United States General Accounting Office

GAO

Report to Congressional Requesters

November 1996

REGULATORY BURDEN

Measurement Challenges and Concerns Raised by Selected Companies

G A O 75 years 1921 - 1996

GAO/GGD-97-2

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-260085

November 18, 1996

The Honorable Ted Stevens
Chairman
The Honorable John Glenn
Ranking Minority Member
Committee on Governmental
Affairs
United States Senate

The Honorable Peter Hoekstra
Chairman, Subcommittee on Oversight
and Investigations
Committee on Economic and Educational
Opportunities
House of Representatives

The Honorable Don Nickles
United States Senate

The Honorable Amory Houghton, Jr.
House of Representatives

This report responds to your requests that we obtain information on the impact of federal regulations on businesses. Specifically, we were asked to describe (1) what selected businesses and federal agencies believed were the federal regulations that applied to those businesses, (2) what those businesses believed was the impact (cost and other) of those regulations, and (3) the regulations those businesses said were most problematic to them and relevant federal agencies' responses to those concerns.

We are sending copies of the report to the Director of the Office of Management and Budget's Office of Information and Regulatory Affairs. Copies will also be made available to others upon request.

If you have any questions about this report or would like to discuss it further, please contact me on (202) 512-8676. Major contributors to this report are listed in appendix III.

L. Nye Stevens
Director, Federal Management
and Workforce Issues

Executive Summary

Purpose

The process of issuing and enforcing regulations is one of the basic tools of government. However, measurement of the effects of regulation on the economy is imprecise and controversial. Some analysts have claimed that federal regulations cost the economy hundreds of billions of dollars each year. However, others question these claims or assert that regulations provide even greater benefits.

Because of their interest in regulatory issues, five Members of Congress asked GAO to investigate the cumulative impact of federal regulations on a limited number of businesses. In this report, GAO attempted to identify the impact of federal regulations on those businesses by asking the businesses to identify which regulations applied to them, the costs and other impacts of those regulations, and the regulations that were most problematic. GAO also attempted to gather information from regulatory agencies regarding the regulations applicable to the businesses and the regulations the businesses viewed as problematic. Although the businesses did not provide all of the information GAO requested, the results illustrated the inherent difficulties associated with measuring aggregate regulatory burden.

Background

Regulations generally start with an act of Congress. They are issued by executive or independent agencies as the means by which statutes are transformed into specific requirements. Today, federal regulations in such areas as the environment, public health, the economy, consumer protection, and workplace safety affect virtually everyone's lives.

Some business groups and individual companies have complained that the cumulative impact of these requirements at the company level has imposed too great a burden on business operations. Congress has responded to these complaints through passage of the Paperwork Reduction Acts of 1980 and 1995, the Regulatory Flexibility Act of 1980, the Unfunded Mandates Reform Act of 1995, and the Small Business Regulatory Enforcement Fairness Act of 1996, which provides an expedited procedure by which Congress can review and possibly disapprove agencies' regulations. The executive branch has also initiated several efforts to make the federal regulatory process less burdensome on business.

Results in Brief

Most of the business associations and other groups that GAO contacted did not nominate companies to participate in its review of the impact of

federal regulations. Also, most of the companies that GAO contacted on its own declined to participate in the study. Ultimately, GAO worked with 15 companies that were willing to provide information.

None of the 15 companies developed a complete list of regulations that were applicable to them. Time and resource constraints and the difficulty of disentangling federal regulatory requirements from those of other jurisdictions and other nonregulatory procedures proved to be major obstacles for the companies. Most federal regulatory agencies also said that they could not detail which regulations applied to a particular company without a great deal of company-specific information and the expenditure of a substantial amount of resources.

Likewise, none of the companies provided comprehensive data on the cost of regulatory compliance. This inability to provide such data was partially a function of the difficulty companies faced in identifying all applicable regulations. Companies also found it difficult to identify their incremental compliance costs, i.e., costs that would not have been borne in the absence of federal regulation. No company had a database capable of capturing incremental costs, probably because there is no regular business use for such data.

GAO's work suggests that measuring the incremental impact of all federal regulations on individual companies, although perhaps not impossible, is an extremely difficult endeavor. Therefore, decisionmakers using studies that attempt to measure total current regulatory costs to guide public policy need to be aware of those studies' conceptual and methodological underpinnings.

Many of the 15 participating companies recognized that regulations provide benefits to society and their own businesses. However, all of the companies provided GAO with a varied list of concerns about regulatory costs and the regulatory process. These concerns included perceptions of high compliance costs; unreasonable, unclear, and inflexible demands; excessive paperwork; and a tendency of regulators to focus on deficiencies.

The agencies responsible for the regulations the companies viewed as problematic often said that the companies misinterpreted the regulatory requirements, indicating that communications between regulators and the companies GAO reviewed had not always been effective. The agencies and some Members of Congress do not always agree on the extent to which

problematic regulations are statutorily driven. This suggests that opportunities exist for improved communication between Congress and the agencies about the statutory basis of agencies' rules. Recently enacted congressional review procedures in the Small Business Regulatory Enforcement Fairness Act have the potential to improve those communications. Finally, the agencies also said that they were aware of and were responding to a number of the companies' concerns.

Principal Findings

Many Companies Were Reluctant to Participate

GAO had difficulty locating companies willing to participate in the review. Seven of nine business and public interest groups GAO contacted did not nominate any companies to participate. Of 51 companies GAO identified, mostly through public sources, as having views on the impact of regulations, 17 agreed to participate in the study and 15 eventually provided views and data. Ten of those 15 companies requested anonymity. Many of the companies that declined to participate in the study cited a lack of time or resources or said they did not have the types of data GAO was seeking. (See ch. 1.)

Companies and Agencies Had Difficulty Developing Lists of Applicable Regulations

Although nearly all of the companies participating in the study initially told GAO they could develop a complete list of applicable regulations, ultimately, none did so. The task proved to be a substantial burden to the companies, and most cut the effort short citing limited resources and higher priorities. Several companies also found that their efforts to develop a comprehensive list of regulations were hampered because many regulations had become part of the everyday operations of the company. Other companies found it difficult to separate federal regulations from those of other governmental jurisdictions. One company was reluctant to characterize its list as complete because it may have exposed the company to suspicions that it was failing to observe some applicable requirements.

GAO found that federal regulatory agencies themselves had difficulty determining the applicability of their regulations to particular companies without a detailed knowledge of the companies' situation and affairs. Several agencies noted that such an effort would use too many scarce resources and pointed to extensive amounts of information they made available to the public so that businesses themselves could determine their

regulatory responsibilities. However, GAO observed that the sources of information often appeared to be fragmented both within and across agencies. GAO also determined that the regulations applicable to two companies from three agencies varied, but, in the aggregate, were substantial. (See ch. 2.)

Companies Lacked Data on Regulatory Costs

In its efforts to collect comprehensive data on the direct costs of compliance with federal regulations, GAO encountered a number of obstacles. First, the companies did not provide a complete inventory of applicable federal regulations that could then be used to determine associated costs. Also, the companies generally did not identify the incremental costs that were attributable to regulatory requirements because they could not determine what costs they would have incurred in the absence of regulations. The companies' financial information systems were not geared to identifying costs associated with regulations. No business purpose would be served by such information, and collecting it regularly would be a substantial incremental cost in itself. Indirect costs, such as lost productivity, construction delays, and misallocation of resources, are even more difficult to measure than direct costs.

Several frequently cited studies have attempted to measure aggregate regulatory costs. For example, a 1993 study estimated that the cost to the economy would be $607 billion in 1995. However, some elements of this analysis have been questioned by economists and others.

GAO's work indicated that, although perhaps not impossible, measuring the incremental cost of all regulations on even a single business is very difficult. Therefore, users of aggregate regulatory cost studies need to be aware of the inherent difficulties and assumptions involved in producing such measures. Questions need to be raised and answered regarding which regulations are included in the studies and whether they focus on incremental costs. (See ch. 3.)

Companies Recognized Some Benefits to Regulation

Despite concerns the businesses expressed about the costs of regulatory compliance, most company officials recognized that regulations provide not only benefits to society but also, in certain cases, to their own businesses. For example, a glass company said federal regulations had opened up new markets for the company. They and officials from other companies also said that federal regulations provide a level playing field

for businesses operating in multiple states, making compliance easier and less costly. (See ch. 3.)

Common Themes Concerning Problematic Regulations and Enforcement

The 15 companies cited more than 100 specific concerns about the regulatory process. GAO grouped these concerns into 10 broad themes, such as the high cost of compliance, the unreasonableness or inflexibility of certain regulations, excessive paperwork, the unclear nature of certain regulatory requirements, severe regulatory penalties, a "gotcha" enforcement approach, and poorly coordinated requirements among agencies and between governmental jurisdictions.

Regulatory agencies responding to these concerns often said that the companies mischaracterized, misstated, or misinterpreted the regulations involved, suggesting a breakdown in communication between the companies and the agencies. Because of these misunderstandings, the agencies sometimes indicated that the companies were incurring unnecessary expenses. The agencies also said that they were taking or already had taken action to alleviate some of the problems that the companies cited. These actions suggest that a variety of regulatory reform initiatives are currently under way within the federal government. Finally, opportunities appear to exist for improved communication between Congress and the agencies regarding the statutory basis of agencies' rules. The agencies said that many of the companies' concerns were driven by statutory requirements underlying the regulations. However, some Members of Congress believe that certain agencies have promulgated regulations that go beyond the intent of Congress. This perception, in part, led to the establishment of the Small Business Regulatory Enforcement Fairness Act's expedited congressional regulatory review procedures, which may serve as a vehicle for improved congressional-agency communications. (See ch. 4.)

Recommendations

GAO is making no recommendations in this report.

Agency Comments and Our Evaluation

GAO invited comments on a draft of this report from the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs as well as top officials or their designees in 19 federal departments and agencies responsible for the companies' federal regulatory concerns. The Office of Information and Regulatory Affairs and 6 of the other 19 departments and agencies said that they had no

comments on the report. Most of the other agencies suggested technical corrections or additions of text, which were incorporated as appropriate. Overall, the agencies indicated that the report was an accurate characterization of their regulatory operations and their positions regarding the companies' concerns.

Contents

Executive Summary		2
Chapter 1 Introduction		12
	Background	12
	Objectives, Scope, and Methodology	18
Chapter 2 Companies and Agencies Had Difficulty Developing Lists of Applicable Regulations		27
	None of the Companies Provided a Complete List of Regulations	27
	Agencies Had Difficulty Providing Lists of Applicable Regulations	30
	Conclusions	43
Chapter 3 Companies Lacked Data on Regulatory Costs		45
	Measures of Regulatory Costs Vary	45
	Companies Generally Could Not Provide Comprehensive, Incremental Cost Data	48
	Indirect Costs of Federal Regulations	52
	The Benefits of Federal Regulations	53
	Conclusions	55
Chapter 4 Companies' Regulatory Concerns Focused on Regulations and Regulators		57
	Companies Expressed Concerns About Regulations and Regulators' Actions	58
	Companies Suggested Ways to Address Regulatory Problems and Improve Relations With Regulators	70
	Conclusions	72
Chapter 5 Overview and Conclusions		74
	Cost of Regulations Is Difficult to Determine	76
	Agencies Said Many Regulatory Concerns Are Being Addressed	77
	Communication Between Businesses, Regulatory Agencies, and Congress Is Not Always Effective	79
Appendixes	Appendix I: Business Interview Guide: Instructions and Data Collection Instrument	86

Appendix II: Companies' Concerns About Regulatory Issues and Agencies' Responses 97
Appendix III: Major Contributors to This Report 124

Related GAO Products 127

Table

Table 1.1: Number of Companies Participating in the GAO Review, by Industry Category and Size 22

Abbreviations

ADA	Americans with Disabilities Act
ADEA	Age Discrimination in Employment Act
BSA	Bank Secrecy Act
BSR	Business for Social Responsibility
CAA	Clean Air Act
CFR	Code of Federal Regulations
CMA	Chemical Manufacturers Association
CWA	Clean Water Act
DOJ	Department of Justice
DOL	Department of Labor
DOT	Department of Transportation
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ERISA	Employee Retirement Income Security Act of 1974
ESA	Employment Standards Administration
FAA	Federal Aviation Administration
FDA	Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
FMLA	Family and Medical Leave Act
FRB	Federal Reserve Board
GEMI	Global Environmental Management Initiative
HCFA	Health Care Financing Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IRS	Internal Revenue Service
NAM	National Association of Manufacturers
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NFIB	National Federation of Independent Businesses
NPDES	National Pollutant Discharge Elimination System

OCC	Office of the Comptroller of the Currency
OFCCP	Office of Federal Contract Compliance Programs
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PBGC	Pension Benefit Guaranty Corporation
PWBA	Pension and Welfare Benefits Administration
RCRA	Resource Conservation and Recovery Act
SBA	Small Business Administration
SEC	Securities and Exchange Commission
SPCC	Spill Prevention, Control, and Countermeasures
TSCA	Toxic Substances Control Act
USSC	United States Sentencing Commission

Introduction

The process of issuing and enforcing regulations is one of the basic tools of government, and the process has generated considerable controversy. Some individuals and organizations have called for increasing regulation of businesses and other nonfederal entities to achieve certain goals, such as fairer competition, cleaner water, or safer consumer products and services. Others have recommended drastic reductions in federal regulatory activity and/or the imposition of constraints on how agencies develop or implement regulations, often because of the burden associated with regulatory compliance and questions about whether the regulations are actually achieving their stated purposes.

A number of studies have attempted to analyze the effect of federal regulations on businesses or the economy as a whole, with some analysts claiming that federal regulations cost the economy hundreds of billions of dollars each year. Although these estimates are frequently cited, measurement of the effects of regulation on the economy is imprecise and controversial. Also, relatively little is known about the impact of all regulations on individual businesses or even how many regulations apply to a business. This type of information about the impact of regulations on individual businesses would provide a better understanding of the impact of regulations on the economy as a whole.

Background

Regulations generally start with an act of Congress and serve as the means by which statutes are implemented and specific requirements are established. These requirements tell people and businesses what must be done to comply with the law. The statutory basis for a regulation can vary dramatically, from (1) very broad grants of authority that state only the general intent of the legislation and leave agencies with a great deal of discretion as to how that intent should be implemented to (2) very specific requirements delineating what regulatory agencies should do and how they should do it.

The Agricultural Adjustment Act is an example of a broad grant of authority, delegating to the Secretary of Agriculture wide discretion to make agricultural marketing "orderly." The statute provides little guidance on which crops should have marketing orders or how to apportion the market among growers.

The toxic air provisions of the Clean Air Act Amendments of 1990 are examples of very specific statutory requirements. The provisions specified that the Environmental Protection Agency (EPA) establish standards, on

the basis of the best existing pollution control technologies, for major sources of 189 of the most prevalent and hazardous air pollutants. The provisions also established three interim milestones and a final milestone for setting the standards and specified certain consequences if EPA missed a milestone for any source category. Likewise, in the Safe Drinking Water Act Amendments of 1986, Congress specified 83 contaminants for which EPA was to promulgate standards within 3 years. The act also required EPA to regulate drinking water contaminants to be as close as technically feasible to a level at which no known or anticipated health effects occur.[1]

The federal government has long regulated economic activity, often through independent regulatory agencies established separate from traditional federal departments and agencies.[2] Social regulation in such areas as environmental quality, workplace safety, and consumer protection is a relatively recent phenomenon. Beginning in the 1960s, a number of major new statutes were enacted in those areas, including amendments to the Clean Air Act (CAA) and the Clean Water Act (CWA), the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), the Occupational Safety and Health Act, the Truth in Lending Act, and the Consumer Product Safety Act. Those and other acts, as well as executive orders, also created new regulatory agencies, such as EPA, the Occupational Safety and Health Administration (OSHA), the National Highway Traffic Safety Administration, and the Consumer Product Safety Commission. By the 1980s, an array of federal regulations were in place that affected many decisions made by American businesses. Concerns then began to be raised about whether the benefits these regulations and regulatory agencies were attempting to achieve were worth the costs associated with compliance. Concerns were also being raised about the cumulative effect of all federal regulations on individual businesses.

Rulemaking Process

The basic rulemaking process is spelled out in section 553 of the Administrative Procedure Act, which, among other things, generally requires agencies to (1) publish notice of a proposed rulemaking in the Federal Register; (2) allow interested persons an opportunity to participate in the rulemaking by providing "written data, views, or arguments"; and (3) publish the rule 30 days before it becomes effective.

[1]Approaches for Environmental Regulations (GAO/RCED-96-135R, Apr. 25, 1996).

[2]The first of these agencies was the Interstate Commerce Commission, established in 1887. Other independent regulatory agencies include the Securities and Exchange Commission and the Federal Communications Commission.

Other procedural rulemaking requirements have been added through general statutes, executive orders, and judicial decisions.[3] For example, certain executive orders since 1981 have required agencies (other than those considered to be independent regulatory agencies) to submit at least their significant regulations to the Office of Management and Budget (OMB) for its review before publication in the Federal Register. Because of the numerous processes involved, federal rulemaking can take years to complete.[4] Once completed, federal regulations are compiled in the Code of Federal Regulations (CFR).

Regulatory Reform Efforts

Numerous attempts have been made legislatively and by the executive branch to reform federal regulatory processes. For example, Congress enacted the following two regulatory reform initiatives in 1980: (1) the Paperwork Reduction Act and (2) the Regulatory Flexibility Act. As its name implies, the Paperwork Reduction Act attempted to minimize the paperwork and reporting burdens agencies impose on nonfederal entities. The act also established the Office of Information and Regulatory Affairs (OIRA) within OMB to review and approve all agency information collection activities. The Regulatory Flexibility Act required agencies to assess the impact of their regulations on small entities (e.g., businesses and governments) and to publish their plans for new regulations. We have reported on the effects these laws have had on agencies' regulatory programs and recommended improvements to their design and implementation.[5]

During the 104th Congress, numerous legislative initiatives have been introduced that attempted to reform the regulatory process and/or reduce businesses' regulatory burden. As of July 1996, at least three major governmentwide reform initiatives had been enacted. The Unfunded Mandates Reform Act of 1995 established a mechanism for advising Congress of the nature and size of federal mandates in proposed legislation or regulations to allow congressional consideration of the appropriateness of such mandates on state, local, or tribal governments or

[3]These include the Freedom of Information Act; the Government in the Sunshine Act; Dole v. United Steelworkers of America, 494 U.S. 26 (1990), which was effectively overturned by the Paperwork Reduction Act of 1995; as well as other statutes and orders discussed later.

[4]We reported in Clean Air Rulemaking: Tracking System Would Help Measure Progress of Streamlining Initiatives (GAO/RCED-95-70, Mar. 2, 1995) that EPA rulemaking took, on average, 3 years to complete at the time of the Clean Air Act Amendments of 1990. Some rules took as long as 9 years to complete.

[5]Paperwork Reduction Act: Opportunity to Strengthen Government's Management of Information and Technology (GAO/T-AIMD/GGD-94-126, May 19, 1994); Regulatory Flexibility Act: Status of Agencies' Compliance (GAO/GGD-94-105, Apr. 27, 1994); and Paperwork Reduction: Burden Reduction Goal Unlikely To Be Met (GAO/T-GGD/RCED-96-186, June 5, 1996).

the private sector. As part of that process, agencies are required to assess the anticipated costs and benefits of federal mandates. The Paperwork Reduction Act of 1995 reaffirmed the principles of the 1980 Act, required OIRA to establish governmentwide and agency-specific paperwork reduction goals, redefined key terms such as "collection of information," and required agencies to establish their own paperwork review and clearance function. The Small Business Regulatory Enforcement Fairness Act of 1996 made several changes in regulatory procedures, including (1) amending the Regulatory Flexibility Act to allow for judicial review of agency decisions, (2) requiring the publication of "small entity compliance guides" to explain the actions a small business or other small entity must take to comply with a rule or a group of rules, and (3) establishing a congressional review process through which Congress can disapprove of final agency regulations. Some Members of Congress viewed this review process as necessary because they believed some agencies had issued regulations that went beyond the intent of Congress when it passed the underlying statutes.

Every president in recent years also has taken steps intended to reduce the burden of federal regulations. In 1981, President Reagan issued Executive Order 12291, which gave OMB the authority to review all new regulations for consistency with administration policies. The order also required agencies to prepare a "regulatory impact analysis" for each major rule, describing the costs, benefits, and alternatives to the rule. In 1985, President Reagan issued Executive Order 12498, which required agencies subject to Executive Order 12291 to submit a list of significant regulatory actions they expected to propose during the upcoming year to OMB for clearance. The President also established a Task Force on Regulatory Relief, headed by then Vice President Bush. In turn, President Bush named his Vice President to head the Competitiveness Council, which was charged with advocating regulatory relief for business. In 1992, President Bush sent a memorandum to all federal departments and agencies calling for a 90-day moratorium on new proposed or final rules. During the moratorium, agencies were ". . . to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden or otherwise promote economic growth."

The Clinton administration has also made a number of attempts to reform the federal regulatory process. Issued in September 1993, Executive Order 12866 revoked Executive Orders 12291 and 12498 and, among other things, established a number of "principles of regulation" (e.g., use the best scientific, technical, economic, or other information; specify performance

objectives, not behaviors; make regulations simple and easy to understand; and use cost-benefit analysis and risk assessment) and reaffirmed the role of OMB in the regulatory review process (although only for "significant" rules).[6] Vice President Gore's National Performance Review also made a number of recommendations to improve the regulatory process, including (1) encouraging innovative regulatory approaches and negotiated rulemaking; (2) streamlining agency rulemaking procedures; and (3) ranking the seriousness of environmental, health, or safety risks.[7] In March 1995, the President reiterated his interest in regulatory reform, calling on all agencies to (1) conduct a page-by-page review of all their regulations and eliminate or revise those outdated or in need of reform; (2) change the performance measures of agencies and regulators to focus on results, not process and punishment; (3) convene groups of regulators and the people affected by their regulations around the country and create "grassroots partnerships"; and (4) expand their efforts to promote consensual rulemaking.

During 1995 and early 1996, the President also announced regulatory reform initiatives aimed at certain agencies or issues (e.g., the environment, pensions, and cancer drugs) and announced other reforms applicable to all federal agencies. For example, agencies were asked to halve many of their reporting requirements, reduce penalties for self-disclosed violations of certain regulations, and allow companies to change processes for certain low-risk manufacturing operations without agency preapproval.

Measures of Regulatory Activity/Burden

The level of federal regulatory activity, and the burden placed on businesses and others as a result of that activity, has been measured in a number of ways. For example, a number of commentors have used relatively simple, easy-to-understand indicators, such as the number of pages in the CFR, the length of the CFR on the bookshelf, the total weight of the rules, and even the length of all of the rules if each sheet of paper were

[6]Executive Order 12866 also contained "general requirements" for rulemaking, such as maximization of the net benefits to society and selection of the least costly regulatory alternatives. For an evaluation of certain elements of Executive Order 12866, see Regulatory Reform: Implementation of the Regulatory Review Executive Order (GAO/T-GGD-96-207, Sept. 25, 1996).

[7]From Red Tape to Results: Creating a Government That Works Better and Costs Less, report of the National Performance Review, Vice President Al Gore, Sept. 7, 1993, pp. 167 and 168, and the accompanying report Improving Regulatory Systems, September 1993. We commented on those recommendations in Management Reform: Implementation of the National Performance Review's Recommendations (GAO/OCG-95-1, Dec. 5, 1994), pp. 516-527.

placed end to end.[8] Others have characterized federal regulatory burden in terms of federal spending on regulatory programs or the number of federal employees assigned to regulatory activities.[9] Although these types of measures are relatively easy to develop and are appealing in some respects, they are at best only relative and indirect measures of regulatory burden and may not accurately reflect the difficulties experienced by the public or individual businesses in complying with federal regulations. These measures also require careful interpretation.[10]

Another indicator of regulatory burden that some analysts have used is the number of hours federal agencies estimate are needed to fill out their required paperwork.[11] Although a more direct measure of regulatory burden than the measures previously described, a paperwork hour estimate has several limitations as a measure of overall regulatory burden. First, paperwork is but one element of the overall burden of federal regulations, and paperwork burden does not include other potentially relevant factors, such as labor costs unrelated to paperwork or capital expenditures. Second, paperwork burden is generally considered to be inaccurately measured. Not all paperwork burden is always counted in the data that agencies submit pursuant to the Paperwork Reduction Act, and many believe that the paperwork burden that is measured is underestimated. Finally, users of these paperwork estimates must be careful in their interpretation; changes in the burden hour totals may not

[8]When the President announced the results of agencies' regulatory reinvention efforts in June 1995, he said the 16,000 pages of rules being eliminated would stretch 5 miles if put end to end. He also said that, as a result of those rules being eliminated, the federal regulatory burden would be "lighter, specifically 39 pounds lighter."

[9]Melinda Warren, Regulation on the Rise: Analysis of the Federal Budget for 1992, Occasional Paper No. 89. St Louis: Center for the Study of American Business, Washington University, July 1991.

[10]We reported that although by some estimates federal spending on regulatory programs had increased, those same estimates when compared with increases in the gross domestic product have remained relatively constant. See Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

[11]The Paperwork Reduction Act requires agencies to submit requests for information collections to OMB for approval before they are carried out and when a previous OMB approval has expired. Agencies usually develop an estimate of the average time each respondent would need to spend to comply with that collection and the total number of respondents who must comply with the collection requirement. Total burden is measured by multiplying the average response time per respondent by the expected number of respondents times the number of responses required each year. OMB uses this information to prepare an annual information collection budget that measures paperwork requirements imposed on everyone outside of the federal government.

reflect changes in the regulatory burden felt by businesses and individuals.[12]

Another common measure of regulatory burden is the cost borne by entities responsible for complying with the regulations involved. Studies of the costs associated with federal regulations vary in such terms as their scope (i.e., whether focused on individual businesses, sectors, or the economy as a whole) and the factors they consider (i.e., economic costs, social costs, paperwork costs, etc.). Types of regulatory cost studies are discussed in detail in chapter 3 of this report. Regardless of the nature of the study, though, the results must be carefully interpreted.[13]

Objectives, Scope, and Methodology

At the request of five Members of Congress,[14] we agreed to obtain information about the cumulative impact of federal regulations on selected businesses. Therefore, we focused our efforts on a limited number of businesses that could help us understand the issues and variables involved. Our specific objectives were to describe (1) what selected businesses and federal agencies believed were the federal regulations that applied to those businesses, (2) what those businesses believed was the impact (cost and other) of those regulations, and (3) the regulations those businesses said were most problematic to them and relevant federal agencies' responses to those concerns.

To accomplish these objectives, we first needed to identify the businesses that would be the focus of our study. Because some of the information we wanted to collect was proprietary in nature (e.g., information on the companies' operating expenses) or involved regulatory enforcement actions that could be very sensitive, we recognized that some companies

[12]In our report entitled Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Changes (GAO/PEMD-94-3, Dec. 6, 1993), we noted that the burden hour estimate increased by 261 percent between 1987 and 1992—from more than 1.8 billion hours to nearly 6.6 billion hours. However, most of this increase was due to a Department of the Treasury reestimate of the time spent dealing primarily with tax-related reporting and filing burdens, not the imposition of new burdens.

[13]In Regulatory Burden: Recent Studies, Industry Issues, and Agency Initiatives (GAO/GGD-94-28, Dec. 13, 1993), we reviewed regulatory burden studies conducted by, or on behalf of, the federal banking agencies and several of the major banking industry trade associations. We found the estimates of regulatory compliance costs to be of little value due to serious methodological problems evident in these studies.

[14]The Honorable Ted Stevens, Chairman, and the Honorable John Glenn, Ranking Minority Member, Committee on Governmental Affairs, U.S. Senate; the Honorable Peter Hoekstra, Chairman, Subcommittee on Oversight and Investigations, Committee on Economic and Educational Opportunities, House of Representatives; the Honorable Don Nickles, U.S. Senate; and the Honorable Amory Houghton, Jr., House of Representatives.

might not want to participate in our study unless their identities could be concealed. Therefore, we told the businesses we contacted that we would not disclose their identity unless we had their permission to do so or unless we were legally compelled or required to do so by Congress. We asked for and received pledges from our requesters that they would concur with and honor our pledge of confidentiality, and that they would oppose disclosure requests from other committees or Members of Congress. The requesters agreed that, although they would have access to summary data that would not identify individuals or firms, neither they nor their staff would have access to the individual business' responses.

We initially attempted to obtain nominations of businesses to participate in our study from two types of organizations: (1) business interest groups, including several that had testified before Congress and/or made public comments criticizing federal regulations, and (2) public interest groups, some of which had defended the need for federal regulatory action. The five business interest groups we contacted were the U.S. Chamber of Commerce, the National Federation of Independent Businesses (NFIB), the National Association of Manufacturers (NAM), the Chemical Manufacturers Association (CMA), and the Greater Washington Board of Trade. The four public interest groups we contacted were Public Citizen Litigation Group, OMB Watch, Business for Social Responsibility (BSR), and Global Environmental Management Initiative (GEMI). We initially contacted most of these organizations during June through August 1994 and asked them to nominate businesses that they believed would be good candidates for our study.

Of these organizations, NAM and the Greater Washington Board of Trade provided nominees for the study (three and six nominees, respectively). Although the U.S. Chamber of Commerce initially indicated it would be able to provide nominees for our study, several months later a representative of the Chamber said that it would not provide any nominees because of concerns its member companies had about our ability to guarantee the confidentiality of their responses. During several months of telephone calls, the NFIB representatives said that they were not able to provide nominees because their efforts were then directed toward other legislative initiatives and priorities. GEMI's board of directors declined to participate but did not provide a reason. BSR representatives initially appeared interested in providing nominees for the review, but they did not respond to any of our subsequent telephone calls. CMA, Public Citizen, and OMB Watch initially agreed to try to identify companies for us to contact, but we never received any nominees from either organization.

Because we wanted to contact more companies than the interest groups identified, we turned to other sources for potential study participants. One such source was a list of companies that had participated in a March 1994 forum on regulatory reform sponsored by the Small Business Administration (SBA). SBA staff who worked on the forum identified seven companies that they believed would be good candidates for participation in our review, and we accepted the nomination of another company from one of the SBA nominees. Another source that we used to identify possible company participants (35 companies) was newspaper and magazine articles in which specific companies commented either positively or negatively about federal regulations or their federal regulatory experience. The periodicals we reviewed to identify these companies included INC., Nation's Business, The Wall Street Journal, and the ABA Banking Journal. We also used a literature search to improve the diversity of our company selections, focusing on articles about companies in certain industrial categories and geographic areas that were not represented by the other nominees. The combination of all of these methods yielded a total of 51 companies as potential participants.

Many Companies Were Reluctant to Participate in the Study

Before contacting the 51 company nominees, we developed a standardized telephone interview guide as part of an initial screening process to (1) provide consistent descriptions of the purpose of our review, (2) collect preliminary information about the companies' views regarding federal regulations, (3) explain the confidentiality guarantees we were able to offer, and (4) determine the companies' interest in participating in our study and their ability to provide the information we needed.

Of the 51 company nominees we contacted, 8 did not respond to repeated telephone calls made over the course of several months. Of the remaining 43 companies, 16 declined to participate in the study during the screening process. Officials from 12 of these 16 companies said they did not have the time or resources needed to participate in our study. Two companies' officials said they did not have the kinds of documentation we were seeking. The other two companies did not specify the reason for their decision not to participate. Some companies decided not to participate in the study after we had been in discussions with them for several months.

We then sent each of the 27 companies that agreed to participate in the study a standardized interview guide we developed for use in our site visits. The interview guide included an overall description of the study, a list of the questions we intended to ask, and definitions of what

regulations and regulatory costs would and would not be considered applicable in the study. (See app. I for a reprint of this interview guide.) We asked that the companies review the guide's instructions and prepare the requested information in advance of our visit.

Of the 27 companies that initially agreed to participate in the study, 10 withdrew before we could visit them and collect any detailed information. These companies cited a variety of reasons for their withdrawal, such as a lack of resources needed to participate in the study, the review's data requirements, and company personnel problems. Of the remaining 17 companies, we selected 15 for inclusion in the study. We did not select one company because of its remote geographic location, and another company was not chosen because we had already selected other companies in the same industry.

Ten of the 15 companies requested that we not disclose their identity. Whenever we discussed those companies with federal regulators and whenever those companies are referred to in this report, we used 10 generic company descriptors. Those 10 descriptors are listed below:

- a federally chartered community bank ("Bank A"),
- a state-chartered community bank ("Bank B"),
- a large commercial bank ("Bank C"),
- a large teaching hospital ("hospital"),
- a manufacturer of railway tank cars ("tank car company"),
- a manufacturer of flexible plastic packaging ("packaging manufacturer"),
- a manufacturer of consumer glassware and fiber optic systems ("glass company"),
- a manufacturer of paper and allied products ("paper company"),
- a tropical fish farm ("fish farm"), and
- a producer of crude oil and natural gas ("petrochemical company").

The following five companies allowed us to use their names.

- Metro Machine Corporation, a ship repair and maintenance company located in Norfolk, VA, with 850 employees;
- Minco Technologies Labs, Inc., a computer chip testing company located in Austin, TX, with 129 employees;
- Multiplex Company, Inc., a beverage dispenser equipment manufacturer headquartered in St. Louis, MO, with 217 employees;
- Roadway Services, Inc., a transportation and logistics company headquartered in Akron, OH, with about 50,000 employees; and

- Zaclon, Inc., a chemical manufacturing company located in Cleveland, OH, with 52 employees.

Table 1.1 shows the distribution of all 15 participating companies by size and industry category. We defined a company as small if it had 49 or fewer employees, medium if it had from 50 to 249 employees, and large if it had 250 or more employees. The industry category groupings are the nine major Standard Industrial Classifications defined by the Department of Labor (DOL). As table 1.1 indicates, larger manufacturing companies constitute the largest proportion of participating companies while companies with few employees and companies in the services, transportation, agriculture, and mining industries constitute the smallest proportion of participating companies.

Table 1.1: Number of Companies Participating in the GAO Review, by Industry Category and Size

	Size of company (by number of employees)			
Industry category	**Small (49 or fewer)**	**Medium (50-249)**	**Large (250 or more)**	**Total (by category)**
Services	0	0	1	1
Finance, insurance, and real estate	1	1	1	3
Manufacturing	0	4	4	8
Retail trade	0	0	0	0
Transportation and public utilities	0	0	1	1
Wholesale trade	0	0	0	0
Construction	0	0	0	0
Agriculture, forestry, and fisheries	0	1	0	1
Mining	0	0	1	1
Total (by size)	**1**	**6**	**8**	**15**

The 15 companies that participated in the review were geographically dispersed. They were located in California, the District of Columbia, Florida, Illinois, Iowa, Missouri, New York, Ohio, Tennessee, Texas, and Virginia.

Collection of Information From the Companies

Using our standardized interview guide developed for the site visits, we visited 14 of the 15 companies, interviewed company officials, and

obtained any available supporting documentation.[15] Specifically, we asked each company for information on (1) the aggregate list of regulations with which the company must comply, (2) the aggregate impact (cost and other) of all of those regulations on the company, (3) the regulations the company viewed as most problematic, (4) what the company believed government and businesses could do to correct or mitigate those problematic regulations, and (5) what the company viewed as the benefits of federal regulations.

After our discussions with the companies, we developed written summaries of the concerns they expressed about problematic regulations, sent them to the companies for their review and correction, and obtained their written agreement that the summaries accurately portrayed the concerns they expressed. Subsequently, the companies also reviewed and approved any other information in our report that we attributed to a named company.

The companies provided more than 100 usable examples of regulations or regulatory actions that they considered problematic.[16] To present a general summary of those concerns, we coded each concern according to 10 recurring themes that we developed by analyzing the companies' comments. (See ch. 4 for a discussion of these 10 themes.) Most of the companies' concerns contained expressions of more than one theme. To verify our coding, we had a staff reviewer, who was otherwise not involved in the job, select a random sample of about 26 percent of the concerns (29 of 111 concerns) and independently code each concern using our original theme definitions. The independent reviewer agreed with our original determinations as to whether a theme was present in more than 90 percent of the cases.

Agency Information Collection Methodology

We provided the verified summaries of the companies' regulatory concerns to the appropriate federal regulatory agencies for their review and comment. The following agencies responded to the companies' concerns:

- Board of Governors of the Federal Reserve System;

[15]We did not visit one company because we were able to collect information by telephone and facsimile.

[16]Some of the companies' concerns were not usable because they were too general (e.g., "too many regulations"). Other company concerns were eliminated because they were not concerns about federal regulations.

- Department of Health and Human Services' (HHS) Food and Drug Administration (FDA) and Health Care Financing Administration (HCFA);
- Department of Housing and Urban Development (HUD);
- Department of the Interior's Fish and Wildlife Service;
- Department of Justice (DOJ);
- Department of Labor's Occupational Safety and Health Administration, Employment Standards Administration's (ESA), and Pension and Welfare Benefits Administration (PWBA);
- Department of Transportation (DOT);
- Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) and Internal Revenue Service (IRS);
- Environmental Protection Agency;
- Equal Employment Opportunity Commission (EEOC);
- Federal Deposit Insurance Corporation (FDIC);
- Federal Emergency Management Agency;
- Office of the Comptroller of the Currency (OCC);
- Pension Benefit Guaranty Corporation (PBGC); and
- United States Sentencing Commission (USSC).

Each agency was allowed to decide how it would respond to the companies' regulatory concerns. We used a content analysis, which was similar to the one we used for the companies' concerns, to code each of the agencies' responses to one of nine recurring themes to allow summarization of those responses. The agency response coding was also independently reviewed by a staff reviewer to ensure accuracy and consistency.

We also asked the agencies to identify which of their regulations were applicable to each of the selected companies. However, several of the regulatory agencies said developing a regulatory inventory for each company would be very time consuming and would require detailed information about the companies. Because 10 of the 15 companies requested anonymity, and because detailed information (location, industry, and size) could lead to identification of those companies, we could not provide the agencies with the information they said they needed to identify the companies' responsibilities. Therefore, we asked several of the regulatory agencies to identify (1) the general types of company information they would need to determine which of their regulations would apply to a specific company (i.e., regulatory determinants) and (2) the types of assistance they provide to businesses to help them identify their regulatory responsibilities and how to comply with those responsibilities (i.e., informational mechanisms). We also asked three of

the agencies—EPA, DOL, and EEOC—to identify their regulatory responsibilities for two of the companies that did not request anonymity—Minco Technologies Lab, Inc., and Zaclon, Inc.

Review Limitations

The methodology we used in this study—focusing on a small group of nonrandomly selected businesses—prevents us from drawing statistical generalizations from the information we obtained. The 15 companies we selected were generally those that (1) were identified by interest groups, SBA officials, or in the literature and (2) were willing to participate in our study and to provide the information we requested. Therefore, we make no inferences about the representativeness of their responses to how other companies would respond. For example, even though 8 of our 15 companies were manufacturers, we cannot conclude that their responses are typical of how other manufacturing companies would have responded. However, the comments the companies we contacted made during this study were similar in many respects to comments made by companies in some of our previous reports and in the literature.[17] Therefore, we believe that these 15 companies are not atypical and their comments and experiences provide insights regarding issues common to organizations beyond the limited sample of companies.

Because the purpose of our review was to determine businesses' and federal agencies' views regarding regulatory issues, we did not collect information from individuals and organizations outside of those groups. For example, we did not discuss companies' regulatory responsibilities or their regulatory concerns with labor unions or other employee organizations. Neither did we collect information from individuals and organizations that were the potential beneficiaries of the regulations cited by the companies as problematic. Collecting the views of all such organizations for all of the regulations cited in this report would have been difficult, if not impossible. Therefore, this report does not reflect the full range of opinions that may exist regarding the issues raised during this review. However, it does reflect the views of the two stakeholders in which we were most interested—certain elements of the regulated community and the regulators themselves.

One of our objectives was to describe what the selected businesses believed was the impact (cost and other) of all existing federal regulations that applied to them. This portion of the study does not address the

[17]Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

development of cost or cost-benefit analysis information for individual regulations, such as the analyses agencies are required to perform under Executive Order 12866.

Although we attempted to obtain documentation wherever possible, we were unable to verify most of the data companies provided on the cost of regulatory compliance, their regulatory concerns, and other issues. Companies frequently provided little documentation to support their cost estimates, and we had no basis to judge whether the costs they identified were reasonable, comparable to costs incurred by similar companies, or even whether such costs were, in fact, the direct result of a specific federal regulatory requirement. Neither did we evaluate the accuracy of the information we obtained from federal regulatory agencies. Our approach was to present the views of both the businesses and the agencies without attempting to resolve the many differences in opinions or attempting to independently determine whether sufficient evidence was available to support either view.

In this report, when we indicate that "some" of the companies met a certain condition, we mean that at least three and no more than five companies met that condition. When we use the term "many companies" we mean either 6 or 7 companies, and the term "most companies" refers to between 8 and 14 companies.

We conducted our review from June 1994 to July 1996 in accordance with generally accepted government auditing standards. We invited comments on a draft of this report from the OIRA Administrator because of OIRA's governmentwide regulatory responsibilities, but an OIRA official said OIRA had no comments. We also invited comments from the top officials or their designees in the previously listed 19 federal departments and agencies responsible for the companies' federal regulatory concerns. Between August 19, 1996, and September 19, 1996, we received comments from top officials or their designees in 13 of these 19 departments and agencies, but officials from the Board of Governors of the Federal Reserve System, FDA, HUD, the Department of the Interior's Fish and Wildlife Service, the Federal Emergency Management Agency, and USSC said they had no comments. In general, the agencies' comments indicated that the report was an accurate characterization of their regulatory operations and their positions regarding the companies' concerns. Most of the agencies suggested technical corrections or additions of text, which were incorporated as appropriate.

Companies and Agencies Had Difficulty Developing Lists of Applicable Regulations

As noted in chapter 1, representatives from both government and industry have described federal regulatory burden in terms of the sheer volume of regulations with which businesses and other regulated entities must comply. Several of the companies participating in this review also made such comments to us in the course of our discussions with them. For example, an official from the fish farm compared the range of regulatory requirements to "getting pecked to death by ducks—each bite may not hurt, but all together they are very painful."

In recognition of the large number of federal regulations and the burden they impose, an element of both the Clinton administration's and Congress' recent regulatory reform initiatives has been the review of existing regulations and, where possible, the elimination of certain requirements. Although the total number of regulations is only a rough indication of regulatory burden, developing an inventory of those requirements is the first step in developing an accurate measure of an organization's regulatory burden. Therefore, we asked the companies participating in this review to develop a list of all of the federal regulations with which they had to comply at the time of our review. We also asked a number of federal regulatory agencies to identify which of their regulations they believed were applicable to those businesses.

None of the Companies Provided a Complete List of Regulations

We generally provided the companies with a copy of our data collection instrument several weeks in advance of our visit, and each company agreed to develop a list of regulations applicable to their firm.[1] We recognized that, in preparing such a list, the companies might find it difficult to identify the specific names or legal citations of regulations. Therefore, we told the businesses that their list of applicable regulations should, at a minimum, cite the major federal statutes governing the regulations. For example, we said the list of statutes in the health and safety area of workplace regulations might include the Occupational Safety and Health Act or the Drug Free Workplace Act. We also said that other categories of workplace regulations could include labor standards (e.g., the Fair Labor Standards Act); employee benefits (e.g., Employee Retirement Income Security Act (ERISA)); civil rights (e.g., title VII of the Civil Rights Act of 1964); and labor relations (e.g., the National Labor Relations Act). Finally, we noted that other categories of regulations (e.g., environmental and tax regulations) could also be listed.

[1]See appendix I for a reprint of the data collection instrument.

We told the companies not to include certain types of regulations on their lists, such as federal regulations that had been proposed but had not been published as a final rule. We also said that they should not include state or local regulations, but we said that any state or local requirement that they believed was mandated by federal law or regulation should be included.

Although all 15 of the companies participating in the review identified at least some regulations that they believed were applicable to their organizations, none of the companies provided us with a complete list of applicable federal regulations. The companies' lists varied substantially in the degree to which they covered the general regulatory areas that would probably be applicable to the companies (e.g., tax, wage and hour, and workplace rules). Several companies listed regulations in only certain functional areas or for certain agencies. For example, officials from the paper company identified what they believed were applicable environmental, health and safety, and transportation regulations—areas that they said were their company's greatest concern. However, they did not identify any regulations in the employee benefits, civil rights, labor relations, or tax areas. Some companies provided what they described as a partial list of regulations and indicated they would provide additional information, but never did so. Two companies' lists reflected only the problematic regulations we asked them to identify for another portion of this review. (See ch. 4 of this report.) Although officials from several companies said they believed their lists contained 75 to 90 percent of the regulations applicable to them, most of the companies' officials acknowledged that their lists were incomplete.

The companies' lists also varied in the level of detail they provided. Some companies identified only broad regulatory areas or general regulatory requirements (e.g., "workmen's compensation" or "IRS") but other companies' lists were more specific. For example, one section of Roadway's list focused on civil rights and employee benefits. Within that section, the company officials cited title VII of the Civil Rights Act of 1964 and listed its associated regulations—29 C.F.R. Parts 1601 and 1602 (Subparts A-E) and 29 C.F.R. Parts 1604-1606, 1608, and 1610-1612.

Most of the companies did not maintain lists of applicable regulations, so they had to compile the information they provided in response to our request. Although officials from each company told us they would prepare a list of applicable regulations, several companies had not done so at the time of our site visit. Other companies made a more extensive effort to respond to our requests for information. For example, a number of officers

and staff within Roadway conducted research and developed documentation. The hospital provided several lists of applicable regulations, one that the administrative staff had developed covering a variety of issues and another from hospital health protection staff.

A few companies compiled the information we requested on the basis of lists of regulations that had been previously developed for certain areas of their operations. However, even these lists were not comprehensive. For example, the petrochemical company had developed a list of environmental, workplace safety, and other regulations for use by their internal auditing staff. However, company officials told us that the list was not necessarily complete. The paper company used an EPA publication entitled Federal Environmental Regulations Potentially Affecting the Commercial Printing Industry. However, company officials noted that this document contained a disclaimer that said it should "not be relied on by companies in the printing industry to determine applicable regulatory requirements."

Companies Cited Various Reasons for Incomplete Lists of Regulations

Some of the companies said it was difficult for them to produce a complete list of applicable regulations because they had limited resources and higher priorities. For example, Multiplex officials said that to compile a complete list of regulations would "use so much time and so many resources that it would be a burden on the company and adversely affect its business operations." Bank C's official said the bank could not devote the time and staff resources needed to produce a complete list of regulations due to higher priority bank-related work. We recognized that producing an aggregate list of regulations would be an expensive and time-intensive endeavor because of the complex analysis required to identify every regulation affecting the business.

Some of the companies also said that some federal regulatory requirements were hard to identify because they had become part of the companies' standard procedures. For example, Roadway's officials said that developing a comprehensive list of regulations was difficult because many regulations have been around for so long they are now part of everyday operations of the company. Officials from the fish farm said that some regulatory requirements (e.g., payroll recordkeeping standards) are now considered part of their everyday business operations. The officials also said that some outside organizations (e.g., insurance companies) require the company to follow certain safety procedures, and they were not sure whether those procedures were also required by regulations.

Officials from the petrochemical company said regulations often cause a fundamental shift in business processes that later becomes less distinctive. The officials noted that industry incurred start-up costs associated with the requirement to produce unleaded gasoline, but because the entire industry was required to be in compliance the identification and capture of these costs became less relevant over time.

Some of the companies also said it was difficult to distinguish between federal requirements and those of other governmental jurisdictions. Officials from the paper company said making this distinction was "difficult, if not impossible." The petrochemical company indicated that it was particularly difficult to separate the requirements when state or local governments enforce federal standards and can add additional requirements. One California company noted that all OSHA regulations and many EPA regulations are enforced by the state, and that California often adds stricter state requirements.

The companies also cited other reasons why their lists of applicable regulations were incomplete or difficult to compile. For example, a fish farm official said that the regulators themselves are sometimes unable to inform the company of all applicable regulations. Petrochemical company officials were reluctant to characterize their list as complete because of a concern that if a regulator saw certain requirements missing from their list they might assume the company was not complying with the missing regulations and pursue some type of enforcement action against the company. Other companies simply noted that their lists were incomplete, but did not provide a reason for this characterization.

Agencies Had Difficulty Providing Lists of Applicable Regulations

We also planned to ask each of the agencies whose regulations were cited by the companies to provide a list of regulations applicable to each of the companies. However, officials from several of the agencies we initially contacted said they could not provide such lists without first obtaining a great deal of specific information about the company. For example, a DOT official said that the agency would need such information as whether the company uses rail transportation, the types of material the company transports, and the nature of the business enterprise (e.g., whether it was a partnership or a corporation). IRS officials said they would need to know whether the business was privately or publicly held, whether it imported or exported materials or products, and whether it had foreign as well as domestic operations. The IRS officials said operational and administrative

decisions made throughout the existence of the companies affect their tax status and, therefore, the applicable tax regulations.

EPA officials also said that the collection of the information they needed to identify applicable regulations would require a large expenditure of resources at a time when their budget was uncertain. The officials said they would have to conduct a site visit at each company to identify their applicable regulations.

Another reason we did not ask the agencies to provide lists of regulations for each of the participating companies was that 10 of the 15 participating companies wanted to remain anonymous. Therefore, the agencies could not contact them directly to collect information, and we could not provide the agencies with detailed information about the companies (e.g., industry, size, location, etc.) that could disclose their identities.

Because we were unable to receive lists of applicable regulations from the agencies, we changed the nature of our inquiry to focus on three related issues. First, we asked 17 of the regulatory agencies that the companies had cited in their lists of regulations to describe the kinds of information they needed to be able to determine the applicability of their regulations to a particular company. Second, we asked each of these agencies to describe the kinds of assistance they provide to companies to help them determine which regulations were applicable to them and how to comply with the regulations. Finally, we asked six agencies and offices to identify which of their regulations were applicable to two of the participating companies that had not asked for anonymity.

Agencies' Determinants of Regulatory Coverage Varied

Fifteen agencies provided information on their regulatory determinants. Officials from many of the 15 agencies said that unique characteristics of a business or a business activity determine whether their regulations are applicable to that business. See the following examples of agencies' regulatory determinants.

- DOT officials said that the applicability of its regulations generally varied by industry, transportation mode, location, and other factors, including the type of material being shipped and the nature and ownership of the transportation firm.
- OCC officials said that a bank's specific activities determined the applicability of its regulations. Similarly, the Federal Reserve Board's (FRB) officials said that coverage of its regulations "is determined by either the

nature of a particular company or the nature of the activities in which a particular company engages or intends to engage."

- EPA officials said that "there is no single set of regulatory determinants that would cover all situations in which a facility may be covered by EPA's regulations. Many of our regulations are event driven, some factors are related to facility location, and many regulations are triggered by physical and operational characteristics of a particular facility."
- IRS officials said it was difficult to come up with criteria for the development of a list of regulations applicable to a particular company because of decisions that companies make in the course of their business. For example, IRS officials said that if a company chooses to provide a qualified retirement plan, it must comply with the statutory provisions and regulations applicable to such plans.
- OSHA's officials said that it "regulates occupational safety and health hazards, not specific industries." Therefore, the "applicability of individual standards depends on whether or not the hazard addressed by the standard is present in the workplace."[2]

Officials from DOL indicated that companies' specific reporting requirements also varied according to specific criteria. For example, the officials said that the requirements for the Form 5500 used by employee benefit plan administrators to satisfy their reporting obligations under title I of ERISA, title IV of ERISA, and the Internal Revenue Code depend on (1) the type of plan (i.e., whether the plan is a pension or welfare plan); (2) the size of the plan (i.e., whether the plan has fewer than 100 participants or 100 or more participants); and (3) how the benefits are funded (i.e., through a trust or insurance or from the general assets of the employer).[3]

On the other hand, some agencies' officials said that determining the applicability of their regulations is relatively straightforward. See the following examples:

- EEOC officials said that, with the exception of reporting requirements, EEOC regulations apply to all entities covered by the statutes it enforces, and the officials indicated that the applicability of those statutes is primarily a

[2]However, OSHA went on to say that "(d)etermining which standards apply to a particular worksite can be done easily (by a regulated business) through a process of elimination. For example, if an employer is engaged in retail trade or service and does not have compressed gases, flammables, or explosives on his or her premises, the employer can eliminate Hazardous Materials (29 C.F.R. 1910, Subpart H) as not applying to his or her business."

[3]Medical, surgical, hospital care, vacation, and scholarship benefits are among those that may be offered by a welfare plan.

function of company size. For example, EEOC officials said that title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA) apply to any company with 15 or more employees. The officials also said that the Age Discrimination in Employment Act (ADEA) applies to all employers with 20 or more employees. According to the officials, any private employer with 100 or more employees must complete their EEO-1 reporting form indicating the race, ethnicity, and sex of employees by job category.[4]

- Officials from the Office of Federal Contract Compliance Programs (OFCCP) in DOL said Executive Order 11246, which OFCCP administers, applies only to contractors and subcontractors who perform government contracts that total at least $10,000 in a 12-month period. However, the officials said that nonconstruction contractors with 50 or more employees and contracts greater than $50,000 have additional obligations.
- The PBGC officials said PBGC's insurance program and regulations apply only with respect to defined benefit pension plans as described in section 4021 of ERISA. The agency officials said that section 4021 generally covers all defined benefit pension plans voluntarily established by private sector employers, and specifically states what plans are excluded from coverage.
- The FDIC officials said that coverage by FDIC regulations "is determined basically by whether an institution is FDIC-insured, and as a subset of that status, whether the institution is an insured nonmember bank for which the FDIC has primary supervisory responsibility at the federal level."

Agency Informational Mechanisms Varied

Sixteen agencies described how they provide information to companies and the public on their regulatory requirements. Most of the agencies identified telephone numbers and listed various publications, handouts, brochures, informational pamphlets, and notifications containing regulatory information. Half of these agencies had or were developing (1) special programs to communicate regulatory requirements to affected businesses and (2) outreach efforts to gather feedback on their regulatory requirements. Six agencies indicated that they used some type of electronic bulletin board as an informational mechanism.

OSHA described a variety of informational resources and programs, including the following examples:

- more than 80 different publications available from OSHA's Publications Office, some of which were also available in OSHA's 100 field offices;

[4]EEOC officials noted that federal contractors and subcontractors are covered by other regulatory requirements.

- safety and health standards in CD-ROM format (available for purchase from the Government Printing Office) containing all OSHA standards, compliance directives, and standards interpretations;
- a DOL-operated Labor News Electronic Bulletin Board and an OSHA Computer Information System accessible through the Internet, which contains some of the information on the CD-ROM;
- the OSHA Consultation Program, which offers free, on-site, expert assistance to small employers in all 50 states to help them comply with OSHA requirements and establish effective safety and health programs (according to OSHA, more than 100,000 employers have used this service and priority is given to small firms in high-hazard businesses); and
- courses on specific safety and health issues for employers who want intensive information about specific safety and health issues at OSHA's Training Institute in Des Plaines, IL, and at OSHA Education Centers in 12 states.

OSHA's officials said OSHA is also piloting several other ways to use computer technology to provide assistance to employers, including the development of interactive compliance tools.

EPA also cited dozens of sources of information about its regulations, including brochures, pamphlets, fact sheets, booklets, letters, hotlines, regional contact numbers, guidance manuals, posters, question and answer sheets, and catalogues of informational materials. EPA listed informational sources for each of its program offices and, within those offices, the sources were also often differentiated by issue. For example, the Office of Prevention, Pesticides and Toxic Substances said it had many of the informational modes listed above as well as information lines for pesticide questions, "PR Notices" providing detailed information to regulated industries, registration kits for those interested in how to register new pesticide products, and outreach efforts to help growers that rely on minor use pesticides. Among the initiatives EPA particularly noted were the following:

- Compliance assistance centers were being established by EPA's Office of Compliance for four industry sectors—automotive, metal finishing, printing, and agriculture. EPA officials said the centers offer "one-stop shopping" for understandable guidance materials, waste minimization and pollution prevention assistance, and advice in reducing regulatory compliance costs.
- Sector Notebooks, which are profiles of 18 industries (e.g., metal fabrication, petroleum refining, and printing), were designed to assist

firms in understanding what multimedia regulations apply to them. Each profile includes, among other things, applicable federal statutes and regulations as well as compliance assistance information. Notebooks are available through the Government Printing Office and on an electronic bulletin board.

- The Office of the Small Business Ombudsman was established to provide a variety of information mechanisms to help communication between the small business community and EPA. EPA officials said the Office has a hotline service that receives nearly 20,000 calls per year, serves as the "one-stop shop" for EPA technical assistance and information, maintains an informal dialogue with over 45 trade associations, and advocates small business positions inside EPA.

EPA also described the mechanisms one of its regional offices (Kansas City) used to communicate regulatory information to the public, including an Agricultural Compliance Assistance Center, public meetings and workshops, "availability sessions" in which regional staff privately meet with citizens one-on-one to discuss issues, state- and trade association-sponsored meetings, mass mailings, public speaking, a toll-free Action Line, and an Iowa RCRA Hazardous Waste Helpline.

Other agencies cited many of the same kinds of mechanisms. According to its officials, EEOC (1) conducted training and outreach seminars during fiscal year 1993 that reached an estimated 4,000 private sector employers and more than 94,000 individuals; (2) published and distributed millions of copies of training materials; (3) mailed out 477,933 publications during the first three quarters of fiscal year 1995; and (4) responded to thousands of public inquiries per year. DOT's officials said DOT public information efforts include electronic bulletin boards, toll-free hotlines, free guidance materials, news releases, mailing lists, and briefings to industry associations. The DOJ officials cited their toll-free ADA Information Line; technical assistance materials; a computer bulletin board and Internet connections; a speakers' bureau, which provides technical assistance at about 120 events each year; more than 40 technical assistance grants to trade associations; an ADA Information File containing more than 30 technical assistance publications placed in 15,000 public libraries throughout the country; and informational notices about the ADA, which are distributed to 6 million businesses through IRS' quarterly mailing to employers.

Regulatory Information Relies on Businesses' Initiative, Appears Fragmented

Some of the agencies' regulatory informational mechanisms are proactive, providing information to businesses and others at the agencies' initiative. However, many agencies, if not most, require businesses to take the initiative in obtaining compliance information. For example, OSHA officials said that although the agency offered a variety of informational mechanisms, it was up to each business to understand its own regulatory compliance responsibilities.[5] However, the businesses that we talked to sometimes indicated a reluctance to approach regulatory agencies for information. For example, an official from Minco said that it was difficult to stay aware of the changes in regulatory requirements because they could not ask "enforcers" to provide information without potentially calling Minco's actions into question. Other indications of the businesses' reluctance to address regulators directly were the decisions by 10 of the 15 companies to remain anonymous during this review.

Also, it is not always readily apparent to businesses which agency of the federal bureaucracy is responsible for a particular program. For example, DOJ officials explained that the ADA defines separate responsibilities for EEOC and DOJ. EEOC provides information about ADA employment regulations, but information about titles II and III of the act (architectural barriers) is available only from DOJ[6]. Sometimes multiple information sources exist within a particular agency, with businesses frequently required to make more than one contact to gather information about that agency's regulatory requirements. As previously noted, EPA listed informational mechanisms by program office—Air and Radiation; Prevention, Pesticides, and Toxic Substances; Solid Waste and Emergency Response; and Water—as well as within a regional office. Therefore, a business would need to be aware of EPA's structure and programmatic configuration to obtain information about all EPA programs. However, EPA has taken some steps to consolidate this information by providing single points of contact for small businesses in its Small Business Ombudsman office and compliance assistance centers for certain industries.

Several Agencies Recently Developed Innovative Informational Mechanisms

Some agencies are attempting to develop methods by which businesses can obtain information about regulatory requirements and other topics in a more efficient and understandable way. For example, in June 1995, the

[5]OSHA officials also said that one of their informational mechanisms was a nationwide small business compliance consultation program.

[6]DOJ officials later noted that although the statute defines separate roles for EEOC and DOJ, it also provides for technical assistance coordination and, as a result of their efforts, the public is being referred to the appropriate agency.

President asked SBA to cochair an effort to make government information more accessible to government customers. SBA developed the idea of a World Wide Web site on the Internet that would, among other things, allow companies to know what federal regulations apply to their operations. Working with the Lawrence Livermore National Laboratory, the University of Massachusetts, and more than two dozen federal departments and agencies, SBA developed the "U.S. Business Advisor" home page, a version of which was formally unveiled in February 1996.[7] Using the Advisor, businesses can access a regulatory assistance center to search an electronic database of current and proposed regulations within particular subject areas. For example, a business can type in the term "chlorine production" and get a listing of chlorine-related regulations and proposed regulations. Businesses can also use the Advisor to obtain the full text of the current or proposed rule. SBA officials said the Advisor is still being developed, and they hope that future iterations will be even more user-friendly.

Some agencies are developing their own World Wide Web sites on the Internet with regard to particular issues. For example, in October 1995, OSHA worked with the business community to create an on-line "asbestos advisor" program that helps businesses determine whether their company is complying with regulations on asbestos exposure.[8] The program solicits information about users' workplaces and tasks, and automatically provides guidance to ensure compliance. As of July 1996, more than 6,100 people had downloaded copies of the program. OSHA said that because of further distribution of the asbestos advisor by major corporations and trade associations, actual circulation could be 10 times greater than the number of downloaded copies. OSHA has developed on-line advisors for other standards (e.g., permit-required confined spaces and cadmium) and plans to create other interactive expert advisors on other issues (e.g., lead in construction and control of hazardous energy sources). DOL officials said the Department has also developed an Internet web site that includes copies of its statutes and regulations and a small business handbook that provides information about all DOL workplace requirements in nontechnical language.

[7]The Internet address for the U.S. Business Advisor is http://www.business.gov.

[8]The Internet address for the asbestos advisor is http://www.osha.gov.

Regulations Applicable to Two Companies Often Differed

We asked EPA, EEOC, and four agencies and offices within DOL—OSHA, PWBA, and the Wage and Hour Division and OFCCP within ESA—to identify which of their regulations were applicable to two of the companies participating in this review—Minco and Zaclon. Neither of these two companies requested anonymity, and they agreed to provide any information needed by the agencies in determining their applicable regulations. Minco is located in Austin, TX; has 129 employees; and is a federal subcontractor that tests computer chips for federal contractors involved in military, space, and medical industries. Zaclon is located in Cleveland, OH; has 52 employees; and manufactures organic and inorganic chemical compounds.

Officials from some of the agencies we contacted initially expressed concerns about providing a list of regulations applicable to the companies. For example, EPA officials said that if the list was incomplete in any way (e.g., because new regulations were issued after they provided a list or because EPA did not know about an element of a company's operations that was covered by its regulations), the absence of a regulation from its list could be construed to mean that the company did not legally have to comply with that requirement. An official at OSHA questioned whether developing a list of applicable regulations was a useful method to measure the impact of OSHA's regulatory requirements. The official said that a list of all OSHA regulations a company must comply with could appear extensive, but would not provide any information on the beneficial results produced by these requirements. The official also said that this exercise might create an unfair impression of OSHA outreach efforts or a company's knowledge of its regulatory responsibilities.

Despite these concerns, EPA, EEOC, and each of the four DOL agencies provided a list of regulations they said were applicable to the companies. Several of the agencies indicated that the two companies' regulatory responsibilities varied substantially. One indicated that the companies' regulatory responsibilities were the same in some respects and different in others. One agency said the two companies' responsibilities were the same in all respects.

EPA Regulations

EPA limited its description of applicable regulations to four major environmental statutes—RCRA, CAA, CWA, and TSCA. The agency also emphasized that its observations were not meant to indicate there had been a formal compliance review or audit of the companies and, therefore, its observations were not an explicit or implied assessment of the companies' compliance status. With regard to Minco, EPA officials said that the company is not regulated at the federal level with regard to any of the

above-mentioned statutes because it has no air permits, does not formulate new or existing chemicals, does not manufacture or handle herbicides or pesticides, and does not have any underground storage tanks.

However, the officials said that EPA's limited review of Zaclon's operations indicated that it faced a number of federal regulatory requirements.

- Because the company produces chemicals, EPA officials said Zaclon is responsible for reporting under TSCA's sections 5 and 8 and is subject to annual Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 emissions reporting.
- EPA officials said Zaclon's discharges to the local waterways make the company responsible under CWA and its permits for (1) monthly discharge monitoring reports; (2) the Spill Prevention, Control, and Countermeasures' (SPCC) revision deadline; and (3) the National Emissions Standards for Hazardous Air Pollutants' (NESHAP) benzene waste water report.
- EPA officials said Zaclon's stack emissions make the company responsible under CAA, including NESHAP fugitive and point source emission reporting for benzene, and air compliance reports.
- As a hazardous waste generator EPA officials said Zaclon is subject to RCRA, including quantifying amounts of annual hazardous wastes, annual financial assurance reporting, and waste minimization reports.

EPA officials also said that Zaclon is required under many of the statutes to report any spills or releases when they occur. The officials said that certain chemicals could be considered a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act; a drug or cosmetic under the Federal Food and Drug Act; a chemical under TSCA; or a waste under RCRA. However, because EPA assumed that the company knew whether any chemicals it produces or uses fall under one of these statutes, it did not describe applicable regulations in those situations.

EEOC Regulations

EEOC divided its response into reporting and recordkeeping issues. The agency's officials said that the only reporting requirement EEOC imposed on Minco was that it annually submit a complete Form 100 (also known as an EEO-1 report) because the company had at least 100 employees. However, the agency officials said that Zaclon does not have to submit the form because it has less than 100 employees.

EEOC officials said both Minco and Zaclon are covered by the agency's recordkeeping requirements, but the length of time for which the records must be maintained varied by statute. The officials said 29 C.F.R. 1602.14 requires both companies to preserve all personnel and employment records for 1 year after the preparation of the record or the date of a related personnel action, whichever is later. Also, records must be retained for any employee involuntarily terminated. EEOC officials said 29 C.F.R. 1620.32 requires both companies to preserve records relevant to the payment of wages under the Equal Pay Act for 2 years. The officials said 29 C.F.R. 1627.3 requires each company covered by the ADEA to make and keep records for each employee (name, address, date of birth, occupation, rate of pay, and compensation earned each week) for 3 years. Employers also must keep a copy of their employee benefit plans on file. If an enforcement action is initiated under title VII, the ADA, or the ADEA, EEOC requires the employer to retain any related records until a final disposition.

Finally, EEOC noted that Minco and Zaclon are covered by the recordkeeping requirements in the Uniform Guidelines on Employee Selection Procedures (29 C.F.R. 1607), but that each company has different obligations under these requirements. Since Minco has more than 100 employees, it is required to maintain records that would disclose whether its selection procedures have an adverse impact on the basis of race, gender, or ethnic group. The Guidelines also require Minco to annually evaluate whether its selection process is having an adverse impact. If so, it must maintain and have available evidence supporting the validity of its selection process. However, because Zaclon has less than 100 employees, it can use simplified recordkeeping procedures that use the existing statistical information present in the company's personnel files.

DOL-OSHA Regulations

OSHA officials indicated that the regulatory responsibilities of Minco and Zaclon are identical. The officials cited 29 C.F.R. 1903 (Inspections, Citations and Proposed Penalties); 1904 (Recording and Reporting Occupational Injuries and Illnesses); 1910.20 (Access to Employee Exposure Records); and various other subparts of section 1910 as applicable to both companies. They also said OSHA's General Industry Standards would generally apply to each company, depending on the hazards in the workplace.

DOL-Wage and Hour Division Regulations

DOL's Wage and Hour Division stated that most of the regulations it cited applied to both Minco and Zaclon. For example, it said the following:

- The Fair Labor Standards Act (29 U.S.C 201 et seq.) and its applicable regulations (29 C.F.R. Parts 510-794) apply to both companies because they are covered "enterprises" with sales in excess of $500,000 per year.
- The Employee Polygraph Protection Act (29 U.S.C. 2001-2009) and its applicable regulations (29 C.F.R. Part 801) apply to both companies because they are ". . . engaged in or affecting commerce or in the production of goods for commerce . . . ."
- FMLA (29 U.S.C. 2601 et seq.) and its applicable regulations (29 C.F.R. Part 825) apply to both companies because they are both ". . . engaged in commerce or in any industry or activity affecting commerce . . ." and employ at least 50 employees during 20 or more work weeks during the year.

However, the Wage and Hour Division's officials said that the McNamara-O'Hara Service Contract Act (41 U.S.C. 351 et seq.) and its regulations (29 C.F.R. Part 4) applied only to Minco because Zaclon does not contract to provide services to the federal government or the District of Columbia.

DOL-OFCCP Regulations

OFCCP's officials said that OFCCP administers and enforces three equal employment opportunity programs that pertain to government contractors and subcontractors and to federally assisted construction contractors and subcontractors. The programs OFCCP officials noted are listed below:

- Executive Order 11246, as amended (41 C.F.R. Parts 60-1 through 60-60), which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin and requires affirmative action;
- section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), and its implementing regulations (41 C.F.R. Part 60-741), which require affirmative action and prohibit discrimination in employment against qualified individuals with disabilities; and
- provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and its implementing regulations (41 C.F.R. Part 60-250), which require affirmative action and nondiscrimination with respect to special disabled and Vietnam-era veterans.

The programs apply to contractors and subcontractors who perform government contracts or federally assisted construction contracts that total at least $10,000 in a 12-month period. Because Zaclon was not a federal contractor or subcontractor at the time of our review, OFCCP officials said the programs' requirements did not apply to the company.

However, Minco was a federal subcontractor with contracts in excess of $10,000, so OFCCP officials said that all three programs applied to the company. Also, because Minco had more than 50 employees and performed government contracts worth at least $50,000, OFCCP's officials said it was obligated to develop a written affirmative action program under each of these laws. OFCCP officials said these plans could be separate documents containing the different analysis that each law requires or a single document consolidating each of the laws' required analyses into one affirmative action plan.

DOL-PWBA Regulations

PWBA summarized the companies' basic reporting and disclosure requirements under Part 1 of ERISA. PWBA's officials stated that PWBA did not attempt to summarize all conceivable reporting and disclosure requirements because the requirements vary according to the size and nature of the benefit plan. For example, the officials said PWBA did not discuss the Consolidated Omnibus Budget Reconciliation Act of 1985, Part 6 of title I, or disclosure requirements related to fiduciary regulations. The agency officials also noted that ERISA contains general recordkeeping requirements. For example, adequate records must be maintained to verify the accuracy of benefit calculations and information reported in the annual report.

PWBA said that the two companies' 401(k) regulatory reporting and disclosure responsibilities differed somewhat because of differences in the companies' plan size and operations. For example, it said because Minco has a single-employer defined contribution 401(k) profit-sharing pension plan subject to Part 1 of title I of ERISA covering 105 of Minco's 129 eligible individuals with assets held in trust, the plan administrator must file the Form 5500 (with all applicable schedules) for each plan year. An annual audit is required and an opinion of an independent, qualified public accountant must also be filed. However, because Zaclon has fewer than 100 eligible employees, PWBA's regulations allow Zaclon's plan administrator to file the Form 5500-C/R (with all applicable schedules), which is an abbreviated Form 5500. Also, under PWBA's regulations for such small plans, an audit and opinion of an independent, qualified public accountant is not required. Although in both companies, participants covered by the pension plans and beneficiaries receiving benefits under the plans must be furnished a summary description of the plan, a summary of any material plan modifications, and a summary of each year's annual report. Both companies must also file their pension plan's description and modifications with DOL.

PWBA also said that because Minco's welfare plans cover 100 or more employees, the administrator of Minco's plans must file the Form 5500 (and all applicable schedules) for each plan year, but Minco is exempt from the audit requirements because the plan was fully insured or unfunded. Zaclon, with less than 100 participants in its fully insured or unfunded welfare plans, is exempt from the Form 5500 report and the audit requirements. PWBA officials said that both companies must furnish their welfare plan participants a summary plan description; a summary of any material modifications; and, for Minco's welfare plan, a summary of each year's Form 5500 report. Minco must also file its welfare plan's description and modifications with DOL.

Conclusions

Our work suggests that the number of federal regulations applicable to a particular company may be substantial. However, producing a complete inventory of those regulations is a very difficult undertaking for both businesses and federal regulatory agencies. A business must have a sophisticated level of knowledge of its regulatory environment and be able to devote the time and resources needed to develop a comprehensive inventory. Our efforts to acquire this information from federal agencies demonstrated that regulatory requirements are contingent on a variety of factors and can vary substantially from one company to the next, thereby making this task more difficult than it appears to be.

Although most of the companies initially told us that they could develop a complete list of regulations applicable to their companies, none of them ultimately did so. The partial lists the companies did develop often focused on only certain functional areas or certain problematic regulations. The companies said their lists were incomplete because of time and resource constraints and because of difficulties they experienced disentangling federal regulatory requirements from their regular operating procedures, state or local requirements, and other nonregulatory requirements. Other participating companies did not provide a reason why their lists were incomplete.

Because of their day-to-day involvement in regulatory matters, it may seem logical that regulatory agencies would be able to determine the applicability of their regulations to particular companies quite easily. However, several of the agencies we contacted said they could not make that determination without expending a substantial amount of their limited resources. Several of the agencies said that unique characteristics of a business or a business activity determine whether their regulations apply

to that business. Therefore, they said they would have to collect detailed information about each company to determine regulatory coverage—information such as whether the firm (1) was a federal contractor or subcontractor, (2) had a qualified retirement plan, (3) had an underground storage tank, (4) used certain types of compressed gases, and (5) discharged water into a local waterway.

The agencies also indicated that they made extensive amounts of information available to the public, so the businesses themselves could determine their regulatory responsibilities. However, these sources of information often appear to be fragmented both within and across agencies. As a result, a business attempting to determine its regulatory responsibilities may find it necessary to contact multiple agencies, and sometimes multiple offices within particular agencies, to collect the information it needs. In some cases, responsibility for an issue may be spread between two or more agencies, making it difficult for companies to determine which agency or agencies should be called regarding that issue. The increasing complexity of the federal regulatory environment makes effective communication between regulatory agencies and the regulated community even more important, and some agencies are taking steps in that direction.

The difficulties businesses and agencies experienced in developing a list of applicable regulations also suggest two other conclusions—one is an issue of compliance and the other is a research concern. First, a business that finds it difficult to list its regulatory compliance responsibilities may not be fully aware of those responsibilities. As a result, the business runs the risk of being out of compliance with regulations that it did not know were applicable. Second, the development of a list of a company's compliance responsibilities is the first step in determining the impact of all regulations on that company. If the list of regulations applicable to a company is incomplete, any assessment of the impact of regulations on that company will be equally incomplete. The difficulties businesses and agencies described in developing company-specific lists of regulatory compliance responsibilities suggest that the development of information on the costs and benefits of regulations to those companies will be at least as difficult.

Companies Lacked Data on Regulatory Costs

To fairly assess the impact of regulations on businesses, one must consider both the burden and the benefits of compliance. Of the two issues, regulatory burden is generally considered to be easier to measure than benefits. As mentioned in chapter 1, regulatory burden has been described and measured in various ways, including the number of pages in the CFR, the number of federal employees involved in regulatory activities, and the number of paperwork burden hours imposed by federal information collection requirements. One commonly cited measure of regulatory burden is the cost associated with compliance with regulations.

In this chapter, we briefly discuss the ways regulatory costs could be assessed, what we attempted to measure in this review, and what company officials told us when we asked about the costs and other types of burden associated with compliance with federal regulations to their businesses. This chapter also discusses what businesses told us about the benefits associated with federal regulations.

Measures of Regulatory Costs Vary

Studies of regulatory costs vary in a number of ways, one of which is the types of costs the studies attempt to assess. Direct costs are those that regulated entities incur in the course of complying with regulatory requirements. These direct costs include the wages and salaries of workers carrying out regulatory responsibilities; capital expenditures (e.g., wastewater treatment facilities or safety equipment); employee training expenses; and other costs incurred as a direct result of regulatory requirements. Indirect or secondary costs include costs such as lost productivity, decreased competitiveness, construction delays, or resource misallocation. Still other costs include those associated with the development and enforcement of regulations, not just costs borne by regulated entities; therefore, these studies could include the budgets of regulatory agencies.

Regulatory cost studies also vary in terms of the range of regulations included within the scope of the study. Studies may focus on costs associated with compliance with any regulatory requirements issued by any agency, or on only selected regulations, such as those within certain subject areas (e.g., environmental rules) or those issued by certain agencies.

Cost studies also vary in terms of the types of costs considered attributable to regulatory requirements. Studies could include all expenditures by the regulated entity that are in any way related to the

regulatory requirements at issue. In such studies, for example, if a company spent a total of $1 million during the course of a year on worker safety training and equipment, the full $1 million would be counted toward the company's regulatory costs. However, because the cost study includes all of the company's expenditures in this area, such an approach implicitly assumes that the company would have spent nothing on worker safety training and equipment during that year in the absence of regulatory requirements. Because many companies probably spend some money to protect their workers in the normal course of business, attributing those expenditures to regulatory requirements is erroneous and overstates the burden of regulations.[1] Another approach does not include all expenditures in the measurement of regulatory costs, focusing only on the incremental costs directly attributable to the regulations in question. If, in the above example, the company had spent $600,000 on worker safety training and equipment, regardless of any regulatory requirements, the incremental cost attributable to regulations in that year would be $400,000 ($1 million minus $600,000).

In a January 1996 description of "best practices" for preparing economic analyses of significant regulatory actions, OMB said that the benefits and costs of an action

> ". . . must be measured against a baseline. The baseline should be the best assessment of the way the world would look absent the proposed regulation. . . . All costs calculated should be incremental, that is, they should represent changes in costs that would occur if the regulatory option is chosen compared to costs in the base case (ordinarily no regulation or the existing regulation) or under a less stringent alternative."

Therefore, OMB recommends calculation of regulatory costs in incremental terms, not the total expenditures in a regulatory area.

The scope of the cost studies we reviewed also varied widely. Some studies, such as the work of Thomas Hopkins, attempted to estimate the cost of regulations to the economy as a whole.[2] Hopkins included the following five expenditure categories in his estimates of cumulative regulatory costs:

- direct costs of environmental regulations;

[1]GAO/GGD-94-28.

[2]Thomas D. Hopkins; Cost of Regulation, a report to the Regulatory Information Service Center, August 1991; "Federal Regulatory Burdens," RIT Public Policy Working Paper, Rochester, N.Y.: Rochester Institute of Technology, 1993; and Regulatory Costs in Profile, Policy Study Number 132, St. Louis: Center for the Study of American Business, August 1996.

- direct costs of other social regulations, including consumer safety, nuclear safety, worker health, and worker security and pensions;
- direct costs of economic regulations, which include agricultural, communications, transportation, energy, financial, construction, and international trade regulations;
- transfers stemming from economic regulations, including transfers stimulating exports and agricultural price supports;[3] and
- process costs of paperwork and reporting obligations, based upon the OMB estimate of the number of hours spent on federal paperwork requirements.[4]

Totaling data from all five cost categories, Hopkins estimated in 1993 that the cumulative cost of federal regulations to the economy would be $607 billion in 1995.[5] However, some economists believe that one of the elements of Hopkins' study—transfer costs—should not be considered part of the cost of regulations to the economy because transfers represent a loss to one group and a corresponding benefit to another.[6] There are also concerns about the accuracy of some of the data included in Hopkins' analysis. For example, we have noted that not all burden is counted in the preparation of OMB's paperwork burden-hour estimate, and that which is counted is often underestimated.[7]

Other studies have attempted to measure the costs of regulatory compliance on individual businesses, not the economy as a whole. One such study by Arthur Andersen and Company focused on 48 large companies' compliance with federal regulations during 1977.[8] The study did not attempt to assess the companies' cost of complying with all federal regulations, focusing instead on six federal agencies and programs.[9]

[3]Transfers are redistributions of resources within society, thereby placing a burden on some groups while benefiting others. For example, agricultural price supports involve a transfer of resources from consumers to farmers.

[4]Hopkins, in his 1991 study, used a formula that multiplies the number of hours to complete all federal paperwork requirements by $20 per hour. Tax forms accounted for about 80 percent of the estimate.

[5]In 1996, Hopkins revised his 1995 cost estimate to $668 billion.

[6]GAO/PEMD-95-18BR.

[7]GAO/PEMD-94-3. In his 1996 study, Hopkins said that "[t]he regulatory cost estimates that appear in this paper lay no claim to precision; both conceptual and empirical challenges make precision unattainable."

[8]Arthur Andersen and Co., Cost of Government Regulation Study, a report to the Business Roundtable, March 1979.

[9]The six federal agencies and programs were EPA, EEOC, OSHA, the Department of Energy, the Federal Trade Commission, and ERISA.

Arthur Andersen auditors went to each company, instructed company officials on what they considered to be allowable and unallowable regulatory costs, and required company officials to estimate the amount the company spent complying with the identified regulations. The study used an incremental measure of regulatory cost, subtracting from the companies' total expenditures the amount the company would have spent to achieve the objectives of the regulations had those regulations not been in force. Using this methodology, Arthur Andersen estimated that the 48 companies' total compliance costs in 1977 were $2.6 billion—an average of more than $54 million per company. This cost can be compared with the companies' 1977 net income after taxes of $16.6 billion—an average of about $346 million per company.

Companies Generally Could Not Provide Comprehensive, Incremental Cost Data

To assess the burden of federal regulations on the 15 companies participating in our review, we used an approach that was similar in some respects to the approach used in the Arthur Andersen study. Like the Arthur Andersen study, we asked each of the companies to provide information on their direct incremental costs. However, unlike the Arthur Andersen study, we focused on costs associated with complying with all federal regulations during 1994, not just selected agencies and programs. Also, we did not require the companies to estimate the costs associated with regulatory compliance. Instead, we left it to the companies to provide what information they believed was appropriate.

Because we wanted to be sure that the companies described their regulatory costs consistently, we provided extensive instructions to the companies regarding what should and should not be included in their tabulations. (See app. I for the instructions provided to the companies and the data collection instrument.) For example, because our focus was on incremental costs, we told the companies that any costs that would have been incurred in the normal course of business during that period should not be included in their cost measures. Because indirect costs are more difficult to measure, we told the companies to provide cost data on direct costs and asked for examples of indirect costs. We also delineated other types of costs that should be excluded from their tabulations, including lobbying costs; costs associated with nonfederal rules; and payments to the federal government, such as taxes and fines for noncompliance.

We asked the companies to include costs for all regulations that they had identified in developing their aggregate list of federal regulations (presented in ch. 2). We attempted to collect the cost data in total and in

each of three cost classifications: (1) capital costs, (2) labor costs, and (3) other costs.[10] We told the companies that their accounting and financial records should be their primary source of the cost data, and that we would like to collect, or at least review, any documentation of these costs.

Although all of the 15 companies participating in our review provided at least some data on their compliance costs, none of the companies provided cost data that were both comprehensive and incremental.[11] Some of the officials with whom we met recognized that the data provided were not what we had asked them to provide. Our interviews with these company officials and our review of the information they provided revealed various reasons why the companies' cost data were neither comprehensive nor incremental.

Companies' Cost Data Were Not Comprehensive

Although we asked each of the companies to provide cost data for all the regulations they faced, none of the companies provided comprehensive cost data. The uncomprehensive nature of the cost data provided was sometimes a function of the difficulty company officials had in citing all applicable regulations. (See ch. 2.) Because we asked each company to provide cost information for all applicable federal regulations, and because company officials generally said they could not identify all applicable regulations, they, therefore, could not provide a measurement of their regulatory costs that they believed reflected all of their responsibilities.

Another reason company officials said they had difficulty providing data on their companies' federal regulatory compliance costs was because they found it difficult to distinguish between federal requirements and those of other governmental jurisdictions. For example, officials from Roadway told us that the intertwining of federal, state, and local requirements made it difficult to separate the effects of each type of requirement. Also, officials from the paper company said that determining their federal regulatory costs was "difficult if not impossible" because they could not distinguish between costs to comply with federal regulations versus state

[10]However, we also told the companies that if this system was not workable for them as a way to break down their incremental compliance costs, they could use some other system.

[11]These results correspond with those of our recent work looking at the effect of regulatory compliance on research grantees at the National Institutes of Health. We found that although members of the research community were confident that compliance costs were high, they were unable to provide cost data directly attributable to compliance activities. See Regulatory Compliance for NIH Grantees (GAO/HEHS-96-90R, Mar. 25, 1996).

and local requirements. Making this distinction was particularly difficult for the companies in regulatory areas where state governments enforced federal standards and could also attach additional requirements. Officials from a company operating in California said that California enforces all of OSHA's regulations and some of EPA's regulations—often adding stricter state requirements.

In other cases, company officials recognized federal regulatory requirements in certain functional areas but still did not provide any cost data for those functional areas. For example, officials from the petrochemical company provided data on environmental, health, and safety costs, but did not provide data on costs associated with other types of regulations with which they said they had to comply (e.g., transportation and shipping). The cost data the companies provided were also incomplete in other ways. For example, one company provided data on its incremental regulatory costs, but only for a portion of its labor expenses.[12] The company did not provide comprehensive data on capital or other types of costs, and the labor cost data did not include the company's hourly workers.[13]

Also, although one company said its incremental cost estimate covered the entire company, the manner in which the estimate was calculated revealed that all units were not actually represented. Company officials estimated the company's total incremental regulatory costs at $52.4 million—$44.9 million for labor costs, $6.8 million in capital costs, and $700,000 in other costs. The officials said they developed these cost figures by first generating these costs for their largest operating unit, then doubling this figure to arrive at the estimated total cost. They said they used this method because the operating unit generated one-half of the company's revenue and accounted for one-half of the company's costs. Therefore, they said that doubling the unit's regulatory costs was a reasonable estimate of the whole company's incremental regulatory costs. However, we believe that if their largest operating unit's regulatory costs were atypical in any way, simply doubling this estimate could result in an

[12]To obtain these data, the company surveyed its salaried employees and asked them to (1) develop a list of the federal regulations that they encountered in doing their jobs and (2) estimate the amount of time they or their subordinates spent each month complying with those regulations. Using the results of this survey and its knowledge of the employees' salaries, the company estimated its direct incremental labor costs for salaried employees to be $145,000 in 1994—about 5 percent of its total payroll of $2.5 million.

[13]Company officials provided cost data for certain problematic regulations, but did not provide any other data on the company's comprehensive, incremental costs. For example, the officials said that the company spent $200,000 for capital improvements to its wastewater treatment facility and spent $1,000 per month for water testing to comply with specific EPA water quality requirements.

underestimate or an overestimate of the company's total incremental costs.

Companies' Cost Data Were Not Incremental

Although we requested that companies provide incremental compliance costs because we believe they are more accurate measures of regulatory burden than total expenditures in areas covered by regulations, most companies did not provide incremental cost data. As previously noted, calculation of incremental costs requires company officials to decide what actions their company would have taken in the absence of the identified regulations—a determination that can be difficult, if not impossible, to make in retrospect. For example, officials from Bank C indicated that it would be very difficult, in most cases, to estimate what expenses they would have incurred if the federal regulations did not exist. An official from the glass company said that it was difficult to determine what percentage of its costs were due to regulations and what part would have been incurred as a normal part of business. Officials from the paper company said a substantial amount of their costs were costs they would have incurred even if federal regulations did not exist. They said that they would still have formidable environmental and health and safety programs simply as a good business practice, and they could not separate what was required from what they were doing voluntarily.

Reflecting the difficulty in separating regulatory and business-related costs, the officials also said their companies' accounting and financial records did not capture the information necessary to determine incremental compliance costs. For example, officials from the petrochemical company told us their company's accounting systems were not designed to uniquely categorize the costs of new and ongoing regulatory requirements. These officials said that there is little incentive to isolate and monitor these costs because such information has little business value. Officials from Multiplex also said that their financial records did not itemize many of the administrative costs associated with specific regulatory compliance activities. Multiplex officials estimated that for environmental compliance, about 60 to 70 percent of their costs were captured using the company's financial records.

Company officials also said they could not provide incremental regulatory cost data because the companies' regulatory responsibilities were sometimes difficult to distinguish from their regular processes and functions. For example, officials from the glass company said regulatory responsibilities were woven into individuals' jobs, and it was difficult to

separate what was being done strictly for regulatory reasons. Officials from the tank car company said it would take a significant amount of time and resources to separate these compliance costs from their day-to-day operations costs. Officials from the petrochemical company said there is little incentive to isolate and uniquely monitor the explicit costs associated with new and ongoing regulatory requirements because they generally view regulations as nonrevenue-producing mandates.

Indirect Costs of Federal Regulations

Although we did not ask the companies that participated in our review to quantify their indirect costs of complying with federal regulations, company officials provided a number of examples of those costs that they said their companies had experienced. The examples indicate that indirect costs can be substantial and are probably the most difficult types of costs to measure. The types of indirect costs that the companies provided included lost productivity, decreased competitiveness, lost business opportunities, delays in the expansion of new products or businesses, misallocation of resources, and delays in construction of new plants and/or equipment. Examples of indirect costs the companies cited included the following.

- Officials from the paper company said that regulations tie up company resources and staff that could be better used in other ways, such as developing new products or processes. They said the company's international competitiveness is also affected by regulations. The officials said that, contrary to popular belief, European countries are less regulated than U.S. companies, and as a result, U.S. companies are at a competitive disadvantage.
- Representatives from the petrochemical company said that the company had curtailed or forgone facility expansions because of regulations that discourage voluntary emissions reductions at the plant site or emissions trading programs that are too administratively burdensome. Company officials also expressed concerns about regulations that restrict access to potential natural gas markets even though the increased use of natural gas is a cost-effective means of achieving emissions reductions. The officials also referred to the unavailability of cash flow to capture business opportunities because of the allocation of funds to compliance requirements.
- An official from Minco, a federal subcontractor, said that regulatory activity tends to drive out other human resource-related actions the company would like to take. For example, she said that the company would like to offer more training and employee development but cannot

do so because January and February are generally dedicated to development of affirmative action plans. Another Minco official said that the company could make more money as a prime contractor but intentionally remains a subcontractor because of the complexity of federal procurement regulations.

- A Multiplex official commented on how responding to regulatory requirements causes a delay of management information and responsiveness to business-related needs. For example, the official said that a company management team's required involvement with an 18-month IRS audit slowed company management's response to internal requests and to other company business. He said a large company can easily absorb a certain level of recordkeeping requirements, but the same requirements can cause many problems for a smaller company like Multiplex.

The Benefits of Federal Regulations

The assessment of benefits is of equal importance to the measurement of costs and other types of burden in assessing the impact of a given regulation or regulations in general. However, as previously noted, accurate measures of the benefits of regulations appear even more difficult to develop than cost measures. For example, in 1991 we reported that, although environmental controls have resulted in substantial and valuable benefits, assigning a monetary value to these benefits was much more difficult than estimating costs.[14]

Few Studies Have Evaluated the Benefits of Regulation

Much of the literature deals with the assessment of costs of regulations, and relatively few reports and studies have addressed the benefits of regulations. In June 1995, Public Citizen, a national consumer advocacy organization, released a report that sought to document the benefits of federal health and safety regulations.[15] The report recognized that the benefits of health and safety standards cannot always be measured in dollar terms, and it highlighted the difficulty involved in attempting to calculate the exact number of lives saved, injuries prevented, and costs averted by a regulation. The report also criticized cost-benefit analysis by maintaining that many of the variables used in the analysis are unquantifiable, and in many cases the primary source of cost data is from industry itself.

[14]Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

[15]Saving Money, Saving Lives: The Documented Benefits of Federal Health and Safety Protections, Public Citizen, June 1995.

Most Companies We Interviewed Agreed Regulations Have Benefits

Despite the concerns the businesses expressed about the costs of regulatory compliance, most of the company officials we interviewed generally recognized that regulations provide benefits to society as a whole, to certain groups and individuals, and even to their own businesses. Company officials said federal regulations had helped protect air and water quality, created safer workplaces, promoted fair competition, and improved both the manufacturing process and product quality. Specific examples of regulatory benefits the companies cited included the following.

- Officials from the paper company said that compliance with federal regulations had helped to improve their manufacturing process. They said some of the dioxin regulations would make their paper manufacturing process more effective and less costly, even though short-term costs could be high. Company representatives added that solid waste regulations were leading the company to use chemicals that are not as hazardous.
- Representatives of the hospital indicated that OSHA's Blood-borne Pathogens Standard had helped reduce the number of needlestick injuries experienced in the hospital. They also said that the Clinical Laboratory Improvement Amendment regulations encouraged laboratories to look more closely at the quality of their work.
- Officials from the glass company said federal regulations had created business opportunities for their company. They said the company created its environmental products and pharmaceutical services businesses to assist others in meeting their regulatory requirements of air pollution control and product safety testing. Company officials also said that federal regulations protected environmental quality, created safer workplaces for employees, and protected businesses from unfair business practices by their competitors.
- A Minco official said she believes the company's requirement as a federal contractor to create an affirmative action plan has aided in the employment of a diverse workforce and fair employment practices. Another official at the company said OSHA's regulations have brought about a greater awareness of job safety for both management and employees.
- Officials from Roadway, Zaclon, Bank B, and the glass company indicated that federal regulations provide a level playing field of uniform requirements for businesses. With this level playing field, federal regulations preempt multiple and often different state and/or local standards, making compliance easier and less costly. As pointed out by the glass company, it can be far more costly to track and comply with 50 different regulations than to comply with a single federal regulation in a given area.

Conclusions

Our work suggests that measuring the incremental impact—direct costs, indirect costs, and benefits—of federal regulations on individual companies is an extremely problematical endeavor. Although the companies clearly experienced indirect costs associated with federal regulations and recognized that those regulations provided benefits to society and to themselves, our discussions with the companies also indicated that measuring indirect costs would be extremely difficult. We encountered a number of serious obstacles in our effort to assess even the most straightforward of such costs—direct incremental costs.

Although all of the 15 companies participating in our review provided some data on their regulatory costs, none could provide comprehensive, verifiable measures of their direct incremental costs of complying with federal regulations. As shown below, the companies described several obstacles in the development of such information.

- As discussed in chapter 2, the companies did not produce a comprehensive inventory of federal regulations applicable to their operations. For example, the companies found it difficult to distinguish federal regulatory requirements from those of other governmental jurisdictions and from their normal business practices. Therefore, there was no comprehensive basis for cost assessment.
- Companies could not isolate incremental regulatory costs because they were unable to identify what costs would have been incurred in the normal course of business operations without federal regulations.
- Companies' financial information systems were not geared to identifying costs associated with regulation.

These difficulties do not necessarily mean that regulatory costs are not substantial or that the measurement of those aggregate costs is impossible. However, they do suggest that serious conceptual and methodological questions need to be raised and answered before studies that attempt to measure total current regulatory costs are used to guide public policy. The following are examples of such questions.

- Which regulations are included in the universe for which cost measures are developed?
- If federal regulations are the focus, how were they distinguished from those of other jurisdictions?
- Are incremental regulatory costs being measured?
- If so, how did the researcher determine what businesses would have spent in the absence of regulations?

- What financial records were used to substantiate the cost figures, and what assumptions guided the collection of the data?

  Users of studies of regulatory costs need to be aware of the inherent difficulties and assumptions involved in producing such measures.

Companies' Regulatory Concerns Focused on Regulations and Regulators

To this point, this report has attempted to assess the impact of federal regulations on selected businesses by focusing on aggregates—the total number of regulations applicable to a company and the aggregate burden (cost and other) of those regulations. Another way to understand the impact of regulations is to examine the concerns those businesses have about the particular regulations that comprise that aggregate.

In a June 1994 study, we used this type of approach to obtain comments on a defined set of federal regulations.[1] Employer and union representatives in selected businesses were asked about their experiences in dealing with 26 statutes and 1 executive order on workplace regulation, including the ADA, the Equal Pay Act, and the Service Contract Act. In summary, both groups generally supported the need for workplace regulations but voiced concerns about the operation of the overall regulatory process. For example, many of the employers said that certain paperwork requirements had questionable value. These employers also said that the regulatory approach used by many agencies was largely adversarial, characterized by poor communication, unfair and inconsistent enforcement, and vague laws and regulations. Both employers and union representatives called for agencies' providing a more service-oriented approach to workplace regulation; improving information access and educational assistance to employers, workers, and unions; and permitting more input into agency standard-setting and enforcement efforts.

In this study, we asked officials representing the 15 participating companies to identify the specific federal regulations that they considered most problematic for their organizations. We also asked those officials what government (Congress or federal agencies) and businesses could do to address either the problems they identified or the federal regulatory process in general. In our instructions to the companies, we defined "problematic regulations" as any federal program, regulation, or law that the officials viewed as causing their companies the greatest difficulty. We said a regulation could be considered problematic for a variety of reasons, such as being too costly, too vague, unnecessary, or duplicative.

In contrast to the difficulties the companies experienced in compiling an aggregate list of regulations and determining incremental regulatory costs, all 15 companies provided examples of what they considered to be their most problematic regulations. In total, we received more than 100 such concerns from the participating companies. We developed written

[1]GAO/HEHS-94-138.

summaries of each of the companies' concerns and verified the accuracy of those summaries with company officials.

We then sent the verified summaries to the appropriate regulatory agencies for their review and comments. In some cases, the agencies said that they needed more information to allow them to respond to the companies' concerns. For example, one agency said it needed to know the state in which a company was located so that it could be certain that the company's concern involved a federal regulation and not a state or local regulation. In those cases, we attempted to obtain additional information from the companies or permission to disclose information we already had that could address the agencies' questions. We were usually able to provide the agencies with the additional information they said that they needed. However, in some cases we could not provide the information because doing so could have led to the identification of companies that wanted to remain anonymous. In those cases, the agencies responded as best they could with the information that was available to them.

By obtaining and presenting agencies' responses to the companies' concerns, we attempted to present a balanced picture of the regulatory issues involved. However, it is important to note the limitations of this methodology and presentation sequence. The companies were able to set the agenda by specifying the topics to which the agencies had to respond. Also, although agencies could question or dispute the companies' concerns about regulatory issues, we did not give companies a comparable opportunity to respond to the agencies' assertions. Lastly, agencies had the final word regarding the companies' concerns, but this presentation should not be interpreted to imply our agreement with the agencies' positions regarding these issues.

Companies Expressed Concerns About Regulations and Regulators' Actions

The 15 companies' regulatory concerns varied substantially. Many of these concerns were about specific federal regulations, but others focused on federal regulatory agencies' actions and the interrelationship between regulations at other levels of government. After analyzing them, we grouped the companies' concerns into the following 10 broad themes:

(1) Compliance with a regulation was costly and/or those costs outweighed the benefits provided by the regulation.

(2) The compliance costs associated with a regulation affected the companies' competitiveness.

(3) The regulation at issue was unreasonable (e.g., it was not scientifically based).

(4) The requirements associated with a regulation were difficult to understand, either because of the technical language involved or because the requirements kept changing.

(5) Certain regulatory requirements were unnecessarily rigid or inflexible.

(6) The paperwork or process requirements associated with a regulation were excessive and costly.

(7) The penalties imposed on companies for noncompliance were too severe.

(8) Regulators were overly deficiency-oriented or had a "gotcha" enforcement approach.

(9) Regulators lacked knowledge of industries and provided little assistance to businesses trying to comply with the regulations.

(10) Regulations from different agencies or levels of government were poorly coordinated or duplicative.

About half of the concerns that the businesses expressed included elements of more than 1 of these 10 themes. For example, 14 of the companies' concerns indicated that certain regulations were both too costly and unreasonable. Similarly, a number of concerns involved both paperwork issues and regulatory costs. Some individual concerns included as many as five themes.

Each of the 10 company concern themes is discussed below along with the associated comments from the regulatory agencies. Like the companies' concerns, the agencies' comments varied substantially. In some cases, the agencies agreed with the companies' concerns and said that actions had been taken or needed to be taken to address those concerns. In other cases, the agencies disagreed with the companies' portrayal of an enforcement action or of a regulation's requirements. In still other cases, the agencies said the companies' concerns were a function of the regulations' underlying statutory requirements.

Appendix II contains a sample of the companies' concerns and the applicable agencies' responses for each of the 10 themes.

Companies Said Regulatory Compliance Was Costly or Costs Outweighed Benefits

Company officials most frequently expressed concerns about the cost of complying with particular federal regulations. Representatives of 14 of the 15 companies mentioned this concern about at least one regulation. For example, one official said DOT-required hazardous materials training cost the company $475,000 annually. Another company official said that as a result of changes to CAA's regulatory requirements, the cost of air quality testing, which was needed to get approval of a construction permit, increased from $10,000 to $30,000.

In response to these concerns, the agencies most frequently said that the companies had overstated regulatory compliance costs. For example, EEOC and DOJ raised questions about the $750,000 Roadway said it spent to comply with ADA requirements. Both agencies said that practical experience to date indicates that the cost of ADA compliance is limited. EEOC cited a study commissioned by Sears, Roebuck and Co. showing that less than 3 percent of the accommodations that Sears made to comply with the ADA cost the company more than $1,000. In several cases, agencies said the costs incurred by the companies might be a function of the way that they complied with the regulations. For example, one company said that OSHA required them to replace certain electrical receptacle boxes with more expensive ones. In response, OSHA said the company only had to abate the electrical hazard, and it was up to the company to decide how to accomplish that goal. According to OSHA officials, the company could have found other ways to power its equipment or used other, less expensive receptacle boxes available for indoor use. OSHA officials added that their standard is consistent with the national electrical code, which is recognized by most authorities as a safe way to provide electrical energy to buildings.

A number of companies also said that they believed the costs associated with compliance with certain regulations outweighed any regulatory benefits. Many companies said they found it difficult to see any benefits associated with the regulations they mentioned, either to themselves or to society in general. Other companies said they did not mind spending money to comply with federal regulations, but not when costs exceeded the benefits. For example, some companies said that although they had substantially met the goals set in particular regulations, total compliance would be extremely costly and would far outweigh any marginal benefits

provided by those increased costs. In other cases, two companies mentioned having to retrofit machinery and/or train more employees than necessary to satisfy certain regulatory requirements—expenditures that they said were unnecessary and yielded no apparent benefits.

Agencies responding to these concerns frequently said that the companies did not recognize the benefits that the regulations provided and/or that they overstated the costs. Another common agency response was that the company had misstated or misinterpreted the regulatory requirement. In several instances, the agencies said that the particular regulatory procedure mentioned by the company was required by law. For example, one company said that the nondiscrimination test IRS requires in the administration of the company's 401(k) thrift savings plan was costly, and that the IRS requirement for a separate audit of the plan was an unnecessary expense. However, IRS said that both of these requirements were imposed by statute. In other cases, though, the agencies agreed with the companies' cost concerns and said they had taken or were taking action to make regulatory compliance less costly.

Examples 1 through 4 in appendix II illustrate companies' concerns and agencies' responses relating to cost and cost-benefit issues.

Companies Said Regulatory Costs Affected Competitiveness

Nine companies indicated that the costs associated with compliance with certain regulations were a disincentive to their investment or expansion decisions, or otherwise affected the companies' competitiveness in the marketplace. Some of the companies said that particular regulations prevented them from expanding their operations because their compliance costs would increase disproportionately to the profits they expected to generate from the expansion. Other companies said that compliance costs imposed a potential liability that discouraged investment. Still other company concerns were that some regulations applied to only certain types of businesses, thereby giving a competitive advantage to similar businesses that were exempt from those regulations.

In response, the agencies often acknowledged that regulatory compliance costs could affect companies' competitiveness and/or flexibility of decisionmaking. However, they frequently said that the requirements in question were statutorily mandated. Several agencies also indicated that the regulations in question were necessary and yielded benefits that the companies did not mention. In several cases, the agencies said they were working to improve the operation of the regulations the companies cited

as inhibiting competition, making them more consistent, flexible, or less burdensome. For example, one company said it would not purchase property that had previously been the site of industrial operations because of the potential cleanup liability under the Comprehensive Environmental Response, Compensation, and Liability Act. Thus, the company felt that its options for choosing new sites were restricted at a time when it needed property for business expansion. EPA responded to this concern by indicating that it has initiatives under way to encourage economic redevelopment through environmental cleanup. Also, EPA said it has encouraged redevelopment of these sites by reassuring prospective new owners that they may not have to face Superfund liability.

Also, some agencies' responses indicated that the way in which companies chose to comply with the regulations could have affected their costs. For example, Bank C said that it had to create 15 new forms as a result of a regulatory requirement, but FRB said that there was no requirement that bank personnel had to complete forms to accomplish the goal of the regulation.

Examples 5 and 6 in appendix II illustrate two of the companies' concerns and agencies' responses relating to the effect of regulatory costs on competitiveness.

Companies Said Regulations Were Unreasonable

Twelve of the 15 companies said that certain regulations they dealt with were unreasonable because they were either (1) not based on sound scientific research, (2) outdated, (3) unlikely to achieve their intended goals, or (4) unreasonable for some other reason. For example, officials of the paper company objected to a DOT requirement that each of the company's several hundred locations submit drivers' logs and other documents to the company's headquarters to help DOT's review. The company thought it was impractical and unnecessary to maintain all of the drivers' logs in one place. In another example, the paper company alleged that title V of CAA requires the regulation of extremely low levels of emissions, and that the company was required to obtain a permit for methanol emissions at the company's fence line that are no more concentrated than in a person's breath.

The regulatory agencies frequently disagreed with the companies' characterization of their regulations as unreasonable. In about half of these areas of disagreement, the agencies said that the regulations did, in fact, have a rational basis and/or provided benefits the companies did not

acknowledge. For example, EPA officials said that the paper company's concern creates the misleading impression that paper mills are subject to title V only for low levels of methanol emissions when, in fact, large emissions of other pollutants would easily justify the need for a title V permit even if the mill had no methanol emissions.

In the other half of these cases, the agencies said that the companies had mischaracterized the regulation or the incident involved. For example, hospital officials questioned the reasonableness of what they described as a revised Federal Aviation Administration (FAA) rule that shortened the shift lengths of helicopter pilots. However, FAA said that the shift length rules had not recently changed. In several other instances, the regulatory agencies said that the regulatory provisions the companies characterized as unreasonable were required by law. For example, HUD officials said that disclosure requirements that bank officials said were unreasonable were established by Congress in specific provisions of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq). However, in some cases the agencies agreed with the companies' concerns about the reasonableness of regulations, and said that they or Congress had taken or were taking steps to minimize the problems the companies had experienced.

Examples 7 through 10 in appendix II illustrate companies' concerns and agencies' responses relating to the reasonableness of regulatory requirements.

Companies Said Regulatory Requirements Were Difficult to Understand

Most companies said they did not understand certain regulatory requirements because they were vague or complex. As a result, the companies said they had difficulty determining whether regulations applied to them and, if so, what they needed to do to be in compliance. Some companies cited confusing, ambiguous, or conflicting terminology used in the regulations themselves or on the required forms. Some companies said they were not able to obtain clarification of the regulations' requirements from agency staff. Other companies said they had to hire outside consultants to explain the requirements or complete the forms, but even those experts are sometimes not able to help them. For example, paper company officials said OSHA regulations require their paper machines to have mechanisms that will stop the machines "quickly," but the rule does not define what "quickly" means, and experts do not agree on a single definition.

In many instances, the regulatory agencies agreed with the companies that the regulations cited in their concerns were vague and/or complex. The agencies often said that some kind of action had been taken or was being taken to clarify the regulations and make them less complex. For example, regulators frequently cited direct compliance assistance, written guidance, simplified processes, toll-free telephone numbers, computerized bulletin boards, and presentation of examples within the regulations themselves as ways that they have tried to make the requirements more understandable. In several instances, the regulators said the complexity of the regulations in question—particularly IRS regulations—was a function of the law or actions taken by Congress. In other cases, the regulators indicated that the regulations were complex because of the inherent complexity of the subject matter being regulated.

Companies also said they did not understand regulatory requirements because of frequent changes to the regulations, thereby making it difficult to stay up to date and know what was required to be in compliance. For example, officials from the hospital said that it was difficult to keep pace with the frequently changing Medicare and Medicaid billing rules, which caused the hospital's computer programmers to spend numerous hours attempting to update the automated patient billing system.

In virtually every case where a company complained about frequent regulatory changes, the agencies said that the changes were caused by congressional, not agency, action. For example, in response to bank officials' concerns about frequent changes in the tax code, Department of the Treasury officials indicated that the changes were initiated by Congress. Treasury officials said they had urged Congress to stabilize the tax code so that taxpayers and their advisers could understand its requirements. FDIC officials said that the number of changes and the level of detail in their call reports were driven in part by statutory requirements.

Examples 11 through 13 in appendix II illustrate companies' concerns about regulations that were vague, complex, and/or frequently changing and agencies' responses to those concerns.

Companies Said Regulations Were Inflexible

Many companies said some federal regulations that they have to comply with were unnecessarily inflexible or rigid. The companies expressed frustration with the same standards or regulations being applied to all companies, locations, or situations without any consideration to other factors that they believed should be taken into consideration. Some

companies felt that in certain regulatory situations, a variety of factors should be considered in determining whether a company should have to comply with that regulation. Examples of the factors the companies believed should be considered included the number of employees in a company, the extent to which a company uses a particular chemical, and the amount of pollutant discharged as the result of a company's process.

For the most part, the agencies disagreed that the regulations or the situations the companies cited were examples of unnecessary inflexibility. In some of the situations the companies described, the agencies said that the requirements were justifiable regardless of other factors that the companies believed should be taken into consideration. In other cases, the agencies said that the regulations the companies cited already had some flexibility built in or that the companies had misunderstood the process or the regulation cited. In some cases, the regulators said that there was no need for the regulations to be more flexible because the standards the company cited were not even applicable to the situation the company described.

Examples 14 and 15 in appendix II illustrate companies' concerns and agencies' responses about regulations that are considered to be inflexible.

Companies Said Paperwork and Process Requirements Were Excessive or Costly

Officials from 14 of the 15 companies said certain regulations' paperwork or other procedural requirements were excessive. The paperwork that company officials cited as problematic included (1) forms or reports that had to be periodically submitted to federal agencies and/or kept for their own records and (2) permit applications that had to be submitted to an agency to obtain approval for certain company activities.

Most of the paperwork or process costs the companies mentioned related to labor costs associated with having their employees complete the required forms or reports. For example, the hospital said it had to hire a consultant for $50,000 to help complete the annual Medicare cost report. Two of the companies indicated that they would not mind bearing the expense of preparing regulatory reports if they felt the reports were actually used by federal agencies. For example, Bank B considered the reporting requirements under the Bank Secrecy Act to be of negligible value to law enforcement agencies. Bank officials said they had seen little evidence of law enforcement agencies' using the information and few prosecutions resulting from information in these reports. Other companies' concerns focused on the costs associated with having to

prepare similar reports for regulators at the federal, state, and/or local levels.

Agencies responding to these concerns most frequently said they agreed that the paperwork or procedural requirements could be expensive. They also said their agencies had taken or were taking action to address the companies' concerns. In several other instances, the agencies said that the costly paperwork or procedures were required by law. For example, in response to the hospital's concern about the annual Medicare cost report being a burden to prepare, HHS officials said that the Social Security Act requires the agency to maintain a system of cost-reporting for prospective payment system hospitals, including annual information to settle costs associated with health care services rendered to Medicare beneficiaries. In about half of the other responses, the agencies said that the companies had misinterpreted or misstated the paperwork or procedural requirements; therefore, they were incurring unnecessary expenses. For example, although one company complained that they had to keep certain employee safety training records "forever," OSHA said that no such employee training records were required and, therefore, no retention requirement existed.

Examples 16 through 19 in appendix II illustrate companies' concerns and agencies' responses relating to paperwork and process issues.

Companies Said Regulatory Penalties Were Too Severe

Many companies expressed concerns that the penalties imposed on them for noncompliance with regulations or their requirements were too severe. For example, the glass company said sizable penalties had been imposed on them for procedural "mistakes," such as not filing pension-related paperwork on time. Another company said it was fined several hundred thousand dollars for not obtaining a federal wastewater discharge permit. The company thought the penalty for this offense was too severe given that the company had a state permit that it believed was sufficient. In addition, a Metro Machine Corporation official said OSHA currently holds companies, rather than individual employees, accountable for violations caused by employee negligence or willful removal of company-installed safety devices. He said OSHA should differentiate between corporate negligence and employee responsibility.

In response to these concerns, the agencies most frequently said that the penalties the companies cited would be imposed only in the most egregious circumstances. For example, in response to the Metro Machine

Corporation concern, OSHA said that when it conducts an inspection and determines that a company's management is attempting all reasonable steps to comply and get employees to comply but the employees are systematically refusing to comply with safety and health standards or rules, OSHA will excuse the employer from a violation. OSHA officials added that the Occupational Safety and Health Act does not permit citing employees for violations. In another response, EPA said two companies' concerns about possible imprisonment of company officials for failing to disclose certain information would be imposed only in instances where those officials had knowingly falsified information or willfully failed to provide the required public notice of the release of a hazardous substance. Agencies also said that the penalties the companies complained about were established in the underlying statutes and, in other cases, that the agency had taken or would take action to address these concerns about the severity of certain regulatory penalties.

Examples 20 and 21 in appendix II illustrate companies' concerns and agencies' responses to penalty issues.

Companies Said Regulators Had a "Gotcha" Enforcement Approach

Officials from more than half of the companies cited incidents in which regulators evidenced a "gotcha" manner or were more interested in finding companies in noncompliance with regulatory requirements than helping companies comply with the regulations. For example, one company said an IRS official unexpectedly visited its facility and, in a "nasty" manner, threatened to close the company down if the company did not immediately remit taxes that were reportedly unpaid. In another instance, a company said that EPA could initiate enforcement actions even when companies self-report deficiencies. Company officials also cited examples in which regulators were more focused on procedural or administrative issues (e.g., filing timely reports) than on whether the objective of the regulation was being achieved (e.g., less air or water pollution from their manufacturing processes).

The agencies responded to the companies' comments in a variety of ways. The agencies often said that (1) their enforcement approaches were reasonable and consistent with their policies, (2) the companies had mischaracterized the incidents or the rules involved, or (3) they have or will take action to minimize these problems. For example, OSHA said that it had used citations and penalties as workforce performance measures in the past, but said it has now "put a stop to that practice." EPA said that in 1995, it revised its policy to generally reduce or eliminate penalties when

violations are self-disclosed and corrected. In response to the company's concern about the IRS employee's demand for immediate payment, IRS said it did not approve of employees who do not follow IRS procedures that require employees to do their jobs in a professional, ethical, and fair manner.

Examples 22 and 23 in appendix II illustrate the types of concerns companies had about how agencies enforce their regulations and the agencies' responses to those concerns.

Companies Said Regulators Were Not Always Helpful or Knowledgeable

Some companies said regulators were uninformed about the regulations they enforced and did not understand the business practices of the companies they regulate. For example, one company said IRS auditors who conducted an audit of their company in 1994 were not knowledgeable about business accounting practices or IRS rules. Also, some companies said regulators were not very helpful when the companies sought assistance. For example, although the tank car company repeatedly tried to obtain clarification from EPA about the meaning of the term "approaching atmospheric," the company said it was unable to get any assistance from EPA. In another case, officials from the fish farm said they had difficulties getting assistance from DOL on how to interpret the Family and Medical Leave Act (FMLA) regulations when an employee is on leave under FMLA and does not intend to work after the leave period.

Relatedly, officials from some companies said agencies do not always provide companies with sufficient opportunities for input into the rulemaking process or adequately consider the comments they receive during that process. For example, Bank B said that although the bank provided comments on Regulation C and Regulation DD, it did not believe the Federal Reserve addressed its concerns before finalizing the two regulations.

Agencies responded in various ways to the companies' concerns about regulators' lack of knowledge and assistance. In a few cases, the agencies indicated efforts were under way to improve their staffs' knowledge of the industries they regulate. For example, IRS said it was working to develop a highly skilled frontline workforce that is more knowledgeable about different industries. In a response to a concern about lack of assistance, OSHA said it has implemented a number of information-dissemination projects and plans to undertake new initiatives to improve the availability of safety and health data to the public.

In response to the rulemaking concerns, agencies said companies usually get the opportunity to provide comments as a rule is being developed. Also, one agency said that while all comments received are considered, these comments cannot always be incorporated in the final regulation. For example, OSHA said it had been working with stakeholders to identify the most pressing new priorities for agency action and had stepped up its efforts to involve business and labor in the entire regulatory process.

Examples 24 and 25 in appendix II illustrate companies' concerns and agencies' responses about regulators' level of knowledge, the rulemaking process, and the availability of assistance from regulators.

Companies Said Regulations Were Duplicative and Poorly Coordinated

Some of the companies described what they believed were conflicting regulatory requirements from different federal agencies or, in some cases, from the same agency. For example, officials from the paper company claimed that sections of OSHA's pulp and paper standards (29 C.F.R. 1910.261) conflicted with other OSHA regulations, leaving company officials confused about what to do. Officials from this company also said DOT and OSHA had different and conflicting standards for defining corrosive materials. We also heard concerns about overlapping and duplicative regulations between federal and state or local agencies. Multiplex said that EPA required the local sewer district to test the company's sewer effluent—the cost of which was charged to the company—and then the local sewer district required Multiplex to perform the same tests.

In response to the companies' concerns about coordination and duplication issues, several of the agencies' responses indicated that action has been or will be taken to remedy any further or potential confusion about regulatory requirements. For example, OSHA said it had been working closely with EPA to develop uniform process safety management standards to protect workers from accidental chemical releases. Also, some agencies indicated that the companies had mischaracterized the regulations or other factors in the companies' concerns. In response to a company's concerns about the overlap between FMLA and the ADA, DOL said the laws contain differing employee protections that serve distinctly different purposes. However, OSHA officials also said that on July 22, 1996, OSHA published proposed regulations to eliminate duplicate or redundant standards from its rules.

Examples 26 through 29 in appendix II illustrate the companies' concerns and agencies' responses about coordination and duplication issues.

Companies Suggested Ways to Address Regulatory Problems and Improve Relations With Regulators

We also asked companies for suggestions on what government and businesses can do to address their regulatory concerns. Although most of the companies' proposals focused on actions that they believed regulatory agencies and/or Congress should take, they also suggested some steps businesses could take to make federal regulations less problematic.

Companies Wanted Fewer Regulations

Some of the companies said they simply want fewer regulations, or at least a halt in the growth of regulatory requirements. They suggested that the federal government could accomplish these goals by taking the following actions:

- eliminate one old regulation for every new regulation issued,
- review existing regulations for their relevance, and
- eliminate paperwork and other regulatory requirements that are not related to the intent of the underlying statute.

Companies Wanted Assurance That Costs Justify Benefits

Officials from some of the companies said that if the federal government cannot reduce the total number of regulations, at a minimum, they wanted an assurance that the benefits of compliance justify the costs. To do this, officials suggested that regulators do cost-benefit analyses before issuing regulations. Another official said cost-benefit analyses could address the issue of "bad science" underlying some regulations, and could result in agencies' implementing only regulations that have proven benefits. However, another company official said he had difficulty envisioning how a sound cost-benefit analysis could work. He suggested that each regulation should have a sunset date and, before reauthorization, the responsible agency should determine whether the regulation was achieving its original intent.

Companies Wanted Flexibility to Determine How to Comply With Regulations

Some company officials said that regulations should focus more on outcomes than on the processes of achieving the outcomes. According to these officials, one way to achieve this would be to give individual companies the flexibility to determine the best processes to achieve the desired goals. For example, an official from the petrochemical company said:

> ". . . government should move away from the current 'specification based' regulatory process and toward a new approach in which government and business jointly establish performance-based environmental, health, and safety standards. Government and business should both be accountable for achieving measurable, quantifiable objectives. Goals would be accomplished in a stepwise fashion, improving cost effectiveness by allowing parties to learn from what works. Government and business should work cooperatively and share the burden for obtaining information and demonstrating results. A peer review procedure could be used to maintain the quality and integrity of the process. Over time, the process would force industry and regulators toward low-cost, high impact solutions with proven effectiveness. Market-based incentives could be widely used, as there are currently few incentives for business to remedy the environmental impact of its operations. The new paradigm would allow those closest to a problem to solve it in the most cost-effective manner . . . ."

Officials from another company agreed with this assessment, adding that the federal regulatory process could be improved if laws were developed that address general goals and objectives and were of long duration. The officials suggested developing long-term strategies that make laws less susceptible to short-term political whims. Another company official said Congress' tendency to be prescriptive and specific in writing legislation is driven even further by lobbyists on both sides of the issues. The official said that agencies would do a better job of writing sensible regulations if the legislation were less constraining.

Companies Wanted More Assistance and Support From Regulators

Many of the company officials said that regulators should offer companies more assistance as they try to comply with federal regulations. Specifically, the officials said that regulators could

- adopt a partnership approach with companies to help them to comply with regulations,
- serve as consultants to companies,
- provide companies with compliance training,
- support companies that make reasonable attempts to comply with regulations,
- give companies a chance to correct regulatory violations before being penalized,
- hire credible and technically competent staff, and
- use review commissions to assist businesses in compliance with regulations.

Companies Suggested Ways They Could Improve the Regulatory Environment

Although officials of several companies clearly believed that the federal government could make changes to improve the regulatory environment, some officials also believed that companies had a role to play in that regard. They suggested several actions that businesses could take to make regulations less problematic, including the following:

- devote more time to commenting on proposed regulations during the rulemaking process;
- devote sufficient resources to becoming more knowledgeable about regulatory issues;
- ensure that company management and employees are trained to properly administer regulations;
- participate in trade and professional organizations that interact with Congress and federal agencies;
- ensure that top management supports a regulatory compliance strategy;
- modernize and make better use of information processing systems; and
- increase their employees' awareness of the seriousness of complying with federal regulations, the potential for problems related to noncompliance (e.g., an increase in job-related injuries), and the fines that could be imposed on them or the company for failure to comply.

Many of the suggestions from the companies were consistent with the agencies' regulatory improvement goals. For example, several of the agencies said they have, or were planning to implement, active outreach programs that disseminate information to the companies through written communications, seminars, toll-free telephone numbers, and computer bulletin boards. In addition, several agency officials said they are in the process of systematically eliminating outdated and impractical regulations. Two agencies said they were shifting to a results-oriented focus because in the past their agencies focused too heavily on processes and activity. DOL officials said they intend to make greater use of negotiated rulemaking—a process in which representatives of the government and all interested parties, including employers, actually draft the proposed rule for public comment.

Conclusions

The 15 participating companies provided us with a lengthy and varied list of regulatory concerns, the most common of which involved the cost of regulatory compliance. The companies also frequently said that federal regulations were unreasonable or inflexible, paperwork was excessive, regulatory requirements were difficult to understand, and regulators had a "gotcha" enforcement approach.

Many of the regulatory agencies indicated that they were aware of the companies' concerns and, in a number of cases, the agencies said that they were taking or had already taken action to alleviate the problems. In several other cases, the agencies said that the companies' concerns were a function of the statutes underlying the regulatory requirement. However, in many instances, the agencies disagreed with the companies' comments, frequently saying that the companies did not recognize the benefits of the regulations or the companies mischaracterized, misstated, or misinterpreted the regulations involved.

The companies' concerns and the agencies' responses indicate that communications between the companies and the agencies are not always effective. Companies do not seem to have enough information about their regulatory responsibilities, and they may be reluctant to seek that information from regulatory agencies. Agencies, on the other hand, have an array of information about their regulatory requirements; however, they do not appear to be getting the information to companies in such a way that the companies understand what regulations are applicable to them and how to comply with those regulations.

The companies and the agencies had several suggestions to alleviate this communication gap and improve relations between them. Some of these suggestions were consistent with agencies' regulatory improvement goals. For example, the companies indicated they wanted more information made available to them about regulatory compliance. Meanwhile, the agencies said they were using or were planning to implement a number of outreach programs, including seminars, computer bulletin boards, and toll-free telephone numbers. However, the degree to which these various informational mechanisms will improve the flow of communication will depend to at least some extent on whether they are integrated, easy to use, and provided in a manner that businesses are willing to use them.

Overview and Conclusions

Government regulation, particularly at the federal level, has long been the subject of public debate. At times, that debate has been extremely contentious, with opponents and defenders of federal regulatory policy staking out very different positions. Opponents contend that some federal regulations are not needed and those that are needed often have become too burdensome. Therefore, opponents believe agencies' regulatory authority should be limited and closely scrutinized. Those defending federal regulations do not want to unnecessarily impose burdens but contend that federal regulatory standards are needed to provide certain societal benefits, such as safer transportation, cleaner air and water, greater workplace safety, and protection for some individuals and groups.

Nevertheless, a consensus has emerged within government that the federal regulatory process needs reexamination. Both Congress and the executive branch have initiated efforts to improve that process. A number of legislative proposals have been introduced in the 104th Congress to change the federal regulatory process. Several of those changes have been enacted, including new paperwork reduction goals and new judicial review processes. Congress has even made itself part of the regulatory review process by instituting an expedited process to reject agency rules that it finds objectionable. The administration's regulatory reform efforts have addressed a number of areas as well, including eliminating and revising existing regulations; changing the performance measures of agencies and regulators to focus on results, not process and punishment; and working with the regulated community in the development of new regulations.

A great deal of the debate about federal regulation has centered on whether the burdens associated with federal regulations outweigh the benefits that those regulations are intended to provide. A number of attempts have been made to measure the burden of federal regulations. Some of these measures are only indirect indicators of regulatory burden (e.g., the number of regulators and the number of pages in the CFR). Other, more direct measures are of questionable validity (e.g., paperwork burden-hour estimates). For example, one study of the direct cost of federal regulations estimated that their cost to the economy would be $607 billion in 1995. However, the validity of this estimate has been questioned by economists and others.[1] Other studies of regulatory costs within particular sectors of the economy have been similarly criticized.[2] The benefits of federal regulations are generally regarded as even more

[1]GAO/PEMD-95-18BR.

[2]GAO/GGD-94-28.

difficult to measure than regulatory burdens, so measures of those benefits may also be of questionable validity.

In this review, we did not try to measure the overall burdens or benefits of federal regulations. We focused our analysis on a limited number of businesses so that we could better understand the issues and the variables involved in the federal regulatory process. Specifically, we attempted to develop information on the impact of federal regulations on selected businesses by determining (1) which federal regulations the businesses participating in our review and relevant federal agencies believed were applicable to those businesses, (2) the impact (particularly cost but also other effects) the businesses believed those regulations had on them, and (3) the regulations those businesses considered were most problematic and relevant federal agencies' responses to those concerns.

Although our objectives were modest in comparison to those of many previous studies of regulations, we experienced a number of difficulties in conducting this review. First, most of the interest groups we contacted—both critics and defenders of federal regulations—did not provide the names of businesses with whom we could discuss these issues. Some of these groups cited concerns about confidentiality or the priority of other business as the reasons why they would not provide nominees. Second, most of the 51 businesses that we were able to identify and contact through other means refused to participate in our study, frequently citing time and resource constraints. Some of these businesses had publicly criticized federal regulations or regulatory processes. Third, many of the 15 businesses we contacted, which had agreed to participate in the review, did not provide information that they initially indicated that they would be able to provide. For example, although nearly all of the businesses said they could develop a list of applicable federal regulations, none of the businesses provided a complete listing. None could provide comprehensive data on the incremental costs of regulations.

Our experience and the information we were able to collect led us to several conclusions. First, we believe that comprehensive, empirically based data about the cost of federal regulations to individual businesses do not readily exist and could not be developed without a great deal of time and effort on the part of both the regulators and the regulated community. Without such data, the cost of regulations to a business or the economy as a whole can only be roughly estimated. Second, the agencies also said that they are reexamining at least some of the federal regulations and processes that businesses found most problematic. If so, the

businesses may feel some reduction in the burden associated with those regulations in the future. Third, we believe that communication between businesses and federal regulators about which regulations are applicable to particular businesses and how to comply with specific regulatory requirements is not always effective. Finally, although the agencies frequently said that problematic regulations were statutorily driven, some Members of Congress believe agencies sometimes establish regulations that go beyond the intent of Congress. This suggests that an opportunity exists for improved communication between Congress and federal regulators—communication that may occur through recently enacted congressional regulatory review procedures.

Cost of Regulations Is Difficult to Determine

As previously noted, the burden associated with federal regulations is generally considered to be easier to measure than the benefits of regulations. Within the burden category, direct regulatory costs are generally regarded as easier to measure than other types of burden (e.g., negative effects on competitiveness or productivity). Conceptually and logistically, it would seem to be easier to calculate regulatory costs with regard to a single business than for an entire industry or the economy as a whole. However, our work suggests that it is extremely difficult to develop a comprehensive, data-based measure of direct incremental regulatory costs, even for an individual business.

The first step in determining the cost of federal regulations to a business is to identify all of the regulations applicable to that business. Any comprehensive tally of a business' regulatory costs will only be as complete as its list of applicable regulations. Although nearly all of the businesses we contacted said they could develop a complete list of applicable federal regulations, none did so. As we discussed in chapter 2, development of such a list is very difficult, requiring a sophisticated understanding of the circumstances in which federal regulations apply as well as a detailed understanding of a company's business processes and products. The businesses we contacted generally did not have prepared lists of applicable regulations, and most found it difficult to distinguish between federal, state, and local regulations or said they did not have the time or resources to develop such a list. Although it may seem logical to assume that regulatory agencies would be able to easily develop a list of applicable regulations, in many cases the agencies would have to gather detailed information about the companies' business processes and products to determine regulatory applicability.

Another step in determining the cost of regulations to a business is to obtain data on its expenditures that are directly traceable to federal regulatory requirements and estimate its incremental regulatory costs. Because most businesses would have incurred some expenses related to regulatory goals, such as a safe workplace or the prevention of environmental damage, even if no regulations existed, the incremental measure is the most appropriate gauge of a company's regulatory costs. To identify their incremental regulatory costs, businesses must subtract expenses they would have incurred in the absence of regulatory requirements from their total expenditures in such areas as worker safety or environmental protection. However, the businesses we contacted did not collect or retain data on their incremental regulatory compliance costs, probably because there is no business reason for them to do so. The businesses also indicated that they could not develop incremental cost data because they could not say what actions they would have taken or what expenses they would have incurred in the absence of regulatory requirements.

In summary, determining the actual cost of federal regulations to a single company or the economy as a whole requires data—data that the companies we visited did not have and that our work showed would be extremely difficult for them to obtain or develop. The universe of regulations for which cost data should be gathered was difficult for the companies to identify and incremental cost data could at best be roughly estimated because the businesses could not determine what expenses they would have incurred if current federal regulations did not exist. We believe that these problems are unlikely to be unique to the companies we visited. Therefore, unless the breadth of companies' regulatory responsibilities is made clear and the incremental costs of regulations can be accurately gauged, measures of the cost of regulations to a company or the economy as a whole should be viewed as estimates, not precise measures of regulatory burden. The more these estimates rely on empirical data and sound assumptions, the greater value they hold for decisionmakers. Public policymakers should use regulatory cost estimates only with a clear understanding of their underlying conceptual and methodological bases.

Agencies Said Many Regulatory Concerns Are Being Addressed

The agencies' responses to the companies' regulatory concerns also indicated that many of the regulations or regulatory processes underlying those concerns were being reviewed or had recently been changed. Listed below are some agencies' responses to companies' concerns.

- EPA said it had proposed allowing oil recovered from collocated and/or commonly owned organic chemical plants to be exempt from its RCRA hazardous waste regulations.
- Treasury officials said their agency was issuing a proposed regulation that would dramatically reduce the reporting obligations of banks under the Bank Secrecy Act.[3]
- DOL, IRS, and PBGC said that they had made a number of regulatory changes to make it easier for businesses to establish pension plans. They also said that new pension simplification proposals announced by the President in June 1995 would, if enacted, simplify the rules even further.[4]
- EPA said it was reexamining its data needs and ways to improve its data gathering systems for the RCRA hazardous waste management program. The agency also said that, for certain companies, it had completed a number of actions that significantly reduced the reporting burden associated with the EPCRA Form R report, thereby reducing companies' reporting requirements from nine pages to two pages.
- EPA said it has published guidelines for reducing or eliminating penalties when violations are self-disclosed and corrected. EPA also said that its policy is to generally provide penalty reductions for such matters as good faith efforts to comply, ability to pay, and other factors.

The number of times that the agencies indicated that they were taking action or had already taken action regarding areas of concern to the companies suggests that a variety of regulatory reform initiatives are under way within the federal government. As noted in chapter 1, every president in recent years has attempted to reform the regulatory process, and both the Clinton administration and Congress have recently taken a number of reform actions. The administration's National Performance Review and other initiatives in this area, such as those aimed at eliminating certain reporting requirements and reducing penalties for self-disclosed violations of certain regulations, are part of this larger effort. Also, Congress' recent assumption of a role in the review of proposed regulations also presages possible modification of regulations that Congress concludes are uneconomic or otherwise objectionable.

We have not examined the initiatives the agencies described to determine whether they have been implemented or whether they will actually afford

[3]Treasury officials later said that Treasury (1) issued an interim regulation on April 24, 1996, that eliminates the requirement that banks report all transactions in excess of $10,000 between banks and certain classes of exempt persons and (2) estimated the change would reduce filings by up to 2 million forms annually.

[4]IRS officials later noted that many of these proposals were enacted in the Small Business Job Protection Act of 1996.

the businesses we talked with in this study the kind of regulatory relief they sought. If the changes the agencies described are made, the businesses may see a reduction in at least some of the regulatory burden that they viewed as most problematic.

Communication Between Businesses, Regulatory Agencies, and Congress Is Not Always Effective

The information that we collected regarding applicable federal regulations and what the businesses viewed as their most problematic regulations strongly indicated that communication between businesses and federal regulatory agencies has not always been adequate to meet their respective needs. Both businesses and agencies need information to determine which regulations are applicable to particular companies—information that both parties said would require substantial time and resources to obtain. However, agencies have the information that businesses need, and vice versa; what seems to be lacking is an effective exchange of that information. Poor communication can also lead to businesses' misunderstanding regulatory requirements, which can in turn lead to compliance problems or unnecessary expenditures. Finally, opportunities appear to exist for improved communication between Congress and federal regulatory agencies regarding the consistency of regulations with their statutory underpinnings. Recently enacted regulatory review procedures may provide the vehicle for that communication.

Determining Applicability of Regulations Difficult Without Communication

The information that we obtained from federal regulatory agencies on the factors that determine the coverage of their regulations and on the regulatory compliance responsibilities of two of the companies in this review—Minco and Zaclon—clearly indicated that different businesses can have substantially different compliance responsibilities. Most of the agencies said that companies' compliance responsibilities are highly situational, dependent on such factors as the companies' size, location, and decisions they make in the course of conducting their business (e.g., whether to have an underground storage tank or to have a qualified retirement plan). As a result, most of the regulatory agencies we contacted said they needed a great deal of information about a business to identify the regulations applicable to that business. Businesses also need a great deal of information about the factors that trigger regulatory coverage to identify their own regulatory compliance responsibilities. However, both the agencies and the businesses told us they could not devote the time and resources needed to develop the information they need to make those determinations.

Interestingly, each party in the regulatory process already has the information the other party needs. Agencies know about their regulations and what characteristics of companies can determine the applicability of those regulations, but are unfamiliar with individual companies' operations and, therefore, would need to expend substantial amounts of time and energy learning about them to provide regulatory counsel. Businesses know how their organizations are configured regarding relevant regulatory determinants, but they do not always understand those determinants and, therefore, may not know about all of their regulatory compliance responsibilities. More effective communications could help bridge the informational gap between businesses and federal regulatory agencies and, as a result, could help achieve the agencies' regulatory goals.

Poor Communication Can Lead to a Misunderstanding of Regulatory Requirements

Federal agencies' comments regarding the companies' most problematic regulations reinforced our conclusion regarding the adequacy of communication between those agencies and companies about regulations. In a number of cases, the agencies said that the companies had misstated or misinterpreted the statute or regulatory requirement involved. In some of those cases, the agencies said the companies were incurring unnecessary expenses because they had misconstrued the requirements or had taken steps that the regulations did not necessarily require. Listed below are examples of inadequate communication between the agencies and companies.

- Officials from Bank B said that some regulations required banks (but not investment firms) to disclose the risks that consumers face regarding certain investment products, and that about a quarter of the advertising time Bank B purchased was used to publicize these risks. However, FDIC officials said there is no regulation requiring the disclosure of investment risks when advertising nondeposit investment products.
- Hospital officials complained about a "costly rule change" that limits helicopter pilots to 12-hour schedules during a 24-hour period, thereby forcing the hospital to hire two additional pilots at a cost of $100,000 per year. However, FAA officials said that the duty time rules had not recently changed and that no 12-hour shift limit existed.
- Officials from the paper company said OSHA lead exposure standards require even routine maintenance workers to put on personal protective equipment and be "fit tested," a process the company said was extremely expensive. However, OSHA said the regulations the company cited did not apply to the type of routine maintenance activities the company described.

- Bank B officials said that BSA requires banks to complete a report on cash transactions of $10,000 or more while the depositor is still in the bank. However, Treasury officials said that once the bank has verified certain basic information about a customer, it can rely on this information in the future and need not require the customer to remain on-site each time a reportable transaction is conducted.
- Bank A officials complained about an FDIC requirement that all banks—even small ones—should have a detailed contingency plan. However, FDIC officials said the bank was referring to a policy statement by the Federal Financial Institutions Examination Council, not a statutory or regulatory requirement. The FDIC officials said the policy statement sets forth areas for management to consider when developing a contingency plan but sets no requirements.

Therefore, communication problems in the regulatory arena can result in misunderstandings of responsibilities and, ultimately, compliance problems and unnecessary costs.

One of the reasons that government regulators and businesses have not always communicated effectively may be the nature of agencies' regulatory informational mechanisms. A business' regulatory compliance responsibilities can originate from any of the several dozen federal regulatory agencies, each of which separately provides information about its own regulatory programs. Therefore, although the agencies have a dizzying array of brochures, toll-free numbers, and other methods to inform businesses of their regulatory requirements, a business attempting to determine its governmentwide compliance responsibilities may have to contact each agency to obtain this information. In some cases, multiple agencies have responsibility for implementing a single statute, with each agency specifying its own functions and requirements.

Regulatory compliance responsibilities may also differ within a particular agency. For example, EPA regulatory requirements originate from several different program units within the agency (Air and Radiation; Water; Solid Waste and Emergency Response; and Prevention, Pesticides, and Toxic Substances). Each of these units has its own informational mechanisms. EPA has established an Office of the Small Business Ombudsman and compliance assistance centers for certain industry sectors for the purpose of consolidating information from these different program offices. However, we did not evaluate the effectiveness of the Office or centers to determine whether they eliminate the need for a small business or a company within a covered industry to contact the program units directly.

Also, these offices by definition do not cover large businesses or companies in industries not covered by the centers.

We have not thoroughly analyzed agencies' regulatory informational mechanisms. However, the information that we obtained in this review suggests that the federal government's overall approach to the dissemination of regulatory information is fragmented and may be contributing to ineffective communication between regulatory agencies and the business community. We recognize that there is a natural tension that exists between regulators and those in the regulated community and that no amount of information or communication will completely eliminate disagreements and compliance problems. However, a better understanding of which regulations are applicable to a business and the requirements those regulations impose on the business is fundamental to an improved relationship between these parties.

Agencies have recently taken steps to make information about their regulations more centralized and accessible to businesses. For example, the U.S. Business Advisor and the Asbestos Advisor programs are designed to make it easier for businesses to determine their federal regulatory compliance responsibilities. Other steps agencies have taken to be more "user friendly" include (1) the previously mentioned EPA Office of the Small Business Ombudsman and EPA's compliance assistance centers and (2) OSHA's consultation program, which offers free, on-site expert assistance to small employers in all 50 states. Congress has also attempted to make information more available to businesses. The Small Business Regulatory Enforcement Fairness Act requires agencies to, among other things, publish "small entity compliance guides," explaining the actions a small business is required to take to comply with a rule or group of rules. These kinds of efforts may help improve communication between federal regulatory agencies and regulated businesses.

Communication Between Congress and Agencies Can Help Address Regulatory Concerns

Although virtually all regulations have some kind of statutory basis, the extent to which particular regulatory requirements are driven by the underlying statutes varies. Some statutes grant agencies the authority to issue rules within broad parameters whereas other statutes provide agencies with little discretion regarding what should be regulated and how the regulations should be developed and implemented. The federal regulatory agencies responding to the businesses' concerns about problematic regulations frequently said that the specific requirements the

businesses were concerned about were statutorily driven. Listed below are examples of statutorily driven business concerns.

- IRS officials said that the requirements (1) to conduct a nondiscrimination test in the administration of a 401(k) thrift savings plan and (2) to audit the plan were required by statute rather than by IRS regulations.[5]
- HCFA officials said that the frequent changes in Medicare and Medicaid billing rules were, in a number of situations, "due to enhancements or changes made by Congress."
- FDIC officials said that the level of detail and the number of changes in its call reports were driven by, among other things, statutory requirements.
- EEOC officials said that its record retention requirements vary because they are tied to the different discrimination complaint filing periods established in each civil rights statute.

We did not review the regulations and statutes that the agencies cited to determine whether the regulatory provisions of concern to the companies are required by the underlying statutes. If those provisions are required by the statutes, agencies will not be able to revise them significantly without changes in the underlying legislation. As previously noted, several agencies said they were recommending statutory changes to address some of the companies' concerns. In doing so, agencies can communicate to Congress the degree to which their regulations are required by the statutory language that Congress enacted.

However, some Members of Congress clearly perceive that federal regulatory agencies have sometimes established regulatory requirements that go beyond the intent of Congress when it passed the underlying statutes. This perception in part led to the establishment of expedited congressional regulatory review procedures through the Small Business Regulatory Enforcement Fairness Act of 1996. If the regulatory provisions that are of concern to companies are, in fact, not required by the statutes, the agencies have a responsibility to address those concerns on their own and not shift the responsibility to Congress. If congressional committees of jurisdiction or individual Members of those committees believe that an agency's regulations do not reflect the intent of the underlying statute or its legislative history, those committees or Members can communicate their concerns to the agencies informally. If Congress as a whole believes an agency's regulation is inconsistent with the intent of the underlying

[5]IRS officials later noted that the recently enacted Small Business Job Protection Act of 1996 contains pension simplification proposals similar to those announced by the President in June 1995 that include new design-based safe harbors methods that employers will be able to adopt in lieu of having to conduct the nondiscrimination test.

statute, Congress can amend the statute to reflect current congressional intent and, in effect, require the agency to amend its regulation.

The expedited congressional regulatory review procedures in the Small Business Regulatory Enforcement Fairness Act may also serve as a vehicle for that communication—at least for new or revised regulations. If Congress believes a new or revised regulation is inconsistent with the intent of the underlying statute, it can pass a resolution disapproving the rule. On the other hand, Congress can allow regulations to take effect if it believes that a rule is in keeping with statutory intent. Although no substitute for straightforward discussions between agencies and Congress, the congressional review procedures in the act have the potential to lead to a better understanding between major players in the federal rulemaking process.

Business Interview Guide: Instructions and Data Collection Instrument

GAO

United States General Accounting Office
General Government Division
Federal Management Issues

March 1, 1995

REGULATORY BURDEN

Business Interview Guide

BUSINESS INTERVIEW GUIDE
INSTRUCTIONS FOR BUSINESSES

GAO is conducting onsite interviews with selected businesses to obtain information regarding the impact of federal regulations. The questions GAO is asking these businesses are attached. This interview guide provides information that affects how those questions should be answered. The questions GAO will ask are in five main sections:

I THE AGGREGATE LIST OF REGULATIONS
II THE AGGREGATE IMPACT OF REGULATIONS
III THE MOST PROBLEMATIC REGULATIONS
IV THE GOVERNMENT'S AND BUSINESSES' ROLE
V THE BENEFITS OF REGULATIONS

I. THE AGGREGATE LIST OF REGULATIONS

Prior to the meeting with GAO staff, businesses are requested to develop a written listing of all (or as many as can be identified) of the federal regulations with which they must comply as of the date of the interview. While the name of specific regulations may be difficult to cite, this list should, at a minimum, cite the major federal statutes governing the regulations. For example, in the area of workplace regulations, the list might include the following:

Labor Standards:	Fair Labor Standards Act, Davis-Bacon Act, Service Contract Act, Walsh-Healy Act,...
Employee Benefits:	Employee Retirement Income Security Act (ERISA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Family Medical Leave Act,...
Civil Rights:	Title VII of the Civil Rights Act of 1964, Equal Pay Act, Age Discrimination in Employment Act, Americans With Disabilities Act,...
Health and Safety:	Occupational Safety and Health Act, Mine Safety and Health Act, Drug Free Workplace Act,...
Labor Relations:	National Labor Relations Act, Railway Labor Act,...
Employment:	Immigration Reform and Control Act (IRCA), Worker Adjustment and Retraining Notification Act (WARN), Veterans' Reemployment Rights law,...

Other categories of regulations would likely include environmental regulations, tax regulations, and so on. It is not necessary to cite the specific section of the U.S. Code or of the Code of Federal Regulations. However, if specific citations are known, please include them.

Regulations to Include/Exclude

Please do not include any regulations that have been proposed but have not been published as a final rule. However, any regulations that have been made final but have not yet taken effect should be included. For example, if an agency published a final rule on July 1, 1994, but the rule does not take effect until July 1, 1995, you should still list the rule in your aggregate listing.

Questions regarding state and local regulations are included in this section to obtain a context within which federal regulations operate. In some cases, state or local regulations may be mandated by federal regulations or statutes, and therefore may be difficult to distinguish from federal regulations. Include as federal, any state or local requirements you believe are mandated by federal law or regulation.

II. THE AGGREGATE IMPACT OF REGULATIONS

In this section, businesses are requested to provide information on the aggregate impact on their businesses of all federal regulations. "Aggregate impact" can take a variety of forms and can be measured in a variety of ways. One obvious and commonly used measure of impact is the incremental dollar cost of regulatory compliance. In fact, the bulk of this section is devoted to capturing businesses' incremental compliance cost (see below). However, we are also interested in other effects of federal regulations on businesses. Examples of non-cost aggregate effects could include difficulties in starting a new business, difficulties in expanding an existing business, loss of competitive advantage, delays, and so on. Please note any cost or non-cost effects of regulations in your answer to question 1 in this section.

Incremental Cost of Regulations

We would specifically like to obtain data on businesses' incremental costs associated with federal regulatory compliance during 1994. We define incremental cost as any costs businesses incur that would not have been incurred were it not for federal regulatory requirements. Any costs that would have been incurred in the normal course of business should not be included. For example, if a business would have taken certain actions to control pollution regardless of federal environmental requirements, the cost of those actions should not be included as an incremental cost.

We would like to collect those incremental costs in total and for each of three cost classifications: (1) capital costs, (2) labor costs, and (3) other costs. These categories are defined as follows:

1. Capital Costs: Actual expenditures, rather than the depreciation, for any property, plant, or equipment required to bring the company into compliance with a federal regulation.

2. Labor Costs: Actual expenditures (pay and benefits) for salaried or hourly employees incurred as a consequence of federal regulations. These expenditures could include labor costs associated with conducting required inspections, completing required paperwork, conducting required training courses, or meeting with government personnel regarding federal regulatory issues.

3. Other Costs: Any other costs associated with complying with federal regulations. These could be costs for performing activities necessary to comply with regulations that affected how a manufacturing or operating function is carried out, costs (material and overhead) for modifying a product to meet a regulatory requirement, or research and development costs to determine product or process modifications to meet regulatory standards.

If this categorization scheme is not workable for you as a way to break down your incremental compliance costs, you may use some other system.

Costs should have a reasonable and verifiable basis for measurement. We would also like to collect (or at least review) any documentation of these costs. Businesses should use their accounting and financial records as their primary source of cost data.

Cost items that should not be included

Certain items should not be included in these cost tabulations. As noted above, we are interested in the incremental cost of regulations on businesses-- costs that businesses would not have borne were it not for federal regulations. Therefore, do not include any costs that you would have incurred even if the federal regulations were not there.

Other items that should not be included in the tabulations include:

- Payments to the federal government. Do not include payments for income and excise taxes, foreign trade tariffs and import duties. Also, do not include fines resulting from noncompliance with regulations.

- Costs of overcompliance. Exclude any costs incurred to meet a more stringent criterion than that required by a federal regulation. Such costs may include actions based on competitive factors, professional standards, employee welfare or the need to

comply with a state or local regulation that was more stringent than a federal regulation.

- Costs not directly attributable to compliance actions. To be directly attributable, a cost element must be essential to accomplish compliance action. For example, if a business is required to widen a bathroom door to accommodate employees with disabilities and the cost of the modification is $1,000, any expenditures over that amount (e.g., spending $2,000 to enhance the appearance of the doorway) should not be considered part of the business' incremental costs.

- Costs of secondary effects. "Secondary effects" include such costs as loss of productivity, investment disincentive, international competitiveness, lost opportunity, construction delays, inflation, resource misallocation and shortage of supplies. Although secondary effects of regulation are real and, in many instances, cause substantial costs, their measurement is much more difficult than incremental costs and will be captured by obtaining businesses' views and cost estimates separate from incremental cost data.

- Costs associated with nonfederal regulations. Nonfederal regulations are those initiated by state or local governments or driven by professional standards. Any costs associated with these nonfederal requirements should not be included.

- Lobbying costs. Do not include any costs associated with actions trying to influence legislative or executive branch personnel to change existing or proposed rules.

Time period

Cost data should be accumulated for only 1994. While calendar year 1994 is our primary focus, businesses may use the latest fiscal year for which data are available and readily retrievable.

Certain cost information for other periods may be reflected separately from the total when necessary and appropriate to accurately reflect regulatory compliance costs.

Regulations covered

Cost data should reflect costs associated with the regulations that were identified in the "aggregate list of regulations" in section I above. Therefore, compliance costs should be for any regulations that have been made final, even those that have not yet taken effect. For example, if a rule is published in final on July 1, 1994, and becomes effective January 1, 1995, any costs a business incurs between July 1 and January 1 (e.g., capital expenditures, training, hiring additional staff) in order to meet the compliance standards should be included.

The incremental compliance cost data should not reflect costs associated with any regulations that have been proposed but have not been published as a final rule. For example, if a regulation has been published as a proposed rule and the agency is accepting comments before final publication, do not include any costs incurred before the rule has become final. Businesses may, however, include costs associated with general information gathering regarding proposed rules (e.g., subscriptions to the Federal Register or other information sources).

Net costs

Businesses should deduct from the incremental costs any cost reductions that result from complying with a regulation. Such reductions include any income from sales of a by-product that resulted from a manufacturing process or an operation required in order to comply with a regulation. However, cost reductions do not include benefits obtained from the existance of regulations such as (1) income a business realizes from making a product so that its customers can comply with regulations, (2) investment tax credits, or (3) other income tax benefits. For example, a company would deduct from the incremental costs of complying with the Clean Water Act, sales of materials recovered by equipment installed to meet discharge requirements. A company would would not deduct sales of new product it developed to meet a compliance need of a customer.

III. THE MOST PROBLEMATIC REGULATIONS

We define the term "problematic regulations" broadly to include any federal programs, regulations or laws that the business views as causing it the greatest problems or difficulties in general. Please try to focus on the top three to five federal regulations that the business considers most problematic. The most problematic regulations faced by the business may be in one or more areas (e.g., paperwork, recordkeeping, resource management, investment, contracting, compliance, etc.) and may be viewed as problematic for a variety of reasons such as being too costly, too intrusive, too vague, unnecessary, duplicative, ineffective, inefficient, or overly burdensome. Problematic regulations would include those regulations the business would most like to see changed or eliminated.

Please note, however, that asking about problematic regulations is not necessarily the same as asking what regulations are the most costly, since a costly regulation may not be considered problematic if it is also viewed as being very beneficial (i.e., worth the cost, or is already a part of business operations). If cost is a reason for the regulation being considered problematic, please provide the incremental costs associated with its compliance, to the extent possible, using the incremental cost principles described above.

IV. THE GOVERNMENT'S AND BUSINESSES' ROLES

These questions seek views on actions that the government or businesses could take, or have taken, which would reduce the "problematic" nature of certain regulations or that can improve the functioning of regulatory programs as a whole. Please specify, if possible, whether the source of the requirement, process or procedure being addressed is in federal statute or law, or whether it is contained in a federal regulation or a regulatory agency's policy. It may be useful to consider your experience or knowledge of federal rulemaking processes or enforcement or audit procedures. Also, please be as specific as possible about what actions should be taken, how and by whom (e.g. the President, Congress, Office of Management and Budget (OMB), Environmental Protection Agency (EPA), etc.) to implement your suggestions.

Please suggest practical solutions, improvements or actions you believe could or have worked for your business. If you are aware of things other businesses or organizations have done or are doing to improve regulations, regulatory compliance processes or rulemaking processes, please provide a brief description of the activity and names and phone numbers of appropriate business or organization representatives GAO could contact for more information.

Businesses are requested to provide appropriate documentation for answers to all questions concerning costs or for any question for which it is reasonable to expect that a business should have some data to support its views. If time permits, GAO's evaluators may request on-site inspection of business operations, records, or workplace activity to verify and better understand answers to key cost estimates or other questions.

V. THE BENEFITS OF FEDERAL REGULATIONS

Businesses should note any tangible or intangible benefits and provide applicable documentation if possible. Beneficiaries of federal regulation could include the company, its employees, its customers, the community, the environment, special interest groups, etc. Businesses should also consider as benefits such things as cost reductions that result from complying with a regulation (see incremental cost principle No. 8 above). Such reductions would include the net income derived from sales of a by-product of a manufacturing process or an operation required in order to comply with a regulation. Other benefits could include those obtained from the existence of regulations, such as revenues from new products created by the necessity for customers to comply with regulations, investment tax credits or other income tax benefits and federal industrial support programs (e,g., federal research and development or credit programs).

BUSINESS INTERVIEW QUESTIONS

I. THE AGGREGATE LIST OF REGULATIONS

NOTE: Before answering these questions, please compile a list of all of the federal regulations with which you must comply. (See instructions.)

1. Does your aggregate list of regulations cover all the federal regulations with which your business must comply? If not:

   a) What percent of all the federal regulations would you estimate are covered by this list?

   b) In general, what types of regulatory requirements are not included?

2. How did you identify the regulations listed?

3. Of all the regulations with which you must comply--federal, state, and local--, please estimate the percentage of the total number of regulations represented by each level of government. What percent of all regulations originated with the federal government? What percent originated at the state government level? What percent originated with local governments?

4. Of all the regulations with which you must comply--federal, state, and local--, please estimate the percentage of the total aggregate effect or impact of all regulations represented by each level of government. What percent of the aggregate effect originated with the federal government? What percent originated at the state government level? What percent originated with local governments?

5. Of all the regulations with which you must comply--federal, state, and local--, please estimate the percentage of the total cost of all regulations represented by each level of government. What percent of the total cost originated with the federal government? What percent originated at the state government level? What percent originated with local governments?

6. Which level of government's regulations--federal, state, or local--are the most problematic? Why? Which level's regulations are least problematic? Why?

II. THE AGGREGATE IMPACT OF REGULATIONS

1. There are a number of ways the aggregate effects of regulations could be described. How would you describe the aggregate effects of all the regulations with which your business must comply?

2. Certainly one way to describe the aggregate effect of regulations on a business is cost. What were your business' aggregate incremental costs of complying with federal regulations during 1994 in total and for each of the following cost classifications. Please describe what cost elements are included in each cost classification, how the estimates were developed, and provide appropriate documentation. **(See instructions on incremental costs.)**

Cost Classification	Costs ($)	% of Total for Class
Capital Costs	_____	_____
Labor Costs	_____	_____
Other Costs	_____	_____
Total Costs	_____	_____

3. Which federal regulations account for most of these incremental regulatory costs?

4. In addition to these incremental regulatory costs, are there other costs your business has incurred in complying with federal regulations (e.g., reduced ability to adopt innovative business practices, construction delays, loss of productivity, loss of competitive advantage, difficulties in expanding your business)? If so, please describe and provide any data.

III. THE MOST PROBLEMATIC REGULATIONS

1. Which federal regulations do you regard as the most problematic for your business? Why do you consider them problematic (e.g., cost, complexity, vagueness, mode of enforcement)?

2. For each of those problematic regulations listed because of their cost, please provide your incremental costs in total and for each of the following cost classifications. Please describe what cost elements are included in each cost classification, how the estimates were developed, and provide appropriate documentation. **(See instructions on incremental costs.)**

Cost Classification	Costs ($)
Capital Costs	_____
Labor Costs	_____
Other Costs	_____
Total Costs	_____

3. What proportion of your business' total incremental regulatory compliance costs reported above would you estimate are attributable to these problematic federal regulations?

IV. THE GOVERNMENT'S AND BUSINESSES' ROLE

1. For the regulations you consider problematic, what specific changes would you recommend the government make to correct or mitigate these problems?

2. In addition to the changes with regard to problematic regulations, are there other specific changes you would make:

a) to any federal laws, regulations, or policies, and/or

b) to the processes used to promulgate, implement, and enforce these laws, regulations or policies.

3. In general, what can government (i.e., Congress, OMB, federal agencies) do to improve the federal regulatory process?

4. Is there anything that your business has done to try and help it manage the regulatory requirements it faces or correct/mitigate regulatory problems? If so, please describe. Did those actions help?

5. Do you know of anything that other businesses have done to try and help manage or correct regulatory problems? If so, please describe. Did those actions help?

6. What characteristics do you believe distinguish successful compliance strategies in a business like yours (e.g., management commitment, resources, trained personnel, etc.)?

7. Have there been any efforts by your trade association or other similar organizations to try and help your business or similar businesses to manage their regulatory requirements or correct/mitigate regulatory problems? If so, describe. Did those actions help?

V. BENEFITS OF FEDERAL REGULATIONS

1. What benefits, if any, does your business, its employees, the community or others derive from federal regulations?

2. Did your business derive any net income from sales of a by-product of a manufacturing process or an operation required in order to comply with a regulation (and deducted from the incremental cost estimates above)? If so, how much income was derived in 1994?

3. What federal income tax, investment tax or industrial support benefits did your business receive in 1994?

4. Are there any other benefits your business derived from the existence of federal regulations?

Companies' Concerns About Regulatory Issues and Agencies' Responses

We asked each of the 15 companies participating in our review to identify which federal regulations they regarded as most problematic. The companies provided us with more than 100 examples of regulatory concerns. We grouped those concerns into the following 10 broad themes:

(1) Compliance with a regulation was costly and/or those costs outweighed the benefits provided by the regulation.

(2) The compliance costs associated with a regulation affected the companies' competitiveness.

(3) The regulation at issue was unreasonable (e.g., it was not scientifically based).

(4) The requirements associated with a regulation were difficult to understand, either because of the technical language involved or because the requirements keep changing.

(5) Certain regulatory requirements were unnecessarily rigid or inflexible.

(6) The paperwork or process requirements associated with a regulation were excessive and costly.

(7) The penalties imposed on companies for noncompliance were too severe.

(8) Regulators were overly deficiency-oriented or had a "gotcha" enforcement approach.

(9) Regulators lacked knowledge of industries and provided little assistance to businesses trying to comply with the regulations.

(10)Regulations from different agencies or levels of government were poorly coordinated or duplicative.

We asked the agencies responsible for the regulations mentioned in the companies' concerns to respond to each one. The agencies' responses to the concerns varied greatly.

This appendix highlights many of the examples from the companies and agencies.

Costly Compliance and Cost-Benefit Issues

This section includes examples of (1) companies' concerns about regulatory compliance being too costly and costs not always justifying the benefits and (2) agencies' responses to these concerns.

Company Example 1

Officials from a petrochemical company said that the benzene emissions standards under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) impose substantial costs on businesses. However, these officials said that the relatively small benefits the standards produce are outweighed by unintended consequences. The officials said the Environmental Protection Agency (EPA) estimated that employers' compliance costs would be $200 to $300 million, but they said petroleum refiners alone have spent $2 billion during the compliance period from August 1991 through December 1994. They said the petrochemical company incurred significant capital expenditures to enclose refinery sewer and treatment systems, and the standard requires a tremendous amount of ongoing maintenance, inspection, and recordkeeping. Regarding benefits, the officials said that a conservative EPA risk model showed in 1989 that less than one case of leukemia would be prevented annually due to controls on refineries and chemical plants. However, they said that the danger of enclosing flammable mixtures of hydrocarbon gases has been shown to pose a greater risk than the calculated reduction in cancer risk. The petrochemical officials said EPA's revised model reportedly shows no justification for the rule to exist.

Agency Response 1

First, EPA officials said they disagreed with the petrochemical company's portrayal of the costs and benefits associated with this regulation. According to the officials, EPA's Regulatory Impact Analysis for the benzene waste air regulation estimated the nationwide capital cost for the rule to be $250 million, with total annual compliance costs estimated at $87 million. The officials said the petroleum refiners' compliance cost estimate of $2 billion was made before EPA's amendment of the benzene waste rule in 1993, and so is not relevant to the rule currently in force. Furthermore, they said the industry estimate of $2 billion greatly overstated costs attributable to the prior rule because (1) it was based on an extrapolation from a few facilities and (2) it improperly assumed the need to control many units that were already in compliance.

EPA officials said many companies incurred higher costs than the agency estimated because some companies coordinated compliance with this rule with requirements under two other environmental laws—the Resource

Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). The officials said the cost of these coordinated actions substantially exceeded the cost attributable to the benzene waste rule alone.

Second, EPA officials said the 1989 EPA risk estimate referred to in this example was based on the limited data that were available during development of the benzene waste regulation. They said subsequent sampling by industry found much more benzene in waste emissions than EPA had estimated in 1989, substantially increasing risk reduction under the rule. Moreover, EPA officials said controlling benzene emissions provides additional benefits. For example, they said controlling benzene emissions significantly reduces emissions of at least nine other hazardous air pollutants, as well as volatile organic compounds that are a key component of ground-level ozone. EPA officials said ground-level ozone, commonly known as smog, causes respiratory and other problems in people living in many American cities. They said that since many facilities use multimedia compliance approaches, additional benefits will also accrue from reducing pollutant emissions to other media.

Third, with regard to the explosion hazard issue, EPA officials disagreed with the company's comments that the benzene waste rule increases risk. The officials said the rule would have the opposite effect. For example, they said before the rule was implemented many systems were open to the atmosphere, a condition that renders flammable the mixtures of hydrocarbon gases in the vicinity. The officials also said the rule now requires companies to enclose waste management operations so that air, a key component of flammable mixtures, is kept out of the system, thereby reducing the danger.

Finally, EPA officials disagreed that there is no justification for the rule. They said that although industry modeling with EPA's revised Human Exposure Model and the 1989 data show the risk of benzene exposure to be less than EPA estimates, it is not sufficiently different to affect a decision about whether the rule is justified. They said this is particularly so in light of the more recent data (previously discussed) from industry sampling showing higher benzene content in waste.

Company Example 2

Representatives of the fish farm said that the Internal Revenue Service's (IRS) rules on how to account for the capital costs of company construction projects done by the firm's employees are complex and costly. They said before a 1986 change in the tax code, indirect costs (e.g.,

telephone costs associated with the construction project) could be treated as a business expense and, therefore, could be deducted from that year's taxes. They also said that after 1986, indirect costs were required to be included as a capital expense, and could only be deducted over a long period of time. The fish farm representatives said identification of indirect expenses associated with such construction projects is time consuming and expensive. In the end, they said, the company had to pay higher taxes because their deductions decreased and taxable income increased.

Agency Response 2

IRS officials agreed that capitalizing indirect costs under section 263A of the Uniform Capitalization Rules is time consuming and expensive. However, they said that Congress imposed this requirement in the Tax Reform Act of 1986. The officials said section 263A of the act (1) provides a series of rules for manufacturers, construction contractors, and taxpayers who produce property for their own use and (2) minimizes differences in tax treatment of costs for purchased and self-constructed assets. They said Congress clearly intended that the effect of this requirement would be a decrease in the taxpayer's current deductions and a corresponding increase in taxable income.

IRS officials said the Service has taken steps to minimize the burden of complying with these rules. For example, they said some taxpayers may use a simplified method to determine the additional costs under section 263A that must be allocated to certain self-constructed assets used in the taxpayer's business and not held for sale to customers. IRS officials said the fish farm representatives should carefully assess the applicability of this regulation to the company.

Company Example 3

The paper company's officials said that compliance with the Occupational Safety and Health Administration's (OSHA) guarding[1] provisions for their machinery is very expensive, and that retrofitting their existing machines will cost between $250,000 and $300,000 per machine. The officials also said that the time and attention spent on guards is far out-of-proportion to the benefits gained. For example, they said their injury logs indicate that fewer than 1 percent of all injuries involve the lack of guards. The officials also said that instead of spending money on guards for the existing process, which does virtually nothing to improve employee safety, it would be better to invest in developing ways to keep people out of the paper-threading process entirely.

[1]Machine guards are devices put on machines to prevent injury to the machine operators.

Agency Response 3

OSHA officials said it is unclear why this company would need to retrofit existing equipment to meet safety and health standards that have been in effect for more than 20 years. They said the pulp and paper industry standards (29 C.F.R. 1910.261) were originally established by the pulp and paper industry in 1969; they became OSHA rules in 1971. Therefore, they said that only companies that have been out of compliance with the standard for years would need to retrofit their equipment at this point.

OSHA officials disagree with the company's assertions that the cost of the machine guards is out of proportion to the benefits. They said machine guards have been consistently proven to provide essential safety protections to workers and substantially reduce the risk of serious injuries. While they acknowledged the company's suggestion that removing workers entirely from the paper-threading process may reduce the likelihood of injuries, the officials pointed out that the proposal would not protect workers who perform maintenance and servicing duties from being injured by unguarded machinery.

OSHA officials said they recognize the need to update the pulp and paper industry's standards to address new technology and ensure consistency with more recent OSHA standards. However, until the standards are updated, the officials said employers in the paper industry have the option to comply with certain provisions of the machine-guarding standards (29 C.F.R. 1910, Subpart O) and lockout/tagout standards (29 C.F.R. 1910.147) in lieu of the outdated provisions addressing similar hazards in 29 C.F.R. 1910.261. They also said that OSHA's variance process allows firms to develop and implement alternative methods of protecting employees if they can show that the alternative provides as much protection as required by the standards.

Company Example 4

The hospital's officials said the Federal Aviation Administration (FAA) instituted a costly rule change involving the shift lengths of helicopter pilots. After several helicopter crashes raised safety concerns, the hospital said FAA limited pilots' shift length to 12 hours during a 24-hour period. They said that prior to this rule change, pilots had been able to work 24-hour shifts as long as they had a minimum of 8 hours of rest during the 24-hour shift. The officials said that, as a result of this rule change, the hospital had to hire two additional pilots at a cost of $100,000 per year. The officials questioned the net safety gains of this policy change and the basis, if any, for the policy change.

Agency Response 4

According to FAA officials, the duty-time rules for hospital emergency medical evacuation service pilots as described in the regulation have not changed, and the hospital is not required to limit pilots to 12-hour shifts. The officials said an evacuation service pilot must receive at least 8 hours of rest during any consecutive 24-hour period, and the assignment may not exceed 72 consecutive hours at a hospital. They said on completion of a hospital emergency medical evacuation service assignment, the pilot must be given a rest period of at least 12 consecutive hours for an assignment of less than 48 hours and at least 16 hours for an assignment of more than 48 hours.

Companies' Concerns About the Effect of Compliance Costs on Competitiveness

This section includes examples of the companies' concerns about the effect of regulatory compliance on (1) companies' competitiveness and (2) companies' decisions about their future expansion efforts. The agencies' responses to each concern follow immediately after the concern.

Company Example 5

Officials from a packaging manufacturer said that the Clean Air Act's regulations are the most problematic for the company, with incremental costs of over $100,000 incurred in 1994. The officials said that these costs have caused the company to shift resources away from revenue-producing activities and toward regulatory compliance functions that have little or no productive value and constrain company growth.

Agency Response 5

According to EPA officials, packaging manufacturers can be major emitters of volatile organic compounds, a principal component of ground-level ozone and the cause of a variety of health problems. The officials said if the packaging manufacturer was located in an area that was not meeting the national air quality standards for ground-level ozone, it would be subject to limitations on its emissions of volatile organic compounds. They also said the company would have options for limiting these emissions (e.g., it could add a control device to its process or use less-polluting raw materials in its process). The officials said EPA could not comment on the costs incurred by this particular company without more information. However, EPA officials disagreed with the company's comments about control measures being unproductive, particularly since reduced emissions improve air quality and protect the health of many people. The officials said that although the cost of these measures may not generate revenue, many firms have found that process improvements to prevent

pollution can yield efficiencies that reduce the cost of clean air compliance.

Company Example 6

Bank B officials said some bank regulations give nonbanks (e.g., investment brokerage firms) an unfair competitive edge in the marketplace. For example, the officials said that one regulation requires banks to disclose the risks faced by consumers with certain investment products, but investment firms are not required to make similar disclosures. The bank officials said about a quarter of the airtime they recently bought for advertising their investment products had to be used to publicize regulatory issues, such as rates and term disclosures. They said a nonbank could have spent the same advertising time simply selling their products and services.

Agency Response 6

Officials from the Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) responded to Bank B's concern. Both FRB and FDIC officials said there is no regulation requiring the disclosure of investment risk. They said this provision is included in an interagency policy statement on retail sales of nondeposit investment products that was adopted jointly by the three regulators and the Office of Thrift Supervision. They also said the policy statement notes that customers should be informed that nondeposit investment products are not insured by FDIC; are not deposits or other obligations of the institution and, therefore, are not guaranteed by the institution; and are subject to investment risks, including possible loss of principal.

FRB officials said this policy is intended to ensure that potential customers are aware that not all products they purchase in a bank are insured or obligations of the depository institution. For example, they said investment products, such as mutual funds, are not insured and are not obligations of the depository institution. They said these disclosures should be included during a bank's sales presentations, when an investment account is opened, and in any advertising and promotional materials. FRB officials said brokers/dealers are not required to make similar disclosures because their customers are unlikely to confuse products sold by those broker/dealers with insured deposits.

According to FDIC officials, they agree with Bank B that FDIC member institutions have a substantial competitive advantage over financial firms

whose products do not have a federal guarantee. However, they said that this competitive advantage is mitigated somewhat by certain responsibilities borne by FDIC-insured depository institutions and not by nonbanks or nonmember banks. For example, FDIC officials said only FDIC member banks must comply with FDIC regulations, advertise their insured status, and keep customers informed about which of their products are insured by FDIC.

According to OCC officials, since banks and nonbanks operate under different statutes, there is competitive inequality between them. The officials said they support statutory changes that would level the playing field among financial service providers. To address other inequalities between banks and nonbanks, they said OCC is evaluating how nonbanks are regulated. Also, the officials said OCC is working with the Securities and Exchange Commission (SEC) to obtain more consistent regulation among all providers of financial services. For example, they said OCC is working with SEC to set appropriate disclosure standards for banks and nonbanks offering mutual funds to the public.

Companies' Concerns About Unreasonable Regulations

This section includes examples of companies' concerns about regulations they viewed as unreasonable (e.g., a regulation or a process was not scientifically based or the regulators did not understand the industry they regulated) and the agencies' responses to these concerns.

Company Example 7

A Bank A official said the Equal Employment Opportunity Commission (EEOC) record retention standard is inconsistent with how EEOC pursues cases. He said EEOC requires that former employees' personnel files be retained for only 1 year after leaving a company, but on several occasions, EEOC staff have questioned bank officials about employees who left several years ago. The official said that, if the bank had followed the EEOC guidelines and only kept employees' files for 1 year, it would have had a "major problem." He said EEOC is likely to rule in a former employee's favor by default if the employer does not have the documentation to support its position.

Agency Response 7

According to EEOC officials, the specific requirements for maintaining personnel records are tied to the filing periods of each statute. The officials said title VII of the Americans with Disabilities Act's (ADA) regulations require personnel records to generally be kept for 1 year, as correctly stated by the Bank A official, since charges can be filed up to 300

days after the alleged discrimination. Equal Pay Act lawsuits must be filed within either 2 or 3 years of the alleged discrimination; the act's recordkeeping requirements contain 2- and 3-year record retention periods.[2] Also, the Age Discrimination in Employment Act (ADEA) has 1- and 3-year retention requirements. EEOC officials said their record retention standards establish a floor. They said employers, if they believe it is good business practice, may keep the records for longer periods. When there is a pending discrimination charge, EEOC officials said all of the statutes require employers to preserve all relevant personnel records until final disposition of a charge. They said if the bank has complied with these requirements and there is no pending charge of discrimination, destruction of records during the normal course of business would not violate the law or give rise to an adverse inference.

Company Example 8

Officials from the petrochemical company said EPA recently finalized rules that unnecessarily restrict how refineries manage oil recovered from their refining operations. They said these rules treat oil returned to the refinery from associated chemical plants as waste that cannot be reused. According to company officials, before the rules, companies used recovered oil as a raw material input into the refining process and produced products from the oil. Company officials believe refineries should be free to use recovered oil to produce petroleum products without interference from EPA.

Agency Response 8

According to EPA officials, as of July 1994, the recovered-oil rule excludes from RCRA hazardous waste regulations any recovered oil that is generated by normal petroleum refining operations and reinserted into the refining process. They said this exclusion does not apply where recovered oil was generated from organic chemical industry operations, except where petrochemical and petroleum refining operations share a common wastewater treatment system. (This stipulation is based on the concern that additional toxic constituents (e.g., chlorinated compounds) may be present in petrochemical processing residuals that are not found in residual hydrocarbons from petroleum refining.) However, EPA officials said in the Petroleum Refining Hazardous Waste Listing Determination, signed in October 1995, it proposed an approach to expand the recovered oil exclusion for petroleum refining operations to include recovered oil from collocated and/or commonly owned organic chemical plants.

[2] 29 C.F.R. 1620.32.

Company Example 9

Bank B officials considered the reporting requirements under the Bank Secrecy Act (BSA) time consuming, of negligible value to law enforcement, and of no value to banks. Under BSA, the officials said banks are required to report financial activity by individuals who daily deposit $10,000 or more in cash. In many cases, they said, the reports track legitimate transactions involving businesses that handle large amounts of cash on a daily basis (e.g., gas stations) rather than identifying any potential criminal activity. The officials said that the reports are time consuming to prepare and require about 60 lines of information. They said that for single cash transactions of $10,000 or more, BSA requires the bank to complete the report while the depositor is still in the bank. Furthermore, the officials said BSA requires that the bank review its total deposits for the day and report individuals with multiple transactions totaling $10,000 or more. They said the latter situation requires the bank to review transactions from all of its branches and follow up with the customer to complete the report.

While the intent of BSA was to identify criminal activity, bank officials said they have seen little evidence of the federal government's or law enforcement agencies' using the information the bank provided on these forms. They said few prosecutions have occurred as a result of the bank's reporting these transactions. Bank officials said the reporting requirement should be changed, requiring banks to report only suspicious activity rather than all daily $10,000 cash transactions.

Agency Response 9

Department of the Treasury officials said they disagreed with some aspects of Bank B's comments about BSA. First, the officials said once a financial institution has verified certain basic identification information about a customer, the institution can rely on this information in the future rather than requiring the customer to remain on-site each time a reportable transaction is conducted. Also, they said most banks use computer programs that link the responsibility of completion of the Currency Transaction Report with other functions of the bank's automated information systems. Second, the officials said BSA regulations do not require banks to aggregate multiple transactions under $10,000. They said multiple transactions must be reported only if the bank has knowledge that a customer's aggregate currency transactions exceed $10,000 in a day.

Treasury officials also disagreed with Bank B officials' assertions that BSA reporting requirements are of negligible value to law enforcement. They said that Treasury believes that recent efforts to streamline the regulatory reporting process more than adequately address previous industry

concerns of complexity and burdensome reporting. In addition, Treasury officials said Bank B's fear that BSA data are insufficiently used is unfounded. Currently, the data financial institutions report are reviewed by Artificial Intelligence Systems at Treasury and IRS. The officials said there are over 90 million records of financial information in its financial database and, in 1994 alone, the database was queried over 1.9 million times by federal, state, and local law enforcement agencies. The officials also said the information reported to Treasury under BSA creates an invaluable paper trail for investigators to follow as they track criminals and their assets. In addition, they said the information is used as a critical tool in criminal, tax, and regulatory proceedings for building investigative leads, identifying individuals and organizations involved in illicit financial activity, and disclosing unreported income.

Treasury officials agreed in part with Bank B's comments that the most effective way to combat financial crime is to reduce routine regulatory burdens and jointly develop programs with the financial community to look at all facets of financial activity vulnerable to money laundering. The officials said Treasury issued an interim regulation on April 24, 1996, that dramatically reduces the reporting obligations of banks. For example, they said provisions of the interim regulation eliminate some of the routine currency reporting that Bank B mentioned.[3] In addition, the officials said Treasury will issue new guidance to financial institutions about which types of activity to report, when the activity should be reported, and to whom to make the report.

Company Example 10

An official of a tank car company said the Department of Transportation's (DOT) requirement that all of the company's employees receive hazardous materials training is unreasonable because only 1 percent of their employees actually deals with hazardous materials. He also said the training is required every 2 years and costs the company approximately $40,000—an expense he said the company would not incur were it not for the requirement. The official said new employees must also receive the training, which costs the company an additional $10,000. He also questioned the value of the training because it is primarily about how to complete shipping papers to meet DOT requirements.

[3]Treasury officials said that the interim regulation eliminates the requirement that banks report all transactions in excess of $10,000 between banks and certain classes of exempt persons. They estimated the change would reduce filings by up to 2 million forms annually.

Agency Response 10

According to DOT officials, the allegation that "hazmat training is primarily about how to complete shipping papers to meet DOT requirements" is incorrect. The officials said hazmat employee training must include the following three categories: (1) general awareness/familiarization training to raise a hazmat employee's awareness of hazardous materials regulations and awareness of the purpose and meaning of hazard communication requirements, (2) safety training to provide information concerning the hazards presented by hazardous materials and procedures to protect the trainee and the public, and (3) function-specific training to provide job-specific training suitable for the function performed by the hazmat employee. For example, DOT officials said a hazmat employee who fills, marks, and labels packages of hazardous materials for transportation must receive specific training in that function, but the employee need not be trained in the preparation of shipping papers if he or she does not perform that function.

Concerns About Companies Not Understanding Regulatory Requirements

This section includes examples of companies' concerns about the difficulties associated with understanding regulatory requirements (e.g., the language is very technical or the requirements keep changing) and agencies' responses to the concerns.

Company Example 11

According to the hospital's officials, it is very difficult to keep pace with frequently changing Medicare and Medicaid billing rules. Although the hospital's computer programmers have spent many hours (approximately 1,500 during fiscal year 1994) trying to keep their automated patient billing system up to date, the hospital officials said it is like "chasing a moving target." They said approximately 40 percent of the hospital's billings are Medicare- or Medicaid-related.

Agency Response 11

Officials from the Department of Health and Human Service's Health Care Financing Administration (HCFA) said a number of changes to hospital billing procedures are due to enhancements or changes made by Congress. The officials said HCFA is aware of the burden that frequent changes have on hospitals and is working on efforts to minimize the burden. For example, they said HCFA tries to give hospitals 90 days to make system changes to accommodate Medicare legislative changes. However, HCFA officials also said that legislative mandates do not always provide the

amount of lead time HCFA would normally afford providers to make changes.

Company Example 12

Roadway Services, Inc., officials said that many labor and employment regulations overlap or have conflicting elements. They also said that the regulations are often either very vague or very detailed, not generally comprehensible. The officials said the regulations implementing Executive Order 11246[4] are a classic example of unclear federal requirements that frustrate many companies.

Agency Response 12

According to officials of the Department of Labor's (DOL) Employment Standards Administration (ESA), Roadway's officials expressed the company's general discontent with DOL's regulations and only specifically cited Executive Order 11246 (Affirmative Action) as problematic. The officials said the regional and district offices of DOL/Office of Federal Contract Compliance Programs (OFCCP) (1) regularly give seminars explaining the technical aspects of the regulations that implement affirmative action plans and (2) provide any technical assistance on an as needed basis. Additionally, since complaints filed against an employer are covered by both ADA and affirmative action regulations, the officials said it was imperative that the regulations be consistent and DOL has efforts under way to improve the consistency of the regulations.

Company Example 13

A Minco Technologies Lab, Inc., official said developing an affirmative action plan is time consuming and complex due to numerous and changing regulatory requirements. The official said the affirmative action plan requirements in Executive Order 11246, administered by DOL/OFCCP, are the most problematic human resources regulations the company faces. She said one problem is that it is difficult for businesses to stay aware of the changes in regulatory requirements; they cannot ask the "enforcers" for information without potentially calling their actions into question.

Agency Response 13

According to DOL/ESA officials, the agency does not seek reprisal against companies that ask the agency for information on developing a plan. The officials said OFCCP continuously provides free technical assistance to all segments of the public from its national, regional, and district offices. They

[4]Executive Order 11246, as amended, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin by federal contractors and subcontractors.

said OFCCP is currently developing supply and service and construction technical assistance guides to further help federal contractors (such as Minco) develop an affirmative action plan and understand the regulatory requirements. OFCCP officials said they expect both guides to be available before the end of 1996. OFCCP officials also said that OFCCP offices hold "grass roots meetings" with contractor representatives to discuss a variety of topics with which they are concerned. The OFCCP offices also hold technical assistance seminars and industry liaison conferences to assist contractors to fulfill their nondiscrimination and affirmative action obligations.

Companies' Concerns About Rigid and Inflexible Regulations

This section includes examples of companies' concerns about regulatory requirements that they consider to be unnecessarily rigid or inflexible and agencies' responses to these concerns.

Company Example 14

Bank A officials said that although they believed the FDIC requirement to have a contingency plan for their information processing systems is a worthwhile goal, the guidelines for the development of such a plan, as they relate to small banks, make it difficult to prepare. The officials said the guidelines are excessively detailed, requiring detailed testing, and appear unreasonable for a small bank such as Bank A.

Agency Response 14

According to FDIC officials, the company's assertion that a bank's board of directors must develop a contingency plan for information processing is incorrect. They said the Federal Financial Institutions Examination Council adopted a policy statement on a contingency plan. The officials said the plan is not mandated by a statute or regulation. They said the implementation of a contingency plan is intended to ensure that a financial institution is able to recover from a disruption to its operations or a break in service from its data-processing server. FDIC officials said the listing of items and factors in the policy statement is intended as a flexible tool for management to use in developing its own unique contingency plan. Without such a plan in place, they said a natural or other disaster could cause devastating disruptions to the institution's operations and customer services, resulting in unrecoverable losses, both financial and reputational.

Company Example 15

Officials from the paper company said OSHA's lead exposure standards[5] are highly prescriptive and expensive. They said any maintenance person working on a valve who scrapes away any paint containing lead, regardless of the amount of lead it contains (e.g., lead-intensive paint versus those paints with only 0.0001 percent of lead) must first put on a respirator and other personal protective equipment. However, before doing so, the officials said the employee must first obtain a doctor's permission and be "fit tested." The officials said that this process costs the company about $1.25 million per year.

Agency Response 15

OSHA officials said the Lead Standards for Construction[6] do not apply to routine maintenance activities not associated with construction work. They said the General Industry Standard[7] would apply in these situations. In addition, they said neither of the standards requires workers to wear respirators or other personal protection equipment while performing the task cited by the paper company, unless exposures are above the permissible exposure limit. According to the officials, medical clearances are not required under these standards unless an employee demonstrates difficulty breathing when using a respirator.

Companies' Concerns About Paperwork and Process Issues

This section includes examples of companies' concerns about regulatory paperwork/process being excessive and too costly and agencies' responses to the concerns.

Company Example 16

The fish farm officials said they want to start a pension plan for their employees, but have not done so because the Employee Retirement Income Security Act's (ERISA) numerous and detailed reporting and recordkeeping requirements make the plan cost prohibitive.

Agency Response 16

DOL, IRS, and the Pension Benefit Guaranty Corporation (PBGC) mentioned several pension plan simplification proposals that were announced in June 1995. The agencies' officials said these proposals, if enacted, would simplify several rules currently governing pension plans and permit small

[5] 29 C.F.R. 1926.

[6] 29 C.F.R. 1926.62.

[7] 29 C.F.R. 1910.1025.

employers to establish pension plans that would be both simpler and less expensive for small employers to administer.[8]

To reduce the burden of complying with ERISA paperwork requirements, the three agencies indicated that they jointly developed the Form 5500 Series to enable plan administrators to satisfy their reporting obligations under titles I, II, and IV of ERISA with a single annual report form. IRS officials said the Service, along with PBGC and DOL, is in the process of significantly simplifying and shortening the Form 5500 and developing software that will allow plans to file the form automatically by using a self-editing program. IRS officials also said when there are changes in the law or regulations, IRS publishes model plan amendments and streamlined application procedures to lessen the costs of amending plans. IRS officials said when employers have made minor plan amendments, they may apply for an IRS review of the amendments using a simplified application form.

Company Example 17

A Bank C official said the Truth in Savings Act (Regulation DD) requires that every fee charged to a customer's account must be separately described on their statement, resulting in the bank's creating 15 new forms for tellers to complete. In addition, an official said that when Regulation DD was first implemented, all of the bank's computer systems had to be reprogrammed to produce savings yield information and new account statements, costing the bank an estimated $3.8 million in its home state operations alone.

Agency Response 17

According to FRB officials, Regulation DD requires institutions to disclose the annual percentage yield earned, any fees imposed, and certain other information on the periodic statements to consumers. As a result, the officials said banks must separately disclose on periodic statements any account-related fees that are assessed. However, they said there is no requirement that bank personnel complete forms to accomplish this purpose.

The officials said FRB is aware of the costs involved in implementing Regulation DD. They said shortly after Regulation DD's enactment, FRB conducted a survey of institutions' start-up costs to implement the regulation. According to FRB officials, the survey revealed that data-processing and systems changes were indeed the most expensive

[8]IRS officials later noted that many of these proposals were enacted in the Small Business Job Protection Act of 1996.

compliance costs for institutions, accounting for approximately 40 percent of the total start-up compliance costs. When Regulation DD was finalized, the officials said FRB implemented several changes on the basis of comments from industry to help minimize costs, particularly those related to periodic statements. For example, they said that information sent in connection with time accounts and passbook savings accounts is exempt from the periodic statement rules.

Company Example 18

The official from the tank car company said the Hazardous Waste Shipment and Waste Minimization reports required by RCRA duplicate other information and are costly to produce (more than $3,000 in 1994). The official said EPA requires the reports to be filed biennially with the EPA Regional Administrator even though almost all of the information is already available to EPA on the shipment manifests for hazardous wastes, which each company is required to keep. He said the only piece of information that the report requests that currently is not on the manifest could be incorporated into the manifest without a problem.

Agency Response 18

EPA officials said they appreciate the company's concern about redundancy of data required on the biennial report and manifest, and they are working to reduce the reporting burden and improve the usefulness of collected data. According to the officials, the Office of Solid Waste is working with states to revise the manifest system and to revise or replace the biennial report, with the objective of eliminating duplicative and overlapping reporting burdens. They said EPA is considering a certification option that would reduce the need for the detailed reporting on waste minimization.

Company Example 19

Multiplex, Inc., officials said EPA paperwork and reporting requirements on the company's use of hazardous materials are in some cases duplicative. For example, under the Emergency Planning and Community Right-to-Know Act (EPCRA), the company has to submit Form R reports to EPA. The officials said the Form R report contains the same information that they submit to the state environmental agency in a "Tier II" report.

Agency Response 19

According to EPA officials, Multiplex could reduce its EPCRA section 313 reporting burden. The officials said that beginning with reporting year 1995, the EPCRA reporting criteria were changed to enable facilities that

had less than 500 pounds of an annual reportable amount of a listed toxic chemical to submit a certification statement in lieu of a Form R, thereby reducing the reporting elements from nine to two pages. They said the data on Multiplex's Form R for the 1993 reporting year indicate that the company could take advantage of this streamlined reporting process.

In addition, the officials said EPA is looking at ways to consolidate environmental reports. They said EPA is particularly looking at replacing a multitude of reporting forms currently required for all the different types of pollution discharged from a single facility with a "one-stop" reporting system. They believed such a comprehensive approach to information collection and management would help to eliminate duplicative reporting while providing an approach that would be more efficient for EPA and its state partners.

Concerns About Severe Penalties Imposed on Businesses

This section includes examples of companies' concerns about the severity of penalties imposed on them for noncompliance with federal regulations and agencies' responses to the concerns.

Company Example 20

An official from the tank car company said EPA regulatory requirements that make managers personally responsible for their companies' compliance with environmental standards are unreasonable. The official said that EPA's regulations for emergency planning and notification under the Comprehensive Environmental Response, Compensation, and Liability Act state that a manager who fails to provide local officials with the required notice regarding a release of hazardous substances can be fined up to $25,000 or imprisoned for up to 2 years or both. He said that if these personal responsibility requirements are continued or expanded, it will be difficult to find anyone willing to manage such companies.

Agency Response 20

According to EPA officials, the tank car company's statements regarding personal liability of the managers are inaccurate. The officials said managers are not held personally responsible for their companies' compliance with environmental standards. They said it is EPA's policy to issue civil administrative complaints to the owners of firms (e.g., partnerships or corporations), rather than to the individuals who operate firms.

However, EPA officials said managers, like all other individuals, are held personally responsible for their own violations when there is a criminal element to the action. They said that under EPCRA, the responsibility to inform a community about an environmental release of a hazardous substance is a fundamental duty to protect public safety. EPA officials said any person who knowingly and willfully fails to provide the required notice may be imprisoned for no more than 2 years and fined up to $250,000. Similarly, under the Comprehensive Environmental Response, Compensation, and Liability Act, any person in charge of a vessel or facility who fails to give notice to the National Response Center of the release of a reportable quantity of a hazardous substance as soon as he/she has knowledge of such release, may be imprisoned for no more than 3 years and fined up to $250,000. This notice requirement is necessary to ensure that risk from the hazardous substance to the public health and the environment are minimized.

Company Example 21

Zaclon, Inc., officials said the company is appealing an $81,000 fine for failure to respond on time to an EPA request for information related to RCRA. Company officials said a letter EPA sent to the company requesting the information was mistakenly filed away by a former company employee. They said the letter was not discovered until EPA imposed the fine 18 months later without any follow-up or other communication regarding the original request. The officials said they are also disturbed that the fine was imposed on them because of a procedural matter (failing to report information), not for noncompliance with something that had a real environmental impact.

Agency Response 21

According to EPA officials, some aspects of Zaclon's concern in this example are inaccurate. First, the officials said Zaclon is not appealing an $81,000 fine. They said that although EPA initially proposed that Zaclon pay a penalty of $81,000, the proposed penalty was reduced to $37,600 after discussions with the company.[9] In addition, EPA officials said the violation at issue did not involve an information request. They said Zaclon was sent a notification of its regulatory obligation to either file a RCRA permit application for a hazardous waste pile at a facility the company had acquired or submit a demonstration of equivalency, indicating that the waste pile had been "clean closed" (closed in an environmentally

[9]A hearing was conducted in the fall of 1994 and an Initial Decision by the Administrative Law Judge is pending.

protective manner as required in the hazardous waste regulations[10]). EPA officials said the company's obligation to either obtain a permit or demonstrate environmentally protective closure of a hazardous waste pile is not a "procedural matter." They said this obligation is a substantive requirement necessary to ensure that hazardous waste management units are designed and operated so as to prevent releases of hazardous constituents into the environment.

The officials agreed that there was no communication between EPA and the company on this matter after the agency sent the initial letter to the company about its obligation and EPA's filing of the enforcement action. They also said the agency sent the company a certified letter, which the company acknowledges receiving, to initially notify them of their obligation. EPA officials said RCRA is a "strict liability" statute; companies have a positive obligation to comply even if EPA does not issue reminders of their responsibility. The officials said issues of good faith are important factors in such situations, but they are appropriately considered in the penalty calculation and do not affect liability for a violation.

EPA officials said although the company might have wanted EPA to initiate additional contact before taking any enforcement action, the agency has limited resources to do so, and the pressure of other work sometimes precludes this opportunity. In addition, the officials said some companies have a record of being resistant to compliance with environmental matters, which would make additional efforts by EPA unproductive.

Companies' Concerns About Regulators' "Gotcha" Enforcement Approach

This section includes examples of companies' concerns about regulators' "gotcha" approach to enforcing federal regulations and agencies' responses to these concerns.

Company Example 22

Officials from the petrochemical company said that EPA's enforcement of environmental regulations is unnecessarily harsh. They said enforcement actions can be initiated even when companies self-report deficiencies found through internal auditing practices. They also said that a minute deviation from a stringent emission level can subject a facility to

[10]40 C.F.R. part 264.110-115.

enforcement action, even if the facility is in compliance 99.9 percent of the time and no degradation of public health or the environment exists.

Agency Response 22

EPA officials said they needed additional information about the company to fully respond to this concern. However, the officials said EPA recognizes the importance of internal auditing and has taken steps to encourage such auditing. They said EPA's policies generally provide penalty reductions for such matters as good faith efforts to comply, ability to pay, and other factors. The officials said EPA published on December 22, 1995, Self-Policing Incentives: Discovery, Disclosure, Correction and Prevention of Violations, which sets forth guidelines to reduce or eliminate the "gravity" component of a penalty when (1) the self-disclosure meets certain conditions and (2) no criminal conduct or imminent and substantial endangerment is involved. However, they said to ensure a "level field" for those companies that comply, no penalty reduction is appropriate when the violations involve significant economic benefit to the violator.

EPA officials said they consider noncompliance with environmental reporting and monitoring mechanisms to be significant. They said since it would be prohibitively expensive for regulators to inspect all facilities on a regular basis, EPA relies on company-maintained records, reports, and notifications as the only realistic mechanisms to ensure compliance.

Company Example 23

A Multiplex official suggested that OSHA's policy of immediately imposing fines for violations places an emphasis on finding violations to justify enforcement actions, rather than on working with the company to encourage compliance. He said many OSHA inspectors focus on finding something wrong because citing violations demonstrates what OSHA views as good job performance. The official recommended that OSHA notify a company of any violations identified during an inspection and allow 30 days for the company to come into compliance before assessing a fine.

Agency Response 23

According to OSHA officials, the Occupational Safety and Health Act provides for monetary penalties to be levied as an incentive for employers to comply voluntarily with OSHA standards; OSHA penalties are not intended to serve a punitive purpose. They said OSHA is aware of employers' concerns about OSHA inspectors' seeming to care less about worker safety than about meeting perceived "quotas" for citations and penalties. They

said OSHA never used quotas but in the past had used citations and penalties as performance measures. However, they said this practice was stopped and performance will be measured by OSHA's success in making safety and health improvements.

The officials said OSHA is making several changes in its enforcement efforts. For example, they said OSHA is changing its fundamental operating model from one of command-and-control to one that provides employers with a real choice between cooperative partnerships and a traditional enforcement relationship. In another example, they said OSHA is expanding its "quick fix" program. They said this program provides an incentive for employers to abate hazards quickly by allowing the employers to receive a penalty reduction if they abate hazards immediately and permanently during the inspection. They said employees benefit under this program by getting more employee protection, and OSHA employees are freed from follow-up abatement inspections and paperwork.

Companies' Concerns About Regulators' Lack of Knowledge and Assistance

This section includes examples of companies' concerns about regulators who (1) lack knowledge about the industries they regulate and (2) provide little compliance assistance to companies. Following each of the examples are the agencies' responses.

Company Example 24

Officials from the hospital said that, in many instances, OSHA regulators do not sufficiently inform companies about upcoming regulatory changes and how to comply with them. They believe that OSHA's consulting function should be energized, which would concurrently move the agency posture into more of a collaborative mode (i.e., away from a "policing" posture that presumes violations until they are disproved by the company).

Agency Response 24

According to OSHA officials, OSHA is increasing emphasis on interactions with stakeholders and expects this emphasis to enable the agency to successfully streamline and rationalize the existing body of regulations and to build a set of common-sense regulations. Also, OSHA officials said they are committed to simplifying access to workplace safety and health regulations and increasing efforts to provide compliance assistance to employers. They said employers, particularly small businesses, are encouraged to use the free consultation service (available through state governments) to help them identify potential hazards at their workplace

and improve their safety management systems. The program, offered free of charge in all states, is completely separate from the enforcement program, and participants cannot be cited during the consultation visit.

To help businesses recognize and protect workers from workplace hazards, the officials said that OSHA has implemented a number of information-dissemination projects and plans to undertake new initiatives to improve the availability of safety and health data to the public, such as using computer technology to assist employers and placing the text of rules on the Internet.

Company Example 25

The fish farm officials said those involved in the federal policymaking process sometimes do not address the underlying cause of the problem. For example, they said Congress established the Aquatic Nuisance Species Task Force after the accidental introduction of nonindigenous zebra mussels into the Great Lakes when a ship dumped bilge water. According to the officials, the task force recommendations suggested numerous actions businesses should be required to do to reduce the problems caused by aquatic nuisance species. The officials also said they spent significant time and resources reviewing the task force's draft reports and providing comments, but the task force virtually ignored the comments they received from industry until the final draft.

Agency Response 25

According to officials in the Department of the Interior's Fish and Wildlife Service, the fish farm is misinformed about the Service's activities under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. They said the company's concern is related to section 1207 of the act. The only regulatory authority in the entire act is over ballast water control and implementation of the Aquatic Nuisance Species Program. In addition, the act requires the task force to recommend in a report to Congress (Intentional Introductions Policy Review) ways to reduce the risk of adverse consequences of future intentional introductions.

Fish and Wildlife Service officials said public review was an integral part of the development of the task force's report. They said an interagency committee conducted the review and prepared the report to Congress. The officials said the review was done in consultation with state fish and wildlife agencies; other regional, state, and local entities; potentially affected industries; and other interested parties. They said meetings were open to the public and public comments were always accepted. The

officials said, during the public review and comment period (August 1993 through late October 1993), they received 145 written comments from many sources, including tropical fish businesses and state and Federal agencies. They said all of the comments brought a fresh perspective to the task force and were thoroughly considered and incorporated, as appropriate, into the final report.

The Service's officials said that, without knowing the name of the company that made these comments, it is impossible for them to provide a specific response to their concern. However, the officials said the final comments of the company seem to indicate that the company's concerns were eventually satisfied.

Companies' Concerns About Regulatory Coordination and Duplication

This section includes examples of companies' concerns about duplication and a lack of coordination of regulations among federal agencies and between federal and state or local levels of government. Agencies' responses immediately follow each example.

Company Example 26

A Minco official said the Family and Medical Leave Act (FMLA) requires employees to submit medical documentation to employers that may conflict with privacy protection requirements under the ADA. For example, he said employees are required to provide employers with medical documentation to support FMLA leave requests. However, according to the official, that documentation may reveal information about a specific medical condition that the ADA requires be kept from employers.

Agency Response 26

Both EEOC and DOL officials disagree with Minco's statement about a conflict between FMLA and ADA regulations. EEOC officials said the FMLA provision allowing employers to ask for certification that an employee has a serious health condition does not conflict with ADA restrictions on disability-related inquiries of employees.

According to DOL officials, the purpose of FMLA's medical certification provisions (29 U.S.C. 2613) is to allow employers to obtain information from a health care provider to verify that an employee or an employee's family member has a serious health condition and the likely periods of absence by the employee. The officials said the regulatory medical certification provisions were developed in consultation with EEOC to

ensure consistency with the ADA's provisions. They said that for privacy reasons, and to be consistent with the ADA, all information on the form is generally limited to the medical facts of the medical condition (of the employee or family member) for which the employee is taking FMLA leave. They said employers must maintain the same level of confidentiality for medical documents under FMLA and the ADA.

Company Example 27

Officials from the glass company said one of their major regulatory problems is state regulations (issued either independently or at the urging of federal agencies, such as EPA) that vary from one state to another. They said it is far more costly to track and comply with 50 different regulations than with a single federal regulation in a given area. They said the lack of uniformity among the various states in which the company operates creates a real burden on the company. The officials said the company must devote significant resources (labor hours, computer systems, and consultant costs) to dealing with differing rules, regulations, and reporting requirements in the various state departments of revenue/taxation, state insurance commissions, state unemployment departments, and state health departments. For example, they said one state in which they operate requires warning labels on all products shipped to that state that "expose" citizens to any of over 300 chemicals, regardless of how trivial the alleged exposure. As a result, the officials said a company must either have special labels for that state or must change all of its product labels to meet that state's standard.

Agency Response 27

According to EPA officials, the right for states to establish their own laws has philosophic and legal underpinnings embodied in the Constitution. The officials said although Congress has specifically debated whether federal environmental requirements should supersede any state requirements or whether they should be the "minimum floor" or "maximum ceiling," in most cases, the prevailing position is that states should be allowed to establish equivalent or stronger requirements.

The officials said EPA has taken strides toward harmonizing requirements between states and the federal level and often encourages states to coordinate requirements or practice reciprocity among themselves. For example, the officials said EPA has a number of pesticide programs designed to harmonize state laws and regulations for pesticide manufacturing, sales, and use. Also, in response to complaints from transporters of hazardous waste about the multiplicity of individual state

requirements, the officials said EPA sponsored a Regulatory Negotiation to develop a uniform national manifest that will meet not only federal information requirements, but also those of every state through which a shipment of hazardous waste might pass.

Company Example 28

An official from the tank car company said the manufacturer did not understand why EPA required a federal National Pollutant Discharge Elimination System (NPDES) permit that duplicated information they filed with a state agency to obtain their state NPDES permit. He said the failure of EPA to honor a state permit, which required the same stringent standards, caused duplication of effort and of data submission. After 2 years of debate and the issuance of an EPA Administrative Order, EPA reportedly fined the company several hundred thousand dollars for not obtaining a federal permit. The company official also said EPA would not work with the company regarding this issue or consider the state permit as evidence of good faith. According to the company official, the company decided to "cut its losses" and just pay the fine, rather than pay for litigation.

Agency Response 28

EPA said the tank car company has a facility operating in one of the few states that is not authorized to administer EPA's NPDES program. According to the officials, although a state may choose to separately regulate discharges to surface waters, the state cannot issue CWA permits unless it is authorized by EPA to operate an NPDES program. They said in states without this authorization, a company must obtain a federal NPDES permit in addition to any requirements under a similar state permit program. Thus, contrary to the company's statement, the EPA officials said this state does not have a permit system equivalent to the NPDES program. They acknowledged that the state issued a wastewater discharge permit to the facility. However, they said the permit did not accurately reflect the nature of the discharge or the actual operations on-site; therefore, the permit was neither legally nor practically the equivalent of an NPDES permit.

Company Example 29

Officials from the paper company said the DOT and OSHA regulations that define corrosive materials conflict. They said DOT defines "corrosive" material by using a patch test on the skin of albino rabbits, whereas OSHA defines a material as corrosive by using a chemical pH test (an easier and more accurate test). They said that different agencies' using different standards is confusing, making it difficult to know which standard to follow.

Agency Responses 29

Both DOT and OSHA officials said their definitions of corrosive materials do not conflict. They said materials are considered to be corrosive when a chemical causes visible destruction or irreversible alterations to human skin tissue at the site of contact.

For example, according to OSHA officials, the Hazard Communication Standard also defines a chemical as corrosive if, when tested on the intact skin of albino rabbits by the method described by DOT in Appendix A to 49 C.F.R. part 173, it destroys or irreversibly changes the structure of the tissue at the site of contact after 4 hours of exposure. The officials said OSHA does not require pH testing to determine corrosivity or preclude its use. Instead, they said the Hazard Communication Standard requires only that "available scientific evidence" be used to identify chemical hazards; such evidence may include results of manufacturers' tests or results of any published human, animal, or in vitro studies.

DOT officials said the use of pH testing in determining whether a material is corrosive is only useful for aqueous materials (those containing water). They said the definition of a corrosive material was recently revised to adopt the Organization for Economic Cooperation and Development's guidelines for determining corrosion. According to this rule, DOT officials said a material in an aqueous solution with a pH of 2 or less or 12 or more may be considered corrosive.

Major Contributors to This Report

General Government Division, Washington, D.C.

Curtis Copeland, Assistant Director, (202) 512-8101
Don Allison, Evaluator-in-Charge
Ellen Wineholt, Senior Evaluator
Dion Anderson, Evaluator
Kathy Cunningham, Evaluator
Scott Derrick, Evaluator
Kiki Theodoropoulos, Evaluator (Communications Analyst)
Thomas Beall, Technical Advisor

National Security and International Affairs Division, Washington, D.C.

Cheryl Goodman, Senior Evaluator
Thomas Melito, Senior Economist

Related GAO Products

Regulatory Reform: Implementation of the Regulatory Review Executive Order (GAO/T-GGD-96-207, Sept. 25, 1996).

Paperwork Reduction: Burden Reduction Goal Unlikely To Be Met (GAO/T-GGD/RCED-96-186, June 5, 1996).

Approaches for Environmental Regulations (GAO/RCED-96-135R, Apr. 25, 1996).

Tax System Burden: A Perspective on the Compliance Burden of the U.S. Tax System (GAO/T-RCED-96-100, Apr. 4, 1996).

Regulatory Compliance for NIH Grantees (GAO/HEHS-96-90R, Mar. 25, 1996).

Regulatory Reform: How Can Congress Assess the Administration's Initiatives? (GAO/T-GGD-95-206, July 18, 1995).

Costs of Regulation (GAO/PEMD-95-24R, June 15, 1995).

EPA and the States' Environmental Challenges Require Better Working Relationship (GAO/RCED-95-64, Apr. 3, 1995).

Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations (GAO/PEMD-95-18BR, Mar. 8, 1995).

Clean Air Rulemaking: Tracking System Would Help Measure Progress of Streamlining Initiatives (GAO/RCED-95-70, Mar. 2, 1995).

Tax System Burden: Tax Compliance Burden Faced by Business Taxpayers (GAO/T-GGD-95-42, Dec. 9, 1994).

Tax Administration: Compliance Measures and Audits of Large Corporations Need Improvement (GAO/GGD-94-70, Sept. 1, 1994).

Environmental Regulation: Differences Remain Between EPA and OMB Over Paperwork Requirements (GAO/RCED-94-254, Aug. 23, 1994).

Workplace Regulation: Information on Selected Employer and Union Experiences (GAO/HEHS-94-138, June 30, 1994).

Paperwork Reduction Act: Opportunity to Strengthen Government's Management of Information Technology (GAO/T-AIMD/GGD-94-126, May 19, 1994).

Regulatory Flexibility Act: Status of Agencies' Compliance (GAO/GGD-94-105, Apr. 27, 1994).

Regulatory Burden: Recent Studies, Industry Issues, and Agency Initiatives (GAO/GGD-94-28, Dec. 13, 1993).

Paperwork Reduction: Reported Burden Hour Increases Reflect New Estimates, Not Actual Changes (GAO/PEMD-94-3, Dec. 6, 1993).

Paperwork Reduction: Agency Responses to Recent Court Decisions (GAO/PEMD-93-5, Feb. 3, 1993).

Risk-Risk Analysis: OMB's Review of a Proposed OSHA Rule (GAO/PEMD-92-33, July 2, 1992).

Environmental Protection: Meeting Public Expectations With Limited Resources (GAO/RCED-91-97, June 18, 1991).

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

PRINTED ON RECYCLED PAPER

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested