

SMALL BUSINESS PAPERWORK REDUCTION ACT
AMENDMENTS OF 1998

MARCH 24, 1998.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BURTON of Indiana, from the Committee on Government
Reform and Oversight, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3310]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3310) to amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, and to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Paperwork Reduction Act Amendments of 1998”.

SEC. 2. FACILITATION OF COMPLIANCE WITH FEDERAL PAPERWORK REQUIREMENTS.

(a) **REQUIREMENTS APPLICABLE TO THE DIRECTOR OF OMB.**—Section 3504(c) of chapter 35 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”), is amended—

- (1) in paragraph (4), by striking “; and” and inserting a semicolon;
- (2) in paragraph (5), by striking the period and inserting a semicolon; and
- (3) by adding at the end the following new paragraphs:

“(6) publish in the Federal Register on an annual basis a list of the requirements applicable to small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)) with respect to collection of information by agencies, organized by North American Industrial Classification System code and industrial/sector description (as published by the Office of Management and Budget), with the first such publication occurring not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1998; and

“(7) make available on the Internet, not later than one year after the date of the enactment of such Act, the list of requirements described in paragraph (6).”.

(b) **ESTABLISHMENT OF AGENCY POINT OF CONTACT; SUSPENSION OF FINES FOR FIRST-TIME PAPERWORK VIOLATIONS.**—Section 3506 of such chapter is amended by adding at the end the following new subsection:

“(i)(1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork—

“(A) establish one point of contact in the agency to act as a liaison between the agency and small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)); and

“(B) in any case of a first-time violation by a small-business concern of a requirement regarding collection of information by the agency, provide that no civil fine shall be imposed on the small-business concern unless, based on the particular facts and circumstances regarding the violation—

“(i) the head of the agency determines that the violation has caused actual serious harm to the public;

“(ii) the head of the agency determines that failure to impose a civil fine would impede or interfere with the detection of criminal activity;

“(iii) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

“(iv) the violation is not corrected on or before the date that is six months after the date of receipt by the small-business concern of notification of the violation in writing from the agency; or

“(v) except as provided in paragraph (2), the head of the agency determines that the violation presents an imminent and substantial danger to the public health or safety.

“(2)(A) In any case in which the head of an agency determines that a first-time violation by a small-business concern of a requirement regarding the collection of information presents an imminent and substantial danger to the public health or safety, the head of the agency may, notwithstanding paragraph (1)(B)(v), determine that a civil fine should not be imposed on the small-business concern if the violation is corrected within 24 hours of receipt of notice in writing by the small-business concern of the violation.

“(B) In determining whether to provide a small-business concern with 24 hours to correct a violation under subparagraph (A), the head of the agency shall take into account all of the facts and circumstances regarding the violation, including—

“(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

“(ii) whether the small-business concern has made a good faith effort to comply with applicable laws, and to remedy the violation within the shortest practicable period of time;

“(iii) the previous compliance history of the small-business concern, including whether the small-business concern, its owner or owners, or its principal officers have been subject to past enforcement actions; and

“(iv) whether the small-business concern has obtained a significant economic benefit from the violation.

“(3) In any case in which the head of the agency imposes a civil fine on a small-business concern for a first-time violation of a requirement regarding collection of information which the agency head has determined presents an imminent and substantial danger to the public health or safety, and does not provide the small-business concern with 24 hours to correct the violation, the head of the agency shall notify Congress regarding such determination not later than 60 days after the date that the civil fine is imposed by the agency.”.

(c) ADDITIONAL REDUCTION OF PAPERWORK FOR CERTAIN SMALL BUSINESSES.—Section 3506(c) of title 44, United States Code, is amended—

(1) in paragraph (2)(B), by striking “; and” and inserting a semicolon;

(2) in paragraph (3)(J), by striking the period and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(4) in addition to the requirements of this Act regarding the reduction of paperwork for small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)), make efforts to further reduce the paperwork burden for small-business concerns with fewer than 25 employees.”.

SEC. 3. ESTABLISHMENT OF TASK FORCE TO STUDY STREAMLINING OF PAPERWORK REQUIREMENTS FOR SMALL-BUSINESS CONCERNS.

(a) IN GENERAL.—Chapter 35 of title 44, United States Code, is further amended by adding at the end the following new section:

“§ 3521. Establishment of task force on feasibility of streamlining information collection requirements

“(a) There is hereby established a task force to study the feasibility of streamlining requirements with respect to small-business concerns regarding collection of information (in this section referred to as the ‘task force’).

“(b) The members of the task force shall be appointed by the Director, and shall include the following:

“(1) At least two representatives of the Department of Labor, including one representative of the Bureau of Labor Statistics and one representative of the Occupational Safety and Health Administration.

“(2) At least one representative of the Environmental Protection Agency.

“(3) At least one representative of the Department of Transportation.

“(4) At least one representative of the Office of Advocacy of the Small Business Administration.

“(5) At least one representative of each of two agencies other than the Department of Labor, the Environmental Protection Agency, the Department of Transportation, and the Small Business Administration.

“(c) The task force shall examine the feasibility of requiring each agency to consolidate requirements regarding collections of information with respect to small-business concerns, in order that each small-business concern may submit all information required by the agency—

“(1) to one point of contact in the agency;

“(2) in a single format, or using a single electronic reporting system, with respect to the agency; and

“(3) on the same date.

“(d) Not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1998, the task force shall submit a report of its findings under subsection (c) to the chairmen and ranking minority members of the Committee on Government Reform and Oversight and the Committee on Small Business of the House of Representatives, and the Committee on Governmental Affairs and the Committee on Small Business of the Senate.

“(e) As used in this section, the term ‘small-business concern’ has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 631 et seq.).”.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“3521. Establishment of task force on feasibility of streamlining information collection requirements.”.

I. PURPOSE

The purpose of the “Small Business Paperwork Reduction Act Amendments of 1998” is to reduce the burden of Federal paperwork on small businesses by requiring the publication of a list of all the Federal paperwork requirements on small businesses; requiring

each Federal agency to establish one point of contact for small businesses on paperwork issues; requiring the agencies to allow small businesses to correct first-time paperwork violations before civil fines are assessed, except when doing so would harm or threaten public health and safety, impede criminal detection, or involve an internal revenue law; requiring the agencies to address the paperwork burden on businesses with fewer than 25 employees; and forming a task force of agency representatives to study the feasibility of streamlining Federal reporting requirements on small businesses. The bill amends Chapter 35, Title 44, otherwise known as the "Paperwork Reduction Act of 1995" (PRA).

SUMMARY

In brief, the Small Business Paperwork Reduction Act Amendments of 1998 are intended to do the following:

A. Require the Office of Information and Regulatory Affairs (OIRA) to publish a list annually on the Internet and in the Federal Register of all the Federal paperwork requirements for small business.

Section 2(a) requires the Director of the Office of Management and Budget (OMB) to authorize the Administrator of OIRA to publish this list. The definition for "small business," in this section and throughout the bill, is the one used in the Small Business Act (15 U.S.C. 631 et seq.). Small business is defined as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." It is further defined by the Small Business Size Regulations (13 CFR 121), which set the size standards businesses must meet to qualify as a small business. "Collection of information" is the term used throughout the PRA to define paperwork. It includes requirements for reporting to the Government and disclosure to third parties, as well as record keeping.

B. Require each agency to establish one point of contact to act as a liaison with small businesses.

Section 2(b) requires each agency to establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork.

C. Suspend civil fines on small businesses for first-time paperwork violations so that the small businesses may correct the violations.

Section 2(b) provides that civil fines may be suspended for six months unless the agency head determines that the violation has caused actual serious harm; that waiving the fine would impede the detection of criminal activity; that the violation is a violation of the internal revenue laws or any law concerning the assessment or collection of a tax, debt, revenue or receipt; or that the violation presents an imminent and substantial danger to the public health and safety. If the agency head determines that the violation presents an imminent and substantial danger to the public health and safety, the agency head may impose a fine or suspend the fine for 24 hours to allow the small business to correct the violation. In making this determination, the agency head shall take into account all the facts and circumstances of the violation, including the following factors: (1) the nature and seriousness of the violation, including whether it is willful or criminal; (2) whether the small

business has made a good faith effort to comply and correct the violation; (3) the previous compliance history of the small business, including any past enforcement actions against its owners or principals; and (4) whether the small business has obtained a significant economic benefit from the violation. Only civil fines may be suspended, not criminal. Only fines assessed for violations of collection of information (paperwork) requirements may be suspended, not fines for violations of other regulatory requirements. The Committee urges the Federal agencies to ensure that this provision applies to the States' enforcement policies and programs when they delegate the authority to issue civil fines for paperwork requirements to the States.

D. Further reduce paperwork for businesses with fewer than 25 employees.

Section 2(c) requires each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees, in addition to meeting the current paperwork reduction requirements of the PRA.

E. Establish a task force, convened by OIRA, to study the feasibility of streamlining reporting requirements for small businesses.

Section 3 establishes a task force to study the feasibility of streamlining reporting requirements for small businesses. The Director of OMB will authorize the Administrator of OIRA to appoint the members of the task force. The members will include representatives from different agencies, including the Bureau of Labor Statistics and the Occupational Safety and Health Administration of the Department of Labor, the Department of Transportation, the Environmental Protection Agency (EPA), and the Small Business Administration Office of Advocacy, in addition to other agencies that the Director determines could contribute to this effort. The task force will examine the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and on one date. After one year, the task force will report its findings to the House Government Reform and Oversight and Small Business Committees and the Senate Governmental Affairs and Small Business Committees. If the task force finds that consolidating reporting requirements so that small businesses can make annual submissions to each agency on one form or a single electronic reporting system will not work or reduce the burden in a meaningful way, the task force will make recommendations to the Committees on what will work to streamline and reduce the burden of reporting requirements for small businesses.

II. NEED FOR LEGISLATION

The burden of Federal regulations on the American public continues to grow. Total regulatory costs in 1997 were up 1.6 percent from the previous year, 7.2 percent over the past five years, and 25.3 percent over the past ten years. Regulation now costs over \$½ trillion per year. Total regulatory costs in 1997 were \$688 billion. When these costs are passed on to the consumer, the typical family

of four pays approximately \$6,875 per year in hidden regulatory costs. Families spend more on regulation than on medical expenses, food, transportation, recreation, clothing, and savings. In fact, U.S. regulatory costs in 1997 (\$688 billion) exceeded 1996 personal income taxes (\$631 billion) and 1995 corporate profits (\$601 billion). The number of regulations on the books continues to climb as well—45,783 final rules have been issued in the past decade (since 1986). And agency budgets to enforce regulations are on the rise. Budgeted enforcement spending for social and economic regulatory programs is expected to hit \$17.2 billion in 1998. That is a 223 percent increase since 1970 when enforcement spending was \$4.6 billion.¹

Small businesses are particularly hurt by the regulatory burden. The United States Small Business Administration reports that the smallest firms carry the heaviest regulatory burdens—small businesses bear 63 percent of the total regulatory burden. Firms with 20–49 employees spend, on average, 19 cents out of every revenue dollar on regulatory costs. The total regulatory burden on small businesses is \$247 billion and on large businesses is \$148 billion.² Since President Clinton took office in 1993, the number of EPA rules affecting small firms has increased 92 percent. The overall number of rules affecting small firms has increased 10 percent. The EPA plans to issue 430 rules in 1998. More than one third, or 163, will affect small businesses.³

Not only are regulatory costs higher for small businesses, but they are harder to absorb. Small businesses cannot afford to comply with regulations in the same way that large businesses can. The high cost of regulations often makes it impossible for small businesses to expand, threatens their ability to stay afloat, or prevents them from opening in the first place. At the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs' hearing, "The Impact of Regulations on Employment," on May 16, 1996, a small business owner from Sumner, Washington testified that the cost of regulations stopped her from opening a new business. When Judi Moody and her husband tried to open a small bookstore and cafe, they ran into so much regulation and paperwork that they couldn't go forward. She recalled at least 25 forms they would have to complete, and those were from the Department of Labor alone. It seemed that they would need to hire a lawyer before they even opened the door. Mrs. Moody and her husband just wanted to hire a couple of employees to sell books and coffee. But because of Government paperwork, they were not able to realize their dream and create more jobs.

Small businesses need a break on regulations and regulatory paperwork, not only because they bear more of the costs, but because they are a crucial part of the American economy. There are 22 million small businesses in the United States. Small businesses with fewer than 500 employees make up the vast majority of all employer firms—99.7 percent. And small businesses generate approxi-

¹ Clyde Wayne Crews, Jr., "Ten Thousand Commandments: A Policymaker's Snapshot of the Federal Regulatory State," 1998 Edition.

² Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business," 1995.

³ Clyde Wayne Crews, Jr., "Ten Thousand Commandments: A Policymaker's Snapshot of the Federal Regulatory State," 1998 Edition.

mately 50 percent of U.S. jobs and sales. One of small businesses' biggest contributions to the economy is that they hire a greater proportion of individuals, who might otherwise be unemployed, than large businesses. Very small firms (fewer than 10 employees) hire part-time workers at a rate almost twice that of very large firms (1000 or more employees). Small firms employ a higher proportion of workers under age 25 and age 65 and over. Small firms have a higher ratio of employees with lower educational levels—a high school degree or less—than large firms. Small firms employ more individuals on public assistance than large firms.⁴

The single most costly type of regulation is paperwork compliance. Regulatory paperwork costs are higher than any other regulatory costs, particularly for small businesses. For firms with fewer than 20 employees, paperwork regulations cost \$2,017 per employee per year. For firms with 20 to 499 employees, paperwork regulations cost \$1,931 per employee per year. For firms with 500 or more employees, paperwork regulations cost \$1,086 per employee per year.⁵

One of the main areas of concern voiced by representatives at President Clinton's White House Conference on Small Business in 1995 was the paperwork burden. The sheer scope of government-mandated paperwork explains why it is such a problem—the estimated total paperwork burden for 1996 was 6.7 billion hours. Unfortunately, past efforts to fix the problem are not working. The PRA's legal requirement for 1996—a 10 percent reduction in paperwork—was not achieved. Paperwork was only reduced 2.6 percent in 1996. And it is estimated to have been reduced 1.8 percent in 1997.⁶ According to the General Accounting Office (GAO), the agencies are unlikely to meet OMB's goal of a 25 percent reduction in the cumulative paperwork burden by the end of fiscal year 1998. EPA officials confirmed that their agency will not meet the goal.⁷ The total cost of the paperwork burden in 1997 is estimated to be \$225 billion. It is projected to increase to \$229 billion in 1998.⁸ Paperwork (process regulation) accounts for one third of total regulatory compliance spending—a dramatic increase from one fifth in 1977.⁹ Process regulations (primarily paperwork) in 1992 accounted for some 40 percent of total business regulatory costs and the burden is increasing.¹⁰

At 18 field hearings across the country, the Subcommittee has heard from many different small business owners about the particular difficulties associated with Federal paperwork requirements. Lyle Clemenson, president of CEI, Inc., a small manufacturing business, has calculated that his company spends between \$7,500 and \$9,000 per year on regulatory paperwork. (August 8, 1995, St. Paul, MN) Betty Devoe, executive director of Westminster

⁴Small Business Administration, "Characteristics of Small Business Owners and Employees," 1997.

⁵Thomas D. Hopkins, "Regulatory Costs in Profile," 1996.

⁶Office of Management and Budget, "1997 Report to Congress on the Paperwork Reduction Act."

⁷General Accounting Office 1997 Testimony, "Paperwork Reduction: Government Goals Unlikely to be Met."

⁸Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business," 1995.

⁹Thomas D. Hopkins, "Regulatory Costs in Profile," 1996.

¹⁰Small Business Administration, "The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business," 1995.

Village, a small retirement community in Muncie, Indiana, reported that the costs of the health care center at Westminster increased by \$166,000 in one year (from 1990–91). Approximately \$100,000 of the increase was due to increased paperwork compliance under Medicare regulations. (April 17, 1995, Muncie, IN)

Dr. Edward L. Probst, a dermatologist from Columbus, Indiana, testified that he is unable to offer his patients the best care due to the burden of federal regulations under the Clinical Laboratory Improvement Act (CLIA). CLIA imposes huge paperwork and reporting requirements on physicians without enhancing the quality of laboratory tests for patients. For Dr. Probst, CLIA regulations have increased the cost of testing, decreased the quality of care he gives to patients, and limited his ability to keep up with the latest medical issues, because the requirements are so time consuming. Dr. Probst was fined because the 260-page manual required in his office did not include a detailed explanation of how to change the light bulb in his laboratory microscope. Dr. Probst must follow a total of 24 steps and fill out paperwork for even the simplest office laboratory test he performs. (April 17, 1995, Indianapolis, IN)

Jeff Bove testified that his small printing company, Benham Press, in Indianapolis, is subject to 19 different federal environmental reporting requirements. All of the reports require information in slightly different formats, over different periods of time, calculated or tabulated in a slightly different manner. Therefore, on average, Mr. Benham spends four weeks per year learning the requirements, collecting the information, and reporting it. To hire a consultant to deal with the paperwork would cost him about \$30,000 per year—more than most small businesses earn. Mr. Benham testified that a unified reporting form would reduce his paperwork by about 90 percent and reduce the time he spends on it by 75 percent. (April 17, 1995, Indianapolis, IN)

The Subcommittee held a hearing on the bill on March 5, 1998. At the hearing small business owners stressed the need for this legislation. They testified that the paperwork burden is so large and costly that, in many cases, their companies' growth is stunted and they are unable to create more jobs. They also emphasized that most small business owners fear unknown regulations and paperwork more than known. Jere Glover, Chief Counsel of the Small Business Administration's Office of Advocacy, also testified in support of the bill. He stated that paperwork and reporting requirements remain a major cost problem for small businesses. He also stated that the legislation addresses almost all the concerns reported by the 1995 White House Conference on Small Business.

The bill addresses many of the concerns which the small business owners voiced at the hearing. The bill's requirement that OIRA publish an annual list of all paperwork requirements on small business would help eliminate the fear of the unknown. For the first time, small business owners would be able to go to one source to discover all the paperwork they must complete. At the suggestion of William Saas, one of the witnesses at the hearing, Subcommittee Chairman McIntosh and Representative Kucinich amended the bill to require OIRA to make the list available on the Internet so that small businesses can access it easily. This comprehensive list will be particularly helpful to an entrepreneur who

wants to start a small business. By referring to this list, any entrepreneur will be able to easily discover all the paperwork requirements he or she will have to meet. This list would also bring to light all the duplicative paperwork requirements placed on small business, providing Congress with the information it needs to eliminate these unnecessary burdens in the future.

The bill's provision to suspend civil fines for first-time paperwork violations, except in cases of actual serious harm or an imminent threat to public health and safety, would relieve small business owners of the fear that they will be fined for an innocent mistake or oversight. Subcommittee Chairman McIntosh wrote the bill with these concerns in mind. After hearing from small business owners at 18 field hearings, he particularly wanted to relieve them of fines for innocent violations of paperwork requirements. The witnesses testified that they would benefit from this provision in cases of omission due to ignorance of the requirements. They emphasized that it is practically impossible to be aware of and keep up with all the Federal paperwork requirements, particularly because new requirements are issued by the various Federal agencies every year.

The bill would also make it easier for small business owners to get answers to their paperwork questions because it requires each Federal agency to establish one point of contact to act as a liaison between the agency and small businesses on paperwork collection and control.

Finally, the bill takes an important step toward streamlining and consolidating paperwork requirements for small businesses by establishing a task force of officials from several of the major regulatory agencies as well as the SBA and OIRA. The task force would study the feasibility of streamlining and reducing the burden of reporting requirements so that small businesses could report to one point of contact at each agency, once a year, on one form. It would report its recommendations to the Congress after one year.

The Subcommittee held a second hearing to give the Federal agencies an opportunity to comment on the bill. Representatives from the Department of Transportation (DOT), the Department of Justice (DOJ), the Securities and Exchange Commission (SEC), and the Department of Labor's Occupational Safety and Health Administration (OSHA) testified at the hearing. All the agency witnesses were concerned about the provision of the bill which would suspend fines for first-time paperwork violations. It was clear from the testimony that the agencies ignored the bill's carefully-crafted exceptions for violations which would result in actual harm or threaten public health and safety. All the witnesses testified that the agencies should retain the authority to issue fines for first-time paperwork violations in every instance with absolutely no restrictions. Rep. Vince Snowbarger questioned the agency witnesses about an amendment which Subcommittee Ranking Minority Member John Tierney and Rep. Kucinich were planning to offer to the bill. The amendment would have replaced the bill's suspension of fines provision with a requirement that the agencies develop policies for delaying, reducing, and eliminating fines for first-time paperwork violations under appropriate circumstances. Rep. Snowbarger asked the agency witnesses if the amendment would add anything new

to the requirements of current law under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Each of the witnesses agreed that the amendment would not require anything more than current law.

III. LEGISLATIVE HEARINGS AND COMMITTEE ACTION

A. HEARINGS

The "Small Business Paperwork Reduction Act Amendments of 1998," (H.R. 3310) was introduced on March 3, 1998, by National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee Chairman David McIntosh, for himself, and Reps. Kucinich, Frost, Woolsey, Gordon, Hamilton, Hastert, Scarborough, Sununu, Sessions, Shays, McHugh, Davis of Virginia, Miller of Florida, Livingston, DeLay, Arme, Boehner, Thornberry, Barr of Georgia, Dunn, and Snowbarger.

After introduction, the bill was referred to the Committee on Government Reform and Oversight, and in addition, to the Committee on Small Business. On March 5, 1998, and March 17, 1998, Chairman McIntosh held hearings to consider the bill.

Witnesses at the March 5, 1998, hearing included: Gary Roberts, President, Roberts Pipeline Sulphur Springs, Indiana; William Saas, President, Taskem, Inc., Brooklyn Heights, Ohio; Teresa Gearhart, Owner, Mhart Express, Inc., Hope, Indiana; Vikki Nelson, Owner, Jarnel Iron and Forge, Hagerstown, Maryland; Robert C. Smith, President, Spero-Smith Investment Advisors, Inc., Cleveland, Ohio; Jere Glover, Chief Counsel for Advocacy, U.S. Small Business Administration.

At the hearing, Gary Roberts testified, "I am not here today asking that you create a loophole which would allow small businesses to ignore their safety responsibilities. As I indicated, our employees are also often our families. They are also our neighbors and friends. Our company has many long-time, loyal employees. We want them to be safe on the job site, because quite simply that means they are productive. As larger companies leave our communities, as they have in neighboring Muncie, Indiana, small businesses need to be able to step in and fill the void with new jobs. We cannot do this when we need to worry more about the definition of documents than we do the concept of running a small business that benefits, not only its owners, but also its employees and its community. * * * I would ask for your help in reducing the paperwork burden that is flooding small businesses."

Teresa Gearhart testified, "The proposed legislation to amend the [Paperwork Reduction Act] would be a tremendous benefit for small business. As a small business owner, I have often spent valuable time searching for the correct answers to filing and meeting the deadlines of the numerous government agencies. * * * Even today, but more importantly when our company was starting and our growth was rapid, we struggled to keep up with the requirements. Knowing the heavy burden of documents required by the long list of agencies, it would be very easy to make errors in meeting those deadlines and filings. Yet fines for small business can be detrimental. The proposed legislation to suspend fines for first-time violations would recognize such an important fact."

Jere Glover, Chief Counsel for Advocacy of the Small Business Administration, testified, "In addition to the actual regulatory and paperwork burden is the perception that is very clear in the minds of small business [owners], that at some point some investigator or some auditor is going to walk in that door and cite them for some regulation that they know existed, and the fine will be so great that it will impact their business and their livelihood."

Mr. Glover further testified, "I was one of the officials who worked with the Vice President and the President to promulgate the March 1995 memorandum [to the heads of the Federal agencies] that said, much like your bill does, that where it is reasonable, where it is a first-time violation, do not go in and play 'gotcha' with the business. I think that makes a lot of sense. And I think your legislation also makes a lot of sense."

Mr. Glover closed by saying, "There can be significant improvements made in the regulatory burdens on small business. And clearly, it is a wonderful idea that you are coming forward with."

Witnesses at the March 17, 1998, hearing included: Emily Sheketoff, Deputy Assistant Secretary, Occupational Safety and Health Administration; Joseph Onek, Principle Deputy Associate Attorney General, Department of Justice; Brian J. Lane, Director of the Division of Corporate Finance, Securities and Exchange Commission; Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation.

At the hearing, Emily Sheketoff testified that, "Although OSHA agrees that legislation like [H.R. 3310] could be beneficial, we have serious concerns about the safety and health impact of the penalty-related provisions in section 2 of the bill." The concerns voiced in her testimony were very similar to those expressed by the other agency witnesses.

B. COMMITTEE ACTION

After taking into account the testimony from the witnesses at the March 5, 1998, and March 17, 1998, hearings, the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, held a mark up of H.R. 3310 on March 17, 1998. By voice vote, the Subcommittee approved forwarding H.R. 3310, as amended, to the full Committee on Government Reform and Oversight for consideration.

On March 19, 1998, at the full committee, Subcommittee Chairman McIntosh offered an amendment to address the concerns voiced by the agencies. The amendment added two additional exceptions to the suspension of fines section of the bill to ensure that the bill would not inadvertently prevent the detection of crimes, particularly drug crimes, or dismiss violations of tax and pension requirements. The amendment passed 19 to 15. By voice vote, the full Committee approved reporting H.R. 3310, as amended, to the full House.

Chairman Jim Talent, on behalf of the Small Business Committee, waived jurisdiction over H.R. 3310, after reviewing the legislation and the legislative history.

IV. EXPLANATION OF THE BILL—SECTION-BY-SECTION ANALYSIS

*Section 1: Title**Section 2: Facilitation of compliance with Federal paperwork requirements**Annual publication of Federal paperwork requirements*

Section 2 (a) amends Section 3504(c) of the PRA to require the Director of the Office of Management and Budget (OMB) to authorize the Administrator of the Office of Information and Regulatory Affairs (OIRA) to publish a list annually in the Federal Register and on the Internet of all the Federal paperwork requirements for small business. The list will be organized or indexed into useful categories by industry type to help small businesses identify which paperwork requirements apply to them. This includes categorization according to the North American Industrial Classification System and other ways that will be helpful and readily described. The first publication of the list will be not later than one year after the date of enactment of the Act. “Collection of information” is the PRA’s term for paperwork. It is defined as “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—(I) answers to identical questions posed to, or identical reporting or record keeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes.” “Small business concern” is the term for a small business as it is used in the Small Business Act. It is defined as an enterprise which is “independently owned and operated and which is not dominant in its field of operation.” It is further defined by the Small Business Size Regulations (13 CFR 121), which set the size standards businesses must meet to qualify as a small business.

Establishment of agency point of contact for small business

Section 2(b) amends Section 3506 of the PRA to require each agency to establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork.

Suspension of fines for first-time paperwork violations

Section 2(b) further provides that agencies shall suspend civil fines on small businesses for first-time paperwork violations so that the small businesses may correct the violations. If a small business does not correct the violation within the prescribed time period, the fine may be imposed. The fine shall be suspended for six months unless the agency head determines (1) that the violation has caused actual serious harm to the public; (2) that failure to impose the fine would impede or interfere with the detection of criminal activity; (3) that the violation is a violation of an internal revenue law or any law concerning the assessment or collection of any tax, debt, revenue or receipt; or (4) that the violation presents an imminent and substantial danger to the public health or safety.

If the violation presents an imminent and substantial danger to the public health and safety, the agency head may either impose the fine or suspend it for 24 hours so that the small business may correct the violation. In determining whether to give the small business 24 hours to correct the violation, the agency shall take into account all the facts and circumstances of the violation, including: (1) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct; (2) whether the small business has made a good-faith effort to comply and remedy the violation in the shortest practicable time; (3) the previous compliance history of the small business, including whether its owners or principal officers have been subject to past enforcement actions; and (4) whether the small business has obtained significant economic benefit from the violation. If the agency head opts to impose the fine in this case, he or she must notify Congress of the decision within two months. Only civil fines may be suspended, not criminal. Only fines assessed for violations of collection of information (paperwork) requirements may be suspended, not fines for violations of other, related regulatory requirements. The Committee urges the Federal agencies to ensure that this provision applies to the States' enforcement policies and programs when they delegate the authority to issue civil fines for paperwork requirements to the States.

Paperwork reduction for businesses with fewer than 25 employees

Section 2(c) amends Section 3506(c) of the PRA to require each agency to make further efforts to reduce paperwork for small businesses with fewer than 25 employees, in addition to meeting the paperwork reduction requirements of the Act.

Section 3: Establishment of a task force on the feasibility of streamlining reporting requirements

Section 3 adds a new Section to the PRA, § 3521, to establish a task force to study the feasibility of streamlining reporting requirements for small businesses. The Director of OMB should authorize the Administrator of OIRA to appoint the members of the task force. The members will include representatives from different agencies that could contribute to this effort, including the Bureau of Labor Statistics and the Occupational Safety and Health Administration of the Department of Labor, the Department of Transportation, the Environmental Protection Agency, and the Small Business Administration Office of Advocacy. The task force will examine the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and on one date. After one year, the task force will report its findings to the House Government Reform and Oversight and Small Business Committees and the Senate Governmental Affairs and Small Business Committees. If the task force finds that consolidating reporting requirements so that small businesses may make annual submissions to each agency on one form or a single electronic reporting system will not work or reduce the burden in

a meaningful way, the task force will make recommendations to the Committees on what will work to streamline and reduce the burden of reporting requirements for small businesses.

V. COMPLIANCE WITH RULE XI

Pursuant to rule XI, clause 2(1)(3)(A) of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1), the results and findings from committee oversight activities are incorporated in the bill and this report.

VI. BUDGET ANALYSIS AND PROJECTIONS

H.R. 3310, as amended, provides for no new authorization, budget authority, or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act of 1994 are not applicable.

VII. COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 24, 1998.

Hon. DAN BURTON,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3310, the Small Business Paperwork Reduction Act Amendments of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 3310—Small Business Paperwork Reduction Act Amendments of 1998

Summary: H.R. 3310 generally would seek to provide relief to small businesses by: (1) waiving civil fines and penalties for first-time violations of paperwork requirements, (2) directing the Office of Management and Budget to publish annually a list of applicable paperwork requirements, (3) requiring that agencies provide a single point of contact, and (4) establishing a multi-agency task force to study the feasibility of streamlining requirements for collecting and reporting information to the federal government.

CBO estimates that enacting H.R. 3310 would result in a net loss of governmental receipts of at least \$4.5 million a year. That amount includes an estimated annual loss of civil monetary penalties (CMPs) of at least \$6 million, net of increased income and payroll taxes. Because the bill would affect receipts, pay-as-you-go procedures would apply. Implementing the bill also would increase annual discretionary costs by requiring agencies to publish a list of paperwork requirements and to participate in the multi-agency task force, but CBO does not expect such costs to be significant.

H.R. 3310 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: By waiving civil fines and penalties for first-time violations of paperwork requirements by small businesses, H.R. 3310 would affect the collection of CMPs by federal regulatory agencies. Specifically, the bill would prohibit federal agencies from assessing CMPs for first-time paperwork violations, except for cases where the agency determines that the violation has caused serious harm or presents an imminent and substantial danger to the public health or safety, or where the violation is not corrected within six months of notification. The onetime relief also would not apply to violations involving the collection of any tax, debt, revenue, or receipt. In addition, the bill would allow an agency to forgo assessing a firm for violations that it considers to present an imminent and substantial danger to the public health or safety. If the agency elects not to waive the fine or penalty, the bill would require that it notify the Congress of the decision within 60 days.

Agencies annually collect approximately \$300 million in non-tax CMPs—excluding those collected by the Internal Revenue Service. Such fines are recorded as governmental receipts. The vast majority of such collections, however, are for non-paperwork violations. Paperwork violations generally involve the failure to record and report information required by federal regulatory agencies to assist in enforcing health, safety, and environmental laws. Additionally, several federal statutes, including the Small Business Regulatory Enforcement Fairness Act of 1996, and Administration policy already required that agencies provide relief to small businesses from first-time fines for paperwork violations. Among other things, agencies are required to consider a firm's size, its compliance history, whether it benefited economically from the violation, and its efforts to correct the violation in determining the amount of any fine or penalty.

H.R. 3310 would broaden this relief so as to prevent agencies from imposing any fine for the vast majority of first-time offenses. Unfortunately, based on information from the agencies we contacted, including the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Departments of Justice and Transportation, agencies do not track the assessment or collection of CMPs by whether a penalized firm is a small business, a first-time offender, or in most cases, even whether the fine is for a paperwork violation. Consequently, the amount of collections that would be forgone under H.R. 3310 is very uncertain.

Based on limited information provided by OSHA, including the amount of fines assessed and collected for certain paperwork violations in 1997, CBO estimates that annual collections by that agency would decrease by at least \$2 million. OSHA and EPA each account for about one-quarter of all non-tax CMPs. Thus, we estimate the EPA would forgo a similar amount in collections of CMPs. For other agencies, which account for one-half of the remaining non-tax CMPs, but which appear to impact small businesses to a lesser de-

gree than OSHA and EPA, we estimate the government would forgo approximately another \$2 million annually. Thus, in total, CBO estimates that enacting H.R. 3310 would result in an annual loss of governmental receipts from CMPs of at least \$6 million. After adjusting for the income and payroll tax offset, CBO estimates a reduction in net governmental receipts of at least \$4.5 million, beginning in fiscal year 1999. Assuming that H.R. 3310 is enacted this summer, we estimate that the net loss in governmental receipts for fiscal year 1998 would not be significant.

The bill also would increase annual discretionary costs for agencies to publish a list of paperwork requirements and to participate in the multi-agency task force, but CBO does not expect such increases to be significant.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal years, in millions of dollars—										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	Not applicable										
Changes in receipts	0	-5	-5	-5	-5	-5	-5	-5	-6	-6	-6

Intergovernmental and private-sector impact: H.R. 3310 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: John R. Righter.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VIII. SPECIFIC CONSTITUTIONAL AUTHORITY FOR THIS LEGISLATION

Clauses 1, 14, and 18 of Article 1, section 8 of the Constitution grant Congress the power to enact this law.

IX. CHANGES IN EXISTING LAW

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

CHAPTER 35 OF TITLE 44, UNITED STATES CODE
CHAPTER 35—COORDINATION OF FEDERAL
INFORMATION POLICY

Sec.

3501. Purposes.

* * * * *

3521. *Establishment of task force on feasibility of streamlining information collection requirements.*

* * * * *

§ 3504. Authority and functions of Director

(a) * * *

* * * * *

(c) With respect to the collection of information and the control of paperwork, the Director shall—

(1) * * *

* * * * *

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; **[and]**

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information**[.]**;

(6) *publish in the Federal Register on an annual basis a list of the requirements applicable to small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)) with respect to collection of information by agencies, organized by North American Industrial Classification System code and industrial/sector description (as published by the Office of Management and Budget), with the first such publication occurring not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1998; and*

(7) *make available on the Internet, not later than one year after the date of the enactment of such Act, the list of requirements described in paragraph (6).*

* * * * *

§ 3506. Federal agency responsibilities

(a) * * *

* * * * *

(c) With respect to the collection of information and the control of paperwork, each agency shall—

(1) * * *

(2)(A) * * *

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); **[and]**

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

(A) * * *

* * * * *

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public[.]; and
(4) in addition to the requirements of this Act regarding the reduction of paperwork for small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)), make efforts to further reduce the paperwork burden for small-business concerns with fewer than 25 employees.

* * * * *

(i)(1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork—

(A) establish one point of contact in the agency to act as a liaison between the agency and small-business concerns (within the meaning of section 3 of the Small Business Act (15 U.S.C. 631 et seq.)); and

(B) in any case of a first-time violation by a small-business concern of a requirement regarding collection of information by the agency, provide that no civil fine shall be imposed on the small-business concern unless, based on the particular facts and circumstances regarding the violation—

(i) the head of the agency determines that the violation has caused actual serious harm to the public;

(ii) the head of the agency determines that failure to impose a civil fine would impede or interfere with the detection of criminal activity;

(iii) the violation is a violation of an internal revenue law or a law concerning the assessment or collection of any tax, debt, revenue, or receipt;

(iv) the violation is not corrected on or before the date that is six months after the date of receipt by the small-business concern of notification of the violation in writing from the agency; or

(v) except as provided in paragraph (2), the head of the agency determines that the violation presents an imminent and substantial danger to the public health or safety.

(2)(A) In any case in which the head of an agency determines that a first-time violation by a small-business concern of a requirement regarding the collection of information presents an imminent and substantial danger to the public health or safety, the head of the agency may, notwithstanding paragraph (1)(B)(v), determine that a civil fine should not be imposed on the small-business concern if the violation is corrected within 24 hours of receipt of notice in writing by the small-business concern of the violation.

(B) In determining whether to provide a small-business concern with 24 hours to correct a violation under subparagraph (A), the

head of the agency shall take into account all of the facts and circumstances regarding the violation, including—

(i) the nature and seriousness of the violation, including whether the violation is technical or inadvertent or involves willful or criminal conduct;

(ii) whether the small-business concern has made a good faith effort to comply with applicable laws, and to remedy the violation within the shortest practicable period of time;

(iii) the previous compliance history of the small-business concern, including whether the small-business concern, its owner or owners, or its principal officers have been subject to past enforcement actions; and

(iv) whether the small-business concern has obtained a significant economic benefit from the violation.

(3) In any case in which the head of the agency imposes a civil fine on a small-business concern for a first-time violation of a requirement regarding collection of information which the agency head has determined presents an imminent and substantial danger to the public health or safety, and does not provide the small-business concern with 24 hours to correct the violation, the head of the agency shall notify Congress regarding such determination not later than 60 days after the date that the civil fine is imposed by the agency.

* * * * *

§3521. Establishment of task force on feasibility of streamlining information collection requirements

(a) There is hereby established a task force to study the feasibility of streamlining requirements with respect to small-business concerns regarding collection of information (in this section referred to as the “task force”).

(b) The members of the task force shall be appointed by the Director, and shall include the following:

(1) At least two representatives of the Department of Labor, including one representative of the Bureau of Labor Statistics and one representative of the Occupational Safety and Health Administration.

(2) At least one representative of the Environmental Protection Agency.

(3) At least one representative of the Department of Transportation.

(4) At least one representative of the Office of Advocacy of the Small Business Administration.

(5) At least one representative of each of two agencies other than the Department of Labor, the Environmental Protection Agency, the Department of Transportation, and the Small Business Administration.

(c) The task force shall examine the feasibility of requiring each agency to consolidate requirements regarding collections of information with respect to small-business concerns, in order that each small-business concern may submit all information required by the agency—

(1) to one point of contact in the agency;

(2) in a single format, or using a single electronic reporting system, with respect to the agency; and
 (3) on the same date.

(d) Not later than one year after the date of the enactment of the Small Business Paperwork Reduction Act Amendments of 1998, the task force shall submit a report of its findings under subsection (c) to the chairmen and ranking minority members of the Committee on Government Reform and Oversight and the Committee on Small Business of the House of Representatives, and the Committee on Governmental Affairs and the Committee on Small Business of the Senate.

(e) As used in this section, the term "small-business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 631 et seq.).

X. COMMITTEE RECOMMENDATION

On March 19, 1998, a quorum being present, the Committee on Government Reform and Oversight ordered the bill, as amended, favorably reported.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT—105TH CONGRESS ROLLCALL

Date: March 19, 1998.

Amendment No. 1.

Description: Amendment to the Amendment in the Nature of a Substitute to H.R. 3310, Page 4, after line 8, insert the following: (c) ADDITIONAL REDUCTION OF PAPERWORK FOR CERTAIN SMALL BUSINESS.—Section 3506 (c) of title 5, United States Code, is amended—

Offered by: Hon. Bernard Sanders (VT).

Adopted by Voice Vote.

Date: March 19, 1998.

Amendment No. 2.

Description: Substitute Amendment to the Amendment Offered by Mr. Kucinich, Page 3, strike line 1 and all that follows through page 4, line 8, and insert the following:

Name	Aye	Nay	Present	Name	Aye	Nay	Present
Mr. Burton	X			Mr. Waxman		X	
Mr. Gilman				Mr. Lantos			
Mr. Hastert	X			Mr. Wise			
Mrs. Morella				Mr. Owens		X	
Mr. Shays				Mr. Towns			
Mr. Schiff				Mr. Kanjorski		X	
Mr. Cox	X			Mr. Condit			
Ms. Ros-Lehtinen				Mr. Sanders		X	
Mr. McHugh	X			Mrs. Maloney		X	
Mr. Horn	X			Mr. Barrett		X	
Mr. Mica	X			Ms. Norton		X	
Mr. Davis (VA)	X			Mr. Fattah		X	
Mr. McIntosh	X			Mr. Cummings		X	
Mr. Souder	X			Mr. Kucinich		X	
Mr. Scarborough	X			Mr. Blagojevich		X	
Mr. Shadegg	X			Mr. Davis (IL)		X	
Mr. LaTourette	X			Mr. Tierney		X	
Mr. Sanford	X			Mr. Turner	X		
Mr. Sununu				Mr. Allen		X	

Name	Aye	Nay	Present	Name	Aye	Nay	Present
Mr. Sessions	X			Mr. Ford		X	
Mr. Pappas	X						
Mr. Snowbarger	X						
Mr. Barr	X						
Mr. Miller	X						

Offered by: Hon. David M. McIntosh (IN).

Adopted by Recorded Vote: 19 Ayes; 15 Nays.

Date: March 19, 1998.

Amendment No. 3.

Description: Amendment to the Amendment in the Nature of a Substitute to H.R. 3310, as amended, Page 3, strike line 1 and all that follows through page 4, line 6, and insert the following:

Offered by: Hon. Dennis J. Kucinich (OH).

Adopted by Agreement.

Date: March 19, 1998.

Amendment No. 4.

Description: Amendment in the Nature of a Substitute to H.R. 3310, as amended.

Offered by: Hon. David M. McIntosh (IN).

Adopted by Agreement.

Date: March 19, 1998.

Motion to favorably report H.R. 3310, as amended.

Offered by: Hon. David M. McIntosh (IN).

Adopted by Voice Vote.

XI. CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104-1

H.R. 3310, as amended by the Committee, amends the Paperwork Reduction Act to reduce the burden of Federal paperwork on small businesses by requiring the publication of a list of all the Federal paperwork requirements on small businesses; requiring each Federal agency to establish one point of contact for small businesses on paperwork issues; requiring the agencies to allow small businesses to correct first-time paperwork violations before civil fines are assessed, except when doing so would harm or threaten public health and safety, impede criminal detection, or involve an internal revenue law; requiring the agencies to address the paperwork burden on businesses with fewer than 25 employees; and forming a task force of agency representatives to study the feasibility of streamlining Federal reporting requirements on small businesses. The original Act does not apply to the House of Representatives or to the Senate, thus H.R. 3310 does not apply to the Congress.

XII. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4, SECTION 423

The Committee finds that the legislation does not impose any Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

XIII. APPENDIX

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, March 20, 1998.

Hon. DAN BURTON,
*Chairman, Committee on Government Reform and Oversight, Ray-
burn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: This letter responds to your request that the Committee on Small Business waive its jurisdiction over H.R. 3310, the Small Business Paperwork Reduction Act Amendments of 1998, as introduced on March 3, 1998. After reviewing this legislation and the detailed legislative history created by your Committee, I have agreed to waive the jurisdiction of the Committee on Small Business over this legislation.

H.R. 3310 would provide small businesses with much-needed relief from government paperwork. Specifically, the bill would: (1) put on the Internet a list of all Federal paperwork requirements for small businesses, organized by industry; (2) offer small businesses compliance assistance instead of fines on first-time paperwork violations, except in cases of actual harm or an imminent threat to public health and safety; (3) establish a Paperwork Czar at each agency who is the contact point for small businesses on paperwork requirements; and (4) establish a task force, including representatives from the major regulatory agencies, to study how to streamline reporting requirements for small businesses. These are all common sense approaches to help small business and I applaud your Committee's prompt action on this important measure.

As you know, House Rule X, Establishment and Jurisdiction of Standing Committees, grants the Committee on Small Business with jurisdiction over "Federal paperwork reduction." Our waiver of jurisdiction over H.R. 3310 is not designed to limit our jurisdiction over any future consideration of Federal paperwork reduction legislation.

Thank you and your staff for your dedication and hard work on this issue. I look forward to working with you on this and other issues throughout the 105th Congress.

Sincerely,

JAMES M. TALENT, *Chairman.*

DISSENTING VIEWS

The business community often complains about the burden of government regulations and the resulting paperwork. In response to this criticism, the Administration has streamlined regulations by reinventing government and implementing many of the recommendations made by the White House Conference on Small Business. Similarly, Congress has passed paperwork reduction legislation such as the Paperwork Reduction Act (PRA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). We fully support efforts to reduce paperwork on small businesses which do not jeopardize important public protections.

There are a number of provisions in H.R. 3310 that address streamlining paperwork requirements on small businesses. They require agencies to annually publish paperwork requirements on small businesses, to establish a small business liaison, and to establish a task force to study the feasibility of streamlining paperwork requirements. However, we oppose the provisions in H.R. 3310 that prohibit the assessment of civil penalties for most first-time violations of information collection that are rectified within a given period of time.

At the March 17, 1998, hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, agency witnesses from the Departments of Justice, Transportation, and Labor, and the Securities and Exchange Commission testified about the unintended yet serious negative consequences of these provisions. They explained that section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA), which became law two years ago, specifically provides relief by directing that federal agencies establish policies for the reduction or waiver of civil penalties for small business violations under appropriate circumstances. Under this law, agencies may provide relief for a variety of reasons including good-faith violations, violations that are corrected within a reasonable period, and violations that do not pose a substantial threat to public health, safety, or the environment. These policies were to be put in place by March 29, 1997, and the agencies should report to Congress on the effect of those policies by March 29, 1998. The witnesses explained that the agencies' SBREFA policies already provide relief for most first-time violations.

However, the civil penalty provisions in H.R. 3310 go far beyond SBREFA because, in most instances, they remove agency discretion from the process and require agencies to prove facts which are extremely difficult to prove before they can take steps to protect the public. Therefore, the bill is opposed by the Administration and many labor, environmental, and consumer groups.

A. CONCERNS ABOUT CIVIL PENALTY PROVISIONS IN H.R. 3310

1. *H.R. 3310 would have wide-ranging and substantive negative effects*

H.R. 3310 prohibits the federal government from assessing civil penalties for most first-time violations of “information collection” requirements. Although the term “information collection” sounds like it is referring to only technical reporting violations, it also includes the distribution of information to third parties and the public. For instance, it includes warning the public about the dangers of a product or prescription drug, warning employees about how to handle hazardous material, and adequately disclosing facts to an investor about a company’s financial status.

At the March 17, 1998, hearing, Mr. Joseph N. Onek, Principal Deputy Associate Attorney General for the Department of Justice testified, “this provision could interfere with the war on drugs, hinder efforts to control illegal immigration, undermine food safety protections, hamper programs to protect children and pregnant mothers from lead poisoning, and undercut controls on fraud against consumers and the United States.”

2. *H.R. 3310 would hamper law enforcement*

H.R. 3310 also weakens the incentive to comply with the law. Mr. Onek testified that “Civil penalties deter unlawful behavior and stop people who break the law from gaining an unfair competitive advantage over the majority of businesses that work hard to do the right thing and comply with the law. But under this bill, unscrupulous businesses would know that they could not be penalized until caught once, and then caught again. Such automatic probation for first time offenders would give bad actors little reason to comply until caught. And that would work to the economic detriment of those hardworking small business owners who work hard to comply with the law.”

Mr. Onek further explained that H.R. 3310 would hamper the enforcement of substantive laws, not just information collection requirements. He testified that “In our experience, companies that fail to comply with record keeping and reporting requirements are often found to be violating other legal requirements as well. Any delay in investigating or taking action against such companies would simply allow the company more time to reap the benefits of unlawful conduct and a greater opportunity to coverup and conceal evidence of wrongdoing.”

3. *Exceptions in H.R. 3310 would not adequately protect the public*

In most instances, an agency is prohibited from assessing a civil fine under H.R. 3310 unless the agency:

- (1) proves the violation caused actual serious harm to the public;
- (2)(a) proves the violation poses an imminent and substantial danger to the public health and safety and (b) informs Congress of its decision to fine within 60 days of its imposition; or
- (3) proves that the failure to fine would impede the detection of criminal activity.

Because this burden of proof is so high, these exceptions do not adequately protect the public.

It is difficult to prove that a failure to report a problem—rather than the underlying dangerous condition—actually caused or posed harm. Mr. Onek explained, “Our concerns are not solved by the bill’s language allowing an agency to impose civil penalties where the agency head determines that the violation causes ‘actual, serious harm’ to public health or safety. * * * [Actual serious harm] may be difficult to discover, because agencies often rely on the very information that might not be reported under this bill to determine the nature, severity, and even existence of harm. Also, reporting and recordkeeping obligations often provide the information needed to prevent harm but violations of these requirements may not appear to cause harm directly.”

Mr. Onek added, “The ‘imminent and substantial danger’ standard in this bill also would be a much higher and more difficult standard to prove than the analogous standards that Congress has determined are appropriate to protect the public under many other statutes. * * * Furthermore, without reporting requirements, the government cannot identify potential underlying problems before they cause harm.”

The third exception provides a negligible benefit. It would be almost impossible to prove that the failure to fine would impede criminal enforcement. It is the information collection violation—not the resulting fine—that impedes law enforcement.

Mr. Onek summed it up well when he testified “The bill essentially shifts the burden of disclosing health, safety, or environmental risks from those in the best position to learn of actual or potential defects or risks to already overburdened regulatory agencies.”

4. H.R. 3310 would create a safe haven for willful and longstanding violations

The safe haven for first-time violations would not be limited to inadvertent violations. Small businesses who willfully refuse to file can also take advantage of it. Moreover, although the bill does not prohibit the assessment of criminal penalties, agencies often choose to assess civil fines for criminal activity because civil violations are easier to prove or because they may want to be lenient with first-time violators. However, H.R. 3310 would close off this option.

5. H.R. 3310 would create an incentive to remain ignorant of the law

Mr. Onek also noted that, “Providing a waiver of civil penalties for first-time violations also will reduce incentives for small businesses to become familiar with their legal obligations.”

6. H.R. 3310 could increase the burden on small businesses

Mr. Onek also testified that “Simply put, the penalty waiver provision does not reduce reporting and recordkeeping burdens at all—except for those who violate the law. This result would put law abiding businesses at an unfair competitive disadvantage and could endanger the public.”

Mr. Onek also explained that it could actually increase the burdens on small businesses. He explained that “If businesses did not keep and report information important to law enforcement and public health and safety, the government would have to either make decisions without critical information or make much more frequent and intrusive inspections. Both alternatives are undesirable.”

B. KUCINICH-TIERNEY AMENDMENT ADDRESSED CONCERNS

Unfortunately, the Committee did not adopt the provisions in an amendment offered by Rep. Kucinich and Rep. Tierney. The Kucinich-Tierney amendment addressed the concerns described above by (1) retaining agency discretion in the civil penalty process and (2) removing provisions that set a high burden of proof on the agencies. Yet it would have provided appropriate relief for first-time violations. It specifically provided that agencies establish policies to reduce or waive civil penalties for first-time violations in appropriate circumstances. The policy would have taken into account the nature and seriousness of the violation, good faith efforts to comply and remedy violations, previous compliance history, financial benefit from the violation, and other factors considered relevant by the head of the agency. When considering the nature and seriousness of the violation, the agency would have taken into account whether the violation was technical or inadvertent, willful or criminal, or threatens or caused harm to health and safety; consumer, investor, worker, or pension protections; or the environment. This amendment would have dovetailed the penalty relief policies required under SBREFA, yet would have gone a step farther by expressly providing relief for first-time violators.

C. EXAMPLES OF POTENTIAL PROBLEMS BECAUSE KUCINICH-TIERNEY AMENDMENT NOT ADOPTED

1. *Drug enforcement*

Paper trails are an important tool for catching drug dealers and other criminals. Financial institutions must report cash transactions exceeding \$10,000 because it helps the government identify criminal activity. Furthermore, the Drug Enforcement Agency (DEA) requires pharmaceutical companies to verify the legitimacy of controlled substance sales to ensure that inventories are not improperly diverted. These reports are jeopardized by H.R. 3310 because, in most circumstances, it would prohibit civil fines for first-time violations that are corrected within 6 months of notification.

2. *Market integrity/pension funds*

The Securities and Exchange Commission (SEC) regulates brokers, investment advisors, and other small entities that are entrusted with handling huge sums of money, pension funds, etc. Paperwork requirements create audit trails and ensure proper calculation and verification of capital requirements, proper segregation of funds, and accurate and full disclosure to clients. The integrity of the market depends on accurate and timely reporting by all participating firms. Without this paperwork, it is difficult for the SEC to protect clients, investors, pensioners, and others from

fraudulent or otherwise inappropriate behavior. Because of the high burden of proof, violators likely would have six months to correct their records which, in turn, would make it more difficult to provide serious misconduct.

3. Illegal immigration

In order to discourage illegal immigration, the Immigration and Naturalization Service (INS) requires employers to document that newly hired employees are eligible for work. Under H.R. 3310 employers who failed to file these reports would not be subject to penalties. Thus, immigration enforcement would be in jeopardy.

4. Highway safety

The Department of Transportation (DOT) requires transporters to file evidence of drug-testing, shipping papers showing the transportation of hazardous materials, accident reports, and flight data recorders. H.R. 3310 would weaken the incentive to file these important reports.

5. Consumer protections

The Consumer Product Safety Commission (CPSC) and the Food and Drug Administration (FDA) requires manufactures to report adverse effects of new products. This provides the information the need to investigate whether or not there is a family product or drug that should be removed from the marketplace before they cause more harm. H.R. 3310 put this information requirement—and others like it—in jeopardy.

6. Employee protections

The Occupational Safety and Health Administration (OSHA) requires employers to report workplace accidents within a short period of time. If this report is delayed, OSHA may not be able to investigate whether there is a problem in time to prevent another similar accident. Moreover, if an employer fails to provide the proper warnings to employees on how to handle hazardous materials, it could be difficult for an agency to prove “actual serious harm” or “an imminent and substantial danger.” For instance, it is difficult to establish how much exposure to a toxic chemical, if any, can be attributed to the failure to instruct employees. Similarly, under the Clean Air Act, advance notice must be given to workers and the public prior to demolition or renovation of an asbestos-containing building. H.R. 3310 weakens the incentive to diligently comply with these important worker protections. As the OSHA witness explained, employees have died, in part, because they were not adequately warned of dangers.

8. Tenant warnings on lead hazards

A landlord must provide warnings to tenants who may have had lead hazards in the home. Without this warning, adults might not take the precautions necessary to prevent lead poisoning in their children. It would be hard for an agency to prove that the failure to distribute the lead hazard pamphlet actually caused the resulting harm or posed the threat of harm. Furthermore, without the

threat of fines, landlords might not take their obligation to warn as seriously. Again, H.R. 3310 jeopardizes this safety protection.

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