subcommittees found OMB's first task force report and OMB's second draft task force report to be largely nonresponsive to Congressional intent. In Consumer Specialty Products Association's (CSPA) testimony, John DiFazio stated, "the *Report* focuses on only a portion of the problem: how to get information efficiently from the federal government. It fails to ask the fundamental question: does each federal agency really need to collect all the information that it does?" (p. 2).

a. Meetings.
   - How many meetings did the task force have in year one (June 2002-June 2003)? Please include the attendance list for each meeting.
   - How many meetings did the task force have in year two (June 2003-June 2004)? Please include the attendance list for each meeting.
   - Were each of the statutorily-named agencies invited to at least one of these meetings? If not, why not?

b. Accomplishments. Your written statement said, "it is not possible to accurately attribute specific paperwork burden reduction accomplishments to recommendations in the Task Force reports" (p. 13). Given this statement, what specific other accomplishments, if any, have resulted from this 2-year effort?

c. Milestones.
   - Which agencies have not yet provided their forms and website information for the Business Gateway Project?
   - When will Phases II and III of the Business Gateway Project be completed?
   - Has OMB ensured sufficient funding for completions of Phases II and III in Fiscal Year (FY) 2005 and 2006?
   - Did each of the 14 key agencies include the expected level of funding in their FY 2005 Budget requests?
   - If Congress does not fund some of these agency requests, from where will the additional funding come?

d. Pilots.
   - What is expected from the 2 pilot burden reduction efforts – on trucking and surface coal mining?
   - Which agencies and how many forms were included in the trucking pilot?
   - Which agencies and how many forms were included in the surface coal mining pilot?
   - Will the result of either or both pilots be any integration of paperwork requirements across Federal agencies and programs (consistent with SBPRA)?
   - Will there be any consolidation of paperwork requirements within an agency so that a small business can 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 (consistent with SBPRA)?

PAPERWORK REDUCTION INITIATIVES/RESULTS

Our invitation asked for your written testimony to address three specific subjects. The third is:

- the specific reductions in reporting and recordkeeping requirements of at least 100,000 hours (exclusive of electronic filing) accomplished since our January 28, 2004 hearing or planned in the rest of 2004 for small businesses (i.e., for most of 2004)

Q3. Small Business Paperwork Reduction Initiatives from 1/28/04 to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (exclusive of electronic filing) were accomplished to benefit small businesses since our January 28, 2004 hearing, and what are planned in the rest of 2004? Please do not include any initiatives that were discussed in your previous testimony before the Ose Subcommittee.

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?

Q4. Thresholds. What is OMB's estimate for the average and total burden reduction in hours if thresholds for small business reporting were increased, such as from 25 employees to 35 employees or from $10 million to a higher number?

Q5. Paperwork Reduction for Very Small Businesses. Section 2(c) of SBPRA, "Additional Reduction of Paperwork for Certain Small Businesses, calls for "efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees." In CSPA's testimony, Mr. DiFazio's stated, "CSPA recommends that OMB

initiate a one-year suspension of all federal-agency reporting requirements, excluding tax-related items, for businesses with fewer than 25 employees, unless such reporting is required by law" (p. 3).

a. What has the Administration done to effectuate this SBPRA requirement?
b. What is your reaction to Mr. DiFazio's recommendation?

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

OCT 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 your letter of July 23, 2004, enclosing additional questions as a follow-up to your July 20, 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
The Honorable Charles A. Gonzales

Identical letter sent to The Honorable Edward L. Schrock

SBPRA IMPLEMENTATION

Our invitation asked for your written testimony to address three specific subjects. The first is:

- the status of implementation of each SBPRA deliverable, including the reason for: (a) each agency still without a single point of contact, (b) each agency still without listed agency compliance assistance resources, and (c) each missing agency enforcement report

Q1. Agency Noncompliance with SBPRA.

a. Single Points of Contact. SBPRA required each agency to designate a Single Point of Contact (SPOC) by June 28, 2003. OMB's June 2003 and June 2004 listings were incomplete. Our records show nine agencies still without a SPOC.

- OMB has at least one form applicable to small business – its SF-LLL, Disclosure of Lobbying Activities. As a consequence, why hasn't OMB named a SPOC for itself?
- What reason(s) apply to the other 8 agencies still without a SPOC?

Answer: OMB has taken steps to ensure a single point of contact for each agency having a direct relationship with small business and having one or more approved information collections affecting small business. We believe the current OMB list of agency single points of contact is complete.

OMB has not designated a single point of contact because we do not have any direct relationships with the public (including small businesses) on regulatory/grant/procurement matters. OMB's information collections are government-wide collections under which specific agencies collect information. If a small business has a question about a particular form, it should direct the question to the recipient agency. For example, the SF-LLL form cited in your question is a form submitted along with a grant request to a particular Federal agency. Completed forms are not sent to OMB. If a question arises about this form, it is appropriate for the question to be directed to the agency that is receiving the grant request.

b. Compliance Assistance. SBPRA required OMB to publish, by June 28, 2004, a complete listing of agency compliance assistance resources available to small business. OMB's June 2003 and June 2004 listings were incomplete. Our records show 18 agencies missing from OMB's latest listing. Your written statement says, "Since we received your [7/6/04] letter, OMB has asked each agency without any listed compliance assistance information to provide us with an explanation" *(p. 6)*.

- What is the reason(s) for noncompliance by each of the following: (1) the General Services Administration (GSA), (2) OMB, (3) US International Trade Commission (USITC), (4) Office of the US Trade Representative (USTR), and (5) the Federal Energy Regulatory Commission (FERC)?

- *Answer: With respect to OMB, please see the answer to Question 1a. With respect to GSA, USITC, USTR, and FERC, each has provided a summary of compliance assistance resources since the July 20th hearing, and the information has been added to OMB's website.*

- When will the agencies with incomplete compliance assistance information – such as for the Department of the Treasury's Alcohol and Tobacco Tax and Trade Bureau - be supplemented?

Answer: From OMB's perspective, we have requested that each department/agency provide us with a summary of its compliance assistance resources for posting on our website and for publication in the Federal Register. We want this list to be accurate and complete. If we become aware that an important component of Federal compliance assistance resources is missing, we will take steps to correct the information on our website. If an agency or department submits additional information to us and requests that we add it to the list on our website, we will do so.

Since the July 20th hearing, the Department of the Treasury has supplied OMB with compliance assistance information for the bureau in question. This information has been added to our website.

c. Enforcement Reports. SBPRA required each agency to submit its initial agency enforcement report to Congress by December 31, 2003. During our January 28, 2004 hearing, you promised to follow-up with each of the then 42 noncompliant agencies. Our records now show 30 agencies without enforcement reports submitted to Congress. Your written statement says, "Since receiving your [7/6/04] letter, OMB has requested that each agency that has not submitted a regulatory enforcement report provide us with an explanation" (p. 11).

- What specific follow-up has OMB taken since our January 28, 2004 hearing with each of 42 noncompliant agencies?

Answer: OMB has taken several steps to remind agencies of their obligation to submit regulatory enforcement reports to the Congress. These steps included a formal memorandum to the President's Management Council, issued on October 28, 2003; a reminder to agencies attending a November 19, 2003 meeting sponsored by the Small Business and Agricultural Regulatory Enforcement Ombudsman; e-mail reminders to major regulatory agencies in December 2003; and follow-up phone calls and e-mails to cabinet-level agencies in January 2004. At a March 18, 2004 interagency meeting sponsored by the National Ombudsman, OMB staff reminded agencies of this obligation with respect to both the initial regulatory enforcement report and the final report, which is due December 31, 2004. In July 2004, OMB contacted the agencies in question and inquired as to the status of their initial enforcement report.

- What is the reason(s) for noncompliance by each of the following: (1) the Department of Defense, (2) Department of Homeland Security (for the missing bureaus), (3) Department of Justice (for the missing bureaus), (4) Department of Veterans Affairs (for the missing bureaus), and (5) Tennessee Valley Authority?

Answer: Responses to our inquiry after the July 20th hearing indicate that DHS has submitted a complete regulatory enforcement report, and DoD, VA, and TVA indicates that they are not regulatory agencies and therefore have no regulatory enforcement actions to report.

DOJ's interim SBPRA report to Congress and the SBA only contained references to the Drug Enforcement Agency (DEA) because, with the one exception noted below, only DEA had imposed penalties relevant for inclusion in the SBPRA interim report. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Bureau of Prisons (BOP), the Executive Office for Immigration Review (EOIR), the Federal Bureau of Investigation (FBI), the Office of Justice Programs (OJP), and the United States Marshals Service (USMS) indicate that none of these components of the Department imposed penalties relevant for inclusion in the initial SBPRA report. ATF reports that as of the date of this letter, it has imposed one relevant penalty on small business during the period starting on October 1, 2003. This penalty will be reported in the Department's Final SBPRA report. The Civil Rights Division initially reported that it was unable to provide the statistical information relevant for the interim SBPRA report. It has revised its case tracking system and will be able to provide data for inclusion in the Final SBPRA report.

Our invitation asked for your written testimony to address three specific subjects. The second is:

- the specific paperwork reduction accomplishments from the June 2003 and June 2004 final reports of the OMB-led task force

Q2. Task Force. As discussed at our July 18, 2003 hearing and in correspondence with OMB both before and after the hearing, the Subcommittees found OMB's first task force report and OMB's second draft task force report to be largely nonresponsive to Congressional intent. In Consumer Specialty Products Association's testimony, John DiFazio stated, "The Report focuses only a portion of the problem: how to get information efficiently from the federal government. It fails to ask the fundamental question: does each federal agency really need to collect all the information that it does?" (p. 2).

a. Meetings.

How many meetings did the task force have in year one (June 2002 – June 2003)? Please include the attendance list from each meeting. How many meetings did the Task Force have in year two (June 2003 – June 2004)? Please provide the attendance list for each meeting. Were each of the statutorily-named agencies invited to at least one of these meetings? If not, why not?

Answer: For the first report, the Task Force held two full task force meetings, and one outreach meeting hosted by the SBA Office of Advocacy. The second Task Force also held two full task force meetings and one outreach meeting hosted by the SBA Office of Advocacy. In addition, a series of meetings and/or teleconferences were held by subgroups to the task force in the preparation of both reports. We believe that each member of the Task Force was invited to each of the meetings. Attendance lists can be found in Appendix I to this document.

b. Accomplishments. Your written statement says, "it is not possible to accurately attribute specific paperwork burden reduction accomplishments to recommendations in the Task Force reports" (p. 13). Given this statement, what specific other accomplishments, if any, have resulted from this 2-year effort?

Answer: With the June 28, 2004 issuance of the final Task Force report, the Task Force has completed the issuance of its list of recommendations under the statute. Given the collective set of recommendations from both reports, OMB is now in the process of evaluating them and determining how best to ensure agency implementation of these recommendations. To ensure that each agency considers and acts in accordance with the Task Force recommendations, OMB plans to seek specific information from each agency in the context of their submissions to the annual Information Collection Budget (ICB). We believe that the ICB is the appropriate mechanism by which agencies can convey their paperwork relief efforts.

c. Milestones. Which agencies have not yet provided their forms and website information for the Business Gateway Project?

Answer: The list of agencies that have not submitted their forms and website links can be found in Appendix II. Although it is important to note the lack of full participation by an agency, it is also important to emphasize continued involvement by each agency in this ongoing initiative. Consequently, should the Subcommittees choose to contact agencies regarding their participation, we recommend contacting all 43 partner agencies to emphasize the importance of this initiative and the need for their involvement throughout the development process.

When will Phases II and III of the Business Gateway Project be completed?

Answer: While the vision of the Business Gateway is clear, the technical solution will be determined based on the alternatives analysis that will take place in the winter of 2005. The phases of the project are contingent of the technical solution that Business Gateway will pick. The report identifies one of many technical solutions being considered.

- Has OMB ensured sufficient funding for completions of Phases II and II in Fiscal Year (FY) 2005 and 2006?

Answer: Yes, sufficient funding is included in the Presidents FY05 budget request. FY06 budget funding is presently under development through a cross agency funding group that is developing a fair model to allocate the costs amongst the partners.

- Did each of the 14 key agencies include the expected level of funding in their FY 2005 Budget requests?

Answer: Yes.

- If Congress does not fund some of these agency requests, from where will the additional funding come?

Answer: If Congress does not fully support the agencies request for the project, OMB and agencies will need to turn to other funding sources, or there will be an impact to the schedule or performance that is expected.

d. Pilots. What is expected from the two pilot burden reduction efforts – on trucking and surface coal mining?

Answer: These "proofs of concept" projects will show how information can be shared and information collection requirements can be streamlined and still meet agency reporting requirements, security, and privacy concerns.

- Which agencies and how many forms were included in the trucking pilot?

Answer: A second group consisting of federal agencies including Federal Motor Carriers Safety Administration (DOT), Research and Special Projects Administration (DOT), Bureau of Transportation Statistics (DOT), and IRS is looking at ways to make it easier for trucking companies to comply with the myriad of federal requirements. They are working in partnership to identify potentially redundant information collection requirements that may be collected across agencies. They evaluated a number of trucking forms to determine whether it is feasible to create a "common form" that trucking companies can use and share, which will reduce the burden on truckers.

- Which agencies and how many forms were included in the surface coal mining pilot?

Answer: In the surface coal mining vertical, agency representatives from Department of Labor's Mine Safety and Health Administration and Department of the Interior's Office of Surface Mining Reclamation and Enforcement, as well as state agency representatives from Virginia, Pennsylvania, Illinois, and West Virginia, are looking to harmonize reporting requirements for surface coal mining and create a consolidated form.

- Will the result of either or both pilots be any integration of paperwork requirements across Federal agencies and programs (consistent with SBPRA)?

Answer: Yes. The pilots will integrate paperwork requirements across relevant Federal agencies where feasible.

- Will there be any consolidation of paperwork requirements within an agency so that a small business can submit all information required by the agency to 1 point of contact at the agency, in a single format or using a single electronic reporting system, and with synchronized reporting (consistent with SBPRA)?

Answer: Business Gateway will not provide a solution to consolidating all of the paperwork requirements within an agency, however some agencies are working on providing this capability. One example is MSHA, which in addition to participating in the surface coal mining vertical, has provided a single, on-line filing source for the majority of the mining industry's health and safety reporting requirements through the Department of Labor's "elaws advisor" website (www.dol.gov/elaws).

PAPERWORK REDUCTION INITIATIVES/RESULTS

Our invitation asked for your written testimony to address three specific subjects. The third is:

- the specific reductions in reporting and recordkeeping requirements of at least 100,000 hours (exclusive of electronic filing) accomplished since our January 28th hearing or planned in the rest of 2004 for small businesses *(i.e., for most of 2004)*

Q3. Small Business Paperwork Reduction Initiatives from 1/28/04 to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (exclusive of electronic filing) were accomplished to benefit small businesses since our 1/28/04 hearing, and what are planned in the rest of 2004? Please do not include any initiatives that were discussed in your previous testimony before the Ose Subcommittee.

Answer: The OMB fiscal year 2004 report, Managing Information Collection: Information Collection Budget of the United States Government *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 2004 report—may result in actions to reduce small business paperwork burden:*

- *The Environmental Protection Agency plans to significantly reduce the paperwork burden imposed under the Resource Conservation and Recovery Act (RCRA). EPA wants 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 2002, and public comment was solicited on new burden reduction items in 2003.

- *OSHA plans to revise a number of predominately health, but also safety-related provisions in its standards for general industry, shipyard employment, and construction that are outdated, duplicative, unnecessary, or inconsistent.*

We expect to receive updates on these initiatives for inclusion in our 2005 report to Congress. In addition, other examples from the 2004 ICB might also meet your criteria.

In addition to agency initiatives planned for 2004, OMB has taken action on Information Collection Requests that result in reduction in burden for small businesses. For example, OMB recently approved an information collection request in which the Department of Health and Human Services reduced, by 406,780 hours, the paperwork burden imposed on clinical laboratories. This reduction was achieved through modification of existing regulations governing the certification of clinical laboratories.

When these efforts are considered alongside the various e-government initiatives agencies have underway, it becomes apparent that agencies are 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.

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: 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.

Although we don't track this information systematically, we can provide examples of agency efforts to reduce burden. For example, EPA sought public comment on alternative thresholds for Toxic Release Inventory (TRI) reporting and on reducing the frequency of reporting. The Agency is evaluating these comments in the context of TRI reform.

OMB asks agencies to identify burden reduction initiatives to compile our annual information collection budget. The 2004 report contains initiatives that are being undertaken by Agencies to reduce the paperwork burden on small businesses.

Q4. Thresholds. What is OMB's estimate for the average and total burden reduction in hours if thresholds for small business reporting were increased, such as from 25 employees to 35 employees, or from $10 million to a higher number?

Answer: With respect to information collection requests approved by OMB under the Paperwork Reduction Act, there is no set reporting threshold. Agencies are free to set thresholds based on the utility of the information and the burden imposed upon the public. Before approving any information collection request, OMB considers both the utility and burden associated with the request.

The current system we use to track information collections does not account for threshold reporting levels. Therefore, it is not possible at this time to provide a specific estimate of small business burden reduction under a mandatory reporting threshold. It is likely, however, that such a mandatory reporting threshold would reduce small business paperwork burden and, to a lesser extent, overall paperwork burden.

Q5. Paperwork Reduction for Very Small Businesses. Section 2(c) of SBPRA, "Additional Reduction of paperwork for Certain Small Businesses, calls for "efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees." In CSPA's testimony, Mr. DiFazio stated, "CSPA recommends that OMB initiate a one-year suspension of all federal agency reporting requirements, excluding tax-related items, for businesses with fewer than 25 employees, unless such reporting is required by law" (p.3).

a. What has the Administration done to effectuate this SBPRA requirement?

Answer: The Act directs agencies to "make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees." For the purposes of our annual information collection budget (ICB), OMB last Fall 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). As a result of this request, the FY 2004 Information Collection Budget included a chapter describing efforts by OMB and agencies to implement the Act. That chapter included planned or ongoing initiatives identified by agencies to reduce the paperwork burden on a substantial number of small businesses.

b. What is your reaction to Mr. DiFazio's recommendation?

Answer: Currently, OIRA reviews each ICR at least once every three years. During this review, OIRA evaluates the utility and burden associated with the collection request. Agencies must certify that the collection has practical utility and that the burden has been minimized. Although it is likely that the stated recommendation will reduce small business paperwork burden, it also may have unintended consequences. For example, small businesses may be required to submit a form in order to receive a benefit (grant, loan, loan guarantee, etc.). A small business owner may also be asked to complete a survey, the results of which will be used to better target Federal programs in such a manner as to aid small businesses. Therefore, an across-the-board suspension of Federal reporting requirements would have some adverse effects on small businesses.

Appendix I: SBPRA Task Force Attendance

For the first Task Force report, two in-person meetings were held, and one public outreach meeting was held. Please note that for the April 4, 2003 meeting, we had to reconstruct the attendance list, and this list may be incomplete.

Attendance List for the January 17, 2003 Task Force Meeting

Mark Forman, OMB
John Graham, OMB
Dana Barbieri, DOL
Lois Orr, DOL
Cheryl Kerr, DOL
Jeff Koch, DOL
Jennifer Silk, DOL
James Van Wert, SBA
David Javdan, SBA
Tom Sullivan, SBA OA
Eugene Taylor, DOT
Neil Eisner, DOT
Michael Chesman, IRS
Sherrill Fields, IRS
David Elizalde, CMS, HHS
Robert Faithful, DOI
Felipe Mendoza, GSA
Stephanie Daigle, EPA
Karen Brown, EPA
Janet Schwalb, DOC
Karen Hogan, DOC
Liz Ivey, GSA
Margie Kinney, IRS
Ron Kovatch, IRS
Frank McDonough, GSA
Don Arbuckle, OMB
Jim Edward, EPA
Cristal Thomas, OMB
David Rostker, OMB
Bryon Allen, OMB
Shawne McGibbon, SBA OA
Suey Howe, SBA OA

Attendance List for the April 4, 2003 Task Force Meeting

Mark Forman, OMB
Jeff Koch, DOL
Dan Chenok, OMB
Keith Holman, SBA
Tad Anderson, OMB
Jo Armstrong, OMB
Joe Sierra, EPA
Shivani Desai, EPA
Lois Orr, DOL
Cheryl Kerr, DOL
Todd Owen for Steve Witt, DOL
David Javdan, SBA
Sherill A. Fields, IRS
Ann Wion, HHS
David Elizalde, HHS
Karen Brown, EPA
Margie Kinney, IRS
Rhonda Cundiff, GSA
Ernst Nilsson, SBA
Jefferson Hill, OMB

Attendance List for the March 4, 2003 Public Outreach Meeting

Jim Tozzi, Center for Regulatory Effectiveness
Heather Hanson, House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
James Goldberg, Goldberg & Associates, PLLC
Janine Rynczak, Chemical Producers and Distributors Association
Marguerite Higgins, The Washington Times
Danielle Waterfield, Screenprinting and Graphic Imaging Association
Susan Eckerly, National Federation of Independent Businesses
Paul Miller, Independent Office Products and Furniture Dealers Association
Richard Peri, Aircraft Electronics Association
Fern Abrams, IPC
Theresa Pugh, American Public Power Association
Karen Harned, National Federation of Independent Businesses
Bruce Lundegren, National Association of Home Builders
Mark Oberndorf, National Automobile Dealers Association
Giovanni Carotolo, U.S. Chamber of Commerce
John Herzog, Air Conditioning Contractors of America
Barry Pineles, House Small Business Committee

Anita Drummond, Associated Builders and Contractors
Nancy Sandrof, Law Office of Adele Abrams
Robert Coakley
Eric Clark, Synthetic Organic Chemicals Manufacturers Association
Rashida Holmes, Synthetic Organic Chemicals Manufacturers Association
Danielle Ringwood, Associated Builders and Contractors
Brad Frisby, National Mining Association
Andreas Kalisperis, Small Business Legislative Council
Gerrie Benedi, NPES
Doug Billings, U.S. Chamber of Commerce
Gene Marie Pade, SBA ONO
Peter Sorum, SBA ONO
Rosario Palmieri, House Small Business Committee
Chris Tampio, National Association of Manufacturers
Jim Van Wert, SBA
Ernst Nilsson, SBA
Jo Armstrong, OMB
Tad Anderson, OMB
Jeff Hill, OMB
Stephanie Daigle, EPA
Larry Fineran, NAM
Andrew Langer, NFIB
Tom Sullivan, SBA OA
Suey Howe, SBA OA
Russ Orban, SBA OA
Kevin Bromberg, SBA OA
Charles Maresca, SBA OA
John McDowell, SBA OA
David Voigt, SBA OA
Keith Holman, SBA OA
Michael Barerra, SBA National Ombudsman
Myisha Frazier-McElveen, SBA
Geoff Galster, American Nursery and Landscaping Association
Sonya Walter, IPC
Tom Hughes, Law Office of Adele Abrams/ASSE
David Gray, Department of Labor
Marc Comer, Senate Small Business Committee
Lois Orr, BLS
Cheryl Kerr, BLS
Warren Stickle, ISSA
Michael See, SBA OA

For the second Task Force report, two in-person meetings were held, and one public outreach meeting was held Please note that for the June 8, 2004 meeting, we had to reconstruct the attendance list, and this list may be incomplete.

January 20, 2004 -- Attendance List for Task Force Meeting

Karen Evans, OMB
John Graham, OMB
Robert Gaddie, DOL
Jeff Koch, DOL
Barbara Bingham, DOL
T. Morris for Tyna Coles, OSHA
RAW for Paula White, DOL
Jody Wharton, SBA OA
Arthuretta Martin, HHS
Michael Miller, HHS
Marty Mitchell, USDA
Peter Ertman, DOI
Louise Wise, EPA
Katherine Campbell, EPA
Jim Edward, EPA
Tracy Back, EPA
Karen Hogan, DOC
Jack Koller, OMB
Keith Belton, OMB
David Rostker, OMB
Shivani Desai, OMB
Jonathan Womer, OMB
Don Arbuckle, OMB

June 8, 2004 -- Attendance List for Task Force Meeting

Jeff Koch, DOL
Marty Mitchell, USDA
Don Arbuckle, OMB
Keith Belton, OMB
Jack Koller, OMB
Shivani Desai, OMB
Jonathan Womer, OMB
Ron Miller, SBA
Karen Hogan, DOC
Steven Lott, DOT
Tracy Bradshaw Morris for Tyna Coles, DOL

Arthuretta Martin, HHS
Barbara Bingham, DOL
Michael Miller, HHS
Catherine Tunis for Karen Brown, EPA

February 9, 2004 -- Attendance List for Public Outreach Meeting

Tom Sullivan, SBA Office of Advocacy
John Herzog, Air Conditioning Contractors of America
Michael Wilson, Textile Rental Services Association
Todd McCracken, National Small Business Association
Bob Bessette, Council of Industrial Boiler Owners
Monica Sharma, National Automobile Dealers Association
Doug Greenhaus, National Automobile Dealers Association
Anita Drummond, Associated Builders and Contractors
Jeff Gunnulfson, Synthetic Organic Chemical Manufacturers Association
Andrew Langer, National Federation of Independent Businesses
Bruce Phillips, National Federation of Independent Businesses
Chris Myers, Small Business Survival Committee
Erica Lengermann, National Association of Convenience Stores
Kevin Horan, Small Business Legislative Council
Melvin Oehlert, the American Legion
Bruce Lundegren, U.S. Chamber of Commerce
Giovanni Coratolla, U.S. Chamber of Commerce
Warren Stickle, Chemical Producers and Distributors Association
Jody Wharton, SBA Office of Advocacy
Keith Holman, SBA Office of Advocacy
Arthuretta Martin, Department of Health and Human Services
Barbara Bingham, Department of Labor
Jeff Koch, Department of Labor
Jonathan Womer, OMB
Joe Lackey, OMB
Bobbie Woolsey, OSHA
Tyna Coles, OSHA
Mike Miller, Department of Health and Human Services
Rashida Holmes, Synthetic Organic Chemicals Manufacturers Association
Bill Lewis, Department of Energy
Bob Gaddie, Bureau of Labor Statistics
Jim Edward, EPA
Marty Mitchell, USDA
Karen Hogan, DOC
Mary Ellen Corridore, IRS
Mike Chesman, IRS

Ron Kovatch, IRS
Sandy Gibbs, SBA
Karen Brown, EPA
Peter Sorum, SBA ONO
Justin Van Epps, SBA
Ron Miller, SBA
Jack Koller, OMB
Shivani Desai, OMB
Keith Belton, OMB
David Rostker, OMB

Appendix II: Business Gateway Status Report

As of August 3, 2004, the following agencies have not submitted forms for the Business Gateway forms catalog:

Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for National and Community Service
Department of Defense
Department of Homeland Security
Department of State
Department of Veteran Affairs
Equal Employment Opportunity Commission
Federal Deposit Insurance Corporation
Federal Housing Finance Board
Federal Maritime Commission
International Assistance Programs
International Trade Commission
National Credit Union Administration
National Endowment for the Arts
National Mediation Board
Office of Special Counsel
Tennessee Valley Authority

As of August 3, 2004, the following agencies have not submitted links/content for Business Gateway:

Department of Education
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Treasury
Export Import Bank
Federal Communications Commission
National Aeronautics and Space Administration
National Archives and Records Administration
National Endowment for the Humanities
National Science Foundation
Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for National and Community Service
Department of Defense
Department of Homeland Security
Department of State

Department of Veteran Affairs
Equal Employment Opportunity Commission
Federal Deposit Insurance Corporation
Federal Housing Finance Board
Federal Maritime Commission
International Assistance Programs
International Trade Commission
National Credit Union Administration
National Endowment for the Arts
National Mediation Board
Office of Special Counsel
Tennessee Valley Authority*

*TVA has indicated that because it has already implemented IT systems addressing goals similar to Business Gateway, it is neither practicable nor in the best interest of the TVA to participate in the Business Gateway as outlined.

Congress of the United States
Washington, DC 20515

November 15, 2004

BY FACSIMILE
The Honorable Joshua B. Bolten
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Bolten:

This letter follows up on the July 20, 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 OMB's Record in Small Business Paperwork Relief? – Part II." On July 23rd, we sent post-hearing questions to John Graham, Administrator, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). On October 1st, we received a partially nonresponsive reply from Dr. Graham. As a consequence, on November 5th, our staffs conducted an on-site audit of all paperwork dockets that OMB claimed reflected program decreases of 100,000 hours or more. Our findings were disturbing. As a consequence and because of continuing Congressional desire for paperwork reduction results, we thought it important to bring this matter to your personal attention.

To ensure more paperwork reduction results and additional OMB effort on paperwork reduction, in post-hearing questions on April 25, 2001 and April 17, 2002, Chairman Ose asked Dr. Graham about disclosing OMB's role in paperwork reduction. Chairman Ose's 2001 and 2002 questions and the key part of Dr. Graham's October 12, 2001 and May 9, 2002 answers were:

2001

Q5. Recordkeeping to Improve OMB Management of Paperwork. Since 1993, the Office of Management and Budget (OMB) has been required by executive order to disclose changes made during the course of its review of agency **regulatory** proposals. The Paperwork Reduction Act (PRA) requires OMB to keep the Congress "fully informed" (44 U.S.C. §3514). After the Subcommittee's April 1999 PRA hearing and subsequently, the Subcommittee asked OMB to keep similar, basic information about its review of agency **paperwork** proposals. The prior Administration's OMB refused to do so.

As a result, to understand OMB's performance, in December 1999, the Subcommittee surveyed 28 departments and agencies to identify any substantive changes in agency paperwork submissions made by OMB and any paperwork reduction candidates added by OMB. The results revealed that OMB's effect on paperwork in the prior Administration was barely visible. To hold OMB accountable to Congress and the public, will you begin to keep such basic information as of July 1, 2001? If not, why not?

A5. As the Subcommittee's question noted, since 1993, OMB has disclosed the changes it makes in agency regulatory proposals during the course of OMB's review. In the past, the Subcommittee made specific suggestions for recording basic information about the changes OMB makes in agency paperwork proposals during the course of OMB's review. Administrator Graham is actively exploring ways to develop a capacity to maintain a record of changes made to agency information collections during OMB's review of agency information collection requests.

2002

Q3. Disclosure of OMB's Role in Paperwork Reduction. Since 1993, OMB has been required by executive order to disclose specific changes made during the course of its review of agency **regulatory** proposals. The PRA requires OMB to keep the Congress "fully informed" (44 USC §3514). To hold OMB accountable to Congress and the public, in April, I asked if OMB would keep similar information about its review of agency **paperwork** proposals. In October, OMB replied, "Administrator Graham is actively exploring ways to develop a capacity to maintain a record of changes made ... during OMB's review." In 1981, OMB's computerized system began to record if a paperwork was approved with or without change due to OMB's review.

a. Will OMB commit to keep information, as of July 1, 2002, about the specific changes made, if any, during its paperwork review? If not, why not?

A3. OMB is beginning to collect information on whether an agency's information collection changed during PRA reviews. Specifically, OMB's computerized database has begun to indicate whether a collection request is "approved without change" from what the agency originally submitted or "approved with change."

OMB is currently working with the Regulatory Information Services Center (RISC) at the General Services Agency *[sic]* (GSA) to create a new information system that will replace OIRA's current, somewhat antiquated, database. GSA has hired Booz-Allen Hamilton to develop this new system, which will expand on the existing system, the RISC/OIRA Consolidated Information System (ROCIS), that RISC uses to produce the Semi-Annual Unified Agenda of Federal Regulatory and Deregulatory Actions. Our goal is [to] have the new, enhanced ROCIS fully operational by November 2003.

One of the post-hearing questions we sent on July 23, 2004 and the key part of Dr. Graham's October 1st answer were:

Q3. Small Business Paperwork Reduction Initiatives from 1/28/04 to 12/31/04. What significant paperwork reduction initiatives of at least 100,000 hours (exclusive of electronic filing) were accomplished to benefit small businesses since our January 28, 2004 hearing, and what are planned in the rest of 2004? Please do not include any initiatives that were discussed in your previous testimony before the Ose Subcommittee.

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?

A3. *The OMB fiscal year 2004 report*, Managing Information Collection: Information Collection Budget of the United States Government *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, ...*

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.

Frankly, we were astonished that OMB still has not updated its computer system. As a consequence, after receipt of OMB's October 1st answers, we asked OMB to identify all paperwork dockets with claimed program decreases of 100,000 hours or more. On October 14th, OMB identified only 38 such dockets. On October 20th, OMB scheduled a November 5th date for our review of these dockets. We found that at least half of them – 19 of the 38 – were bogus reduction claims, i.e., not due to actions by the Executive Branch. In fact, 12 were merely adjustments in burden due to corrections of computer entry errors, re-estimates of burden, or changes in use without regard to any action by the Executive Branch. Also, only 2 of the 6 dockets with over 10 million hours claimed in burden reduction can be verified. Enclosed is a chart summarizing our findings.

What followup - including quality control measures of OIRA paperwork reviews - do you intend to pursue because of these findings and to ensure more paperwork reduction results? And,

when will OMB's updated paperwork reduction computer system - projected by OMB for completion by November 2003 - be operational? Thank you for your attention to our concerns.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Edward L. Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight

Enclosures

cc The Honorable Tom Davis
The Honorable John Tierney
The Honorable Donald A. Manzullo
The Honorable Charles A. Gonzalez

38 OMB dockets with over 100,000 hours of program change: 1/1/04-10/5/04

docket #	# hours	agency	subject	reason
0910-0458	-193,804	HHS/FDA	blood supply	**adjustment**: correction-error
0925-0001	-345,509	HHS/NIH	grant application	small changes, including adds
0938-0612	-406,780	HHS/CMS	CLIA	frequency changes
0960-0629	-119,683	HHS/SSA	SSI application	**adjustment**: change in use
1205-0040	-280,349	DOL/ETA	Sr. Comm. Servs.	**electronic** + adds
1405-0113	-297,500	DOS/BCA	medical for visas	**adjustment**: correct.-reestimate
1545-0074	-47,389,057	Treas/IRS	1040	deletes + adds
1545-0099	-266,757,910	Treas/IRS	1065	deletes, adds, mods
1545-0110	-3,692,519	Treas/IRS	1099-DIV	**statutory** changes
1545-0152	-1,461,200	Treas/IRS	3115	? – w/o supporting statement
1545-0172	-20,800,000	Treas/IRS	4562	**adjustment**: increase vs. decrease + **statutory** changes
1545-0184	-3,109,095	Treas/IRS	4797	deletes + adds
1545-0188	-613,030	Treas/IRS	4868	deleted 5 lines
1545-0227	-1,214,173	Treas/IRS	6251	deleted 12 lines
1545-0429	-681,977	Treas/IRS	4506	moved burden to 2nd form + deletes
1545-0644	-385,000	Treas/IRS	6781	**statutory** changes
1545-0720	-537,814	Treas/IRS	8038	**adjustment**: correction-error
1545-0895	-530,784	Treas/IRS	3800	deletes +
1545-0984	-285,833	Treas/IRS	8586	deletes
1545-1414	-116,763	Treas/IRS	8846	deletes
1545-1618	-1,237,487 **(actually +1,237,487)**	Treas/IRS	8863	**adjustment**: increase vs. decrease
1545-1619	-1,120,00	Treas/IRS	8862	deletes
1545-1809	-1,700,000	Treas/IRS	8882	8 deletes, 1 add
1545-1810	-170,000	Treas/IRS	8881	deletes
1545-1867	-17,539,470	Treas/IRS	8453-S	**adjustment**: correction-error
1545-1899	-13,132,334	Treas/IRS	new NPRM	? – w/o explanation of chg
1550-0012	-119,966	Treas/OTS	Community Reinvestment Act	regulatory change in definition

docket #	# hours	agency	subject	reason
1651-0055	-1,247,184	DHS/Customs	harbor fee	extension w/o chg but no longer on exports
1845-0001	-490,702	ED/higher ed	student aid	**electronic**
1902-0174	-420,918	FERC	natl. gas pipelines	**NPRM** + **?** - w/o explanation
2040-0071	-363,845	EPA/CWA	TMDL	**adjustment**: correct.-reestimate
2502-0369	-115,076	HUD	housing inspections	eliminate correct. action plans
2900-0091	-461,667	DVA	health application	**adjustment**: change in use + EZ
3060-1046	-124,200	FCC	telecom call tracking	change from interim to final reg
3064-0092	-347,403	FDIC	Community Reinvestment Act	**? adjustment:** change in use – w/o explanation
3235-0060	-484,414	SEC	disclose corp. events	**adjustment**: correct.-reestimate + NPRM for **statutory** change
3235-0278	-161,984	SEC	investment advisor	change in recordkeeping requirements
3235-0444	-14,700,000	SEC	security transactions	**adjustment**: correct.-reestimate[1]

[1] Attached is SEC's explanatory text for this huge adjustment vs. program change.

3235-0444
SEC

addition, there would be no additional cost in connection with the deletion of the expired transition period related to the confirmation of transactions involving securities futures products.

Broker-dealers routinely use confirmations for billing purposes. In addition, broker-dealers would send customers some type of statement regardless of the requirements of Rule 10b-10. The amount of confirmations sent and the cost of the confirmations vary from firm to firm. Smaller firms send fewer confirmations than larger firms because they effect fewer transactions.

13. Estimate of Total Annualized Cost Burden

According to information previously provided by industry participants, the Commission staff estimates that the average cost, including postage, for a one-page confirmation is 89 cents. Based upon discussions with industry participants, the Commission staff estimates that the total annual cost associated with generating and delivering to investors the information required under rule 10b-10, including the proposed amendments, would be $2.26 billion.[3] It is important to note, however, that the confirmation is a customary document used by the industry for business purposes.

14. Estimate of Cost to the Federal Government

Rule 10b-10 does not require that any documents be submitted to the federal government, thus no costs to the federal government are imposed directly by the Rule. Costs to the federal government are attributable to ensuring compliance with and enforcing the Rule. The cost to the federal government attributable to the operation of Rule 10b-10 is estimated at $20,000 per year (500 reviews at one hour at a cost of $40.00 per hour, including overhead). It should be noted that the National Association of Securities Dealers, Inc. and the New York Stock Exchange conduct their own examinations to determine compliance with confirmation rules.

15. Explanation of Changes in Burden

It is difficult to determine precisely the number of confirmations sent annually by the industry. Broker-dealers are not required under the federal securities laws to report to the Commission the number of confirmations each firm sends.

The Commission staff has changed its estimate of the number of confirmations sent annually because we believe the data and method we are currently using to produce our estimate are more reliable than the data and method used before. The change reflects increases in broker-dealer

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[3] (2.54 billion confirmations at $0.89 per confirmation = $2.26 billion.)

activity due to increased trading volumes and does not result from changes in the Commission's administration of the rule.

16. Information Collections Planned for Statistical Purposes

Not applicable.

17. Explanation as to Why Expiration Date Will Not be Displayed

Not applicable.

18. Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

The collection of information does not employ statistical methods, nor would the implementation of such methods reduce burden or improve accuracy of results.

Congress of the United States

Washington, DC 20515

July 23, 2004

BY FACSIMILE

Mr. Felipe Mendoza
Associate Administrator
Office of Small Business Utilization
General Services Administration
1800 "F" Street, N.W. #6029
Washington, DC 20405

Dear Mr. Mendoza:

This letter follows up on the July 20, 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 OMB's Record in Small Business Paperwork Relief? – Part II." 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 August 13, 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
The Honorable Charles A. Gonzalez

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Q1. Enforcement & Waiver/Reduction Policies for First-Time Violations by Small Business. The Small Business Paperwork Relief Act (SBPRA) required each agency to submit its first enforcement report to Congress by December 31, 2003. To date, the General Services Administration (GSA) has not yet submitted its report. Your testimony stated that GSA did not assess any civil penalties in 2003 (p. 4). However, GSA assessed civil penalties in previous years, as indicated in some of the Office of Management and Budget's (OMB) "Federal Financial Management Status Report and 5-Year Plan" reports. In addition, GSA penalizes small businesses in its contracting practices.

a. Why has GSA not submitted its enforcement report, statutorily due December 31, 2003, stating that it did not assess any civil penalties in Fiscal Year (FY) 2003? When will GSA do so?

b. What is GSA's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

c. Has GSA's policy changed since the June 2002 enactment of 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?

d. Does GSA 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.

e. Does GSA 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. Compliance Assistance Resources. OMB's June 2004 listing includes no compliance assistance information whatsoever for GSA. Your testimony stated that GSA is "in the process of compiling a list" (p. 5).

When will GSA provide all of the missing information? What is the reason for this noncompliance?

Q3. Single Point of Contact. You serve as GSA's Single Point of Contact (SPOC).

a. As GSA's SPOC, how many calls have you received from small business?
b. What topics did they cover?
c. Were you able to answer all questions posed? If not, how were they handled? And, was the response complete and timely?

d. Did OMB, the Small Business Administration, or anyone else train you as GSA's SPOC? If not, do you think that training would help?

Q4. SBPRA Task Force. OMB's June 2004 report indicates that you served on the OMB-chaired SBPRA task force.

a. How many meetings of the task force did you attend?
b. What was your role, if any, in the task force?

PAPERWORK REDUCTION INITIATIVES/RESULTS

Q5. Burdensome GSA Paperwork. On April 11, 2002, Abator President and CEO Joanne E. Peterson testified before the Ose Subcommittee about paperwork burdens imposed on small businesses. She explained that, in order to expand her business in Ohio, she needed to get on the State Term contract list. To do this, she had to successfully complete GSA Solicitation FCIS-JB-980001B - REFRESH #10-9 ("Federal Supply Schedule for General Purpose Commercial Information Technology Equipment, Software, and Services," including having to complete GSA Standard Form 1449, OMB Nos. 9000-0136 & 3090-0163), which ran over 200 pages long and cost roughly $12,232 in direct labor (about 640 man-hours) and supplies. Peterson stated, "Adding the federal GSA Solicitation requirement on top of an already complicated and burdensome state process puts small firms like Abator at a competitive disadvantage to large corporations that compete for this government work."

Can GSA reduce the burden of this specific paperwork requirement? If so, how? If not, why not? What paperwork reduction initiatives has GSA accomplished since 1/20/01 to benefit small businesses?

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[OMB's Information Collection Inventory:

OMB NO: 9000-0136     EXPIRATION DATE: 10/31/2006
RESPS:1,275,000       HOURS:397,800        COSTS(000):$0
  Commercial Item Acquisitions - FAR Sections Affected: Part 12;
  52.212-1 and 52.212-3
FORMS: NONE

OMB NO: 3090-0163     EXPIRATION DATE: 11/30/2004
RESPS:172,500         HOURS:68,900         COSTS(000):$0
  Information Specific to a Contract
FORMS: NONE]
```

GSA Office of Congressional and Intergovernmental Affairs

September 23, 2004

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to the questions for the record from the joint hearing on July 20, 2004, entitled "What is OMB's Record in Small Business Paperwork Relief? --Part—II." before the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Small Business Subcommittee on Regulatory Reform and Oversight.

If you require further information, please contact me on 202-501-0563.

Sincerely,

Clinton Robinson
Associate Administrator

Enclosures

cc: The Honorable Tom Davis
The Honorable John Tierney

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Q1. **Enforcement & Waiver/Reduction Policies for First-Time Violations by Small Business**. The Small Business Paperwork Relief Act (SBPRA) required each agency to submit its first enforcement report to Congress by December 31, 2003. To date, the General Services Administration (GSA) has not yet submitted its report. Your testimony stated that GSA did not assess any civil penalties in 2003 (p. 4). However, GSA assessed civil penalties in previous years, as indicated in some of the Office of Management and Budget's (OMB) "Federal Financial Management Status Report and 5-Year Plan" reports. In addition, GSA penalizes small businesses in its contracting practices.

Why has GSA not submitted its enforcement report, statutorily due December 31, 2003, stating that it did not assess any civil penalties in Fiscal Year (FY) 2003? When will GSA do so?

Response: GSA did not submit an initial report. Notwithstanding OMB's and SBA's attempt; because we did not initiate enforcement actions in which civil penalties are assessed during the 1-year period beginning October 1, 2002. However, in order to comply with the SBPRA, GSA is submitting its initial report simultaneous with this letter. (See Enclosure 1.) Also, as required by the SBPRA, GSA will submit a final report by December 31, 2004, for the one-year period beginning October 1, 2003.

What is GSA's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

Response: Although we have initiated administrative actions that involve large and small businesses *(i.e.*, debarment and suspension of contractors) we have not initiated enforcement actions in which civil penalties are assessed during the reporting periods stipulated by the SBPRA. We do not have a policy for first-time violations.

Has GSA's policy changed since the June 2002 enactment of 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?

Response: GSA has not changed its policies concerning first-time small business violators because GSA does not have an established policy. As discussed elsewhere, GSA does not consider itself a small business regulatory agency and has not assessed civil penalties against small businesses. Since GSA did not assess civil penalties against small businesses we have not established a policy for waiving or reducing those fines.

Does GSA 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.

Response: No. Please see the response above.

Does GSA track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

Response: GSA has no program to track first-time violations of these requirements by small businesses.

Q2. **Compliance-Assistance Resources.** OMB's June 2004 listing includes no compliance-assistance information whatsoever for GSA. Your testimony stated that GSA is "in the process of compiling a list" (p. 5).

When will GSA provide all of the missing information? What is the reason for this noncompliance?

Response: Pursuant to recent discussions with the OMB and the subcommittees, GSA began the process of compiling a list of compliance-assistance resources. On July 19, 2004, a partial list (enclosure 2) was provided to OMB. We plan to provide OMB with a more extensive list of resources by September 30, 2004.

The reason for the noncompliance – notwithstanding OMB and SBA's attempts and request for the reports - we were not of the opinion that the requirement to submit the list of compliance-assistance resources applied to GSA

Q3. **Single Point of Contact**. You serve as GSA's Single Point of Contact (SPOC). As GSA's SPOC, how many calls have you received from small business?

Response: As GSA's Single Point of Contact (SPOC), I did not receive any calls from small businesses with respect to the collection of information and the control of paperwork under the SBPRA.

What topics did they cover?

(Not applicable; please see above response).

Were you able to answer all questions posed? If not, how were they handled? And, was the response complete and timely?

(Not applicable; please see above response).

Did OMB, the Small Business Administration, or anyone else train you as GSA's SPOC?

Response: I received no formal training as GSA's SPOC.

If not, do you think that training would help?

Response: It would be useful for the GSA single point of contact to understand their SBPRA obligations. OMB has provided agencies with such information. Consistent with the SBPRA and as encouraged by OMB, GSA will soon designate a SPOC within the Office of the CIO. We will share the OMB document with the newly designated SPOC.

Q4. **SBPRA Task Force.** OMB's June 2004 report indicates that you served on the OMB-chaired SBPRA task force.

How many meetings of the task force did you attend?

Response: I attended the January 17, 2003 meeting of the Task Force.

What was your role, if any, in the task force?

Response: I had no assigned role in the task force meeting.

PAPERWORK REDUCTION INITIATIVES/RESULTS

Q5. **Burdensome GSA Paperwork.** On April 11, 2002, Abator President and CEO Joanne E. Peterson testified before the Ose Subcommittee about paperwork burdens imposed on small businesses. She explained that, in order to expand her business in Ohio, she needed to get on the State Term contract list. To do this, she had to successfully complete GSA Solicitation FCIS-JB-980001B - REFRESH #10-9 ("Federal Supply Schedule for General Purpose Commercial Information Technology Equipment, Software, and Services," including having to complete GSA Standard Form 1449, OMB Nos. 9000-0136 & 3090-0163), which ran over 200 pages long and cost roughly $12,232 in direct labor (about 640 man-hours) and supplies. Peterson stated, "Adding the federal GSA Solicitation requirement on top of an already complicated and burdensome state process puts small firms like Abator at a competitive disadvantage to large corporations that compete for this government work."

Can GSA reduce the burden of this specific paperwork requirement? If so, how? If not, why not?

Response: As noted in the question, the paperwork burden faced by Ms. Peterson was one imposed by state requirements. While we cannot comment on specific state contracting requirements, our review of our records indicates that Ms. Peterson was successfully awarded a Federal contract (GS-35-0388P) under GSA's Schedules program in March of 2004.

Among the efforts GSA is making to reduce the burden of Federal paperwork requirements on small business and others is the enhancement of the abilities of businesses and agencies to utilize electronic commerce. (See GSA's next response for additional improvements.)

What paperwork reduction initiatives has GSA accomplished since 1/20/01 to benefit small businesses?

Response: To reiterate from my submission for the July 20, 2004 hearing: GSA constantly seeks ways to make doing business with the Federal government easier for small business.

The GSA Information Technology (IT) Acquisition Center recently launched "eOffer", a tool to submit contract offers and contract modification requests to FSS online. The eOffer tool provides offerors interested in getting on the IT Schedule with an opportunity to submit their offer electronically, thereby significantly reducing paperwork burden. This electronic proposal process guides users through each step of the solicitation, using the latest in digital authentication technology to ensure the integrity of the data, and provide for the electronic signature of the proposal.

The GSA Office of Acquisition Management's Systems Management Center developed the program and is currently adapting the program to process modifications electronically as well. The IT Acquisition Center expects to reduce its cycle times for awarding contracts with the help of this new program. The program will be rolled out to other centers in the Office of Commercial Acquisition within the year. See http://eoffer.gsa.gov.

Congress of the United States

Washington, DC 20515

July 23, 2004

BY FACSIMILE

Mr. Jesus Delgado-Jenkins
Acting Assistant Secretary for Management
and Budget & Chief Financial Officer
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Mr. Delgado-Jenkins:

This letter follows up on the July 20, 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 OMB's Record in Small Business Paperwork Relief? – Part II." 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 August 13, 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
The Honorable Charles A. Gonzalez

PRINTED ON RECYCLED PAPER

Q1. Enforcement & Waiver/Reduction Policies for First-Time Violations by Small Business. The Small Business Paperwork Relief Act (SBPRA) required each agency to submit its first enforcement report to Congress by December 31, 2003. Treasury submitted its report in two pieces: January 12, 2004 for the Internal Revenue Service (IRS) and March 5th for the rest of the Department.

a. What is Treasury's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

b. Has Treasury's policy changed since the June 2002 enactment of 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 Treasury 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 Treasury track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

e. Your testimony stated, "the reason more penalties were not waived is due to the fact that the taxpayer did not request a waiver, or the taxpayer could not demonstrate reasonable cause" (p. 5).
   - Does this fully explain why the Alcohol and Tobacco Tax and Trade Bureau (TTB) waived or reduced only 7 percent of the 16,203 penalties it levied on small business in FY 03? If not, what other reason(s) apply?
   - What reasons apply to why the IRS waived or reduced only 12 percent of the 15.2 million enforcement assessments it levied on small business in this period?
   - Has your office or another office within the Office of the Secretary reviewed these practices for consistency with the President's policies?

Q2. IRS's Enforcement Report. IRS accounts for 81 percent of all paperwork levied on the public and the lion's share of Federal enforcement fines and penalties levied on small business. IRS's enforcement report shows that it directs 66 percent of its enforcement actions against small business and it has only reduced or waived 12 percent of its fines and penalties levied on small business. In contrast, the Departments of Labor and Transportation (DOT) and the Environmental Protection Agency (EPA) have special policies for small business. As a result, last year, EPA only took 11 percent of its

enforcement actions against small entities, and reduced or waived 44 percent, and DOT reduced or waived 34 percent of its assessed penalties against small entities. What can Treasury do to be more sensitive to the special burdens facing small business?

Q3. Enforcement Data Systems. When did Treasury 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 December 31, 2003?

Q4. Compliance Assistance Resources. The Office of Management and Budget's (OMB) June 2004 listing includes compliance assistance resources information for only part of the Treasury Department (e.g., there is no information for TTB, which has 116 OMB-approved paperwork requirements and which took 16,203 enforcement actions in Fiscal Year 2003 against small entities). Your testimony stated that Treasury is "currently assembling information on those resources" for TTB (pp. 5-6).

When will Treasury provide all of the missing information? What is the reason for this noncompliance?

Q5. Single Point of Contact. Treasury's Single Point of Contact (SPOC) reports to you.
a. How many calls has Treasury's SPOC received from small business?
b. What topics did they cover?
c. Was Treasury's SPOC able to answer all questions posed? If not, how were they handled? And, was the response complete and timely?
d. Did OMB, the Small Business Administration, or anyone else train your agency's SPOC? If not, do you think that training would help?

PAPERWORK REDUCTION INITIATIVES/RESULTS

Q6. Reduced Frequency for Form 941. The US tax code provides discretion to the Treasury Department to issue a regulation to establish the frequency of employer reporting about wages paid to employees. IRS regulations establish a quarterly reporting requirement, which is embodied in the Form 941, "Employer's Quarterly Federal Tax Return." For individuals with a household employee (maid), the tax code requires only an annual vs. quarterly Form 941 to be filed if wages are below a certain threshold.

In April 2004 testimony before the Ose Subcommittee, IRS Commissioner Everson stated that IRS "is studying a proposal that would allow taxpayers to file an annual [Form 941] filing option. By extending this option to taxpayers who have demonstrated compliant behavior in filing returns and payment of taxes for at least 8 quarters, and who less than $2,500 per quarter in tax liability, the initiative could affect approximately 691,000 small business taxpayers" (p. 17). OMB's April paperwork reduction report says that January 2006 is the target date for a decision on this 344 billion hour paperwork burden? Why not sooner?

Rec'd 8/13/04

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

AUG 12 2004

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Ose:

This is in reply to your letter of July 23, 2004, which enclosed follow-up questions to the July 20, 2004 joint hearing of your subcommittees, "What is OMB's Record in Small Business Paperwork Relief? – Part II."

I am pleased to provide the enclosed answers to your questions. Please do not hesitate to contact me if you have any further questions or require additional information.

Sincerely,

Jesus Delgado-Jenkins

Jesus H. Delgado-Jenkins
Acting Assistant Secretary for Management

Enclosure

Department of the Treasury

Answers to Questions for the Record
July 20, 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

"What is OMB's Record in Small Business Paperwork Relief? – Part II"

Q1. Enforcement & Waiver/Reduction Policies for First-Time Violations by Small Business. The Small Business Paperwork Relief Act (SBPRA) required each agency to submit its first enforcement report to Congress by December 31, 2003. Treasury submitted its report in two pieces: January 12, 2004 for the Internal Revenue Service (IRS) and March 3, 2004 for the rest of the Department.

a. What is Treasury's policy for first-time violations by small business that do not have the potential to cause serious harm to the public?

Answer: Virtually all of the penalties assessed on small businesses by the IRS and the Alcohol and Tobacco Tax and Trade Bureau (TTB) are for failure to timely deposit taxes or the failure to file returns or pay the tax due. The Internal Revenue Code (IRC) prescribes the amount of the penalty in these circumstances and, except as described below, does not distinguish between first-time violators and repeat offenders. Specifically, both the IRS and the TTB will waive penalties for first-time violators (and indeed any violator) where the statutory standard of reasonable cause is found.

Reasonable cause is determined on a facts-and-circumstances basis in each case. For example, the TTB considers a first time violator's lack of TTB-related business experience to be reasonable cause and routinely waives penalties in such case. The fact that a particular violation may be the taxpayer's first may also be a relevant factor in that analysis.

In certain cases, the IRC does provide exceptions to a penalty, such as in the case of certain first-time depositors of employment taxes who inadvertently fail to make a required deposit of employment taxes. In other cases, the IRC authorizes the IRS to abate a penalty, such as in the case of a first-time depositor who sends a deposit to the IRS and not to the correct government depository. Outside of these specific statutory provisions directed at first-time violators, the IRS evaluates the applicability of penalties – whether or not involving first-time violators – under the statutory reasonable cause standard.

b. Has Treasury's policy changed since the June 2002 enactment of 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?

Answer: Because the penalties assessed by the IRS and the TTB are required by the IRC, neither agency can have penalty policies that contravene the dictates of the law. Prior to the enactment of SBPRA and SBREFA and today, both the IRS and the TTB routinely advise all taxpayers of their rights to appeal the finding of a tax liability or the imposition of a penalty and abate penalties consistent with the IRC.

c. Does Treasury 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.

Answer: Penalties under the IRC that have been assessed against small businesses are almost all for violation of statutory requirements -- the failure to timely deposit taxes or the failure to timely file returns or pay the tax that is due. For this reason, we cannot classify them as violations of paperwork or regulatory requirements. Treasury does not have different policies for first time violations by small businesses which distinguish between paperwork and regulatory requirements.

d. Does Treasury track first-time violations by small business of either paperwork requirements or regulatory requirements or both? If not, will you begin to do so?

Answer: The IRS and the TTB track all violations. The IRC, however (except in a few limited areas), does not distinguish between first-time and repeat violators. Being a first-time violator may, however, be relevant in determining whether the violation was due to reasonable cause. This information can be determined by the IRS and the TTB by examining taxpayer filing and compliance records.

e. Your testimony stated, "the reason more penalties were not waived is due to the fact that the taxpayer did not request a waiver, or the taxpayer could not demonstrate reasonable cause" *(p. 5)*.

- Does this fully explain why the Alcohol and Tobacco Tax and Trade Bureau (TTB) waived or reduced only 7 percent of the 16,203 penalties it levied on small business in FY 03? If not, what other reason(s) apply?

Answer: Those are the principal reasons why the TTB did not waive or reduce more

penalties. While many small businesses do not request waivers, if requested, and a small business can demonstrate the violation was due to reasonable cause, the TTB will grant the waiver. It should be noted that most TTB penalties involve the Special Occupational Tax, which in most cases is an annual tax in the amount of $250. Because the tax is small, the average penalty for failure to pay is small – less than $70. This may be a reason that more businesses do not choose to contest the penalty.

- What reasons apply to why the IRS waived or reduced only 12 percent of the 15.2 million enforcement assessments it levied on small business in this period?

Answer: The IRS will waive or reduce a penalty for failure to timely deposit taxes or to timely file returns or pay the amount due any time the taxpayer can show that the failure was due to reasonable cause. If a taxpayer cannot demonstrate reasonable cause, the law precludes waiving or reducing the penalty.

- Has your office or another office within the Office of the Secretary reviewed these practices for consistency with the President's policies?

Answer: The penalties imposed by the IRS and the TTB for failure to pay or for making late payments, as well as the circumstances in which those penalties can be reduced or waived, are prescribed by statute.

Q2. IRS's Enforcement Report. IRS accounts for 81 percent of all paperwork levied on the public and the lion's share of Federal enforcement fines and penalties levied on small business. IRS's enforcement report shows that it directs 66 percent of its enforcement actions against small business and it has only reduced or waived 12 percent of its fines and penalties levied on small business. In contrast, the Departments of Labor and Transportation (DOT) and the Environmental Protection Agency (EPA) have special policies for small business. As a result, last year, EPA only took 11 percent of its enforcement actions against small entities, and reduced or waived 44 percent, and DOT reduced or waived 34 percent of its assessed penalties against small entities. What can Treasury do to be more sensitive to the special burdens facing small business?

Answer: Treasury is very sensitive to the burdens facing small businesses. Both the IRS and the TTB have aggressive outreach programs to explain compliance obligations to small business taxpayers. For example, the TTB routinely sends representatives to seminars and other industry events to answer questions from its industry members, with a particular emphasis on establishing personal relationships with small businesses. The TTB also maintains an active customer service and support program, through which it provides one-on-one expert technical advice on matters affecting the alcohol and tobacco industries through e-mail, telephone, and letterhead responses to inquiries from individuals and businesses.

The IRS has an aggressive compliance assistance program to assist taxpayers and to improve compliance with the tax laws, and has built a multi-dimensional education program to provide an understanding of the tax code and its major provisions. This instruction impacts a wide range of businesses including start ups. All of this material is available at the comprehensive IRS website that features 10,000 pages of information and video instruction, and receives about 1.2 million visitors per month. The IRS also has an aggressive program to identify and resolve systemic problems for taxpayers, including an Office of Taxpayer Burden Reduction that focuses on systemic changes to make it easier for taxpayers to comply with the tax code. All these programs have been developed and delivered through an extensive partnership with the major national and local small business, trade, and tax practitioner associations, as well as the Small Business Administration and its components. These organizations communicate with over 30 million small business taxpayers.

The IRS and the TTB work within the IRC, which defines the circumstances in which failure to timely deposit or failure to file or pay taxes due penalties may be waived. The grounds for waiver (*i.e.*, reasonable cause) arise by operation of law.

Q3. Enforcement Data Systems. When did Treasury 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 December 31, 2003?

Answer: The data systems at the IRS, the TTB, the Financial Crimes Enforcement Network (FinCEN), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) did not need to be adjusted in order to capture the necessary data for the reports that were provided to the Congress. The Office of Foreign Assets Control (OFAC) adjusted its data system in early 2004 to be sure that it could identify penalties assessed against small businesses.

Q4. Compliance Assistance Resources. The Office of Management and Budget's (OMB) June 2004 listing includes compliance assistance resources information for only part of the Treasury Department (e.g., there is no information for TTB, which has 116 OMB-approved paperwork requirements and which took 16,203 enforcement actions in Fiscal Year 2003 against small entities). Your testimony stated that Treasury is "currently assembling information on those resources" for TTB *(pp. 5-6)*.

When will Treasury provide all of the missing information? What is the reason for this noncompliance?

Answer: The Treasury Department underwent a massive reorganization in late 2002 and the first half of 2003 as a result of the creation of the Department of Homeland Security. Key staff departed and it appears the Department lost track of this requirement.

The TTB, which was established in 2003, has completed compiling its compliance assistance resources. This information has been posted on the TTB website and transmitted to OMB for posting on the OMB website. We are working with our other regulatory components to ensure that they are in compliance with the law.

Q5. Single Point of Contact. Treasury's Single Point of Contact (SPOC) reports to you.

a. How many calls has Treasury's SPOC received from small business?

Answer: Treasury's single point of contact has not received any calls from small businesses. We believe this is because our small business customers already know where to get the information they need, whether it be from the IRS, the TTB, or other parts of the Treasury Department. Both the IRS and the TTB have comprehensive written and electronic compliance guidance for small businesses, and have substantial resources devoted to responding to taxpayer inquiries.

For example, for the 10-month period ending September 30, 2003, the Small Business/Self Employed (SBSE) Division at the IRS received almost 5.4 million calls on its toll-free lines for responding to inquiries for tax information or about notices sent by the IRS. Also, in FY 2003 the SBSE website had over 7 million hits.

Similarly, in the last fiscal year, the TTB fielded about 80,000 calls from taxpayers seeking assistance (virtually all of TTB's customers are small businesses). For the six month period ending June 30, 2004, the TTB website received almost 4 million hits.

b. What topics did they cover?

Answer: As stated in answer Q5a, to date, Treasury's SPOC has not received any calls from small businesses. However, our SPOC knows to refer the calls in a manner consistent with the process outlined in answer Q5d.

c. Was Treasury's SPOC able to answer all questions posed? If not, how were they handled? And, was the response complete and timely?

Answer: As stated in answer Q5b, to date, Treasury's SPOC has not received a formal call. However, our SPOC knows to refer small business callers in a manner consistent with the process outlined in answer Q5d.

d. Did OMB, the Small Business Administration, or anyone else train your agency's SPOC? If not, do you think that training would help?

Answer: Because Treasury is a diverse organization with a diverse mission, the most important information our SPOC needs to have is where to refer small business callers so

that they can speak with someone with the expert knowledge to help. For tax questions, the SPOC can ascertain whether the IRS or the TTB is the appropriate contact, and put callers in touch with the appropriate office. If callers have questions about other Treasury requirements, the SPOC can do similar referrals. If the SPOC is unsure of where to refer callers, the SPOC knows who to call in Treasury's General Counsel Office to find the answer. Accordingly, we do not believe other training is needed at this time.

Q6. Reduced Frequency for Form 941. The US tax code provides discretion to the Treasury Department to issue a regulation to establish the frequency of employer reporting about wages paid to employees. IRS regulations establish a quarterly reporting requirement, which is embodied in the Form 941, "Employer's Quarterly Federal Tax Return." For individuals with a household employee (maid), the tax code requires only an annual vs. quarterly Form 941 to be filed if wages are below a certain threshold.

In April 2004 testimony before the Ose Subcommittee, IRS Commissioner Everson stated that IRS "is studying a proposal that would allow taxpayers to file an annual [Form 941] filing option. By extending this option to taxpayers who have demonstrated compliant behavior in filing returns and payment of taxes for at least 8 quarters, and who [owe] less than $2,500 per quarter in tax liability, the initiative could affect approximately 691,000 small business taxpayers" (p. 17). OMB's April paperwork reduction report says that January 2006 is the target date for a decision on this 344 billion hour paperwork burden? Why not sooner?

Answer: Systems will need to be organized to identify those taxpayers who qualify for the annual filing option. The processes will involve hundreds of IRS personnel to identify the taxpayers who qualify, contact those taxpayers who qualify, and set up the program. The target date of January 2006 allows for the time to establish the necessary processes and implement the program.

Congress of the United States

Washington, DC 20515

July 28, 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 July 20, 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 OMB's Record in Small Business Paperwork Relief? – Part II." As discussed during the hearing, please respond to the enclosed followup questions from Ranking Member John Tierney 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 August 19, 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
The Honorable Charles A. Gonzalez

PRINTED ON RECYCLED PAPER

Questions for the Record
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Hearing Held on July 20, 2004
for John Graham, Administrator, Office of Information and Regulatory Affairs
from Ranking Member John F. Tierney

1. In developing its proposal for a rule that is supposed to regulate emissions of toxic mercury from power plants, EPA failed to analyze any mercury control options other than the approaches proposed by the Administration. In fact, EPA refused to do the analyses recommended by its own public advisory group on this rule, which included recommendations from states, industry, and environmental advocates.

Responding to public criticism regarding the lack of analysis of alternatives to the proposal, Administrator Leavitt promised in March 2004 that EPA would conduct additional analysis. To date, as far as we know, EPA still has not done any new analysis and EPA is refusing to answer congressional inquires about its schedule for doing additional analysis. EPA Assistant Administrator Jeffrey Holmstead has repeatedly refused to analyze the range of options recommended by the advisory group. Assistant Administrator Holmstead reportedly said in an interview that EPA refused to do the modeling analysis recommended by the advisory group after discussions with White House officials, including you and James Connaughton, Chairman of the Council on Environmental Quality.[1]

a. Have you discussed with Mr. Holmstead the question of what analysis EPA should conduct to support a decision on the mercury rule, either before or after EPA issued the proposal? If so, when did you discuss this, and what was your recommendation?

b. Have you discussed with any other Administration official the question of what analysis EPA should conduct to support a decision on the mercury rule? If so, please identify the official(s) involved and the timing of your discussion.

c. After the proposal was issued and Administrator Leavitt promised to conduct additional analysis, did you discuss with Mr. Holmstead the question of what additional analysis EPA should conduct to support a decision on the mercury rule? If so, what was your recommendation?

d. After the proposal was issued and Administrator Leavitt promised to conduct additional analysis, did you discuss with any other EPA or Administration official the question of what additional analysis EPA should conduct to support a decision on the mercury rule? If so, please identify the official(s) involved and describe your recommendation.

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[1] *EPA Will Spotlight Cap-and-Trade Approach in New Mercury Analysis*, Greenwire (Mar. 25, 2004).

2. At the hearing, you seemed to indicate that you were not familiar with the fact that EPA's public advisory group has recommended that EPA conduct analysis of alternative approaches to the mercury rule or with the specific recommendations for analysis made by EPA's public advisory group. Is this correct?

Do you not agree that the recommendations for necessary analytical work made by the formally established public advisory group on EPA's mercury rulemaking should be given substantial weight? If you do not agree, please explain the basis for your position.

3. Traditionally, OIRA has encouraged agencies to consider a broader range of regulatory options than agencies may have initially contemplated. OIRA has also strongly supported extensive analysis of the costs and benefits of regulatory options. In the mercury rulemaking, does OIRA support analysis of a full range of regulatory options for controlling mercury?

a. If so, have you provided this advice to EPA? If EPA does not comply, do you contemplate returning the draft final rule to EPA?

b. If not, why not?

4. At the hearing, you committed to provide information to the Committee on any advice that you or your office have given EPA on matters of legal interpretation of the Clean Air Act regarding EPA's ongoing rulemaking on mercury.

a. Has OIRA attempted to provide EPA any such legal advice? If so, please describe the substance of such advice. Please include any discussion of EPA's proposed approach under section 111 of the Clean Air Act and the interpretation of section 112 included in the proposal that could authorize a cap-and-trade approach to mercury control.

b. Has OIRA attempted to provide EPA any legal advice regarding whether section 112 of the Clean Air Act requires EPA to analyze additional more stringent mercury control options, such as the analysis recommended by the advisory group? If so, please describe the substance of such legal advice.

5. The law firm Latham & Watkins has promoted an interpretation of section 112 of the Clean Air Act that would allow a cap-and-trade approach to regulation of mercury air pollution. Some have stated that this proposal was included in EPA's proposal at the request of the Office of Management and Budget (OMB) and the Department of Energy. Is this accurate? Did OMB request or support including the Latham & Watkins' proposal? If so, please explain the basis for including this proposal in EPA's proposed rule.

Rec'd 10/4/

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 14 2004

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

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:

This letter is in response to your letter of July 28, 2004, in which you posed additional questions for the record of the July 20, 2004 joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs and the Small Business Subcommittee on Regulatory Affairs on implementation of the Small Business Paperwork Relief Act.

The questions relate to the Office of Information and Regulatory Affairs (OIRA) involvement in recent U.S. Environmental Protection Agency (EPA) proposed rulemakings to limit air emissions of mercury and nickel from electric utilities. Specifically, in December 2003, EPA proposed a rule to permanently cap and reduce mercury emissions from power plants. OIRA reviewed this rule from November 25, 2003 until December 15, 2003. Also in December 2003, in a separate but closely related action, EPA proposed the Clean Air Interstate Rule (CAIR), which would require states in the eastern United States to reduce sulfur dioxide and nitrogen oxides emissions. OIRA reviewed this rule from December 11, 2003 until December 17, 2003. Together, these two proposed rules address air emissions of mercury from coal-fired power plants.

A supplementary proposed rule on the mercury cap-and-trade program rule was published on February 24, 2004. The supplemental proposal describes a model cap-and-trade program that states could adopt, as well as monitoring and reporting requirements for those states choosing to participate in the trading program. OIRA received this supplementary proposal for formal review on January 29, 2004, and concluded review on January 30, 2004.

A supplementary proposed rule on the CAIR was published on June 10, 2004. This supplement provides additional specifics on the CAIR cap-and-trade program, as well as details on the proposed integration of CAIR with existing Clean Air Act requirements. OIRA received this supplementary proposal for review on May 13, 2004 and concluded review on May 18, 2004.

In each case, OIRA reviewed these proposed rules under the authority of Executive Order No. 12866. This executive order, issued by the Clinton Administration, empowers OIRA to review, and to coordinate interagency review of, significant Federal rules. In fulfilling its responsibilities under the Executive Order, OIRA reviews and evaluates agency analysis in support of agency rulemakings.

During these particular rulemakings, OIRA interacted extensively with EPA and other Federal agencies. For example, EPA and OIRA have discussed ways of implementing a cap-and-trade approach for mercury under Sections 111 and 112 of the Clean Air Act. The use of a cap-and-trade approach to achieve efficient reductions in emissions is a central tenet of this Administration's regulatory approach and is a key element of its Clear Skies legislation. In addition, Executive Order No. 12866 includes as one of its principles of regulation the provision that agencies should assess the use of economic incentive programs, such as a cap-and-trade program.

OIRA and EPA believe it makes sense to address mercury, sulfur dioxide, and nitrogen oxide emissions simultaneously. This suite of actions is expected to reduce the number of asthma attacks and heart attacks around the country by lowering the levels of fine particles and ground level ozone in the air. By reducing mercury levels, it also would reduce potential risks to pregnant women and young children who consume certain fish. If enacted, these rules would protect public health and the environment without interfering with the steady flow of affordable energy for American consumers and businesses while assuring that all types of coal retain a vital part of our energy mix.

Sincerely,

John D. Graham, Ph.D.
Administrator
Office of Information
and Regulatory Affairs

cc: The Honorable Tom Davis
The Honorable John Tierney
The Honorable Donald A. Manzullo
The Honorable Charles A. Gonzalez

Identical letter sent to The Honorable Edward L. Schrock

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CHAIRMAN

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Congress of the United States

House of Representatives

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BERNARD SANDERS, VERMONT,
INDEPENDENT

October 15, 2004

The Honorable John Graham
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Dr. Graham:

I recently received your response, addressed to Subcommittee Chairman Ose, to questions I submitted as a follow-up to a July 20, 2004, Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs hearing. My questions were on EPA's rulemaking on mercury emissions from power plants.

I am again enclosing my questions for your response. I am disappointed that your reply did not address any of the specific questions I posed or provide any of the information I requested. This is particularly troubling in light of the fact that you personally committed at the hearing to provide information to the Committee on any advice that you or your office have given EPA on matters of legal interpretation regarding EPA's ongoing mercury rulemaking.

I have posed straightforward questions regarding the activities of your office with respect to a high profile and controversial rulemaking. Your continued failure to respond would raise questions regarding your willingness to cooperate with Congress in its oversight capacity and your good faith in making assurances to Members of this Committee.

Please submit your responses to each of the specific questions enclosed by October 29, 2004. Thank you for your cooperation.

Sincerely,

John F. Tierney
Ranking Minority Member
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs

Enclosure
cc: The Honorable Tom Davis
The Honorable Henry Waxman
The Honorable Doug Ose

11/10/(

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 12, 2004

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

The Honorable John F. Tierney
Ranking Minority Member
Subcommittee on Energy, Policy, Natural
Resources and Regulatory Affairs
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Tierney:

Thank you for your letter of October 15, 2004 regarding my response dated October 4, 2004 to your questions of July 28, 2004. These questions were forwarded by Chairmen Ose and Schrock and followed up on my testimony at the July 20, 2004, joint hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs and the Small Business Subcommittee on Regulatory Affairs on Implementation of the Small Business Paperwork Relief Act. The intent in my October 4th letter was to respond to your questions, which I believe I did, and in response to your recent letter I will try to respond more directly to each question below.

In addressing your questions, let me provide some context regarding regulatory review under Executive Order 12866 and our relationships with the Executive Branch agencies and departments. As you know, E.O. 12866 instructs agencies to submit drafts of significant rules to my office, the Office of Information and Regulatory Affairs (OIRA), for review. We review and evaluate the draft rules and the analysis that supports them for compliance with the principles of the Order. In the course of these reviews, we discuss the rule and its analysis with agency staff and policy officials, often at great length. We also seek the advice of other agencies who may have expertise or interest in a particular rulemaking. These interagency views are particularly helpful in ensuring that the draft rule is carefully thought out and coordinated with other federal programs.

These discussions among OIRA and agency officials are collegial and iterative, and involve questions, responses, suggestions, and general discussion of policy, economic, legal, programmatic and analytic issues. In the course of these predecisional discussions, OIRA and other agencies may offer suggestions to the agency on the issue areas listed above. This is followed by further back and forth among all the involved parties. The regulating agency may decide that suggestions and recommendations have merit and adopt them, or a version of them; or, agency officials may decide to pursue either their original course or a different course that may emerge from the review. The point I wish to underline is

that while the Executive Order directs OIRA to review and coordinate interagency review of draft rules, it is the rulemaking agency that retains legal authority over the rule and makes all final decisions regarding its content.

Now let me respond to your questions:

1. a. You ask if I discussed with Mr. Holmstead, the EPA Assistant Administrator for Air and Radiation, the question of what analysis EPA should conduct to support a decision on the mercury rule. EPA and OIRA staff and officials, including myself and Mr. Holmstead, have discussed the mercury rulemaking, including associated analysis, on numerous occasions, both before and after the proposed rule was issued. Those discussions continue as we collaborate on the development of a final rule. In addition, the public has had the opportunity to comment on this proposed rulemaking. They also have offered comments and recommendations on analytic issues that EPA will be taking into consideration and discussing through the interagency review process. As noted above, this process is the norm with any important rulemaking.

1. b. You ask if I discussed with any other Administration officials the question of what analysis EPA should conduct to support a decision on the mercury rule. I and my staff have discussed mercury analysis issues with numerous officials involved in the interagency review process, including representatives from EPA, the Department of Energy, the Council of Economic Advisors, and the Council of Environmental Quality. Again, such conversations have taken place on numerous occasions over the past eighteen months and continue as EPA analyzes public comment and works toward developing a final rule.

1. c. You ask if, after the proposal was issued and Administrator Leavitt promised to conduct additional analysis, I discussed with Mr. Holmstead the question of what additional analysis EPA should conduct. I did indeed discuss mercury analysis issues with Mr. Holmstead, other EPA officials, and interagency officials both before and after the proposal was issued. It should be added that the discussions regarding this rulemaking included analytic, economic, legal, programmatic and policy issues as well. In this case, OIRA has encouraged EPA , as we encourage other agencies, to consider a variety of analyses. As noted above, these discussions are continuing and will be informed by public comment on the proposal.

1.d. You ask if, after the proposal was issued, I discussed with any other EPA or Administration official the question of what additional analysis EPA should conduct. Yes, I and my staff discussed analytic and other issues with numerous EPA officials and staff, as well as with officials and staff from other interested agencies. These conversations have been numerous, interative, and ongoing, and are continuing as EPA evaluates public comments and develops a final rule.

2. You note the EPA public advisory group's recommendations regarding alternative analytic approaches to the mercury rule, and ask if I agree that the recommendations made by the public advisory group should be given substantial weight. In any important rulemaking, including its mercury regulation, EPA considers a number of important factors, such as policy, technical, legal, and resource considerations, from a wide variety of sources. All these factors go into the

agency's decisions regarding the appropriate analyses to undertake, for example, in considering the input of this working group. Of course, comments made by the public in response to the proposal may recommend yet other analytic approaches that EPA will have to consider and weigh.

3. You ask if OIRA has strongly supported extensive analysis of the costs and benefits of regulatory options, and whether we support analysis of a full range of regulatory options for controlling mercury. You also ask if we have provided such advice to EPA and whether we would return the draft final rule if EPA does not comply. We have indeed encouraged EPA to perform a rigorous comparison of the cap-and-trade versus MACT alternatives. As noted above, we continue to discuss these and other important issues related to this rulemaking with EPA and other interagency officials. When EPA submits a draft final rule to us for E.O. 12866 review, we will evaluate whether the agency has complied with the principles of the Order.

4. You ask if OIRA has attempted to provide EPA any advice regarding matters of legal interpretation of the Clean Air Act related to the mercury rulemaking. You also ask if we have attempted to provide any such legal advice regarding whether section 112 requires EPA to analyze additional, more stringent mercury control options. Legal issues are frequently discussed in the course of our review of draft rules and the interagency consultation process under Executive Order 12866. Such issues are often critically interwoven with economic, policy, programmatic, technical, and other issues. In the course of our discussion of the mercury rulemaking, we and other interagency officials have at various times discussed all these issues with EPA.

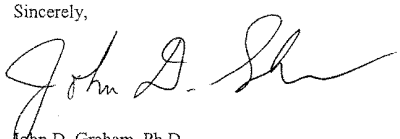
5. You ask if OMB requested that EPA include in the mercury proposal an interpretation of section 112 promoted by the law firm Latham and Watkins which would allow a cap-and-trade approach to regulation of mercury. As you may know, OIRA has long been a supporter of market-based regulatory policies, including, where appropriate, cap-and-trade programs. We have always felt that the proposed rule should take comment on cap-and-trade mechanisms, including alternative legal authorities for establishing mercury cap-and-trade programs. We have had numerous discussions with EPA and other interagency officials, as well as with stakeholders, about this important issue, and I am sure it will continue to be the focus of continuing dialogue as EPA works toward a final rule.

Finally, I want to address your request for information about specific discussions that OIRA has had with EPA and other agencies regarding this rulemaking. These discussions are part of the Executive Branch's ongoing internal deliberative process. Under Executive Order 12866, certain categories of documents and information are made available during the course of OMB's review of a draft rule and when the proposed rule or final rule is published. In the disclosure procedures that I established in October 2001, soon after I became OIRA Administrator, I reinforced these disclosure procedures. These disclosure procedures, however, do not include the release of the informal interagency discussions that occur as a regular part of the regulatory review process. These discussions are an important part of exploring regulatory alternatives and evaluating the rulemaking package; they are beneficial for OIRA, for the rulemaking agency, and for other interested agencies and offices. As the courts have indicated

on numerous occasions, and as Congress recognized in the FOIA exemption that protects predecisional, deliberative information, the effectiveness of deliberative discussions depends on their being conducted in a confidential manner. Providing more detailed information regarding these discussions would impair their confidentiality and, thereby, impair the deliberative process itself.

I hope that this letter addresses the concerns you raised in your letter of October 15, 2004. Please do not hesitate to contact me if I can supply additional information.

Sincerely,



John D. Graham, Ph.D.
Administrator
Office of Information
and Regulatory Affairs

cc: The Honorable Tom Davis
The Honorable Henry Waxman
The Honorable Doug Ose
Mr. Jeffrey Holmstead