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THE ADMINISTRATION'S PROGRAM TO REDUCE UNNECESSARY REGULATORY BURDEN ON MANUFACTURERS—A PROMISE TO BE KEPT?

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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THE ADMINISTRATION'S PROGRAM TO REDUCE UNNECESSARY REGULATORY BURDEN ON MANUFACTURERS—A PROMISE TO BE KEPT?

THURSDAY, APRIL 28, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT,
COMMITTEE ON SMALL BUSINESS
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:32 a.m. in Room 311, Cannon House Office Building, Hon. W. Todd Akin [chairman of the Subcommittee] presiding.

Present: Representatives Akin, Kelly, Poe and Bordallo.

Mr. AKIN. The meeting will come to order. It is a pleasure to see some witnesses. We have a lot of witnesses today. We are going to have to try to keep on time and all, but welcome everybody. Thank you so much for taking the time to join us.

Minority Member Bordallo, it is also great to have you here.

We were just chatting a moment beforehand on a subject of red tape and paperwork. It is sort of a peculiar subject for me to be chairing a meeting on this because I would like to get rid of all of it if I could. I have already expressed a political opinion. I try to stay away from that to some degree.

I would like to say good morning and welcome to the hearing of the Subcommittee on Regulatory Reform and Oversight. A special welcome to those of you who have come some distance to participate and attend this meeting.

We are holding the hearing in light of a disturbing reality: In the past five years the United States has lost over two million jobs in the manufacturing sector. Small manufacturers, which make up the core of the industrial base of our country, have been struggling.

I am happy to say that in the recent months the economy and manufacturing specifically have shown signs of improvement. Much of that can be attributed to the tax reductions proposed by the President and enacted by this Congress and of course to the hard work, creativity and initiative of the American workforce.

A number of factors have been cited in causing the loss of manufacturing jobs. They include the tax burden, overvaluation of the dollar, low wage rates in countries such as China, outsourcing to foreign countries of jobs formerly performed here in the United

States, governmental paperwork and red tape, and needless bureaucratic regulations.

I want to make it very clear that we are not talking here about eliminating regulations that are essential to maintaining the public health, safety and necessary protection to the environment. To eliminate such regulations would be bad business and detrimental to the nation as a whole.

The Administration has heard the plea of manufacturers, especially small manufacturers, to eliminate needless and burdensome regulations. In February 2004, the Office of Management and Budget, OMB, asked for recommendations from the public as to those regulations affecting the manufacturing sector that should be modified or otherwise reformed to reduce the costly regulatory burden. Comments were received from over 40 businesses and nonprofit organizations that nominated 189 regulations, guidelines and paperwork requirements for reform.

In December 2004 OMB submitted the 189 nominations to the federal agencies for their review. In March of this year the Administration announced that, "Federal agencies will be taking practical steps to reduce the cost burden on manufacturing firms operating in the United States by acting on 76 public nominations to reform federal regulations."

It was further announced that, "OMB has directed agencies to take the most appropriate action to ease the excessive burden for the manufacturing industry while maintaining health, safety and environmental protections for the public."

This is a good start, but there are a number of questions that need to be asked. Will this program be implemented and completed as advertised? Are the 76 proposals, of the 189 nominated for reform, the ones that will have the most beneficial effect on manufacturers and our country's economy?

These are the critical questions we are seeking to have answered today, and we appreciate all of you who have agreed to testify to that end. Thanks again to all of our witnesses for coming, and now I will turn to our distinguished Ranking Member, Mrs. Bordallo, for her opening remarks. Thank you.

Ms. BORDALLO. Thank you very much, Mr. Chairman, and I would like to thank you for calling this important hearing today. I think it is an important first step to call for regulations that I believe to be outdated and overly burdensome and review them.

In that respect I am encouraged by the actions of the Office of Information and Regulatory Authority, the Office of Advocacy, the Department of Labor and the EPA. However, I am somewhat discouraged at the time it has taken to move forward with such a program and at the lack of resources available to conduct such reviews.

One of the key conclusions we have reached is that more needs to be done to help small businesses with the federal regulatory and paperwork burden. In the four hearings that we have held on this issue in the last month, every small business witness and every major association that has testified before the Small Business Committee has put regulatory burden at or near the top of their priority list.

It is clear something is definitely wrong, and in spite of promises to rectify this problem made in recent years the regulatory burden has only increased for our nation's 23 million small businesses. Federal agencies need to be held accountable for their agencies' performance, and I hope that a connection is being made between the federal red tape and paperwork burden and national competitiveness.

As you know, I represent Guam, the Territory of Guam, which is located on the doorstep of China, Japan, South Korea and many other Asian countries, some of the most competitive economies in the world. Our small businesses need to be efficient and competitive as they can be to succeed. Action on regulatory reduction starts with setting standards for agency performance and then following through from the highest to the lowest level.

I know that during the term of President Clinton he put the Vice President in charge of a government-wide effort to review and renew our commitment to regulatory overhaul and compliance. During this Administration there was a dramatic reduction in small business dissatisfaction about red tape that has recently, I am sorry to say, bottomed out. I hope that high priority level has not been lost.

The U.S. should avoid a race for the bottom, and by that I mean we should maintain our high standards. We must instead adopt the attitude that innovative and effective solutions exist to achieve our regulatory goals without jeopardizing our ability to maintain worldwide competition.

The Committee has been careful in the past to ensure that small businesses are not simply used as a mantra to dismantle regulations, but rather that we find intelligent ways to provide protection to health, safety and fair competition, and the best way to do this in my view is with the cooperation of the small business community, as well as state and local governments like Guam to review problems in our present system and reduce outmoded and redundant regulations.

I look forward to hearing about your efforts to review previous regulations, and I do hope that small businesses form a major part of that effort.

Thank you, Mr. Chairman.

Mr. AKIN. Thank you so much. I am looking forward to comments.

One of the things I have tried to do in my Subcommittees is to try to keep things on time, so it is my job to make sure that we keep the opening comments at five minutes per witness.

We have, I think, from most of you written statements that you have submitted for the record. So, I think probably for the purposes of our proceeding it might be best if you just summarize what you came here to say. Congressmen get chased to all different kinds of Committees and directions, so if you think of the one or two things that you really want to communicate, maybe that is the easiest way to proceed.

I like to run things fairly informally, and we are not overwhelmed with people. There are so many different Committees

meeting at the same time that we will be able to get through things in a good amount of time I think.

The first person I would like to call is the Honorable John Graham from OMB. Perhaps, John, you can touch on that one set of numbers that I mentioned, that there were I think 189 nominations, and we picked 76.

You know the old 80/20 rule. Sometimes 80 percent of the trouble comes from 20 percent of the regulations. I hope that we have picked some of the real juicy ones, but I look forward to your testimony.

STATEMENT OF THE HONORABLE JOHN D. GRAHAM, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. GRAHAM. Thank you, Mr. Chairman. Good morning to you and to other Members of the Subcommittee.

Let me start with some good news and bad news on the subject of regulatory burden. During the first full year of the President's Administration we slashed the growth of new regulations by about 70 percent compared to the 20 year previous average, so we have been making progress and slowing the growth of the burden of regulation.

The bad news is that we at OMB are humbled by the sea of existing federal regulations that have accumulated over the last dozens of years of the republic. Since OMB began to keep records in 1981, there have been 115,000 new federal regulations adopted. Twenty thousand of them we at OMB cleared and allowed to be published in the Federal Register. Of those, 1,100 of them were estimated to cost the economy more than $100 million when they were enacted.

Sad as it is to say, most of these regulations have never been reviewed to determine whether they accomplished their intended purpose, how much they actually cost or what their benefits are.

Mr. Chairman, as you mentioned in your opening remarks, we have taken a modest step in this Administration in 2004 to identify a particular sector of the American economy, the manufacturing sector, which compared to all of the other various sectors is estimated to bear the largest burden measured as cost per employee for a business in terms of regulatory burden.

We received, as you mentioned, 189 nominations from 41 commenters, and we have identified in collaboration with the agencies 76 of them that we feel we can make practical progress without new legislation, simply with actions of our federal regulatory partners.

I want to thank the collaboration we had not only from our regulatory agencies, but from the Advocacy Office of the Small Business Administration and the Commerce Department, the new Manufacturing Unit of the Commerce Department, that helped us identify these targets for practical progress.

Let me conclude my oral statement by just giving you a sense of the global economy that we work in and how even the most regulated segments of the world economy in the European Union today, they are aggressively seeking efforts to reduce the burden on Euro-

pean businesses in order to make them more competitive in the global economy. While we certainly hear about China, and that is a very significant concern, let me tell you what is happening in Europe.

Financial Times dated Monday, April 25, 2005, Bonfire of Red Tape Planned for Brussels. "As many as 50 European laws could be scraped by this summer as Gunter Verheugen, the new EU Enterprise Commissioner, tries to signal a new era of lighter regulation from Brussels. Mr. Verheugen has ordered a bonfire of legislation that was proposed under the former administration of Commissioner Prodi in one of the most thorough cleanouts of red tape ever conducted by the European Commission."

The article continues, "The Commission has suggested it would withdraw or radically simplify a string of existing laws in such areas as medical devices, waste disposal, the approval of motor vehicles, company law and taxation."

I draw your attention to this reality, Mr. Chairman, because we not only need to do this in this country aggressively in order to reduce the current burdens, but we need to recognize the global competitive environment that our workers and our businesses are operating under.

There are other parts of the world that are dramatically taking steps to make themselves more competitive. That is why I am very encouraged that you are here this morning helping us and drawing attention to our modest effort to streamline these 76 manufacturing regulations. Thank you very much.

[The Honorable John Graham's statement may be found in the appendix.]

Mr. AKIN. You get the extra points for being 45 seconds under time. Good work. Thank you very much, Administrator.

Our second witness is going to be Howard Will, and I believe that Howard is the president of the Caldwell Group, if that is correct.

Mr. WILL. Correct.

STATEMENT OF HOWARD WILL, CALDWELL GROUP

Mr. WILL. Chairman Akin, Ranking Member Bordallo, Members of the Committee, I am Howard Will. I am here on behalf of the U.S. Chamber of Commerce and the Associated Wire Rope Fabricators.

I am the CEO/owner of Caldwell Group, a 70 employee small manufacturer located in Rockford, Illinois. I purchased this company in 1976, so I have been at it for about 30 years. Caldwell manufactures below-the-hook lifting products, and the Caldwell Company was one of two firms that invented the web slings back in the 1950s using MIL spec web.

I have been active in technical aspects of trade associations for almost all of my professional life, first with the Web Sling Association as past chair of their technical committee and past president of that organization and currently with the Associated Wire Rope Fabricators as a past board member, a member of the technical

committee and chair of their testing committee for the past 10 years.

These associations have conducted a number of technical activities. The Web Sling Association back in the 1970s developed a web sling standard which is the basis for Chapter 5 in the ASME B30.9 standard. They did UV and saltwater testing of web slings to determine deterioration of boat slings, and mostly recently they have done UV testing of web slings to see how slings hold up in a construction environment.

The Associated Wire Rope Fabricators is the most active testing committee in the industry with 10 to 12 test programs completed. Many of the problems they have tested are web slings, heat effects on web slings, braided wire rope slings, fatigue of round slings and cuts in web slings.

The point I am making is these trade associations, particularly their members, and many of their members are the chief engineers of these companies, and these companies are small companies. They have the technical expertise. They do the testing. They provide the input to draft and update the ASME standards, specifically the B30.9 standard, which is updated every three years.

This standard, ASME B30.9, is the recognized safety standard for slings. It covers six types of slings—chain, wire rope, metal, mesh rope, web, round slings—and is updated every three years.

The OSHA position, they use and promote an old standard. Back in the 1970s B30.9, the 1971 version, was the basis for OSHA's rules which were published in the Federal Register and adopted in 1975. There has been no change or update in this regulation in 30 years.

They have also published a booklet, 3072, and there has been no update since 1996 on that. The problem is there are new slings, new technical info, and there are errors in the booklet. AWRF in particular has pointed out problems with the booklet.

Changing the OSHA standard is one of the 76 items pointed out by OMB for action, and nothing has happened. The basic problem is the industry uses the B30.9 standard. They create operating instructions for their products. They use warnings on their products, and they conduct training in the field based on that standard.

O.S.H.A. relies on its outdated rules, and obviously there is a conflict when there is something newer. There is potential for more conflict. It pops up in another area, and that is court cases where you have product liability. You have two sets of rules/interpretations in a court of law.

In conclusion, please follow OMB's recommendation and adopt the B30.9 standard as the safety standard for slings. OSHA, please use an accelerated ruling process and adopt this new updated standard and update your 1971 rules.

Thank you.

Mr. AKIN. Thank you very much. Do you have one of those little counters over there? You had that timed perfectly.

Mr. WILL. Three seconds.

Mr. AKIN. I appreciate your testimony. Thank you.

The third witness is going to be the Honorable Veronica Stidvent, the Assistant Secretary for Policy for the Department of Labor. You can proceed, Veronica. Thank you.

STATEMENT OF THE HONORABLE VERONICA VARGAS STIDVENT, DEPARTMENT OF LABOR

Ms. STIDVENT. Thank you. Chairman Akin and distinguished Members of the Subcommittee, thank you so much for the opportunity to appear before you today to discuss the Department of Labor's ongoing efforts to strengthen worker protections while reducing unnecessary regulatory burdens on the economy, particularly on the manufacturing sector and on small businesses. This hearing is especially timely coming as it does during Small Business Week.

As requested by the Subcommittee, my testimony will address the Department's overall progress in responding to the public's reform nominations in OMB's report. The Department takes very seriously its responsibility to protect worker safety and health, retirement security, pay and equal access to jobs and promotions.

Over the years, advances in safety, health, science and technology, as well as changes in the law, have rendered a number of Department regulations outdated or even unnecessary. As a result, these advances have required us to revise or eliminate regulations and to consider and adopt new rules and approaches that ensure strong protections for workers without imposing unnecessary and costly burdens on the economy.

The Department recognizes the costs that regulations place on the regulated community, particularly the small business community. We have pursued alternatives to rulemaking whenever feasible and have attempted to minimize the costs of any regulations while ensuring that strong worker protections are in place.

The Department also recognizes that employers often need help understanding their rights and responsibilities under federal labor laws and regulations. That is why Secretary Chao launched the Compliance Assistance Initiative in June of 2002. The initiative aims to provide businesses, employees, unions and other regulated entities with the knowledge and tools they need to comply with the Department's rules.

As part of the initiative, we have developed a variety of free tools, often tailored to small business, to provide employers with access to clear and accurate information when and where they need it. The initiative also involves working with other government agencies such as the Small Business Administration and partnering with private organizations to help educate business owners and workers about available compliance assistance tools and resources.

Our multifaceted approach to regulatory reform, compliance assistance and vigorous enforcement is working. Due in part to these activities, the rate of workplace fatalities and the injury and illness rate are at the lowest levels in OSHA history. In 2004, the Mine Safety and Health Administration reported the fewest number of fatalities since 1910 when records were first kept.

As this Subcommittee recognizes, one important regulatory tool in the process is addressing the public's reform nominations that

are included in OMB's annual report to Congress on the costs and benefits of federal regulations. OMB's 2005 report included 11 reform nominations for the Department of Labor, including recommendations addressing the Family and Medical Leave Act, permanent labor certification and nine OSHA regulations and guidance documents.

The Department either has or will be taking action on each of these reform nominations. For example, a commenter recommended that the Department finalize the new labor certification application process to bring permanent alien workers into the United States. The Department's Employment and Training Administration published this final rule on December 27, 2004.

To conclude my testimony, I would like to briefly describe two of the regulatory actions listed on the Department's spring 2005 regulatory agenda. First, OSHA will complete its respiratory protection standard by publishing its assigned protection factors final rule.

The protection factors are numbers that describe the effectiveness of various classes of respirators in reducing employee exposure to airborne contaminants. This action will reduce compliance confusion among employers and provide employees with consistent and appropriate respiratory protection.

Second, and consistent with the Secretary's priority for ensuring pension and health benefits security, the Employee Benefits Security Administration will finalize its rules to protect and preserve retirement assets of workers who are covered by 401[k] plans that have been abandoned by their employers.

These rules will empower financial institutions that hold assets of abandoned plans to help workers gain access to their retirement benefits, benefits that might otherwise be depleted as a result of ongoing administrative costs.

Mr. Chairman, the Department is proud of its achievements in streamlining its regulatory agenda since 2001. In doing so, we have provided clarity in our regulations for employers, workers and the public at large. We value the important input we receive from the public during the rulemaking process, OMB's reform nomination process and the feedback we receive through other outreach efforts.

We are dedicated to reducing the regulatory costs and burdens for employers which will help them create jobs while at the same time continuing our commitment to strengthen protections for the American workforce.

Mr. Chairman, this concludes my testimony, and I would be happy to respond to any questions you may have.

[The Honorable Veronica Vargas Stidvent's statement may be found in the appendix.]

Mr. AKIN. Thank you, Veronica. We are going to do the questions after we have a chance to have the opening statements. Some people have come a long distance. We want to make sure everybody gets a chance.

Our next witness please would be Drew Greenblatt. You are with Marlin Steel Products I believe?

Mr. GREENBLATT. That is correct.

STATEMENT OF DREW GREENBLATT, MARLIN STEEL PRODUCTS, LLC.

Mr. GREENBLATT. Mr. Chairman, Members of the Regulatory Reform and Oversight Subcommittee, my name is Drew Greenblatt, and I am the owner of Marlin Steel Wire in Baltimore, Maryland. I am before you representing the views of the National Association of Manufacturers or the NAM.

The National Association of Manufacturers is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. Three-quarters of the NAM's members are manufacturers with small to medium sized operations. Visit the NAM's award winning website at www.nam.org for more information about manufacturing and the economy.

N.A.M. president John Engler testified about the impact of regulations on manufacturing earlier this month before the Regulatory Affairs Subcommittee of the House Committee on Government Reform. Since his testimony is so recent and on the same topic, the Subcommittee staff agreed that it would make sense to submit that written testimony for the record of this hearing.

Briefly, Governor Engler's April testimony noted that regulations, especially environmental and workplace regulations, impact the manufacturing sector more than any other sector. In addition, regulations impact small manufacturers in terms of cost per employee more than twice as much as larger manufacturers, nearly $17,000 for firms with fewer than 20 employees versus $7,000 for firms with more than 500 employees.

Thus, it is appropriate for last year OMB's annual report to Congress on the costs and benefits of regulatory programs to focus on regulations that impact manufacturing. In particular, the NAM submitted several small technical suggestions and strongly urged OMB to improve seven regulations that have a broad effect on manufacturing.

On March 9 of this year, after consultation with the agencies about these regulations, OMB listed 76 regulations that agencies were directed to consider improvements for. I would like to note that any substantive changes to any of the regulations on this list will be subject to notice and comment requirements of the Administrative Procedures Act, so any such changes to be made will be transparent and open.

Turning to my company, these regulations may seem like abstract concepts, but they have a major impact on Marlin. Marlin makes wire baskets, shelves, wire forms and hooks for U.S. companies like Baxter, Boeing, Caterpillar, Honeywell, Johnson & Johnson and Rubbermaid. We make 100 percent of our products in Baltimore, and we import nothing. We do not outsource our employees from overseas.

We were established in 1968, and we have 20 employees. We are an example of the American job growth machine. Growing my company in a profitable manner is my goal, and as I grow I am going to need smart people and I am going to need to hire them. I am going to need to buy more equipment. Some of that equipment is

made in Rockford, Illinois. The congressman on the other Committee is in that area. I buy from Lewis, Ideal and Schlotter, three major manufacturers in Rockford.

For the record, all my employees get great health insurance, vacation, holiday pay, 401[k], 100 percent college reimbursement, but there are government caused obstacles to my growth. For me and many of my peers, it is just not one or two regulations that are troublesome. It is a cumulative effect of many regulations. We follow the regulations. Some are good, but the bad ones need to go.

Let us discuss a few of the bad ones that directly affect Marlin and my employees. The first is taxes. Small and medium sized firms are burdened with high expenses. We fill out lots of paperwork and file taxes. It costs my company over $17,000 for outsiders to comply with all these rules.

In addition, I have to pay $30,000 just for internal bookkeeping costs. This makes no sense. That money could be redeployed to more productive purposes like purchasing that robot over there. We bought one of these two months ago so now we can weld as fast as four on welded Mustangs.

If we bought a second one, which I would love to do, we could reduce our costs, narrowing the price difference between me and China. We could make higher quality parts. That would improve the quality difference between me and China, and we could ship faster. Thereby I would win more jobs.

I assure you a Chinese factory does not pay $47,000 a year for this kind of paperwork. This improvement will increase my revenue, which will let me hire more well paid people. This is a win/win solution.

In summary, I think it is a good idea for us to keep the good regulations, get rid of the bad regulations, and what will occur is a renaissance in American manufacturing.

Thank you very much.

Mr. AKIN. Drew, thank you very much for your comments.

Our next witness is going to be the Honorable Stephanie Daigle is it?

Ms. DAIGLE. Yes, it is.

Mr. AKIN. You are with the EPA?

Ms. DAIGLE. Yes.

Mr. AKIN. Thank you, Stephanie.

STATEMENT OF THE HONORABLE STEPHANIE DAIGLE, OFFICE OF POLICY, ECONOMICS AND INNOVATION, ENVIRONMENTAL PROTECTION AGENCY

Ms. DAIGLE. Good morning, Mr. Chairman and Members of the Subcommittee. My name is Stephanie Daigle, and I am the Acting Associate Administrator of the Office of Policy, Economics and Innovation at the Environmental Protection Agency.

Thank you for inviting me here today to discuss the report on regulatory reform of the U.S. manufacturing sector. This report includes 42 wide-ranging reforms to be undertaken by the Agency. I would also like to highlight a few of the Agency's activities that address the needs of small business.

Each year EPA publishes hundreds of regulations and guidance documents. While these actions are necessary to protect public health and the environment, they can pose challenges to small business. In recent years, my office has overseen several reforms to strengthen the credibility and quality of our regulations. At EPA we are fully committed to creating a regulatory system that works for small business.

I am confident that we can achieve this goal because EPA has a long history of working with small business to identify their unique needs and concerns. One of our most recent actions is the development of a small business strategy. The overall goal of the plan is to improve our regulations so that they are easy to understand and practical to implement.

An important element of the small business strategy is to rigorously implement the Small Business Regulatory Enforcement Fairness Act or SBREFA as we like to call it. EPA is a government leader in implementing SBREFA.

Over 450 small business, small government and small nonprofit representatives have provided regulatory advice to the Agency through participation on our small business advocacy review panels. Twenty-seven notices of proposed rulemakings have been published following completion of a panel process, and each regulatory proposal reflected the advice and recommendations of the panel.

I would like to give you one example of a successful panel. In May 2004, EPA finalized a clean air non—road diesel rule, a rule that was strongly supported by industry, health advocates, states, territories and local governments. Since the non—road diesel rule will affect many small entities, EPA convened a SBREFA panel to solicit information and comments from these industries.

Several of the participants expressed concerns with the projected impacts of meeting the new requirements. To accommodate these concerns, the final rule includes a number of provisions to reduce the impact of the rule on small business such as providing additional time and temporary exemption for small volume equipment sales. This is just one example that shows EPA's commitment to addressing small regulatory issues.

Now let me turn to the manufacturing sector report. Each year OMB is required to submit a report to Congress that estimates the total annual cost, benefits and impacts of federal rules and paperwork. While I discuss a number of reforms in my written testimony, I would like to highlight one in particular because it demonstrates the value of the reform process initiated by the report. It concerns a recycling of solid waste.

In the nomination process leading to the manufacturing report, eight industry trade associations, the Chamber of Commerce and SBA requested that the Agency revised its definition of solid waste to exclude certain types of recycling from regulatory coverage. Commenters told us that EPA's current regulatory system for

classifying waste materials actually discourages recycling instead of encourages it.

We listened to their concerns, and in October 2003 the Agency proposed revisions to the definition of solid waste to enable certain types of materials be more easily recycled. In response to the manufacturing initiative, the Agency has committed to finalizing the rule on an expedited schedule. It is our intent to publish a rule by the fall of 2006.

In reaching this conclusion, EPA actively and rigorously sought out the perspective of small business. As part of the outreach effort for the proposed rule change, EPA met with the SBA Advocacy Environmental Roundtable twice, and we plan to participate on a panel at the 2005 Small Business Ombudsman/Small Business Assistance Program National Conference this June.

The solid waste initiative shows how it is possible to protect public health and the environment and meet the needs of the small business community.

Mr. Chairman, Members of the Subcommittee, under this Administration the EPA has taken significant steps towards improving the quality and credibility of our regulations. The reforms we have outlined in the manufacturing initiative are an important part of that improvement process.

Thank you for inviting me here today.

[The Honorable Stephanie Daigle's statement may be found in the appendix.]

Mr. AKIN. Thank you for your testimony, Stephanie.

Our next witness, speaking from the endowed chair of the SBA, is the Honorable Thomas Sullivan. Have you missed any hearings in the last year or two, Thomas?

Mr. SULLIVAN. I sure hope not, Mr. Congressman.

STATEMENT OF THE HONORABLE THOMAS M. SULLIVAN, OFFICE OF ADVOCACY, SMALL BUSINESS ADMINISTRATION

Mr. SULLIVAN. Thank you, Mr. Chairman, Members of the Committee. It is a pleasure to be here again to testify on the public regulatory reform nominations.

Because my office is independent I think I should start out by saying that the views that I express are not the official views of SBA or the Administration. Rather than go through in some detail my written statement I would like to just summarize a few points.

We have heard certainly from a case example how individual businesses help the American economy, but I would like to shed some light on how manufacturing overall helps the American economy. Quite frankly, it keeps the American economy afloat.

I am lucky enough to have economists in my office who produce data spoken about by Mr. Greenblatt, and this other data will certainly be welcome news for this Committee. The economic data from 2002 indicate that nearly 99 percent of all manufacturing firms are small business. Put another way, the small businesses employ over 42 percent of the more than 14 million Americans who are manufacturing employees.

Additionally, small firms innovate more than large ones do, producing 13 to 14 more patents per employee than larger firms do. Finally, small manufacturing firms are more likely than large companies to produce specialty goods and custom demand items. For these reasons, manufacturing is very important to the small business sector of the United States economy, and small business is important to U.S. manufacturing.

I think just that little segment from my written testimony highlights why small business analysis and in particular small business flexibility is so important in the way that agencies conduct their business and draft rules and regulations.

I want to make sure that this Subcommittee realizes that when we talk about reform nominations this is a completely public and transparent process, much to the credit of John Graham's team at OIRA. Additionally, I also want to make sure that the Subcommittee realizes that the responsibility for these reforms rests with the individual agencies.

That is an important starting point because where OIRA makes sure that there is scientific and economic peer reviewed data that is the underpinnings for regulations and my office makes sure that there is small business impact analysis and flexibility for the alternatives that make any regulation less burdensome for small business, the ultimate authority for those regulatory decisions do rest with the agencies like EPA, OSHA, IRS, Department of Transportation and others.

The reason that this public reform nomination process is so important is that the agencies themselves have stepped up to the plate and said these are the rules that we have reviewed that may be outdated, may be duplicative or may simply be unnecessary and so that bears note that the agencies are ultimately responsible.

Lastly, I want to shed some light and disparage on any type of discussion that calls small business flexibility a political process. It is not. My office was created under a Democratic President. The Regulatory Flexibility Act was a Republic President with a heavy Democrat Congress. The Reg Flex Act was amended under President Clinton, and most recently President Bush signed an Executive Order giving the Office of Advocacy even more authority to compel small business flexibility in the way that agencies regulate.

In order for America to remain competitive, and I believe Dr. Graham really hit on this about not only is China looking over our shoulders, but European companies as well are breathing down our necks. In order to make sure that we maintain this country's competitiveness we must make sure the economic engine which is small business is not stifled by overburdensome or unnecessary regulations.

Thank you, Chairman.

[The Honorable Thomas Sullivan's statement may be found in the appendix.]

Mr. AKIN. Thank you very much.

We have been called for a vote. I think we have time, Robert, for your testimony for five minutes, and then I think what we will do is stand in recess. I do not know how many votes we have, but

probably several. I would guess in about 20 minutes maybe we could take up the time for some questions.

Would you proceed, please, Robert?

STATEMENT OF ROBERT SCHULL, DIRECTOR OF REGULATORY POLICY, OMB WATCH

Mr. SCHULL. Certainly. I am Robert Schull. I am the Director of Regulatory Policy for OMB Watch, which is a nonprofit, nonpartisan research and advocacy center promoting an open accountable government responsive to the public's needs. I want to thank you, Mr. Chairman, and Members of the Subcommittee, for inviting me to testify.

We definitely agree that small businesses should not be an excuse for weakening or eliminating the regulatory protections of the public health, safety and environment that we definitely need.

We are concerned because the project being promoted today by OMB is a project that we see as nothing less than a hit list of regulatory protections to be weakened or eliminated and a give away of the public's valuable protections to benefit not small business, but large corporate special interests.

Now, one of the keys to identifying how this hit list will not serve small businesses is to look at the fact that it is targeted at manufacturers. According to Census data, at best 2.5 to five percent of America's small businesses are manufacturers, and if you look at the items on this hit list, the 76 items, and you go through and count up those that were either recommended by the SBA on its list of high priority items or if you look at those whose description mentioned specifically alleviating a small business burden you will find that only 11 out of those 76 items on the hit list meet those criteria.

Additionally, I would like to point out that there were numerous attacks on workers' rights to family and medical leave in this hit list. In fact, of all the suggestions for weakening or eliminating family and medical leave rights that were originally submitted in the 189 suggestions, all but one of those FMLA suggestions were added to the 76 items on the final hit list. I wanted to point this out because the FMLA already by law exempts employers with fewer than 50 employees. This is not a list to benefit small business.

The fact is small business wants to be a responsible member of the public. Small business owners and their families live in the very communities that will be affected by this hit list, but we have to recognize that small business does contribute, just as every other business does, to workplace health and safety injuries, to pollution, to the things, the very problems that we need regulations to protect us from.

So the answer is not a free pass or the elimination of valuable safeguards. The answer, especially if you are considering the needs of small business, is to help small business comply with the regulations so that they can compete on a level playing field with the big corporations that they are competing against.

Give them free compliance assistance that is well funded. Continue the laudable efforts of the Department of Labor and EPA to

work with small businesses on SBREFA panels with compliance assistance. The answer is not a free-for-all that forces the agencies to stop everything and consider an onslaught of recommendations handed to them by OMB.

Now, my written statement has I think just been distributed. I have to warn you the level of vitriol in it is probably a little high, but then again the stakes are high.

I want to point out one item in particular, the listeria rule. This is one of the items that OMB actually proudly touted back in December as a regulatory reform accomplishment. Just the same, that rule is on this 76 item hit list of protections to be weakened or eliminated.

This is important because listeria is a deadly foodborne pathogen that causes close to 2,500 cases of food poisoning every year. Over 90 percent of the victims are hospitalized and 20 percent die. This foodborne pathogen is particularly dangerous to women, to pregnant women, because women who contract listeriosis almost inevitably will miscarry or bear children with significant birth defects.

Why is this rule that was proudly touted as a regulatory reform accomplishment on the hit list of rules to be weakened or eliminated? It is hard to know in part because we do not have enough transparency in this process. I mean, this hit list is arguably an expanded version of a petition for rulemaking under the APA.

Normally with a petition for rulemaking we send those petitions to the agencies and the agencies directly respond to us with their reasons for accepting or rejecting the petition. We do not have the agency responses here. I mean, the agencies, as was just pointed out, will be responsible for implementing these reforms, but we do not know why the listeria rule was accepted as a regulatory reform nomination.

Mr. AKIN. Robert, your time has expired now.

Mr. SCHULL. Certainly.

[Mr. Schull's statement may be found in the appendix.]

Mr. AKIN. We will stand in recess for probably about 20 minutes I would expect.

[Recess.]

Mr. AKIN. The meeting will return to order. Thank you all for your forbearance. Fortunately it was just one vote, so it will be okay to get going and get you out in time for lunch hopefully.

I guess I had quite a number of questions. As you all testified, it raised some other questions as well. I guess maybe one of the things that might be appropriate after Robert's testimony would be some kind of a response from someone else I think.

Mr. Sullivan, would you like to take a crack at a couple?

Mr. SULLIVAN. Mr. Chairman, I would. First I should say that had I seen Robert Schull's testimony ahead of time like I did all the other witnesses' I probably would have been able to help him out with pointing out some of the inaccuracies in his statement, but now I will just take the opportunity to do it with your question.

Mr. Schull talked about how only 11 of the public reform nominations were recommended by my office. Unfortunately, that is inaccurate. Twenty-eight were, so roughly half of the recommendations that we put forward will be part of the agency's commitment.

I also want to assure this Subcommittee in particular that the other recommendations that did not make it into the manufacturing report, if my office can convince agencies to look again at these rules to see whether or not they can be reformed we most certainly will. That is certainly the job of the Office of Advocacy, and we will certainly pursue those.

Mr. AKIN. Can I interrupt just a second? The 76 that you chose would not take legislative action to make reforms. Is that correct?

Mr. SULLIVAN. Actually there are two that would take legislative action.

Mr. AKIN. Okay.

Mr. SULLIVAN. One was the permanent expensing, Section 179 expensing, and the other is the Do Not Fax rule that unfortunately was misinterpreted by the Federal Communications Commission, and that is being taken care of.

Mr. AKIN. So it was not necessarily a parameter for the reforms that we were looking at here that they did not require legislative action; they were chosen for other reasons as well then?

Mr. SULLIVAN. Yes, Mr. Chairman, and Mr. Schull did talk about the listeria rule. That was one of ours. Mr. Schull is absolutely correct that food safety is of paramount importance, but is it more important to designate and require a specific irradiation machine than to make sure that the food is safe?

That is really what is at stake here with this listeria rule because as of now you are required to operate irradiation equipment. What small businesses say is that yes, the meat must be safe, but does it not make sense to have flexibility if you cannot afford the equipment or if you get the equipment and it does not work or if you get the equipment and you do not get training on how to operate it correctly?

Would it not make sense to go to a system that is flexible for small business where you would allow for personal inspection to make sure of its safety? When you talk about listeria and you talk about regulatory reform that is what we are talking about here.

I should just close with the fact that the laws that my office oversee, the Small Business Regulatory Enforcement Fairness Act and the Reg Flex Act, specifically require that agencies not compromise their missions of environmental protection, workplace safety, road safety, air safety in order to build in flexibilities to small business.

That is the law and so when we encourage agencies to be flexible the law says that they can be flexible but without compromising the important public safety measures.

Mr. AKIN. The basic mission that they were assigned to do?

Mr. SULLIVAN. Yes, Mr. Chairman.

Mr. AKIN. Ms. Bordallo?

Ms. BORDALLO. Thank you very much, Mr. Chairman.

My first question is to Mr. Sullivan. You mentioned a study performed for advocacy that found two regulatory areas where regulatory compliance is dramatically higher for small manufacturers than large—environmental compliance and tax compliance.

Small business cost is 4.5 times higher in these areas, so I look at the 76 recommendations and I see 42 at EPA but only one from Treasury. Can you explain that?

Mr. SULLIVAN. Yes, Congresswoman. Actually the Chairman referred to this a few moments ago. Many of the provisions imposed by IRS and burdensome for small businesses are statutory in nature, and the complexity, the sheer complexity of the Code primarily is what is driving the high cost.

When the President's bipartisan Tax Advisory Panel comes out with recommendations later on this summer I think this Subcommittee certainly will take great interest in what legislative options exist to reduce that burden.

Now, you pointed out that the environmental regulations are very high, and you are right. The Crain Hopkins study does point out that on environmental regulations there is a severely disproportionate negative impact and so I commend the EPA for looking at those situations where they can reduce impact, but at the same time maintain environmental protections.

Ms. BORDALLO. All right. I have a follow up for Dr. Graham. You heard that Mr. Greenblatt's first recommendation for regulatory reform was tax regulations. I think that is what he mentioned. However, only one tax regulation made your list so can you go on to explain that?

Mr. GRAHAM. Yes. I think it would be useful to actually go back and look at the entire 189 nominations that we received from largely the business community about regulations they sought to be changed, and I think you will find that there are a relatively small number of tax regulations compared to environmental regulations or labor regulations.

Ms. BORDALLO. How many recommendations were there?

Mr. GRAHAM. We would have to go back and do the actual count, but there were 189 total. Then we would have to count the number that were in Treasury.

Ms. BORDALLO. So you have no idea how many?

Mr. GRAHAM. I think there were under 10 is my guess, but I can get those exact numbers for you.

I think the answer lies in Tom Sullivan's answer, which is there is so much of tax regulation that is actually embedded in the Tax

Code that Congress specifies that it is very hard to identify things that agencies can do without actually having new legislation pass through the Congress.

Now, Mr. Chairman, on your point I want to emphasize and elaborate on Tom's answer. We were looking and gave emphasis to reforms that could be adopted without requiring new legislation. It was not an absolute criterion. We did not say we were not going to consider anything, but as a practical matter we felt we wanted to give emphasis to those kinds of reforms.

Tom mentioned two that may require legislation, and in one of those cases, the FCC example, we at OMB are not convinced it requires legislation. We think that FCC could make that change and fix that problem even without it, but we certainly will not argue if Congress is going to fix it through legislation.

Ms. BORDALLO. One more, Mr. Chairman. Thank you. This is for Mr. Graham.

Last year you told this Subcommittee that environmental regulations impose the largest burden on small firms followed by economic regulations, tax compliance and then workplace rules.

That sounds fairly balanced to me, but I look at your list and I notice that 42 of your 76 recommended rules are for EPA and nine are from OSHA. That seems somewhat lopsided.

Is there a reason that your choices are concentrated so heavily in environment, health and safety standards?

Mr. GRAHAM. I think actually it would be good to direct those questions to each of the agencies. The agencies were evaluating these nominations that we referred to them, and the Labor group—Ms. Stidvent is here, and her group evaluated theirs. Ms. Daigle and her team evaluated those at EPA.

They made a merits evaluation, and we took into account in that dialogue input we got from SBA Advocacy. I do not think there was any effort to draw a certain percentage from each agency. We just looked on the merits at how strong the case was for these various proposals, and that is the distribution that resulted.

Ms. BORDALLO. Do any of the agencies want to answer that?

Ms. DAIGLE. Sure. I would be happy to. We received well over 90 nominations from the different submitters. They were not from any one particular sector.

What we did is we took a close look at it. We accepted 42 of them because we thought they could be done in a reasonable timeframe and that they could be done without harming either health or the environment.

Ms. STIDVENT. That is similar to the process that we followed. We looked at the nominations that the public sent in to OMB, evaluated them on their merits. In many instances we were already underway with a reform process, and we continued that.

There were a few instances in which we decided we needed more information to pursue a decision on those particular nominations,

but I will say, and I will reiterate this for Dr. Graham and Mr. Sullivan. We really value this process.

It is incredibly resource intensive to try and review all possible regulations that are currently existing and so it is very helpful to us when the public comes forward and suggests some possibilities for reform and improvement in regulations.

Ms. BORDALLO. Mr. Chairman, I have a concluding statement.

Mr. AKIN. Yes, if you will.

Ms. BORDALLO. Yes. Actually, we are talking today about difficult problems that Congress must resolve and agencies together. I am from Guam, and in my travels I have seen factory conditions all over Asia, including China, Taiwan, Korea. You name it, I have been there. Steel factories, manufacturing companies of all kinds.

How do we set a balance and where do we draw the line in setting our standards so that we can protect public health and safety, but still compete with these countries and continue to do business with them?

In the short time that I have been a Member of Small Business, every public hearing we have had are the saddest stories you will ever want to hear about small businesses that have been in families for generations are collapsing. How can they survive?

Perhaps if we discontinued some of our business with some of these countries, but they do not have to comply with anything. People that work in steel factories do not even have safety shoes or anything. I mean, it is incredible.

I am not saying that we should cut down on our regulations. We need them there for the protection of people, but we have to come to some kind of a balance, and I think this is what we are asking so that it is not so difficult for small businesses.

It is bad enough they are losing. They are shutting down, and then they have to have all these burdens of regulations, surveys or whatever goes on and so we have to cut the red tape. Mr. Chairman, I am just feeling that we have to look at this very seriously so that we can discontinue the erosion of small businesses in our nation.

Thank you.

Mr. AKIN. Thank you very much. I appreciate your comments and am very sympathetic to what you are saying.

Let me just back up a little bit here if I could, John, to your comments from the very beginning. I got the impression from what you were saying that we are just merely scratching the surface of what we have basically accumulated through years of legislation and rulemaking. First of all, am I right in that assumption?

Mr. GRAHAM. Yes, sir.

Mr. AKIN. Second of all, it is also my impression that in each one of these specific recommendations, if you cut through the red tape, you come down to sort of a common sense balance between certain things that we want in terms of our society, in terms of health and

welfare and taking care of people and at the same time not creating some sort of a monster nightmare of federal regulations, which makes it so we are not competitive as an industry. Every one of these things is kind of a balance question.

That is I guess a long wind-up for my main question, and that is let us say that you were king for a day and you really had to take on this problem, Doctor. How would you proceed to try to make us more competitive internationally with dealing with the whole red tape situation? What sort of mechanical procedure would you put in place?

Mr. GRAHAM. Mr. Chairman, I want to start by saying that I do not think we actually have to have a balancing determination in many of these reforms. In many cases we can achieve the same amount of worker protection, the same amount of environmental protection, but at the same time allow the businesses to pursue those goals through more cost effective, more efficient means.

Hence, when you write a regulation that specifies as a small business you must adopt this particular technology and you cannot consider any other alternatives, even equally effective and less costly alternatives, then you have written a regulation that is going to put us in an economic disadvantage.

Mr. AKIN. And certainly it is a time bomb because over time, technology is going to say that there may be a better way to solve the same problem.

Mr. GRAHAM. So another concrete example. We all want leaks of pollution in factories detected and cleaned up, but do we have to have a separate leak detection and repair report on each pollutant submitting to the federal government? Would it be all right if we had one report permitted for all of the leaks of all the various pollutants and that report submitted?

That does not change the amount of cleanup that occurs. It reduces the amount of recordkeeping and red tape in the process. That is not a question of balance. That is just a question of cutting out unnecessary regulatory activity.

Now, in some cases you are right. You sort of have to make a balancing judgment. I think it is fascinating that in most of the 76 cases no one is calling for the removal of the regulation. They are simply calling to allow more flexible and less costly alternatives to achieve the same objective.

Mr. AKIN. I appreciate you sharpening that point, but still the basic question is, are you are saying we are scratching the surface?

I guess the concern I have is that I started in the business world, and we have this 20 or 30 employer business, and it is a little bit like letting leaking water into some sort of a chamber. At a certain point the water gets high enough that the guy drowns and the same thing happens economically.

We raise the cost of doing business high enough in this country one of two things happens. They go out of business, or they ship the business overseas, one or the other. Those are your two choices.

My question is seeing a lot of jobs going overseas, let us say we focus on this problem. How do you proceed if we want to do more than scratch the surface? How do we get into all of this stuff?

I am saying say we want to accelerate the pace of really looking over the red tape that we are—

Mr. GRAHAM. I think that is a fundamental question. I am not going to pretend I have the answer to it because we have 20,000 of these regulations that were adopted in 1981 when OMB, my office, was first created. How in the world do we have enough people at OMB or the agencies to even begin to scratch the surface of these existing regulations?

One little nugget that I will give you that has helped us. At the Department of Transportation they had a regulation that governed how consumers would get airline tickets. In their wisdom the Clinton Administration included a sunset provision in that regulatory program that said that if it is not affirmatively renewed in a new rulemaking within a certain period of time it goes away.

Let me tell you how valuable that little sunset provision was adopted by the Clinton Administration for this Administration because we worked with the Department of Transportation for over a year on do we really need to have a regulation to help people get airline tickets. Can people not get on the Internet and get their own airline tickets? It is not that hard.

After a year of debate we finally agreed that maybe we really did not have to have this. Frankly, if it was not for that little sunset provision I do not know where that debate would have ended up. That is a concrete example of a tool, but it has to be used very carefully and very specifically in order to be constructively used.

Mr. AKIN. I want to open that question now up to everybody else on the panel, whoever. Put your hand up and run down if you have some thoughts as to how do you proceed.

Mr. SULLIVAN. Mr. Chairman, I think doing what is effective, finding out what works and doing it over and over again certainly deserves to be considered. The agencies deserve credit for taking leadership on, stepping up to the plate and saying we are going to reform some of these rules.

I would encourage this Subcommittee in particular to make sure to follow up on a regular basis to see where those reforms are, so the oversight. I cannot overstate the importance of oversight on these nominations.

A second legislative option is look at what is working with Executive Order 12866, which is primarily the responsibilities that John Graham is responsible for in OIRA.

Additionally, look at the responsibilities of Executive Order 13272 and work with your colleagues in the House and the Senate to see whether or not some of those provisions can be enacted into law so that some of these efforts can become the way that government operates.

Last, but not least, any time you do have these oversight committee hearings please bring in small businesses to give even more suggestions on reform because as soon as small businesses are

asked amazingly small business common sense from Main Street makes a huge impact.

Mr. AKIN. Thank you.
Anybody else? Yes, Robert?

Mr. SCHULL. Well, I want to say that if the question is how do we improve our global competitiveness then we cannot just look at regulation in isolation. There are many other factors, among them the current trade environment.

I mean, the free trade agreements that we have with China and Africa, with Mexico, I mean we are forcing American manufacturers to compete with manufacturers in nations where people can go to work with no shoes, people have no overtime rates, no collective bargaining.

I mean, there is a much bigger picture so that if the question really is how do we improve competitiveness we really have to look at the big picture so that we can make sensible policy decisions that look at everything in the bigger context.

Mr. AKIN. Thank you. I think all of us recognize there are a lot of different components to competitiveness, and certainly the red tape is one that this Committee is charged with paying particular attention to, so that is why the focus on that point.

Let me toss out an idea. What would happen, and I do not know politically whether this could ever be done, but you take one of these federal agencies that has grown for so many years, and as congressmen one of the problems we have is our time is divided so much. I used to be a part-time legislator as a state rep. I am even more of a part-time legislator as a congressman because we have multiple Committee hearings going on even right now.

I do not really have a lot of confidence that Congress, although we perhaps initially created a lot of these regulations by the laws that we passed, have the ability to really review them and reform them and to make sure that they are up to date.

What would happen if we were to take some sort of a large systems integrator, some big corporation, a glorified consultant, and say look, they do not have a political dog in the fight. We are going to turn them loose inside a particular agency, and we are going to go through department or section or whatever it is by section.

We list out all of the products that each particular department creates, and we also list out how many people are employed to produce those particular reports or oversight or whatever it is that these departments are doing. Then we systematically go through it and say first of all can it be reorganized or are these things really necessary.

You come back to Congress and say look, you have 15 people all tasked with the same thing so we have grouped them together so this is an organizational shift. Here are the different things that are being produced, and here is what each one costs you. Okay, Congressman. You decide. How much do you really want to pay for this?

Has that ever been tried? Has anybody thought about using that sort of a large systems integrator to do that research? Perhaps you

could make the case that that is a more objective way of kind of wading into these things. That is a thought anyway.

Response?

Mr. GRAHAM. Just one quick response in terms of sympathy for the logic behind the suggestion, and that is that after four years of being in the role I am in and seeing the interaction between the various federal agencies and the Congress on regulation, one thing I have noticed is that for a lot of regulatory agencies there is more enthusiasm and excitement for creating new regulatory programs than there is for going back and looking at that existing sea of regulation and doing the hard work of modernizing, rescinding, refining and so forth.

The heart of your idea is to try to find some other force, some institutional force in that dynamic, whether it be the example you gave or another type of agency or something that has the resources and expertise to really force a re—look at this substantial body of regulation.

I do not know exactly how to do that, but I want to make it clear to you that in spite of the best leadership of these various agencies by their own psychology as institutions they want to create new regulations. They do not want to spend their time working on these existing regulations.

Thank the Lord I have the two colleagues to my right from two agencies who are sympathetic enough to work with us to try to just look at a modest number of these affecting the manufacturing sector.

Mr. AKIN. That has been my observation as a past engineer coming to this place; that we have created a system which continues to churn this out, but from a political point of view it does not make us look good if we say I went back and looked in these old, moldy books of regulations and got rid of 10 of them or something. I mean, you do not get any brownie points back in your district.

We do not really have a way of getting back into and taking a look, particularly some of these things that are written with the mindset of a particular time period where now a lot of things have moved on and it maybe should be approached in a different way.

Mr. GREENBLATT. Mr. Chairman, if I may?

Mr. AKIN. Yes, Drew?

Mr. GREENBLATT. I wonder if it makes sense and a more direct approach would be to have a sunset provision on all existing regulations and another rule is that any future legislation must be sunset. If it is a good idea we will reenact it. If it is a bad idea, it will die.

That way in a couple years—three, five years from now—we will not have 20,000 regulations on the books. We will have 7,000 really good ones that really are effective that are really helpful. The 13,000 regulations small business will not have to review, monitor, be unsure of if they are complying, do the paperwork for.

They are adding no value, so if we could just constantly be sunsetting all future regulations and all existing regulations, the good ones will stay. The bad ones will go away.

Mr. AKIN. Thank you for the thought. Sunsetting is a useful tool. No doubt about that. The trick is how do you go back to however many thousands of these things there are?

Any other comments? I prefer if I can to run Committee hearings more like a discussion than like an official hearing, so people jump in if you want to.

Ms. BORDALLO. Mr. Chairman, if I could? Getting back to, you know, dealing with the foreign countries and all of that I am just curious.

Have any of you ever sat down with your counterparts in these countries to check on regulations, rules and regulations? Has there ever been an effort on the part of our government to discontinue trade with some of these that are absolutely not paying any attention to any kind of rules and regulations in their factories and manufacturing companies?

I know there is such a thing as the free trade and foreign countries do not like others interfering, but I just wonder has there ever been anything in the past in the way of this, and do you meet with your counterparts to discuss this because we continue to trade with these people?

In essence our small businesses are going bankrupt, going out of business, and here they are. We are competing with all these rules and regulations that we have, and we are still trading with these countries.

Mr. SULLIVAN. Congresswoman, the answer is yes. Yes, there is a regular meeting of counterparts in other countries.

Dr. Graham referred to the bonfire in Brussels. I meet with folks from Sweden, from Norway, from northern Ireland, from the U.K., Ireland in general, Australia, Canada. Each one of these countries that I mentioned is aggressively looking on how to build in flexibilities to reduce regulatory costs so that they can up their competitive ante in the global marketplace.

This effort that is ongoing, the public reform nominations, is not at all done in isolation, and if we do not make sure to stay on track with this annual public transparent process then the other agencies—excuse me. The other countries will do it. They will do a better job, and they will be more aggressive, and our competitive edge then becomes compromised.

Ms. BORDALLO. You mentioned all European countries. Have you ever been to Asia?

Mr. SULLIVAN. I have not. My travel budget does not allow for me to get out there, but if I do, Congresswoman, I am going to stop by Guam on the way.

Ms. BORDALLO. I will tell you. No. Really seriously, you should get to Asia. This is where you are going to find your eye opener.

I think it is about time we sit down, since we do so much trade with this part of the world, you know, that you must make that. Talk to whomever, budget people, and set some money aside for Asian travel.

Thank you, Mr. Chairman.

Mr. AKIN. Thank you.

If there are no further questions or comments here then we will go ahead and close the hearing, and I will have fulfilled my promise of getting you out in time for a good lunch.

Mr. GRAHAM. Thank you, Mr. Chairman.

Mr. AKIN. The meeting is adjourned.

[Whereupon, at 12:07 p.m. the Subcommittee was adjourned.]

STATEMENT OF
JOHN D. GRAHAM, PH.D.
ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
BEFORE THE
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
OF THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

April 28, 2005

Mr. Chairman, and Members of this Committee, I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Thank you for inviting me to this hearing and for giving me the opportunity to testify today on the reform of regulations that impact the United States manufacturing sector.

The Administration is moving on several fronts to facilitate the streamlining of regulation. First, we have insisted that new federal regulations be supported by good science and economics to ensure that they are necessary and cost effective.

During our review of new rules, we very clearly recognize that small businesses often face a disproportionate share of the regulatory burden. We work closely with the Advocacy Office of the Small Business Administration to ensure that agencies meet their obligations to analyze the impact of regulations and to consider less burdensome regulatory alternatives for small businesses. For example, OIRA, along with Advocacy, sits on Small Business Advocacy Review Panels, pursuant to Small Business Regulatory Enforcement Fairness Act (SBREFA). These panels ensure meaningful small business input in the early stages of rule development for all EPA and OSHA rules that may have significant small business impacts. To date, OIRA has participated in 27 EPA and 7 OSHA SBREFA panels. While not legally binding, the recommendations of these panels are taken seriously by the agencies and have frequently resulted in significant changes in the proposed regulations.

In addition, Executive Order 13272, issued in August 2002, strengthens agency compliance with the Regulatory Flexibility Act (RFA) and Advocacy's role in ensuring that agencies make minimization of small business impacts a central consideration in the rule development process. The Executive Order states that agencies must thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the RFA.

We are happy to report significant success: as we stated in our 2005 Draft *Report to Congress on the Costs and Benefits of Federal Regulation*, the average yearly cost of the major regulations issued during this Administration is about 70% less than over the previous 20 years, and the average yearly net benefit of the major regulations issued during this Administration is over double the yearly average for the previous 8 years. This Administration has clearly slowed the

growth of burdensome new rules, while still moving forward with crucial safeguards for homeland security, human health, and environmental protection.

Modernizing and streamlining the sea of existing federal regulations, however, is an immense and humbling challenge. To give you perspective on this challenge: OMB reviews approximately 300-350 new final rules each year, of which approximately 40-50 are considered "major" or "economically significant", primarily because they are estimated to have an economic impact greater than $100 million in any one year. The flow of new rules, however, is tiny when compared to the number of rules already on the books. Since OMB began to keep records in 1981 there have been over 115,000 final rules published in the Federal Register by federal agencies. Of these published rules, over 20,000 were formally reviewed by OMB prior to publication. Of the OMB-reviewed rules, over 1,100 were considered "major" or "economically significant".

Sad as it is to say, most of the existing federal rules have never been evaluated to determine whether they have worked as intended and what their actual benefits and costs have been. During President Bush's first term, OMB initiated a program to take a second look at a limited number of these existing regulations, guidance documents, and paperwork requirements, as we are authorized to do under what's known as the Regulatory Right to Know Act.[1] Our February, 2004 request for reform nominations, with a clear focus on the manufacturing sector of the U.S. economy, was the third such solicitation of reforms undertaken by this Administration.

To briefly summarize the previous reform initiatives, in 2001 OMB requested public nominations of rules that should be rescinded or modified. We received 71 nominations from 33 commenters, and OMB determined that 23 of the nominations should be treated as "high priority" review candidates. Federal agencies have taken at least some action (e.g., a proposed or final rule) on nearly 75% of these high priority reform nominations. In 2002, OMB again requested public nominations of reforms. In an important innovation, we included guidance documents and paperwork requirements, as well as rules, within the scope of the solicitation. We received 316 distinct reform nominations from more than 1,700 commenters. OMB and the agencies determined that 156 of the nominations should be referred to agencies for their consideration. We have determined that about 1/3 of the 2002 nominations referred to the agencies have resulted in agency action. Appendix D of our 2004 final *Report to Congress on the Costs and Benefits of Federal Regulation*[2] contains an item-by-item update on the status of each of the 2001 and 2002 nominations as of December, 2004.

We decided to focus our 2004 regulatory reform initiative on the manufacturing sector, which is one of the most heavily regulated sectors of our economy. In the 2004 *Economic Report of the President*, the Council of Economic Advisors found that the recent economic downturn hit the manufacturing sector hard, starting earlier and lasting longer in that sector of the economy. The Department of Commerce, in their 2004 report *Manufacturing in America*, recommended regulatory reform as a key activity government can undertake to ensure the continued competitiveness of U.S. manufacturing. Since U.S. manufacturers compete with firms from both

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[1] Section 624 of the Treasury and General Government Appropriations Act of 2001 (31 U.S.C. § 1105 note, Pub. L. 106-554)

[2] Available on our website at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html

developed and developing countries in an increasingly global economy, the Administration believes it is critical that any unnecessary regulatory burdens be removed.

We also applied the lessons learned from the 2001 and 2002 processes to our latest round of reform requests. First, we offered additional guidance to commenters on how to suggest reforms. We asked that commenters try and make a benefit-cost case for the reform, as many of the rules that are potential reform candidates undoubtedly generate substantial benefits. We also recommended that commenters focus on reforms that agencies can move forward on without statutory change. Our experience with previous years taught us that these are the types of reform suggestions that are likely to lead to agency actions.

In December 2004, OMB released for agency review the 189 reform nominations that were submitted by 41 industry and non-profit groups in response to our request. OMB instructed federal agencies to review the merits of each of the reform nominations and prepare a response for OMB. The responses included a determination as to whether reform action is appropriate, and if appropriate a time-line for action and a plan for public participation. OMB evaluated the reform nominations and collaborated with federal agencies in the development of response plans. OMB also sought evaluations of the recommendations by the Advocacy Office of the Small Business Administration and the Department of Commerce's Office of the Assistant Secretary for Manufacturing and Services.

Of the 189 nominations, 76 were selected by the agencies and OMB for priority consideration and action by the Bush Administration. OMB's report on *Regulatory Reform of the U.S. Manufacturing Sector*[3] summarizes each of the 76 reform nominations and the time-specified steps Federal agencies will take to address them. The majority of the 76 reform nominations address programs administered by the Environmental Protection Agency and the Department of Labor, a pattern that reflects the large impact of environmental and labor regulation on this sector of the economy. Recommended actions range from gathering and reporting additional information to issuing modernized regulations.

In closing, OMB is dedicated to this initiative; we will oversee the reform process to make sure that agencies make adequate progress in the months and years ahead. Thank you very much for the opportunity to participate today in this very important hearing.

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[3] Available on our website at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html

STATEMENT OF VERONICA VARGAS STIDVENT
ASSISTANT SECRETARY FOR POLICY
U.S. DEPARTMENT OF LABOR

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

April 28, 2005

Chairman Akin and distinguished Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the Department of Labor's efforts to strengthen worker protections while reducing unnecessary regulatory burdens on the economy, particularly on the manufacturing sector and on small businesses. This hearing is especially timely, coming as it does during Small Business Week. As requested by the Subcommittee, my testimony will address the Department's overall progress in responding to the public's reform nominations that were included in the Office of Management and Budget's (OMB) 2005 report on *Regulatory Reform of the U.S. Manufacturing Sector*.

The Department takes seriously its responsibility to protect worker safety and health, retirement security, pay, and equal access to jobs and promotions. Over the years, advances in safety, health, science, and technology -- as well as changes in the law -- have rendered a number of Department regulations outdated or even unnecessary. As a result, these advances have required us to revise or eliminate regulations and to consider and adopt new rules and new approaches that ensure strong protections for workers without imposing unnecessary and costly burdens on the economy.

The Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA) each have continuing rulemakings to identify regulations or provisions of regulations that are outdated, redundant, or unnecessary. For example, this past January OSHA published Phase II of its Standards Improvement Project, which revised or removed a number of health provisions in its standards for general industry, shipyard employment, and construction. OSHA expects these revisions to reduce regulatory requirements for employers without reducing employee protection. As mentioned in OMB's Report on regulatory reform, the Agency is now beginning Phase III, which will address both safety and health topics.

As we explained when we published our Regulatory Agenda last December, the Regulatory Flexibility Act and Executive Order 12866 require the Department to provide the public with a list of all regulations that the Department expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The Department's Spring 2005 Regulatory Agenda, which should be published by June, will include approximately 85 items upon which we expect to make significant progress or to complete within the next twelve months. This Agenda includes the most important and necessary regulatory items that address workers' health and safety, security, and other rights that could not be protected effectively by using other tools at the Department's disposal, such as compliance assistance, voluntary partnerships, and nonbinding guidance documents. Many items on the Agenda involve updates of regulations to reflect current technology.

The Department's Regulatory Agenda is now a meaningful document that employers, employees, and the public can easily obtain, understand, and rely upon.

Reflecting only those items that we expect to have under active consideration during the coming year, our Regulatory Agenda reduces regulatory uncertainty while allowing us to continue protecting the health, safety, and other working conditions of the American workforce.

The Department recognizes the costs that regulations place on the regulated community, particularly the small business community. We have pursued alternatives to rulemaking whenever feasible and have attempted to minimize the costs of any regulations while ensuring that strong worker protections are in place. For instance, rather than issue a new regulation, OSHA addressed the hazards of metalworking fluids by developing a best-practices guide and making it available on its website. Metalworking fluids are used extensively in manufacturing industries such as automotive, aircraft, farm equipment, marine, industrial engine, heavy machinery, and hardware manufacturing, as well as in machine shops. This action effectively protected workers without delaying other regulatory priorities that the Department listed in its Regulatory Agenda.

The Department also recognizes that employers often need help understanding their rights and responsibilities under federal labor laws and regulations. That's why Secretary Chao launched the Compliance Assistance Initiative in June of 2002. The Initiative aims to provide businesses, employees, unions, and other regulated entities with the knowledge and tools they need to comply with DOL's rules. We understand that before anyone can comply with regulations, the regulations have to be communicated clearly and understood. While the Office of Compliance Assistance Policy in my agency

coordinates education and outreach activities under the Initiative, each of the Department's agencies provides extensive compliance assistance.

As part of the Initiative, we have developed a variety of free tools, often tailored to small business, to provide employers with access to clear and accurate information and assistance when and where they need it. These resources include a compliance assistance web site; a toll-free help line; a set of free, interactive e-tools, called the **elaws** advisors *(Employment Laws Assistance for Workers and Small Businesses)* that guide users to specific employment law information; and the Employment Law Guide, which describes DOL's major laws and regulations in plain and simple terms, providing a valuable resource to employers needing introductory information to help them establish important workplace policies for their businesses.

The Initiative also involves working with other government agencies such as the Small Business Administration and partnering with organizations in the private sector to help educate business owners and workers about available compliance assistance tools and resources. Partners distribute DOL educational materials; place compliance assistance articles in their member publications; and invite DOL agencies to participate in conferences, workshops, and other compliance assistance training opportunities.

I am very pleased that in its draft 2004 Report to Congress, the Department of Labor's compliance assistance efforts received an "A" rating from the Small Business Administration National Ombudsman.

OSHA's compliance assistance efforts are an example of the Department's approach to protecting workers without needlessly burdening the economy. OSHA has developed many programs to help businesses comply with its regulations and standards

and to promote workplace safety in a cost effective manner. For instance, in 2004, OSHA's training programs reached more than 375,000 employers and workers. Moreover, through its Strategic Partnership Program, OSHA has entered into cooperative relationships with groups of employers, employees, and employee representatives to identify safety and health problems, and has crafted agreements to accomplish tasks, such as training employees and developing site-specific safety and health management systems that strengthen protection for employees while minimizing the economic burdens. There are currently 228 active partnerships. Of these partnerships, 115 directly involve small businesses.

Further, under its Voluntary Protection Program (VPP), OSHA has established cooperative relationships with management and labor groups at 1,256 workplaces that have implemented a comprehensive safety and health management system. The manufacturing sector accounts for 896, or 71% of these workplaces. The extraordinary commitment by employers and employees to safety and health at these sites produces bottom-line results: the average VPP worksite has an injury rate 52% below the average for its industry.

Our multi-faceted approach to regulatory reform, compliance assistance, and vigorous enforcement is working. Due in part to these activities, both the rates of workplace fatalities, four deaths per 100,000 workers, and the injury and illness rate, five per 100 workers, are at the lowest levels in OSHA history. In 2003, there were 300,000 fewer injuries and illnesses than the previous year, a decrease of 7.1 percent. In addition, a drop in fatalities among Hispanic workers during each of the two most recent years is particularly encouraging because deaths among this group had been rising every year

since 1995. Encouraging, too, is the fact that fatal work injuries among foreign-born Hispanic workers declined in 2003 for the first time since the census began. Also due in part to the Department's focus on regulatory reform, compliance assistance, and enforcement, in 2004, the Mine Safety and Health Administration (MSHA) reported 55 fatalities, the fewest number of fatalities since 1910, when records were first kept. Since 2000, the mining industry has seen a 35% decrease in fatal accidents nationwide.

Furthermore the Employee Benefits Security Administration (EBSA) had its best year ever in FY2004, with a record breaking 121% increase in enforcement results that protected $3.1 billion in retirement, health, and other benefits for American workers and their families. In short, the Department's approach to regulatory reform, compliance assistance, and strong enforcement is clearly working.

As this Subcommittee recognizes, one important regulatory tool is the process for addressing the public's reform nominations that are included in OMB's annual Reports to Congress on the Costs and Benefits of Federal Regulations. In considering regulations to promulgate, revise, or withdraw, we evaluate many factors, including input that is received from the public through the OMB nominations process, stakeholder meetings, industry experience, experience with previous regulatory initiatives in a given area, and alternatives to regulation.

Beginning with its 2001 Report to Congress, OMB solicited suggestions from the public on specific regulations that could be rescinded or changed that would increase net benefits to the public by either reducing costs or increasing benefits. In 2002, OMB expanded its request for reform suggestions to include agency guidance documents and paperwork requirements. In 2004, OMB requested nominations of "regulations, guidance

documents or paperwork requirements that, if reformed, would result in substantive reductions in regulatory burden and result in true savings by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and increasing flexibility." OMB was particularly interested in reforms addressing burdens on small and medium-sized manufacturers.

OMB's 2004 final Report to Congress listed 189 reform nominations from 41 commenters and requested that agencies review and prepare responses for OMB by January 24, 2005. The Department of Labor accounted for 39 nominations. Following discussions with the agencies, including the Department of Labor, and input from the Office of Advocacy, OMB published a document in March, *Regulatory Reform of the U.S. Manufacturing Sector*, which included 76 nominations that OMB and the agencies determined have potential merit and justify further action. The Department of Labor accounted for 11 of these reform nominations. (Note that the Family and Medical Leave Act (FMLA) nomination in OMB's March report combined 9 separate nominations addressing FMLA in the 2004 OMB report, so the 11 nominations account for 19 of the nominations in the 2004 OMB report).

The 11 Department of Labor reform nominations include recommendations addressing FMLA, Permanent Labor Certification, and 9 OSHA regulations and guidance documents. As described in the OMB report, the Department either has or will be taking action on each of these reform nominations. For example, a commenter (U.S. Chamber of Commerce) recommended that the Department finalize the new labor certification application process to bring permanent alien workers into the United States. The Department's Employment and Training Administration published the final Permanent

Labor Certification rule on December 27, 2004, with an effective date of March 28, 2005. In another example, the American Coke and Coal Chemicals Institute and the American Iron and Steel Institute recommended that changes be made to update OSHA's coke oven emission standard. OSHA published Phase II of its Standards Improvement Project in January of this year, which streamlined some of the provisions of that standard. As mentioned above, the Agency is now beginning a Phase III rulemaking to further update many of their standards. This update will likely address both safety and health topics.

Since OMB's 2001, 2002 and 2004 reports each included reform nominations addressing the FMLA, I would like to briefly discuss the Department's plan to address these public recommendations. The final regulations implementing FMLA were published in 1995. Since then, as employers have attempted to implement the regulations and employees have attempted to utilize FMLA benefits, the Department has received feedback suggesting possible revisions to the regulations, including the nominations for reform to OMB. In addition, Congress has held a number of hearings over the years at which stakeholders identified the positive attributes as well as possible issues with these regulations. Furthermore, federal courts -- including the United States Supreme Court -- have invalidated several provisions of the FMLA regulations.[1]

The Department held a series of stakeholder meetings to receive informal feedback on how the regulations are working. The Department invited more than 20 groups representing employees, unions, employers (including the National Federation of

[1] For instance, the U.S. Supreme Court invalidated an FMLA regulation that required an employer to designate the leave taken by employees as FMLA leave or else be prohibited from counting it against an employee's 12-week FMLA entitlement. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81 (2002). In addition, a number of appellate courts have stricken another FMLA regulation that requires employers to treat certain employees as eligible for FMLA leave, even though they do not meet the FMLA's eligibility definition. *See, e.g., Dormeyer v. Comerica Bank-Illinois*, 223 F.3d 579 (7th Cir. 2000).

Independent Business and the National Association of Manufacturers), women's and family advocacy groups, elder care groups, and others with experience working with the regulations, to share their views about the rules. The Department intends to consider carefully the court decisions, the public's views, and the agency's experience administering the regulations before deciding what action, if any, is appropriate to take.

To conclude my testimony, I would like to briefly describe some of the regulatory actions listed on the Department's Regulatory Agenda for Spring 2005, which should be published during the coming year. As I mentioned earlier, our Agenda's list of some 85 items provides a realistic and manageable number of regulatory initiatives that will focus Department attention and resources. These items demonstrate DOL's approach to strengthening protections while lowering the burdens of regulation on the economy. Here are a few examples:

OSHA will complete its Respiratory Protection standard by publishing its Assigned Protection Factors final rule. The protection factors are numbers that describe the effectiveness of various classes of respirators in reducing employee exposure to airborne contaminants. This action will reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection. OSHA is also in the process of updating its electrical standard for the first time since it was published in 1981. The first stage of the update addresses safety design standards for electrical systems and is scheduled for completion later this year.

Consistent with the Secretary's priority for ensuring pension and health benefits security, the Employee Benefits Security Administration (EBSA) will finalize its rules to protect and preserve the retirement assets of workers who are covered by 401(k) plans

that have been abandoned by their employers. These rules will empower financial institutions that hold assets of abandoned plans to help workers gain access to their retirement benefits -- benefits that might otherwise be depleted as a result of on-going administrative costs. EBSA is also taking steps to simplify its Voluntary Fiduciary Correction Program. This effort will further encourage and facilitate voluntary compliance with the laws governing employee benefit plans.

Mr. Chairman, the Department is proud of its achievements in streamlining its Regulatory Agenda since 2001. In doing so, we have provided clarity in our regulations for employers, workers, and the public at large. We value the important input we received from the public, during the rulemaking process, OMB's reform nominations process, and the feedback we receive through other outreach efforts. We are dedicated to reducing the regulatory costs and burdens for employers, which will help employers to create jobs, while at the same time continuing our commitment to strengthen protections for the American workforce.

Mr. Chairman, this concludes my testimony. I would be glad to respond to any questions you may have.

Testimony of Stephanie Daigle
Acting Associate Administrator
Office of Policy, Economics and Innovation
U.S. Environmental Protection Agency
before the
Subcommittee on Regulatory Reform and Oversight
of the
Committee on Small Business
U.S. House of Representatives

April 28, 2005

I. Introduction

Good morning Mr. Chairman and Members of the Subcommittee. My name is Stephanie Daigle, I am the Acting Associate Administrator of the Office of Policy, Economics and Innovation at the Environmental Protection Agency (EPA). Thank you for the opportunity to appear before you today to discuss the EPA items included in the Office of Management and Budget=s (OMB=s) report on Regulatory Reform of the U.S. Manufacturing Sector. I believe this Subcommittee will be pleased to hear about the commitments the Agency has made for regulatory reform in the manufacturing sector as well as the overall progress the Agency has made in recent years towards improving the regulatory process and developing a system that works for small businesses.

EPA publishes hundreds of regulations and guidance documents each year B some that are simple and non-controversial and some that are highly complex. In recent years, the EPA has taken numerous steps towards improving our action development process. These steps have strengthened the credibility and quality of our policy decisions and, in turn, have helped EPA fulfill its mission more efficiently and effectively. The Agency has also strengthened our partnerships with states and other external stakeholders, which EPA considers extremely important for achieving our environmental goals.

II. Steps EPA has taken to Improve Regulations/Respond to Public Input

At EPA, we share the President=s appreciation for the key role played by small businesses in sustaining the health of our national economy. Small businesses face unique challenges and our regulatory programs must succeed in identifying cost-effective, practical environmental solutions while maintaining health, safety, and environmental protections for the public. Through multiple Agency programs, we work in partnership with America=s small businesses to provide effective, balanced environmental results. We recognize that by providing better and earlier access to the regulatory process, developing alternative approaches to regulations, and increasing the transparency and clarity of our documents, we are creating a system that works for small businesses.

The EPA has a long history of working with small businesses to identify their needs and concerns. We have established a Small Business Ombudsman and initiated more than 100 activities designed to help small businesses fulfill their environmental stewardship responsibilities. Each month, we answer over 1,200 calls on our small business regulatory hotline. In addition, we provide more than 350 EPA publications of interest to small businesses. Some are documents that assist small businesses in complying with EPA rules such as *Opening Doors for America=s Small Businesses: A Guide to Help Small Businesses Navigate EPA*. Others help small businesses with technical solutions to environmental problems, such as the *Little Known but Allowable Ways to Deal with Hazardous Waste* booklet, and the *Small Quantity Generator Handbook* which are among the most frequently requested publications.

We support and oversee the Small Business Assistance Programs in each of the 50 states and three territories and have developed and distributed numerous small business compliance assistance tools, focusing in particular on ten specific small business sectors (bakeries, food services, furniture finishing, health care, hotels, landscaping, machine shops, marinas, retail stores, and service stations). In addition, the Small Business Environmental Homepage provides state small business assistance programs and small businesses with access to environmental

compliance and pollution prevention information. We are also in the final stages of developing a booklet entitled AAn Ounce of PreventionY@ which provides easy, quick and inexpensive ideas to help small businesses plan their activities so they minimize the likelihood and potential impacts of an environmental emergency.

Our small business program is recognized for its excellence. EPA has received letters of appreciation from the Small Business Administration (SBA), as well as favorable comments from small business associations. I am proud of the fact that, during testimony before the U.S. Senate, a representative from the Printing Industries of America described the EPA=s Small Business Ombudsman office as Aone of the best outreach programs in the federal government.@

In October 2004, we finalized the Implementation Plan (the APlan@) for our revised Small Business Strategy entitled AUnifying EPA=s Small Business Activities: a Strategy to Meet the Needs of Small Businesses.@ The strategy focuses on four major elements aimed at unifying EPA=s small business activities by (1) strengthening the Agency=s small business advocacy roles; (2) expanding small business involvement in the regulatory process; (3) developing additional compliance assistance tools and resources; and (4) promoting programs that reward environmental leadership.

The *Small Business Strategy* recommends a wide variety of traditional and innovative approaches for addressing small businesses. The overall goal of the Plan is to bring unity and improved effectiveness to Agency-wide efforts to assist small businesses in improving their environmental performance, and to establish a general framework outlining how EPA=s Program and Regional Offices will coordinate, collaborate, and unify environmental and regulatory compliance assistance to small businesses.

Most of these activities are, to some degree, already taking place within the Agency. The Plan is expected to build on these activities, as well as on other work under way in partner

agencies at the federal, state, and local levels. The Strategy fully envisions partnerships with other agencies as well as with small business trade associations.

We conducted intensive external and internal outreach during the development of our Strategy and the Implementation Plan to ensure that all issues and needs were considered. Most major small business trade associations, the SBA, and other stakeholders provided input to the process.

We also have multiple programs that are directly focused on improving our regulations so they are easy to understand and practical to implement. The Small Business Regulatory Enforcement Fairness Act (SBREFA), passed in March 1996, amended the Regulatory Flexibility Act to further the Agency=s partnerships with small entities in our rulemakings. One of the important goals of these Acts is to provide small entities with an expanded opportunity to participate in the development of certain regulations. For regulations that we identify through a screening analysis as possibly having a significant economic impact on a substantial number of small entities, we solicit input from affected parties and work with them to consider alternatives that minimize adverse effects on the small entities.

EPA is a government leader in implementing SBREFA. Over 450 small-business, small-government, and small non-profit representatives have provided regulatory advice to the Agency through participation on our Small Business Advocacy Review Panels. Twenty-seven notices of proposed rule makings have been published following completion of a panel process and each proposal reflected the advice and recommendations of the panel. EPA=s record has been lauded by small businesses and small communities alike.

EPA=s implementation of SBREFA extends beyond the statutory requirements. EPA=s policy is to conduct outreach and provide accommodations, where appropriate and allowable, in any rule that imposes significant adverse impacts on small businesses. Thus, the Agency has a strong record of considering small business needs in the development of its regulations.

For example, in May 2004, EPA finalized the Clean Air Nonroad Diesel Rule which was strongly supported by the regulated community, health advocates, and state and local governments. This rule will cut emission levels from diesel engines used in construction, agricultural and other industries by over 90 percent, and require the removal of 99 percent of the sulfur in diesel fuel. When the full inventory of older engines is replaced, the Nonroad Diesel Program will annually prevent up to 12,000 premature deaths, 15,000 heart attacks, and other significant health symptoms. All told, these benefits would add up to over $80 billion a year.

As the Nonroad Diesel Rule will affect many small engine manufacturers and refiners, EPA convened a SBREFA panel to solicit information and comments from small entity representatives from the engine, equipment and refining industries. Several of the small entities expressed concerns with the projected impacts of meeting the new emissions standards and requirements for low sulfur fuels. To accommodate these concerns, the final rule includes a number of flexibility provisions that are designed to reduce the economic impact of meeting the new emissions standards and requirements for low sulfur fuels. Specifically, we adopted provisions that provide additional time, temporary exemptions for small volume equipment sales, and flexibility in implementing the fuel requirements.

III. The Manufacturing Sector Report

The Manufacturing Sector Report issued by OMB offers yet another opportunity for reducing unnecessary and burdensome requirements on small businesses while protecting the environment. Each year OMB is required to submit a report to Congress that estimates the total annual costs, benefits, and impacts of federal rules and paperwork. To initiate this process, OMB publishes a draft Report each February and solicits public comments on its content and on any regulatory actions or guidance documents the public believes should be nominated for reform. The most recent Report focuses on the manufacturing sector.

In February of 2004, OMB requested public nominations of specific regulations, guidance documents, and paperwork requirements that, if reformed could lower costs, increase effectiveness, enhance competitiveness, and increase flexibility. One-hundred and eighty-nine responses were submitted to OMB from 41 different commenters. Ninety-four of those were referred to EPA in December 2004 for our review and consideration. After evaluating the merits of each of the reform nominations, in January 2005, EPA submitted its reform recommendations to OMB. Forty-two reforms were included in OMB=s report. These cover a wide range of issues, many of which focus on reducing the frequency and burden of reporting requirements either through changes in guidance or through changes in regulations.

The regulatory reform nominations we are pursuing allow the Agency to effectively protect the environment and human health at a level above, or at least equal to, our current standards but in a manner that is more effective and less burdensome to the regulated community.

I would like to highlight some specific nominations that may be of interest to this Subcommittee because they demonstrate the value of the reforms we have undertaken. These three reforms include: (1) removing regulatory hurdles that currently discourage the recycling of waste; (2) eliminating unnecessary reporting requirements; and (3) reducing unnecessary compliance costs for certain facilities that pose low risks.

Definition of Solid Waste

Eight industry trade associations, the Chamber of Commerce, and SBA requested the Agency to revise its definition of Asolid waste@ to exclude certain types of recycling from regulatory coverage. Commenters expressed concern that EPA=s current regulatory system for classifying waste materials is overly broad, thereby subjecting materials that are otherwise

recyclable to EPA=s rigorous hazardous waste regulations. Because of the cost of complying with these regulations B both in terms of additional treatment standards and reporting requirements B many companies have been discouraged from recycling wastes that have economic value.

We generally agree with the stakeholders who told us that removing the specter of RCRA hazardous waste regulations where it is not necessary can spur the increased reuse and recycling of these materials and lead to greater resource conservation. Thus, in October of 2003, the Agency proposed revisions to the definition of solid waste to enable certain types of materials to be recycled. In response to the Manufacturing Initiative, the Agency has committed to make changes on an expedited schedule by publishing a final or proposed rule in the *Federal Register* by the Fall of 2006. As part of the outreach effort in developing possible revisions to the definition of solid wastes, EPA met with the Small Business Administration Advocacy Environmental Roundtable in November of 2003 and again in December of 2004. We also plan to participate on a multi-media panel at the *2005 Small Business Ombudsman/Small Business Assistance Program (SBO/SBAP) National Conference* in June of this year.

TRI Burden Reduction

The second reform I would like to highlight for the Subcommittee relates to EPA's Toxics Release Inventory (TRI) and paperwork reduction. Under this program, EPA requires certain covered facilities to annually report releases and other waste management activities for listed toxic chemicals. The Agency makes the information available to the public to inform them of how toxic chemicals are managed in their local communities. Since many of the sources covered in this program are small businesses, it has been a focus of the small business community since its inception.

During the nomination process, we heard from several commenters including the small business community that aspects of the TRI program data are misleading to the public and/or the reporting requirements are burdensome to covered facilities. Among the suggestions received were that the Agency should reduce the frequency of reporting and modify the way the Agency presents chemical quantities that are sent to landfills, and releases that are injected into deep wells. EPA has been aware of concerns with the burden of TRI reporting for some time and had launched a significant regulatory TRI burden reduction effort prior to this regulatory reform initiative. In response to concerns such as the ones raised in this year's nominations, the Agency was aggressive in seeking stakeholder input. For example, EPA convened a stakeholder meeting to obtain input on all options being considered for future regulatory proposals, and we requested feedback through an Internet dialog which yielded over 700 comments.

The first outcome of these efforts was a rule proposed this January to take comment on modifications to the actual reporting forms. The rule proposed, for example, to simplify reporting elements related to waste treatment. We will propose another rule this summer. The second proposal will contain options that would result in greater burden reduction. While we are still finalizing options for this rule, EPA is strongly considering a "no significant change" option B if releases and other waste management information have not changed significantly since an established baseline year, a reporter would not need to complete a form R. There are numerous implementation details that require close attention as we consider this and other burden reduction options. We are currently working to address these in a way that provides significant burden relief without compromising the value of the TRI information to the public. In response to the reform nominations, the Agency has committed to complete both rulemakings on an expedited schedule by December 2006.

Spill Prevention, Control, and Countermeasure Rule (SPCC)

A final example I would like to highlight for the Subcommittee are improvements to the Spill Prevention, Control, and Countermeasure rule B SPCC. The SPCC rule, originally

promulgated in 1973, requires owners or operators of non-transportation related facilities with aboveground oil storage greater than 1,320 gallons to comply with a series of requirements designed to prevent potential discharges to navigable waters of the United States or adjoining shorelines. SPCC is of significant interest to small businesses. Five separate comments on SPCC were submitted to OMB for regulatory reform consideration in the Thompson Report. Commenters focused on those requirements considered to be the most costly and burdensome, particularly to small entities. For example, the current regulation requires facilities that store oil above certain thresholds and near waterways, to prepare and implement spill prevention, control, and countermeasure plans that must be certified by a professional engineer. This certification requirement may be costly and we have been requested to remove this burden for facilities, including small businesses, that have relatively small volumes of oil.

In 2002, we revised the original SPCC rule to reduce the regulatory burden on facilities in areas that we considered to be a low risk. For example, we raised the regulated storage thresholds to 1,320 gallons, removed the 660 gallon threshold, and exempted containers under 55 gallons in size. Although we made progress in 2002, following discussions with the regulated community, EPA recognizes the need to further address SPCC issues and, like the definition of solid waste, we are working on an expedited schedule. We expect to issue guidance to EPA inspectors this summer. In addition to guidance, we are developing a rule to streamline requirements for certain facilities and for oil-filled equipment. We expect to issue a proposed rule by August of this year, and a final rule by February 2006. EPA has already granted two extensions of the deadlines for revising and implementing SPCC plans. Also, we are working to identify additional areas where regulatory reform may be appropriate for small and low risk facilities. For these additional areas, we expect to issue a proposed rule by June 2006, and a final rule by June 2007.

IV. Conclusion

Mr. Chairman, Members of the Subcommittee, under this Administration, the EPA has taken significant steps towards improving the quality and credibility of our regulations and guidance documents. The reforms we have outlined in the manufacturing initiative are an important part of that improvement process. We are committed to implementing and completing the reforms as outlined in OMB=s manufacturing initiative. All of these initiatives are being tracked in the Agency=s regulatory tracking system, which keeps the Administrator informed both of progress and upcoming milestones. I expect the Agency will be successful in responding to the 2005 manufacturing sector reform nominations.

Thank you for allowing me to appear before you, and I would be happy, now, to take any questions you might have.

Office of Advocacy *A Voice for Small Business*

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Testimony of
Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration

U.S. House of Representatives
Committee on Small Business
Subcommittee on Regulatory Reform and Oversight

Date:	April 28, 2005
Time:	10:30 A.M.
Location:	Room 311 Cannon House Office Building Washington, D.C.
Topic:	"The Administration's Program to Reduce Unnecessary Regulatory Burden on Manufacturers – A Promise to Be Kept?"-

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit http://www.sba.gov/advo, *or call (202) 205-6533.*

Chairman Akin and Members of the Subcommittee, good morning and thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent entity within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.

The Subcommittee requested Advocacy's view of the value of the process undertaken in 2004 by the Office of Management and Budget (OMB) and Federal agencies to reduce the regulatory burden on U.S. manufacturers through 76 targeted regulatory reforms (*see* Attachment A for a list of the proposed reforms). The 2004 call for improvements to manufacturing rules is the most recent in a series of regulatory reform efforts initiated by this Administration since 2001.[1] Advocacy believes that the manufacturing reforms, if implemented by Federal agencies, would yield reduced regulatory burden without sacrificing needed health, safety, and environmental protections (*see* Attachment B for Advocacy's overview of manufacturing reforms).

I would also like to provide specific information to the Subcommittee regarding the importance of manufacturing to small business, and the particular significance of some of the regulatory reforms identified as high priorities to the small business economy.

How Important Is Manufacturing to Small Businesses?

Small business is the driving force behind U.S. manufacturing. Economic data from 2002 indicate that nearly 99 percent (98.6%) of all manufacturing firms are small businesses.[2] Put another way, these small businesses employ over 42% of the more than 14 million Americans who are manufacturing employees.[3] Additionally, small firms innovate more than large ones do, producing 13 to 14 times more patents per employee

[1] OMB called for public nominations of rule reforms in the May 2001 and March 2002 Draft Reports to Congress. OMB received 71 and 316 nominations from the public, respectively. OMB did not issue a public call for nominations in 2003.
[2] See Office of Advocacy economic statistics, available at http://www.sba.gov/advo/stats/us_tot_mi_n.pdf.
[3] *Id.*

than larger firms do.[4] Small firm patents are more likely to be driven by leading edge technology than large firm patents.[5] Finally, small manufacturing firms are more likely than large companies to produce specialty goods and custom-demand items. For these reasons, manufacturing is very important to the small business sector of the U.S. economy, and small business is important to U.S. manufacturing.

How Important Are the Costs of Regulation to Small Manufacturers?

The 2001 Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms*,[6] found that small businesses are disproportionately impacted by the total Federal regulatory burden, which was estimated by Crain and Hopkins to exceed $840 billion in 2000. For manufacturing firms employing fewer than 20 employees, the annual regulatory burden in 2000 was estimated to be $16,920 per employee – nearly 2 1/2 times greater than the $7,054 estimated for firms with more than 500 employees.[7] Looking specifically at environmental and tax compliance costs, the difference between small and large manufacturing firms was even more dramatic. Small manufacturing firms spend 4 1/2 times more per employee for environmental compliance and tax compliance than large businesses do. Environmental regulations comprise the largest share of small manufacturers' regulatory burden, adding up to 76% of the total.[8] This large discrepancy between large and small manufacturers for environmental costs is largely attributable to the fact that many environmental rules require large fixed capital investments (e.g., pollution control equipment) and other costs that small firms cannot spread over high-volume operations in the way that large firms can.

The 2001 Crain-Hopkins study remains the most comprehensive, up-to-date measure of the total cost of regulations on the U.S. economy. The report used data

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[4] *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at http://www.sba.gov/advo/research/rs225tot.pdf.
[5] *Id.*
[6] *The Impact of Regulatory Costs on Small Firms* (October 2001) available at http://www.sba.gov/advo/research/rs207tot.pdf.
[7] *Id.* at page 31, Table 10A.
[8] The distribution of environmental compliance costs across industries and firm sizes in the Crain-Hopkins study is derived directly from firm-level data from the Pollution Abatement Control Expenditures (PACE) survey from 1994, the last year for which data were available when the Crain-Hopkins study was written.

gathered from numerous sources, including the Office of Management and Budget (OMB), the Organization for Economic Cooperation and Development (OECD), the Council of Economic Advisors, the Census Bureau, and various resource organizations. The data underlying the Crain-Hopkins study were the most recent available when the study was completed in 2001, such as the 1999 OECD report, *Regulatory Reform in the United States*[9] and OMB's 2000 Report to Congress.[10]

The Crain-Hopkins study is the only such study that allocates regulatory costs by industry sectors and firm size, thereby allowing focused consideration of regulatory costs on small entities and their employees. The Crain-Hopkins study's findings are important because they underscore the significance of small business to the American economy. Despite the disproportionate regulatory burdens borne by small firms, the small business sector is the primary engine of job creation, growth and innovation.[11]

How important is the OMB Regulatory Reform Process to Small Manufacturers?

OMB's regulatory reform process shows great promise as a way to relieve unnecessary regulatory burdens on small businesses, including small manufacturers, while maintaining health, safety and environmental protections. Public nominations, unrelated to the 2004 focus on manufacturing, have already yielded rule reforms. The Centers for Medicare and Medicaid Services (CMS), for example, responded to a public nomination for changes to the criteria Medicare uses for classifying a hospital, or unit of a hospital, as an inpatient rehabilitation facility (IRF). CMS followed the suggestion of Advocacy and members of the public in adopting a lower percentage of patients that hospitals had to have in IRFs in order for the hospital to qualify for Medicare payments. The rule reform reduced the economic impact on small entities such as hospitals and allowed many IRFs to remain open.

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[9] Organization for Economic Cooperation and Development, *Regulatory Reform in the United States*, OECD Reviews of Regulatory Reform, Paris, 1999.

[10] Office of Management and Budget, Office of Information and Regulatory Affairs, *Report to Congress on the Costs and Benefits of Federal Regulations*, available at http://www.whitehouse.gov/omb/inforeg/2000_cost-ben_final_rpt.pdf.

[11] See Office of Advocacy, *Small Business Frequently Asked Questions* available at http://www.sba.gov/advo/stats/sbfaq.pdf and *Small Serial Innovators: The Small Firm Contribution to Technical Change* (February 2003) available at http://www.sba.gov/advo/research/rs225tot.pdf.

Lessons learned from earlier reform nominations will benefit those reforms specifically impacting the manufacturing sector. By August of this year, Advocacy anticipates that the Environmental Protection Agency (EPA) will propose two additional major regulatory reforms urged by small businesses through the OMB nomination process: revisions to the Spill Prevention, Control and Countermeasure (SPCC) program, as well as to the Toxic Release Inventory (TRI) reporting requirements. Likely improvements to the SPCC program, which protects our waters against spills from oil storage tanks, include allowing small facilities with storage capacity below a certain threshold to use streamlined, less expensive requirements. EPA's objective of environmental protection will be met, and in some cases enhanced,[12] while many small manufacturers will not be required to incur needless cost.

Similarly, the current TRI reporting burden, which can be particularly difficult for some small manufacturers who must file detailed annual reports despite having no releases to the environment, may be eased by allowing facilities with no year-to-year changes to submit a streamlined No Significant Change form. EPA is also considering expanding the availability of a streamlined reporting form (Form A), which has the potential to reduce the paperwork burden on small firms without sacrificing environmental benefit. These reforms, along with the 74 other manufacturing reforms highlighted by OMB, would be of significant value to small manufacturers and other small entities if implemented.

Advocacy is committed to the OMB Reform Process

The Office of Advocacy has actively participated in OMB's regulatory reform process, including holding public outreach meetings to receive suggestions on needed reforms, working with small business representatives to hear their views, and helping OMB prioritize the regulatory reforms of particular concern to small entities. Advocacy is committed to OMB's regulatory reform process because the process can really only work if the interests of small business are included. Congress realized the importance of small business when the Regulatory Flexibility Act (RFA) and the Small Business

[12] At present, because of the complexity and cost of the current SPCC program, Advocacy believes that many small businesses do not fully comply with the requirements. Compliance will likely improve with a simpler, less expensive program that is tailored to small facilities.

Regulatory Enforcement Fairness Act (SBREFA)[13] were enacted into law. When planned rules are evaluated by Advocacy under the RFA and SBREFA, we look for ways to reduce small business burdens without compromising the regulatory objectives intended by the regulating agency. We believe that OMB's regulatory reform process, with appropriate Congressional oversight, can achieve the same result, which will be extremely beneficial for small manufacturing firms.

Thank you for allowing me to present these views. I would be happy to answer any questions.

[13] Codified at 5 U.S.C. §§ 601-612.

ATTACHMENT A

Summary of 76 Regulatory Reform Nominations
(Office of Advocacy Reform Nominees Indicated in Bold)

OMB No(s).	Rule Nominated for Reform	Agency
4	Coastal Zone Management Act Federal Consistency	National Oceanic and Atmospheric Admin.
6	NAFTA Certificates of Origin	Dept. of Homeland Security
7	Maritime Security	Dept. of Homeland Security
12	Motor Vehicle Brakes	Dept. of Transportation/ FMCSA
14	**Hours of Service**	**Dept. of Transportation/ FMCSA**
16	Lighting and Reflective Devices	Dept. of Transportation/ NHTSA
18	Occupant Ejection Safety Standard	Dept. of Transportation/ NHTSA
22	Vehicle Compatibility Standard	Dept. of Transportation/ NHTSA
26	Employer Information Report (EEO-1)	Equal Employment Opportunity Commission
28	"Coke Production" Emission Factors (AP-42)	EPA
30	Document AP-42: Science and Site-Specific Conditions	EPA
33	Clean Up Standards for Polychlorinated Biphenyls	EPA
34	Common Company ID Number in EPA Databases	EPA
35	Enforcement and Compliance History Online (ECHO) Website	EPA
36	Electronic Formats for Agency Forms	EPA
38	Expand Comparable Fuels Exclusion under RCRA	EPA
39	Export Notification Requirements	EPA
42	**Hazardous Waste Rules Should Be Amended to Encourage Recycling**	**EPA**
43	**Lead Reporting Burdens Under the Toxic Release Inventory Program**	**EPA**
44	Maximum Achievable Control Technology Standard for Chromium	EPA
45	Polychlorinated Biphenyl Remediation Wastes	EPA
46	Permit Use of New Technology to Monitor Leaks of Volatile Air Pollutants	EPA
47	**Water Pretreatment Streamlining Rule**	**EPA**

48	**Provide More Flexibility In Managing F006 Wastewater Sludge to Encourage Recycling**	**EPA**
51	Remove Disincentives to Recycling Spent Hydrotreating and Hydrorefining Catalysts	EPA
52	**Reporting and Paperwork Burden in the Toxic Release Inventory Program**	**EPA**
54,55 56,57 58	**Spill Prevention Control and Countermeasure (SPCC) Rule**	**EPA**
59	Water Permit Rules	EPA
61	Annual Reporting of Pesticide Information	EPA
68	Cooling Water Intake Structures, Phase III	EPA
75	Electronic Filing by Manufacturing Firms	EPA
83	Leak-Detection and Repair Programs	EPA
86	**Method of Detection Limit/Minimum Level Procedure under the Clean Water Act**	**EPA**
87	Operating Permits under the Clean Air Act	EPA
88	Potential to Emit Test	EPA
90	Prohibit Use of Mercury in Auto Manufacturing	EPA
92	Reduce Inspection Frequency from Weekly to Monthly for Selected RCRA Facilities	EPA
97	**Reportable Quantity Threshold for NOx at Combustion Sources**	**EPA**
101	Sulfur and Nitrogen Monitoring at Gas Turbines	EPA
103	Program for Developing and Validating Analytic Methods	EPA
108	**Deferral of Duplicative Federal Permitting**	**EPA**
110	Superfund Amendments and Reauthorization Act	EPA
112	Vapor Recovery at Gasoline Stations	EPA
116	Publicly Owned Treatment Works removal credits	EPA
117	Categorical Wastewater Sampling and Testing	EPA
118	Definition of Volatile Organic Compound	EPA
119	Thermal Treatment of Hazardous Waste Guidance	EPA
121	**"Do Not Fax" Rule**	**Federal Communications Commission**
122	Broadband	Federal Communications Commission
125	**Health Insurance Portability and Accountability Act of 1996**	**Department of Health and Human Services**
134-137 141-144	**Reform of Family and Medical Leave Act (FMLA)**	**Department of Labor, Employment Standards Administration**
139	Reform of FMLA	Dept. of Labor/ESA
145	Permanent Labor Certification	Dept. of Labor

151	Annual Training for Separate Standards	Dept. of Labor/OSHA
152	Coke Oven Emissions	Dept. of Labor/OSHA
153	Flammable Liquids	Dept. of Labor/OSHA
155	Hazard Communication Training	Dept. of Labor/OSHA
156	Hazard Communication/Material Safety Data Sheets (MSDS)	Dept. of Labor/OSHA
157	**Hexavalent Chromium**	**Dept. of Labor/OSHA**
159	**Sling Standard**	**Dept. of Labor/OSHA**
160	Guardrails Around Stacks of Steel	Dept. of Labor/OSHA
169	Walking and Working Surfaces	Dept. of Labor/OSHA
175	Duty Drawback	Dept. of the Treasury/Dept. of Homeland Security
178	**Election to Expense Certain Depreciable Business Assets**	**Dept. of the Treasury/ Internal Revenue Service**
188	**Ready to Eat Meat Establishments to Control for *Listeria Monocytogenes***	**Dept. of Agriculture/Food Safety and Inspection Service**

ATTACHMENT B

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Advocacy Identifies 48 Small Manufacturing Regulations Ripe for Reform

On January 5, 2005, the Office of Advocacy (Advocacy) sent a letter to Dr. John Graham, Administrator of the Office of Information and Regulatory Affairs (OIRA), an office within the Office of Management and Budget (OMB). Advocacy's letter was sent in response to Dr. Graham's request that Advocacy identify rules that, if reformed, would reduce regulatory burdens on small manufacturers. OMB's request was part of its *2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.* In its report, OMB identified 189 manufacturing regulatory reform nominations. Advocacy listened to the recommendations of small businesses and identified 48 priority regulations that were ripe for reform and would significantly reduce the regulatory burden on small manufacturers. A copy of Advocacy's letter and its 48 reform nominations can be found at, *www.sba.gov/advo/laws/comments*. Advocacy has been working with OMB to reduce the Federal regulatory burden on small businesses. The chronology of Advocacy's involvement with respect to OMB's 2004 Report to Congress on the costs and benefits of Federal regulations follows:

- OMB released its draft Report to Congress for public comment on February 20, 2004 (*see* 69
Fed. Reg. 7987, February 20, 2004). Chapter II of the draft report sought public nominations of regulatory reforms relevant to the manufacturing sector, especially on small and medium sized businesses. The public was requested to suggest specific reforms to regulations, guidance documents or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and increasing flexibility.

- On February 25, 2004, the Chief Counsel for Advocacy presented testimony to Congress on OMB's commitment to seek out, and act on, regulatory reform nominations made by small businesses. The testimony can be found at:
www.sba.gov/advo/laws/test04_0225.html.

- On April 28, 2004, Advocacy held a roundtable with small business representatives to hear nominations for regulatory reform. Over 35 recommendations for reform were identified by the roundtable participants. On May 14, 2004, Advocacy filed a comment letter with OMB in response to its 2004 draft report to Congress. The comment letter outlined Advocacy's outreach to small business and provided OMB with the 35 recommendations for regulatory reform. The comment letter can be located at: *www.sba.gov/advo/laws/comments*.

- On November 17, 2004, the Chief Counsel for Advocacy testified before Congress on the status of regulatory reforms nominated by the public in previous OMB reports to Congress. The testimony can be found at: *www.sba.gov/advo/laws/test04_1117.html.*

- Federal agencies are expected to review the merits of OMB's 189 reform nominations and prepare a response to OMB by January 24, 2005. OMB will then work with the agencies to identify the Administration's regulatory-reform priorities, which will be announced in February 2005.

- Advocacy's January 5, 2005, letter to OMB will help agencies prioritize their regulatory reforms to particularly benefit small business.

For more information, visit Advocacy's web page at: *www.sba.gov/advo* or contact Linwood Rayford at 202-401-6880 or linwood.rayford@sba.gov.

Testimony of

J. Robert Shull

Director of Regulatory Policy
OMB Watch

Before the
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
U.S. House of Representatives

Hearing on
"The Administration's Program to Reduce
Unnecessary Regulatory Burden on Manufacturers:
A Promise to Be Kept?"

April 28, 2005

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Testimony of
J. Robert Shull
Director of Regulatory Policy
OMB Watch

Before the
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
U.S. House of Representatives

April 28, 2005

Thank you for the opportunity to testify before you today. I am Robert Shull, Director of Regulatory Policy for OMB Watch. OMB Watch is a nonprofit, nonpartisan research and advocacy center promoting an open, accountable government responsive to the public's needs. Founded in 1983 to remove the veil of secrecy from the mysterious and powerful White House Office of Management and Budget, OMB Watch has since then expanded its focus beyond monitoring OMB itself. We currently address four issue areas: right to know and access to government information; advocacy rights of nonprofits; effective budget and tax policies; and the use of regulatory policy to protect the public.

We are concerned about the project being promoted today by OMB, a project we see as nothing less than a hit list of regulatory protections to be weakened or eliminated in a shameful giveaway of the public's protections to benefit large corporate special interests. In a report released in February 2004, OMB invited these corporate special interests to nominate regulatory "reforms" to benefit the manufacturing sector.[1] When industry responded with a wish list of 189 regulatory safeguards to be rolled back,[2] OMB consulted with the relevant agencies and followed up in March of this year with a report concluding that 76 of those suggestions merited being added to a hit list.[3]

This hit list project sacrifices public protections in order to benefit the bottom line of large corporate special interests. My testimony will discuss the following three points:

- There is no principled reason for this reckless effort to weaken and eliminate public protections.
- This hit list is a giveaway of public safeguards to benefit large corporations, not small businesses.

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1. 2004 OMB DRAFT ANN. REP. ON COSTS & BENEFITS OF REGS. (available on-line at <http://www.whitehouse.gov/omb/inforeg/draft_2004_cbreport.pdf>) [hereinafter "2004 Draft Report"].

2. 2004 OMB ANN. REP. TO CONG. ON COSTS & BENEFITS OF REGS. (available on-line at <http://www.whitehouse.gov/omb/inforeg/2004_cb_final.pdf>) [hereinafter "2004 Final Report"].

3. OFFICE OF INFO. & REG. AFFAIRS, OFFICE OF MANAGEMENT & BUDGET, REGULATORY REFORM OF THE U.S. MANUFACTURING SECTOR (2005) (available on-line at <http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf>) [hereinafter "Final Hit List"].

- OMB is putting the public at real risk with this anti-regulatory hit list.

I. OMB HAS NOT ESTABLISHED A PLAUSIBLE CASE FOR EXEMPTING MANUFACTURERS FROM PROTECTIONS OF THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT.

OMB claims that a hit list to serve manufacturers is needed "[i]n light of recent concerns about the health of manufacturing in the U.S."[4] OMB offers three arguments (two explicit, one implied) that undermining the public's regulatory protections is the correct approach to remediate these "recent concerns" about the manufacturing sector: (1) because regulatory safeguards hold back U.S. manufacturers when they try to "compete with firms from both developed and developing countries in an increasingly global environment";[5] (2) because manufacturing bears a disproportionate share of the overall regulatory costs in the economy;[6] and (3) because "the rebound in manufacturing employment has not been as rapid as in other sectors."[7] These arguments do not justify OMB's extraordinary distortion of regulatory policy through this hit list initiative.

A. OMB has failed to prove any link between regulatory safeguards and competitiveness of U.S. manufacturers.

OMB's argument that regulation harms the competitiveness of U.S. business reads more like a photocopy of industry talking points than a reasoned argument based on sound evidence. The real scholarly evidence refutes this claim. While the business community may be hampered in competing in global trade, regulation is not at fault. The business community, however, has nothing to gain by publicizing the real reasons for its difficulties, such as lower wages paid in other countries with which we now have self-destructive free trade agreements. The idea that regulation causes competitive decline is the product not of careful scholarship but, rather, of a multi-million dollar public relations campaign.

OMB bases its argument on the dubious estimates of the supposedly inordinate amount spent on regulatory compliance. These citations, however, are an insufficient basis to criticize regulation for four reasons:

(1) *Regulatory safeguards produce significant benefits for the public.* Citations to the high cost of regulation do not establish that regulation is unwarranted because they

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4. 2004 Draft Report, *supra* note 1, at 1.

5. 2004 Final Report, *supra* note 2, at 47.

6. *Id.* at 50.

7. Press Release, Office of Management and Budget, "OMB Initiates Review of Manufacturing Regulations" (Feb. 13, 2005) (available on-line at <http://www.whitehouse.gov/omb /pubpress/fy2004/2004-05.pdf>).

completely ignore what we gain from these expenditures. Protecting people and the environment may cost a lot of money, but it also produces far larger benefits. In fact, even though OMB distorts and constricts the presentation of benefits information in its annual report to Congress,[8] it nonetheless reports every year that regulation in the United States generates aggregate benefits that greatly exceed the cost of the federal regulations.

(2) *Not all costs have the same moral or ethical value.* Totaling all regulatory compliance costs into one lump sum misrepresents the very different value that the public can attach to the meaning of some of those costs. Some regulatory costs represent the cost to industry of doing what it should have done as a good corporate citizen in the absence of regulation. For example, stunning new evidence reveals that U.S. automakers misled the government and the public for years by claiming that the strength of vehicle roofs is unrelated to the serious injuries sustained when vehicles crash and roll over. According to industry documents, Ford denied this link even though its Volvo subsidiary had conducted research demonstrating that strengthening car roofs and other improvements are the key to preventing injuries and saving lives in rollover crashes.[9] If and when the National Highway Traffic Safety Administration issues a rule to safeguard against vehicle roofs caving in during rollover crashes, the cost to the automakers of complying will mean little if it is not offset by the profits earned during the period that the automakers knew of the need for stronger roofs but failed to do anything about it.

(3) *Cost estimates are overblown.* Moreover, many claims about regulatory costs are suspicious because they rely on cost estimates that come from industry sources that have an incentive to overstate the costs for regulatory and public relation purposes. According to a recent influential study,

> *ex ante* cost estimates have usually been high, sometimes by orders of magnitude, when compared to actual costs incurred. This conclusion

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8. The OMB report for 2004, for example, eliminated the scope of regulatory protections studied to a selection of "major regulations" issued in the previous 10 years and excluded all the many protections that continue to provide significant benefits to the public health, safety, civil rights, and environment even after all the compliance costs have long since been paid. *See generally* 2004 Draft Report, *supra* note 1. Moreover, the cost figures are derived exclusively from agency *ex ante* guesses about regulatory compliance costs—guesses which have been shown to overestimate actual compliance costs to a significant degree. Further, the report excluded from its benefits numbers many benefits that were not quantified and thus treated as zero; such omitted benefits include "reduced human and ecological risks from antibiotics, hormones, metals, and salts" from pollution regulations governing factory farms, *id.* at 15 Tbl.4; non-cancer benefits from Clean Water Act regulations, including decreased incidence of "systemic toxicity to vital organs such as liver and kidney," "decreased extent of learning disability and intellectual impairment," and "decreased risk of adverse reproductive effects and genotoxicity," *id.* at 45 Tbl.9; and *every single benefit* to America's workers from regulations that implement the Family and Medical Leave Act, *id.* at 42 Tbl.9.

9. *See* Press Release, Public Citizen, "New Report on Auto Industry Data Shows Automakers Misled NHTSA and Public When Denying Link Between Roof Strength and Injuries" (Mar. 30, 2005) (available on-line at <http://www.citizen.org/pressroom/release.cfm?ID=1909>).

> is not at all surprising in light of the strategic environment in which the predictions are generated. In preparing regulatory impact assessments for proposed rules, agencies are heavily dependent upon the regulated entities for information about compliance costs. Knowing that the agencies are less likely to impose regulatory options with high price tags (or to support them during the review process), the regulatees have every incentive to err on the high side.[10]

One particular estimate of costs, the discredited Crain and Hopkins study commissioned by the Small Business Administration, is significantly overblown.[11] For example, the familiar estimates that the manufacturing sector in 2000 "shouldered $147 billion of the $497 billion onus of environmental, economic, workplace, and tax-compliance regulation"[12] suffer the same problems just discussed and actually magnify those errors significantly, based on the assumption that regulatory compliance costs should be doubled to account for industry's public relations campaign against regulatory protections and the expenses of lobbying this very Congress.[13]

(4) *Compliance costs are so minuscule that they have minor competitive consequences.* Finally, and most importantly for these purposes, regulation cannot be blamed for a decline in competitiveness or other economic ills because compliance costs are only a very small percentage of total value of the shipments made by manufacturers. On the basis of data from the World Bank, Professor Kevin Gallagher of Boston University finds the "sum of all marginal pollution abatement costs in the United States is less than one percent of value added production."[14] Department of Commerce data confirm this estimate. This information indicates abatement expenditures are an average of 0.62 percent of the value of shipments of all industries. Industry sectors with high abatement costs only pay between 1.27 and 1.51 percent of the value of shipments.[15] Indirect costs are derivative of direct compliance costs; since low direct

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10. Thomas O. McGarity & Ruth Ruttenberg, *Counting the Cost of Health, Safety & Environmental Regulation*, 80 TEX. L. REV. 1997, 1998 (2002).

11. *See* W. MARK CRAIN & THOMAS D. HOPKINS, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS (Office of Advocacy, Small Business Admin. RFP No. SBAHQ-00-R-0027) (2001).

12. Testimony of National Assoc'n of Manufs., *Hearing on Impact of Regulations on U.S. Manufacturing Before the House Subcomm. on Reg. Affairs, House Comm. on Gov't Reform*, 109th Cong. (April 12, 2005), at 5 (citing CRAIN & HOPKINS, *supra* note 11, at 27 Tbl.9A).

13. *See* CRAIN & HOPKINS, *supra* note 11, at 10.

14. Testimony of Prof. Sidney A. Shapiro, *Hearing on Impact of Regulations on U.S. Manufacturing*, 109th Cong. (April 12, 2005), at 5 text accompanying note 5.

15. *Id.* at 5 (citing Adam B. Jaffe, Steven R. Peterson, Paul R. Portney, & Robert N. Stavins, *Environmental Regulation and the Competitiveness of U.S. Manufacturing: What Does the Evidence Tell Us?*, 33 J. ECON. LIT. 132, 141 Tbl.5 (1995)).

costs generally will produce low indirect costs, regulation overall should have a minor competitive and labor impacts.

The scholarly evidence backs up this claim. Economists have considered the impact of environmental regulations on plant location decisions (do pollution-intensive industries build disproportionate number of new factories in countries or areas of the United States where there is weak environmental regulation?) and on trade flows (do exports from developing to developed countries show an increasing percentage of pollution-intensive goods?). Neither type of study supports a regulation-competitiveness link. I recommend a recent literature review by Professor Sidney Shapiro, which synthesizes the major research on the questions and comes to the following conclusions:

- The leading meta-study of plant location and trade flow studies found that "studies attempting to measure the effect of environmental regulation on net exports, overall trade flows, and plant-location-decisions have produced estimates that are either small, statistically insignificant, or not a robust to test of model specification." These authors concluded that there is "[o]verall ... relatively little evidence to support the hypothesis that environmental regulations have had a large adverse effect on competitiveness, however that elusive term is defined."[16]

- According to another survey of the literature, "The vast majority of studies have found no systematic evidence that the share of developing country exports and production is becoming more pollution-intensive. In addition, no studies have indicated that there is substantial evidence that pollution-intensive industries flee developed countries with relatively high (and costly) environmental standards)."[17]

Not finding any credible scholarship to argue that regulatory protections hinder industrial competitiveness, OMB cited three studies from international literature purporting to make that link. Two of those OMB conceded as flawed, because they used subjective assessments and included non-regulatory interventions as well as direct regulation in their calculations. The third, a World Bank study, is completely inapposite to the arguments OMB is feebly presenting, in large measure because it does not even address the types of regulations (environmental, health, and safety) with which OMB typically concerns itself and reaches such general and abstract conclusions that it provides no support

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16. *Id.* at 5-6 (citing Jaffe et al., *supra* note 15, at 141).

17. *Id.* at 6 (citing KEVIN O. GALLAGHER, FREE TRADE AND THE ENVIRONMENT: MEXICO, NAFTA, AND BEYOND 26 (2004)).

whatsoever for OMB's position that a hit list of the public's protections will somehow enhance the competitiveness of American manufacturers.[18] OMB assiduously avoided reference to the many recent studies refuting the fiction of a competitiveness-regulation tradeoff, including the following:

- evidence that investment in Mexican industry has grown at a time when Mexican regulations were becoming much stricter, consistent with the "Porter hypothesis" that regulation may actually stimulate growth and competitiveness;[19]
- the finding that growth is positively correlated with pollution reduction within the Los Angeles area;[20]
- the intriguing discovery that restrictions on timber harvesting caused by protection of the spotted owl under the Endangered Species Act may have had net benefits for timber companies, by raising the value of their non-protected timber;[21] and
- the demonstration that some occupational safety and health regulations increase productivity in manufacturing in Quebec.[22]

B. OMB has failed to prove that the manufacturing sector is unfairly targeted for regulatory protections.

OMB's reports justifying the hit list project uncritically cited the discredited Crain and Hopkins study and its unsurprising conclusion that manufacturers bear more compliance costs than other industries. This conclusion has been quoted to suggest that there is an unfair, inequitable, or disproportionate burden on the manufacturing sector, but it just easily proves the very opposite. The conclusion that manufacturers bear greater costs than others is, without context, meaningless. The manufacturing sector takes materials and processes them into new products along with waste from the

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18. For a thorough discussion of the problems with the World Bank study, see the comments filed by law professor Lisa Heinzerling and economist Frank Ackerman on the 2004 draft report (available on-line at <http://www.progressiveregulation.org/articles/cost_regs_2004_comments.pdf>).

19. Ebru Alpay et al., *Productivity Growth and Environmental Regulation in Mexican and U.S. Food Manufacturing*, 84 AMERICAN J. AGRIC. ECON. 887 (2002).

20. Matthew E. Kahn, *Smog Reduction's Impact on California County Growth*, 40 J. REGIONAL SCI. 565 (2000).

21. Ted W. Chiles, Jr., & Joy Clark, *Environmental Regulation and the Spatial Distribution of Capital and Resources*, 29 REV. REGIONAL STUDS. 51 (1999).

22. Charles Dufour et al., *Regulation and Productivity*, 9 J. PRODUCTIVITY ANAL. 233 (1998).

processing and unused constituents of the original materials. It can be dangerous work for employees and can result in hazardous waste products that are released in the environment to everyone's detriment. The manufacturing sector is responsible for most of the air and water pollution in this country and many of the safety and health problems to which workers are exposed. That *manufacturers* must do more to protect workers and the environment than, say, *retailers* does not reveal a problem that needs to be fixed but instead may be evidence that safeguards are wisely targeting those who create the harms from which we need protection.

C. OMB cannot justify its anti-regulatory hit list by exploiting the crisis in manufacturing jobs.

As a supplement to its failed arguments for regulatory rollbacks, OMB implied that its concern "about the health of manufacturing" is more or less the same as the public's grave concern about the health of manufacturing *jobs* in the United States. The press release accompanying the draft report made that link explicit by including this telling sentence: "The President's Council of Economic Advisors recently reported that, while manufacturing is beginning to share in the economic recovery, the rebound in manufacturing employment has not been as rapid as in other sectors."[23] The implication that rolling back or weakening protections of the public health, safety, and environment will necessarily improve the crisis in manufacturing jobs is dubious at best and ignores the two primary reasons for the loss of such jobs: off-shoring and "productivity" gains. The latter may well be a symptom of the former: although the usual argument is that firms are using fewer employees because of technical advances and management improvements, one commentator urges that many productivity gains are actually the result of off-shoring practices.[24] The off-shoring of these valuable jobs since the advent of certain recent global trade agreements has provoked quite serious "concerns" about the health of high-wage blue-collar employment, and even finance commentator Lou Dobbs has begun to catalog these job losses on his CNN broadcast in a running segment called "The Exporting of America."[25]

We looked at recent testimony from the Manufacturers Alliance/MAPI, which compiled a chart comparing business openings and closings in the manufacturing sector against the same for nonmanufacturing concerns.[26] When we adapted that chart—which uses the government's own data—by adding the dates of certain controversial "free trade" events, such as the enactment of NAFTA and the permanent establishment of most favored nation trade status for China, we ended up with the following:

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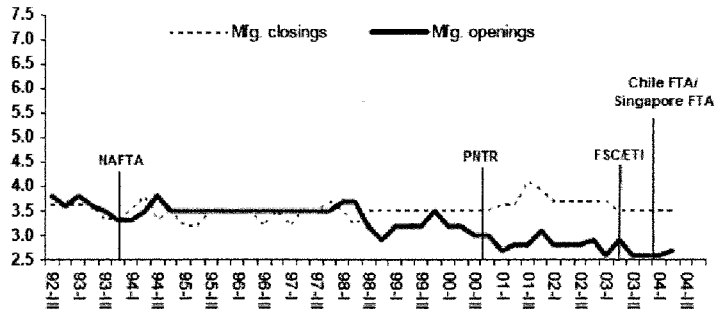
23. *See* OMB Press Release, *supra* note 7.

24. *See* Thom Hartmann, "Exposing the Conservative Straw Man: 'Productivity,'" *Common Dreams News Center*, April 12, 2004 (available on-line at <http://commondreams.org/views04/0412-13.htm>).

25. *See* http://www.cnn.com/CNN/Programs/lou.dobbs.tonight/.

26. Testimony of Thomas J. Duesterberg, Manufacturers Alliance/MAPI Inc., *Hearing on the Impact of Regulation on Manufacturing Before the Subcomm. on Reg. Affairs, House Gov't Reform Comm.*, 109th Cong. (April 12, 2005), at 3 Cht.1.

Establishment Openings and Closings By Industry
Seasonally Adjusted Quarterly—1992 III to 2004 I



Source: U.S. Department of Labor, *Business Employment Dynamics Survey*

Given that there is no conclusive link between regulation and competitiveness or employment in the manufacturing sector, perhaps it is time to avoid these misguided hit lists and target our reform efforts elsewhere.

II. OMB'S HIT LIST WILL ONLY SERVE LARGE CORPORATE SPECIAL INTERESTS.

Peppered throughout OMB's rationale for the hit list and recent testimony of several industry witnesses are references to small business. The impression created by all these allusions to small business concerns is that this hit list is somehow a gift to America's small businesses. In fact, this hit list project is a boon for large corporations and a boondoggle for everyone else. The repeated references to small business amount to nothing more than pleasing rhetoric designed to cover up the ugly reality that this hit list will sacrifice our protections for the bottom line of corporate megaliths.

A. OMB's anti-regulatory hit list serves large corporations instead of small businesses.

The first clue that this hit list primarily benefits large corporations is its focus on the

manufacturing sector: only 2.5% of all small businesses are manufacturers.[27] The items on the final hit list itself rarely address small business concerns. Of the 76 final reforms, 11 purport to focus all or in part on small business. This tally was made by counting final reforms either recommended by the SBA or whose description mentioned alleviating a small business burden. Many of those requests, however, were joined by a number of other petitioners representing large corporations as well.

Consider, for instance, reform #188, a request to rescind the rule controlling the deadly foodborne pathogen Listeria in ready-to-eat lunch meats, which was nominated by SBA as well as the National Association of Manufacturers. Rescinding the rule would affect all manufacturers, not just small ones; without the small business excuse, this hit list recommendation compels the conclusion that big businesses are attempting to dilute an important health control. This is not surprising given the influence of big food companies in weakening the Listeria rule from its original proposal.[28] Ironically, as recently as December OMB listed the Listeria rule as having annual benefits of $44-$154 million and costs of only $16 million, and OMB touted it as a "regulatory reform accomplishment"[29]—just three months before endorsing its addition to the hit list. Moreover, the rule to which the objection is being made is an interim final rule, and USDA is already considering whether to modify the rule. The nomination appears to be entirely superfluous except as a signal from OMB to weaken the existing rule.

Likewise, consider the many requests for weakening or eliminating worker's rights under the Family and Medical Leave Act. All but one of the suggested hit list changes made their way to the final hit list. The hostility to family and medical leave rights is clear evidence of the big business orientation of the hit list: not one of these rollbacks would benefit small businesses, because the Family and Medical Leave Act itself has an exemption for businesses with fewer than 50 employees.[30]

B. OMB's anti-regulatory hit list will not meet the needs of America's small businesses.

It is not at all surprising that OMB and the big corporations that dominate the hit list would try to paint this hit list project as a service to small business; the public believes that small businesses need some help in order to operate on a level playing field with big corporations. The small business community is a major source of innovation and employment in this country. Like their larger

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27. The statistic was derived from U.S. Census Bureau data for 2002, with the numbers spread across two web pages: <http://www.census.gov/csd/susb/susb02.htm> and <http://www.census.gov/epcd/nonemployer/2002adv/us/US000.HTM>. We confirmed our selection of numbers and the calculation of percentage in a phone call with the Small Business Administration's economic research office.

28. *See* CONSUMER FED. OF AMER., NOT "READY TO EAT": HOW THE MEAT AND POULTRY INDUSTRY WEAKENED EFFORTS TO REDUCE LISTERIA FOOD-POISONING (Dec. 2004) (available on-line at <http://www.consumerfed.org/CFA_Not_Ready_to_Eat.pdf>).

29. Final Hit List, *supra* note 3, at 21.

30. *See* 29 U.S.C. § 2611(2)(B)(ii).

counterparts, however, small businesses are also responsible for social ills addressed by regulations, ranging from workplace health and safety problems to environmental pollution.[31] Thus, we cannot simply give small businesses a free pass from regulation. At the same time, it can be relatively more expensive for small business to comply with regulations than large companies. Small businesses want to do their part and be responsible; real reforms, then, must help small businesses comply with regulations in order to level the playing field with large businesses while giving the public the protection it needs and deserves.

We already have these reforms. Small firms receive direct government subsidies such as outright and government-guaranteed loans from the Small Business Administration (SBA) as well as indirect preferential treatment through federal procurement requirements and tax provisions. Additionally, small business is treated to many exemptions or special treatment in the area of regulation. For example, employers with fewer than 15 employees are exempt from the Equal Employment Opportunity Act,[32] and OSHA levies lighter penalties for smaller firms, exempts businesses with fewer than 10 workers from recordkeeping requirements, and provides free on-site compliance consultations.[33]

Small business concerns are inscribed in law. The Small Business Regulatory Enforcement Fairness Act (SBREFA) requires agencies to give special consideration and voice to small business as part of the rulemaking process as well as expanded judicial review for small businesses wishing to challenge agency decisions.[34] Likewise, the Equal Access to Justice Act gives small businesses special privileges when litigating against agencies: small businesses can recover attorney's fees if they prevail in court against a federal agency.[35]

Real reforms for small businesses would make these benefits meaningful by clamping down on the ways that large businesses game the rules and claim the status of "small business." Real reform would consider the role of small business in contributing to pollution and other harms to the public and would respond by adequately funding compliance assistance offices in every congressional district, which would be given the resources they need to give small businesses the help that they, in turn, need to be good corporate citizens and comply with the law. This hit list does not come close to being real reform; it is a shameful giveaway of the protections we need, and it shamelessly exploits the real needs of small businesses in order to justify this dangerous exercise.

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31. *See* Richard J. Pierce, Jr., *Small is Not Beautiful: The Case Against Special Regulatory Treatment of Small Firms*, 50 ADMIN. L. REV. 537 (1998).

32. *See* 42 U.S.C. § 2000e(b).

33. *See* OSHA, *OSHA Small Business Assistance: OSHA Benefits for Small Business* (available on-line at <http://www.osha.gov/dcsp/smallbusiness/benefits.html>).

34. *See* 5 U.S.C. §§ 601 *et seq.*

35. *See id.* § 504.

III. OMB'S HIT LIST PUTS THE PUBLIC AT RISK.

OMB's hit list is a disgraceful abandonment of the government's duty to protect the public health and safety. None of us acting alone can avoid the harms caused by food producers who sell us meats tainted with Listeria, factories that make our air too dirty to breathe, companies that pollute our drinking water with carcinogens, and all the other ways that we are exposed to conditions that put us at risk. Through our democratic government, we are able to pool our energies and act broadly to ensure that the public interest is protected. I am not overstating things when I say that lives are at stake. OMB is putting us all at risk with a hit list project that interferes with sensible regulatory agenda-setting and seeks to reduce the level of protection we all deserve.

A. OMB has neither the right to compile the hit list nor the competence to do the right thing with it.

Soliciting the hit list of regulatory protections to be rolled back or watered down is beyond the limited scope for the annual report that Congress authorized. OMB is authorized by statute to report the costs and benefits of regulations and make recommendations, if necessary, *to Congress* on reforms to the network of regulatory protections. Congress did not, however, authorize OMB to open up those protections to an industry free-for-all in which industry identifies its own targets for weakening or rolling back, and Congress definitely did not authorize OMB to conduct its own series of follow-up actions prompting agencies to implement any hit list.

This hit list project is an arrogation of power utterly without mandate or justification. Congress alone holds the power to regulate conduct harmful to the public interest. In certain complex areas, such as environmental protection and workplace safety, Congress has realized that sound protections require the consultation of experts, in-depth investigations of existing problems, comparisons of a wide array of options, and the participation of a broad cross-section of the public. In order to authorize action while allowing the finer points to be worked out over the time it takes for all these requirements to be fulfilled, Congress authorizes agencies to bring all these resources to bear in the issuance of regulations that give substance to broad statutory mandates. Short-circuiting the agency process to scale back the protections mandated by Congress is not a power OMB has ever been granted.

OMB's invitation to compile a new hit list disrupts a system that has been refined over decades. Members of the public seeking changes in regulation have always had two options: they can submit petitions for rulemaking to regulatory agencies through 5 U.S.C. § 553(e),[36] and they can always lobby Congress itself. There is a reason that these are the two options: Congress sets the ultimate protective agenda through federal law, and Congress in turn relies on agencies, which have the resources and

36. In fact, this entire hit list project is arguably a distorted version of the APA petition for rulemaking, albeit conducted in secret. OMB has essentially forwarded the public's petitions for rulemaking to the agencies, and the agencies have ruled upon those petitions. The way OMB has conducted the process, however, the actual agency decision—including the agencies' rationales for adopting or rejecting the public's call for rulemaking—is held back from the public, which only received OMB's summary of those decisions.

expertise to unite public voices and scientific wisdom, to draw on those resources in setting their own sensibly balanced agendas for rule-making. OMB is not merely providing a third alternative; it is disrupting a carefully constructed system that was developed over decades to balance competing public preferences and the insights of scientific experts in the development of important protections. OMB's economists, even with a handful of scientists to support them, lack both the agencies' institutional competence to make sound judgments and Congress's constitutional authority.

Experience has proven the wisdom of the system we have and the folly of the hit list project OMB proposes. OMB's 2001 report solicited a hit list that resulted in one regulation being placed on a "high priority" list of rules to be rolled back—just months after OIRA itself had written the agency prompting it to *create* the rule.[37] Rules were added to that "high priority" hit list with little or no justification, despite the sometimes years-long development of a record justifying the issuance of the rules in the first instance and even cost-benefit analyses that, within the controversial terms of "regulatory accounting" discourse, demonstrated net benefits.[38] After the embarrassment of the 2001 hit list, OMB followed up in 2002 with a hit list project in which it simply forwarded the public's requests to the agencies, without sifting or prioritizing them. For this hit list, OMB appeared to have learned the lessons of 2001, and it set up a more elaborate decision structure for processing the industry hit list nominations. Even so, OMB once again proved that its right hand did not know what its left hand was doing: although OMB proudly touted an interim rule to protect the public from Listeria poisoning as a "regulatory reform accomplishment," it decided just three months later to endorse industry's call to weaken that rule as one of the 76 items on the final hit list.[39] These inconsistencies only resolve into coherence with the contemplation of OMB's evident bias toward industry interests, with whom OMB has contacts that it refuses to disclose to the public,[40] and many of which are the same interests that supported OMB regulatory czar John Graham's Center for Risk Analysis.[41]

Leaving agenda-setting to the agencies makes much more sense. The public health, safety, and environmental agencies routinely draw on experts and members of the public who have experienced first-hand the need for sensible safeguards, and some of their career staff members have worked in

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37. Joan Claybrook, Public Citizen, Comments to 2002 Draft Report on the Costs and Benefits of Federal Regulation, at 9 (available on-line at <http://www.citizen.org/documents/cb%20comments.pdf>).

38. *See id.* at 8-9.

39. *Compare* 2004 Final Report, *supra* note 2, at 111 Tbl.9 (citing Listeria rule as a regulatory reform accomplishment), *with* Final Hit List, *supra* note 3, at 66 (endorsing the weakening of that Listeria rule as an administration regulatory reform priority).

40. OMB only logs its meetings with industry when the subject of discussion is currently going through the rulemaking process. OMB has actually had meetings with corporate special interests to discuss, among other things, potential legislative attacks on regulatory policy to be introduced when the Paperwork Reduction Act comes up for reauthorization. *See White House Meets With Industry to Plan Anti-Regulatory Strategy*, OMB WATCHER, Jan. 10, 2005 (available on-line at <http://www.ombwatch.org/article/articleview/2610/1/308?TopicID=1>). These meetings are not logged anywhere, and the contents of those discussions have not been made available to the public.

41. *See* Claybrook, *supra* note 37, at 10.

their fields for so long that they are experts in their own right. They know their issues with a depth and breadth that a handful of economists in OMB cannot match. OMB's compilation of an anti-protection hit list and inevitable use of back-door pressure to have that list implemented will only interfere with the judgment of the professionals who have far more expertise to make such decisions. This hit list will only divert agencies from their crucial mission to protect the public.

B. OMB has used the label of "reform" to paper over its retrogressive attack on public safeguards.

Not that the agencies need any help diverting themselves away from their mission to serve the public. As we documented in a recent report, *The Bush Regulatory Record: A Pattern of Failure*,[42] the Bush administration has thrown itself into the task of reshaping regulatory policy in ways that are hostile to the public interest. Instead of giving the public the protections we deserve, the Bush administration has opted to abandon work on documented public health and safety problems. Instead of identifying other priorities for serving the public, this administration is doing nothing. It cannot meet even short-term benchmarks for action, and proposals to address long-identified needs are either thrown into the junk heap or allowed to languish. What little this administration has accomplished is not strong enough to meet the public's needs but, instead, is weakened at the behest of corporate special interests.

This hit list promises more of the same. A few of the items on the list could possibly be characterized as resulting in the same degree of protection for less cost. For instance, nomination #34 recommends using common identifiers for all EPA databases and #10 recommends eliminating duplicative energy appliance labeling. These appear to be valid suggestions and true "housekeeping" measures as characterized by the U.S. Chamber of Commerce. They are, however, the minority.

Most of the hit list would instead result in less protection. For example, the American Public Power Association recommends that EPA does not need to regulate cooling water intakes structures at electric utility generating plants with capacity of under50 million gallons a day (MGD) for reduction of fish entrainment and impingement under the CWA because such standards are "unlikely to yield net benefits." Since this nomination addresses an ongoing rulemaking under CWA §316(b), it is not a look-back nomination at all. In this circumstance, this appears to be another signal from OMB to EPA to adopt a weaker regulation.

Several attacks on EPA's Toxics Release Inventory (TRI) are a second example of the desire to weaken regulatory protections disguised as regulatory reform. TRI is widely supported as a useful and important regulatory program. Environmentalists like TRI because it supports the public's right to know about the toxic substances to which they are exposed. Conservatives like TRI because, as Donald Elliot observes, "disclosure of TRI data to the public has been a powerful incentive to promote

42. This report is available on-line at <http://www.ombwatch.org/regs/patternoffailure>.

'voluntary' pollution reductions."[43] Nonetheless, complaining about TRI imposed burdens is a favorite pastime of some industry groups, and so it is no surprise that the nominations made the final hit list.

The first complaint regards the lowering of the TRI reporting threshold for lead to 100 pounds from 10,000 pounds because it affects many small businesses and small lead emitters. Lowering the level would defeat the very purpose of the TRI lead standard, which was promulgated because lead is a persistent bio-accumulative toxic that is dangerous even at low levels and little information is available to local communities regarding lead emissions. Nonetheless, at the behest of industry, OMB has deemed that the recommendation merits further action.

Similarly, a number of petitioners simply want all use of material reporting thresholds increased. Again, these requests go to the substantive basis of the TRI program that was designed by Congress to provide important information to the public on the cumulative amount of toxics used and released. Further, the request appears to be redundant as the procedural component of this complaint regarding reporting forms is already being addressed through EPA's TRI Burden Reduction Rule in which industry has been an active participant.

The dizzying number of hit list items that would lower our protections and expose us all to greater risk of harm must have consumed enormous amounts of agency resources to process. With that thought in mind, I noticed with interest the statement that Howard Will prepared for today's hearing on behalf of the Chamber of Commerce. Mr. Will stressed the failure of the Occupational Safety and Health Administration to update its standards for slings that lift, hoist, and pull heavy items. Let us assume that Mr. Will is accurate in depicting the industry standard as a safer improvement over the OSHA standard. I am struck by the response that Mr. Will received from OSHA: that resource constraints preclude the agency from acting to update the standard. The same reason has been offered by OSHA and another Labor agency, the Mine Safety and Health Administration, and presumably other Labor agencies as well to justify their decisions to abandon work on long-identified public needs.[44]

Let's assume further that OSHA's excuse is truthful—that the agency truly is strapped, and that is has unacceptably scarce resources to devote to protecting the public with a fair, enforceable standard rather than voluntary guidance. The real reforms we need, then, are not the weakening and elimination of our workers' protections. The real reforms we need are resources for the agency to do the job it is charged with doing. The real reforms we need are for OMB to stop meddling with agency priorities so that OSHA and all the other agencies can stop spending time on the repeal of existing protections and can instead work on developing the new protections that we need.

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43. E. Donald Elliott, *Environmental TQM: Anatomy of a Pollution Control Program That Works!*, 92 MICH. L. REV. 1840, 1851 (1994).

44. For charts that set side-by-side the proposals withdrawn from OSHA and MSHA's agendas as well as the excuses offered for failing to act, click on the download links in the sidebar to this on-line article: *Agencies Continue to Abandon Protective Plans*, OMB WATCHER, April 4, 2005 (on-line at <http://www.ombwatch.org/article/articleview/2771/1/307?TopicID=3>).

There are many urgent unmet needs for the public health and safety, and this hit list will only exacerbate those unmet needs by diverting these supposedly scarce resources away from the agencies' real missions. OMB's selection of items "worthy" of being added to the hit list reveals a distinct hostility to the public interest. Of the two public interest nominations surviving on the final list, only one had a substantive action item. In response to Public Citizen's nomination to establish an occupant vehicle ejection standard, OMB provided a timeline for rulemaking—a timeline, that is, for completing work the agency had already begun before the final hit list was announced. In contrast, for Public Citizen's suggestion that an urgent unmet need is the redesign of vehicles to reduce the harms caused when incompatibly designed vehicles collide, DOT provided no action deadline but, instead, committed only to provide a summary of research in the area. Thus, two out of 76 reform nominations address public interest concerns, and only one of those actually pledges any real action.

Meanwhile, there are plentiful environmental and public health and safety issues that remain unaddressed by regulation. For instance, important consumer protections to prevent auto vehicle deaths such as establishment of a rollover crashworthiness standard and coverage of 15-passenger vans by NHTSA safety standards, both proposed by Public Citizen, were left off the final list even though motor vehicle deaths are the leading cause of death for Americans aged 4 to 34. Likewise, other recommendations to protect citizens from mad cow disease, consumers from fecal contamination of meat, and workers from ergonomic injuries and beryllium exposure were likewise rejected despite the need for real reform in these areas.

OMB is not interested in real improvements for the public. It would rather delay a rule to alert drivers when the air pressure in their tires is dangerously low. It would rather allow industry to write its own rules for emissions standards. It would rather order weaker alternatives in rules governing the waste-ridden runoff from factory farms. Now, it would rather preserve the bottom line of big corporations by targeting our protections for weakening or elimination on a hit list than give us the protections we need.

The Honorable Todd Akin
Chairman, Regulatory Reform and Oversight subcommittee
Small Business Committee
United States House of Representatives
2361 Rayburn Office Building
Washington, DC 20515

Dear Chairman Akin:

RE: The Administration's Program to Reduce Unnecessary Regulatory Burden on Manufacturers – A Promise to be Kept?

On behalf of the North American Die Casting Association (NADCA), I am writing to provide comments on the impact federal regulations are having on the die casting industry.

NADCA is the sole trade and technical association of the die casting industry. NADCA membership consists of both corporate and individual members from over 950 companies located in every geographic region of the U.S. As an important part of the larger metalcasting industry, die casting produces over one-third of all castings and supports numerous other industries such as automotive, industrial machinery, appliances, etc.. Die casters contribute over $7.3 billion to the nation's economy annually and provide over 65,000 jobs directly and indirectly. The die casting industry is comprised of mainly small businesses; over 60 percent of domestic die casters have fewer than 100 employees.

In recent years, the American metalcasting industry has been facing intense competition from foreign metalcasters. In fact, China recently surpassed the United States to become the number one producer of metalcastings in the world. The soaring cost of doing business in the U.S. is a primary factor preventing many domestic manufacturers from being able to price their pieces as low as their Chinese competitors who do not face many of these expenses.

For American die casters, the cost of complying with federal regulations is higher than ever and has a direct impact on the price of domestic castings. A die casting business employing fewer than 20 employees will face an annual regulatory burden of approximately $7000 per employee. For example, the EPA pretreatment standards for water discharges from die casting facilities cost the company approximately $2,000.00 per test. That regulatory cost must be addressed as part of the facility's overall operating cost which is used as the basis for determining price-per-piece. As a result of increased

operating costs, companies are forced to raise the price of their goods to maintain their profit margin so they can stay in business.

However in today's market, faced with an onslaught of cheap, low-cost imports, die casters have no choice but to lower their costs. This, in turn forces die casters to cut costs in other areas, such as health care, training and sometimes the number of employees. In many cases though, a U.S. die caster cannot beat a foreign competitor's price and lose contracts.

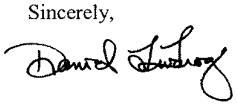
A year ago, in an effort to educate Congress on the issues faced by die casters, NADCA launched its Manufacturing Initiative as part of this effort. NADCA identified and developed positions on four key areas:

> **Currency** – *The U.S. government should strongly encourage countries to allow their currencies to be set by market forces.*
>
> **Energy** – *The U.S. government should support and enhance it's commitment to metalcasting energy efficiency research through the Metalcasting ITP program. Specifically, the Department of Energy should increase their annual budget request for this program to $10 million and Congress should appropriate the same based on the past success and future potential of the program.*
>
> **Health Care** – *Congress needs to pass legislation to allow for Association Health Plans to be established. The federal government needs to improve quality and reduce cost of U.S. health care through the following initiatives:*
>
> - *Reduce administrative waste*
> - *Supporting medical education; and*
> - *Undertake health services research.*
>
> **Regulatory Reform** – *The U.S. government must take into account the full impact a regulation may have on an industry.*

NADCA strongly urges the U.S. government to establish a more objective cost-benefit review process for all proposed regulations, updated on a periodic basis, which takes full account of adverse impact on business and jobs. That type of review and subsequent cost savings would have a significant impact on this industry, allowing many U.S. die casters to lower their cost per piece and compete directly with their foreign competitors.

Thank you for your consideration of this important issue.

Sincerely,



Daniel L. Twarog
President

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