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H.R. 391 AND S. 1378—THE SMALL BUSINESS PAPERWORK REDUCTION ACT AMENDMENTS OF 1999

HEARING

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

OCTOBER 19, 1999

H.R. 391 and S. 1378

TO AMEND CHAPTER 35 OF TITLE 44, UNITED STATES CODE, FOR THE PURPOSE OF FACILITATING COMPLIANCE BY SMALL BUSINESSES WITH CERTAIN FEDERAL PAPERWORK REQUIREMENTS, TO ESTABLISH A TASK FORCE TO EXAMINE THE FEASIBILITY OF STREAMLINING PAPERWORK REQUIREMENTS APPLICABLE TO SMALL BUSINESSES, AND FOR OTHER PURPOSES

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H.R. 391 AND S. 1378—THE SMALL BUSINESS PAPERWORK REDUCTION ACT AMENDMENTS OF 1999

TUESDAY, OCTOBER 19, 1999

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:38 a.m., in room SD–628, Dirksen Senate Office Building, Hon. George V. Voinovich presiding.

Present: Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. The Committee will please come to order.

First of all, I would like to welcome today's witnesses, including my friend and colleague, Senator Blanche Lincoln, and my fellow Ohioan, Robert Smith of Beachwood, Ohio, who is President of Spero-Smith Investment Advisers in Beachwood and who is also associated with National Small Business United.

Today, we will be hearing from witnesses regarding H.R. 391 and S. 1378, which are companion bills to one another and are both entitled the Small Business Paperwork Reduction Act Amendments, importantly, amendments. S. 1378 is a bill that Senator Lincoln and I introduced this past July, while H.R. 391 is legislation that has passed the House already by a vote of 274 to 151.

The main thrust of these bills is to give small business the ability to correct first-time paperwork violations that do not cause physical harm, affect internal revenue laws, and I want to underscore, or threaten public health or safety if the violation is corrected in a reasonable time.

In addition, the legislation would establish a multi-agency task force appointed by OMB to study how to streamline reporting requirements for small business, establish a point of contact at each Federal agency that small business could contact regarding paperwork requirements, require an annual comprehensive list of all paperwork requirements for small business to be placed in the *Federal Register* and on the Internet, and last, require additional paperwork reductions for small businesses with fewer than 25 employees.

Today, there are 23 million small businesses in the United States employing 53 percent of our Nation's private workforce. Small businesses are the mainstay of American society, and their payroll contributions and their tax base constitute the economic heart and the

backbone of our competitiveness in the global marketplace. People forget that it is the little businesses that grow into the big businesses and we need to continue to have more of them and to see them succeed.

Despite the contributions small businesses make, the Federal Government too often unfairly burdens them by burying them in paper, and I would like to say that it may not necessarily be just the "Federal Government," including Congress. Small business owners spend $229 billion per year on compliance costs and some 6.7 billion hours are used annually to fill out all Federal paperwork requirements in order to comply with numerous government programs, guidelines, and policies. They just keep stacking up.

I will never forget when I started practicing law and I had some people and they wanted to go into business, and I started explaining all of the things they would need to do, and this was back a long time ago, 35, 40 years, and they said, well, I am going to have to hire you, and I said, yes, you are. You are also going to have to hire an accountant and you are also going to have to have a bookkeeper, and a lot of them just shook their heads, got up, and walked out. That was enough of that.

According to the National Federation of Independent Business, small business owners are subjected to 63 percent of the Nation's regulatory burden, and the paperwork regulations they are subjected to cost more than $2,000 per employee, which I think is just incredible.

I am convinced that relieving the paperwork burden on the small business owners in our Nation is going to help increase productivity, save money, create more jobs, and make them more competitive in that global marketplace.

That is another thing we forget about, all these rules, regulations, and so forth, and a lot of them are absolutely necessary and some of them are questionable, but all of that adds to the cost of doing business. In the old days when we were just doing business in this country, that is one thing. But today, we are now in that international marketplace and I think every time we do anything, we ought to evaluate what impact will this decision have on the competitiveness of America's businesses in that global marketplace.

In 1996, the Paperwork Reduction Act was supposed to reduce the amount of paper by 10 percent. Instead, it was only a 2.6 percent reduction. In 1997, the act was supposed to provide another 10 percent reduction in the amount of paper. Instead, there was a 2.3 percent increase in paperwork. In 1998, the act was supposed to provide another 5 percent reduction in the amount of paper. Instead, there was another 1 percent increase. I know that is not easy. I know when I was governor, I said we were going to reduce unnecessary regulations, and it is easy to say, but it is a lot more difficult to implement.

In most instances, it is the business owner himself who, along with running the day-to-day operation of the business, is also responsible for filling out the paperwork and keeping track of the government's constantly changing requirements. Small business owners want to comply.

It was very interesting. We had a hearing last week with the Internal Revenue Service where we were talking about quality man-

agement. Congress passes changes in the IRS code and we make them effective immediately. What we forget about is that it takes a while for the agency to even understand what they are and then train people to respond to customers' questions that are coming in. Somehow, we just forget about the fact that the people in those agencies are the ones that have to do the work, become familiar with things, and are able to handle it.

It is the same thing in business today. If you are a small business owner and these things come in and you are trying to keep track of everything that is going on, it takes a while for you to get a handle on what it is that you are being required to do.

To show how onerous first-time paperwork violations can be, the National Federation of Independent Businesses reports that an agriculture supply store owner from Oklahoma had decided to switch over the storage of chemicals for the fertilize he sold from 2.5-gallon containers to bulk containers. In other words, before that, he had them in 2.5-gallon containers. No, I am going to go to bulk.

His bulk storage approach also brought additional regulations, which he acknowledged and complied with. But in his second year of using the bulk containers, he did not know he had to submit the Pesticide Production Report required by the EPA. He was fined the maximum of $5,500, which the EPA insisted on even after he submitted the paperwork. A settlement agreement was eventually reached that called for a fine of $3,300 and legal fees of $1,600, nearly the entire original amount.

That is the other thing that people forget about. It is easy enough to say, well, I have got to deal with the agency, but most of the time, when you start dealing with a Federal agency, you end up hiring a lawyer, and quite frankly, sometimes the lawyers' fees are as expensive as the fine that you might ultimately have to pay with the Federal agency.

William Saas, President of Taskem, Inc., in Brooklyn Heights, Ohio, mentioned in a House hearing last year that the metal finishing industry studied a particular finishing operation—now, this is not the whole industry, this is a particular finishing operation—and discovered that there were over 160 environmental reports alone that had to be filed on one particular operation. Mr. Saas made a good point, saying, "Honestly, with 160 potential regulations, no one can really be sure that they have touched every base."

To sum it up, a friend of mine who owns a nursery recently said to me when I was out there, "George, every morning when I open that door, I am afraid that I am violating some Federal regulation or paperwork requirement." That is a heck of a thing. Every day, he is going in there thinking, somebody is going to maybe do something wrong and I am going to be in the soup.

The Small Business Paperwork Reduction Act, I think, will help a bit. It will give small business owners a 6-month grace period to correct first-time paperwork violations, again, that do not cause harm, affect internal revenue laws, or involve criminal activity. If a violation threatens public health or safety, each affected agency or jurisdiction would have the discretion to levy a fine as usual or provide a 24-hour window to correct the infraction. But I will say this so that everybody understands this. There are certain things that are going to be exempt, period, from this law, and that in-

volves the IRS and those things that would cause harm or involve criminal activity.

This legislation is also about giving decent, hard-working entrepreneurs as much assistance as possible in gaining access to information about what is required of them, decrease the amount of paper they are required to submit to the government, and more importantly, keep from having to pay penalties for simple, honest paperwork mistakes.

In addition, I want to stress that this does not limit the ability of Federal agencies from going after business owners who are bad apples, owners whose negligence or recklessness are a threat to their employees, their customers, or the public.

I will never forget, my first year as Governor of Ohio, we had a business in Lancaster, Ohio, that did not label—and Chief, you would be interested in this—the chemicals in that place, and he had just one violation after another. As a result of their failure to do their labeling, a fire fighter was killed and it was just a terrible situation. We nailed him. We went after him. I just want you to know that that kind of thing, that is not exempt under this legislation. It is not exempt under this legislation. If it is not specific enough for some of you, then we will work on it with you to make sure that we calm any fears that you may have.

I look forward to the testimony of today's witnesses, but before I do that, we have a custom in this Committee of asking all the witnesses to stand, raise their hand, and to swear to the truthfulness of their testimony. So if you will do that, I will swear you in.

Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?

Senator LINCOLN. I do.

Mr. GLOVER. I do.

Mr. SPOTILA. I do.

Ms. ACHESON. I do.

Mr. SMITH. I do.

Mr. GOLD. I do.

Mr. WARREN. I do.

Senator VOINOVICH. Let the record show that everyone answered in the affirmative.

Our first witness this morning is Senator Blanche Lincoln. The two of us are freshmen. However, Senator Lincoln served with distinction in the House of Representatives before being elected to the Senate, although I think you took a couple years off to start a family. She has been just a breath of fresh air in the Senate and I have really enjoyed working with her and with her staff. Senator, we are so glad that you are here this morning and I appreciate the fact that you are cosponsoring this legislation, which I think is important to businesses in my State and your State and in this country.

Senator Lincoln.

TESTIMONY OF THE HON. BLANCHE LINCOLN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator LINCOLN. Thank you, Mr. Chairman. I appreciate all of your leadership on this issue and have certainly enjoyed working with you and your staff on the Small Business Paperwork Reduc-

tion Act of 1999. I would like to compliment your staff. They have worked wonderfully with us and we appreciate that.

Without a doubt, your experience as Governor of Ohio and certainly in the other levels of government that you have served previous to this, working with small businesses that are the lifeblood of most communities, has been enormously helpful in moving forward on the Paperwork Reduction Act. I think it is so essential for legislators and public servants here in Washington to have some of that first-hand experience, and I think you bring a really good perspective that is much needed. So I am delighted to be here with you as a cosponsor and to be working with you.

Regulatory reform has been a priority of mine since I began my public service in the U.S. House of Representatives in 1993. When I served in the House, we figured out that it was important for the Federal Government to comply with the same regulations that we were applying to all of American businesses.

A great example is here in the Dirksen building, where we are undergoing renovations to comply with safety standards. If you walk around, you realize that now in trying to comply with the regulations that we placed on businesses out in the countryside, we are having much difficulty within the Federal walls of government being able to comply. So we are beginning to, hopefully, recognize that when we impose rules and regulations on industry, it is important to walk in their shoes a time or two to realize exactly what we are doing.

As many know, I come from a seventh generation farming family in Phillips County, Arkansas. My brother grows rice, cotton, soybeans, and wheat on the same land that our family has farmed for more than 60 years. So my interest in regulatory reform originated with the personal experience of me and my family with too much government intrusion. My father was always proud to both study and take the test for his compliance with pesticide application, but it was not usually the studying that troubled him. After having used pesticide application for almost 40 years, he knew the issues backwards and forwards. It was really the application with government, going through the paperwork to comply with being able to take those tests that annoyed him.

Another example of intrusive government regulation is wetlands regulation, when you have only a quarter of an acre that needs to be leveled and yet you have four different agencies to work through who all go by different laws. It does not make a lot of sense.

The farmers in my State are frustrated by having to file too many forms for too many government agencies. They cannot imagine why they need to provide the same information to several different offices within the Department of Agriculture. Since all of the agencies are part of the Federal Government, it seems they should share information rather than taking up folks' time filling out forms.

So when I came to Congress 6 years ago, I joined other like-minded members who tried to relieve the regulatory burden on small businesses and local government by passing Reg Flex Act and the unfunded mandates legislation. The bill that we are discussing today is an important extension to the Paperwork Reduction Act that I supported in 1995, and I know that you can well

understand what the unfunded mandates legislation meant to State and county and local governments. It was an important issue that we brought up when I was in the House and something we need to continue to focus on.

I would like to highlight a few components of the Small Business Paperwork Reduction Act of 1999 that are particularly appealing to my constituents. First, it just makes sense to permit agencies to waive fines for the first time violations of paperwork requirements. You have mentioned that in your remarks.

One small business owner who employs 85 people in Paragould, Arkansas, has complained that many Federal laws are difficult to understand. His quote was, "You do not know that you are doing it wrong until they come after you."

Especially in rural areas, small business owners are the engines that fuel the local economy. The Federal Government should not dispassionately levy fines on people who are making a good-faith effort to obey the law. Rather than harassing small business owners, we should be eliminating burdensome regulations and making sure the laws that are necessary are easy to understand.

That is why I support another provision in this bill that requires all Federal departments to have a single point of contact for small businesses. Until we can streamline our laws to make them crystal clear, we ought to at least provide a person at the other end of the telephone line to answer questions, and you have mentioned some of that, as well, making sure that there is someone there to converse with, communicate with, and at least give our constituents the common courtesy of giving them an idea of what they can expect.

The gentleman I mentioned earlier also said, "With all the regulations, I am not even sure why I am in business." He said, "Small business owners have been fined for violating information gathering requirements that they did not even know existed."

That is why another provision in the bill, to require the OMB to publish annually all information gathering requirements for small business, makes sense. Think of how difficult it would be to start a new business. In addition to trying to lease space, hire new employees, purchase equipment, and secure financing, a potential small business owner must attempt to follow local, State, and Federal laws. That would be a lot easier if all the Federal paperwork requirements were listed in one place, would it not? We do not want to tie the hands of enterprising young business men and women in government red tape.

Mr. Chairman, I could go on and on, sharing stories from constituents who complain about the information gathering requirements associated with well-meaning laws that I have supported. The owner of a small business that employs 75 people in Little Rock said that she has had to pay an outside firm $75 per employee covered by COBRA just to comply with paperwork requirements. As she said, "the best part is we just have a mere 14 days to facilitate all of this or face penalties, regardless of how busy we might be in trying to make a living. My business is highly seasonal and we get really busy in the spring trying to fulfill our State contract obligations, and you know, it really does become a hassle at trying to get all of this done within the 14-day requirement."

The bill we are discussing today will not solve all the frustrations of small business men and women, but it is an important first step. I thank you for your leadership on this issue and I encourage you to continue to look for ways that we might alleviate the paperwork requirements for small business owners.

On a final note, I understand that the International Association of Fire Chiefs will testify today regarding some of the concerns about this legislation, and I noticed you mentioned that to the Chief. Senator Voinovich, you and I thought we had addressed the fire fighters' concerns which were raised when the House considered similar legislation and I would refer my colleagues to page S8640 of the July 15, 1999, *Congressional Record,* where Senator Voinovich and I engaged in a colloquy to clarify the legislative intent of this bill. As the Chairman has stated first-time violations of paperwork reduction would not qualify for a civil penalty waiver if human health and safety were endangered. We in no way want to make that an issue in this bill.

I look forward to working with the fire fighters and any other groups that may have concerns about parts of this bill. I view all legislation, until it is signed into law, as a work in progress rather than a work of art. Collaborating with the fire fighters, nursing home groups, and the small business men and women from across the country, I am confident that we can forge this legislation into good law.

Thank you, Mr. Chairman, for your leadership and for allowing me the time to be a part of this hearing.

Senator VOINOVICH. Thank you, Senator Lincoln. I would underscore what you have to say in terms of working with the various organizations that are concerned about this legislation to make sure that it is something that everybody feels comfortable with. I have learned here in the Senate, very quickly, that the more you are able to do that, the better off you are. So I am hoping that we are going to be able to respond to some of the concerns that individuals have about this legislation, at the same time making sure that we move forward with it.

I do really think, as you do, how important it is, and I am glad that you brought up some personal experiences in your family and also other examples, because so often when we talk about some of this, it is just paperwork and we do not think of human beings that have to go through the process of complying with it. I think that most people want to do the right thing and are conscientious. What we are trying to do is to work with those individuals so that they comply with the law and at the same time not put them in a position where they are jeopardizing their business because of some innocent first-time failure to file a piece of paper.

So thanks very much for being here today.

Senator LINCOLN. Thank you, Mr. Chairman, and I think if there is anything we want to accomplish, it is to interject common sense into government. I think you and I have really worked hard at doing that in this bill and we look forward to working with others that will be testifying here today.

Senator VOINOVICH. Thank you.

Senator LINCOLN. Thank you.

Senator VOINOVICH. On our second panel this morning, we have Jere Glover, who is the Chief Counsel for Advocacy at the Small Business Administration; the Hon. John Spotila, Administrator of the Office of Information and Regulatory Affairs at OMB, who came on, in July, was it?

Mr. SPOTILA. Yes.

Senator VOINOVICH. And we have Eleanor Acheson, who is the Assistant Attorney General for the Office of Policy Development at the Department of Justice.

We thank you very much for being here today and we look forward to your testimony. I will first call on Mr. Glover for his testimony this morning. I would like to remind the witnesses that we would appreciate your keeping your remarks as close to 5 minutes as possible, that the written testimony that you submitted will become a part of the record, that we in this Committee leave open the record for at least a week, so if there is some other information that you would like to add, we would welcome it, and also give you an opportunity to respond to questions that may arise during this hearing so that you can let us know your point of view.

Mr. Glover.

TESTIMONY OF JERE W. GLOVER,[1] CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. GLOVER. Mr. Chairman, it is a privilege to be here. Paperwork reduction is sort of like the old saying about the weather. Everybody talks about it, but nobody ever really does anything about it. I am very pleased that the Committee has focused on this and I think that the legislation you have introduced goes in the right direction to making sure that we do, in fact, actually do something about it.

You mentioned one of your constituents who said that every morning he goes to work with fear that some government official is going to point out some rule or regulation. That is an all too common occurrence in the small business community. The amount of government regulations and paperwork is so much that most small businesses recognize that there is probably something they are not in compliance with. This bill goes a long way to addressing that fear, and it really does draw heavily on small business people because they are worried that their businesses and their life savings may be lost because of something they have done that they did not know that was even a violation.

The White House Conference on Small Business recommendation on paperwork, I think, was very interesting when the delegates came together in 1995, and I will just summarize that quickly. It is to simplify langauge and forms, sunset and reevaluate all reporting every 5 years, with a goal of reducing paperwork by at least 5 percent in each of the next 5 years, and eliminate duplicative regulations and reporting, and assemble information through a single source. It is kind of like you had their recommendation in mind when you drafted your legislation.

[1] The prepared statement of Mr. Glover with an attachment appears in the Appendix on page 49.

The Office of Advocacy did a study in 1994 and 1995 which pointed out that there were $700 billion. It has been widely reported, and you mentioned it in your opening statement. Over $2 billion of this, almost $2.4 billion, actually, comes from the process regulations or paperwork regulations. That is a tremendous amount of information.

Small business is very heavily impacted, because numerous studies that we have conducted indicate that the burden on small business is 50 percent more than it is on larger firms in filling out the same kind of regulatory compliance. So small business is often much more heavily burdened by the regulations than others.

Let me give you an example of a regulation that we have dealt with within the government process. The Office of Advocacy is charged with representing the views of small business before Congress and before the Federal agencies, so we often appear, and often when small businesses tell us about a concern.

We got a call from a small business person who I had met during the White House Conference process and he said, "Jere, I have to fill out paperwork on every one of my locations every year and it drives me up the wall because it is the worst possible kind of regulation, that has no purpose and no function." He was a service station dealer, and every year he has to file with the Environmental Protection Agency forms that indicate he has gasoline on his premises. Now, he assured me that everybody in his community knew that and that on those rare days when he did not have gasoline, he put a sign out front that said, "no gas today."

I said, boy, the Paperwork Reduction Act has just passed. This is a great opportunity. I am going to contact EPA and say, hey, this is a slam-dunk. There is no reason you need to have these forms filed. Well, we met with the folks at EPA in charge of this and they said, "Well, Jere, the fire departments, the fire chiefs rely on this information. This is critical information that they have to know." And I said, "I will tell you what. You call five and I will call five, because I do not believe that is how they find out that service stations have gasoline on their premises."

Well, I called five fire chiefs and they did not even know that EPA had that information, but they assured me that under no circumstances, if they got a call to go to a service station, would they go look at EPA's information. They fully were aware that there was gasoline there.

EPA then agreed to remove that regulation, and they went a step further. They said, "You know, not only that, Jere, there are some other regulations that we are requiring people to report. There is rock salt. There is sand. There is gravel. These are things that are sort of fungible commodities. They are not real problems. We are going to eliminate those at the same time."

Well, after 2½ years, the gasoline reports are no longer required, but it took 2½ years of personal involvement of us to get those eliminated. Unfortunately, the rock salt, sand, and gravel regulations are still hung up, and one of the reasons is that the State Governments get revenues for every form that is filed and they have objected to removing that because it will reduce the amount of paperwork.

I use this example to show how hard it is to change the regulatory and paperwork burdens on businesses, and without some serious legislation directly focused, as yours is. There are a number of things in this particular legislation that I think make a lot of sense—the compilation of small business paperwork burden, a single point of contact, a single filing. In this day and age with the Internet technology that is out there, there is no reason small businesses cannot file one form and all the rest of the government look at that and you would not ask any of the same information a second time. I have had conversations with John Spotila and we are working on a project to make that sort of thing happen.

So there is promise. There is hope. But that does not mean we do not need legislation to make sure we do not backslide and that we move forward as quickly as possible.

The paperwork burden on small business has not gone down, despite the Paperwork Reduction Act. There are lots of explanations. In my mind, there is no justification for it. So I commend you for the legislation and, hopefully, we can move forward on this. Thank you, sir.

Senator VOINOVICH. Thank you. Mr. Spotila.

TESTIMONY OF JOHN T. SPOTILA,[1] ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. SPOTILA. Thank you, Mr. Chairman, for inviting me here today. While the administration strongly supports easing the paperwork burden on small businesses, we are concerned that, as now drafted, S. 1378 could produce unintended negative consequences. We acknowledge the need to increase our efforts to reduce the paperwork burden and would welcome the opportunity to work with you to achieve real progress in this area, but we feel strongly that S. 1378 has flaws and needs to be modified.

Reducing the paperwork burden on small business has been a continuing theme for the President. As he said to the White House Conference on Small Business, "We know that small business is the engine that will drive us into the 21st Century. You employ most of the people, create more than half of what we produce and sell, and create more of the new jobs and we need to respond to that."

We have some examples of burden reduction. The Federal Highway Adminstration reduced the burden of its controlled substances and alcohol use and testing program by allowing motor carriers to conduct 15 percent less alcohol testing, reducing burden by 300,000 hours. The Patent and Trademark Office has introduced electronic filing of trademark forms. The Department of Defense is reducing the burden of its acquisition management system and data requirements control list by over 20 million hours by eliminating duplicative data requirements on DoD contractors.

But there is still much more to be done. Since my confirmation in July, I have made this a priority at OIRA. Last month, we issued new guidance to agencies on preparing their fiscal year 2000 information collection submissions to OMB. Agencies are to de-

[1] The prepared statement of Mr. Spotila appears in the Appendix on page 61.

scribe in detail their initiatives to reduce the information collection burden on small business. This will give us a better picture and enable us to help agencies learn from each other and adopt strategies that have worked elsewhere.

But reducing burden will require a comprehensive effort with full participation by the agency. OIRA plans to work closely with the Small Business Administration to develop new approaches that will reduce paperwork burden. To help spearhead our joint efforts with the agencies, SBA Administrator Aida Alvarez has detailed to us Ronald Matzner, who is here today, to my left, one of SBA's leaders in streamlining and regulatory reform.

My good friend, Jere Glover, and I have talked at length on what needs to be done and how to do it. We envision setting up an interagency working group to examine what must be done and to develop recommendations, and we are going to do that now, even before the statute is resolved. We very much look forward to working closely with you and other members of Congress in this endeavor.

These initiatives provide background for the discussion today. We know we need to take a fresh look at this problem and work together to address it. Our concern is that a number of the provisions of the bill may create unintended new problems that complicate our task and cause other harm. We need to be careful, despite good intentions, not to adopt legislation that would create adverse consequences.

We are most concerned that the one-time waiver provision in Section 2(b) would shield small entities that do not act in good faith, such as those that do not make a good faith effort to comply or who intentionally or knowingly violate regulations at the expense of the public good. We note that a number of agencies argue that the waiver provision would seriously hamper their ability to ensure safety, protect the environment, detect criminal activity, and carry out their statutory responsibilities. We certainly believe that the supporters of S. 1378 do not intend for it to have these consequences, but we fear that it will have this effect. Here are some examples:

Transportation operators must now report certain accidents to the Department of Transportation. This serves important purposes. If a company fails to notify DOT promptly after an accident, information important to the investigation may be lost or destroyed. This would make it harder to protect public safety. Companies who delay the reports until being notified of a violation may compromise public safety, even though it may not be possible to show that they cause serious harm to the public interest or a danger to the public health or safety, the standards proposed in S. 1378. We must be careful not to create a situation in which negligent operators can delay their notification just to cover up their mistakes.

DOT's effort to implement legislation requiring passenger manifests for virtually all airline flights into and out of the United States could be undermined here. These manifests make it possible to notify the families of victims if an accident occurs. If a small carrier decided to save money by deliberately ignoring the information collection and record keeping requirements, it could use the waiver to undermine the intent of legislation designed to help those families.

Under the Clean Water Act, regulated entities must monitor and report pollution discharges. This can be important in assessing environmental threats. In a recent case in California, EPA and a regional water quality control board were concerned that a company withheld and misrepresented data relating to the amount of sealife killed by a cooling water intake system. This made it hard to assess the extent of any damage to water quality and sealife.

Nor is Section 2(b) needed. We already have protection for small business owners who act in good faith under the Small Business Regulatory Enforcement Fairness Act, SBREFA, which directed agencies to provide civil penalty waivers to small entities for violations of statutory and regulatory requirements when the small entity corrects the violation within a reasonable time, is not subject to multiple enforcement actions, and has not acted willfully or in a way posing serious health, safety, and environmental threats. This is a sensible approach that we support fully. It applies directly to the concern about first-time paperwork violators, since reporting and record keeping requirements are almost always based on regulations.

Most small business owners make a good faith effort to comply with governmental requirements for record keeping and reporting. They believe that if they act in good faith, they should not be punished, but they do not believe that those who act in bad faith or who try to abuse the system should get away with it. Indeed, they do not want some competitor to get a cost advantage over them by enjoying immunity for deliberately ignoring known requirements.

If the protection in SBREFA is not sufficient to reach small business owners who act in good faith without harming the public, it is reasonable to talk about adjusting it. There is no good reason, however, to extend this protection to entities that do not act in good faith. As it is now drafted, the administration strongly opposed Section 2(b).

We are also concerned about the provision in Section 2(a) requiring OMB to publish annually a list of all Federal collection requirements applicable to small business concerns, organized by North American Industrial Classification System Code. We are very interested in communicating information on this better, but we are concerned that this may not be the right solution. It would be hard to implement, resource intensive, and difficult to keep current and complete, and if not kept current and complete, it will not be of much use to small business owners. It also will be difficult for agencies to predict what collections they might require in the future since they cannot anticipate all the problems and situations that may arise. We want to help small business owners, but we are not sure this is the right way to use our resources.

Finally, you have asked us for our views specifically on Section 2(c) dealing with efforts to further reduce the burden for small business concerns with fewer than 25 employees. As we understand it, this is designed to ensure that agency efforts to reduce burden aim specifically at businesses with relatively few employees. We appreciate the unique circumstances these businesses face and do not object to this provision.

In summarizing, we sympathize with the goal of easing the paperwork burden on small business and would be willing to work

with you to improve the language of S. 1378 to the point where we could support its passage. More generally, we would welcome the opportunity to work with the Committee to develop new approaches for alleviating paperwork burdens. We understand and share your concerns and those of small business owners all across the land. This is a difficult problem to solve and we need to work together if we are going to make any real progress. Thank you.

Senator VOINOVICH. Thank you. Ms. Acheson.

TESTIMONY OF ELEANOR D. ACHESON,[1] ASSISTANT ATTORNEY GENERAL, OFFICE OF POLICY DEVELOPMENT, DEPARTMENT OF JUSTICE

Ms. ACHESON. Thank you, Mr. Chairman. I am pleased to provide the views of the Department of Justice on S. 1378. The Department strongly supports common sense efforts to streamline information collection requirements and help small businesses comply with reporting and record keeping obligations. However, we have serious concerns with the provision of S. 1378 that would waive civil penalties for certain first-time violations of those obligations because such a waiver would undermine basic principles of accountability, enforcement, and deterrence that are the underpinnings of important regulatory programs that protect Americans' well-being.

Earlier this session, the Department recommended that the President veto a bill, H.R. 391, with a similar provision. By allowing one free pass for violations of information collection requirements, the bill appears to suggest that these violations are not significant. We disagree. Reporting and record keeping requirements form the backbone of most Federal regulatory programs designed to protect human health, safety, environment, welfare, and other public interests, allowing agencies to monitor compliance with applicable standards and to detect and deter illegal conduct. The public also relies on such information to make educated choices.

We ask businesses to provide information because they are the best sources of that information. Encouraging self-reporting by businesses is a sound means to ensure that the government receives the necessary information important to law enforcement and public health and safety without having to make much more frequent and intrusive inspections.

The penalty waiver provision undermines these safeguards by removing consequences for failure to comply with the law. This makes it easier for small businesses to be casual about or even to decide not to comply with information collection or reporting requirements. The results of such noncompliance can be that real risks and harms to the public occur because agencies or the public do not have the information when it is needed. For example, if a company that stores hazardous waste on its property fails to notify local fire fighters about these wastes, in the case of an emergency, those fire fighters will not know how to respond in the safest way.

As my prepared statement explains in detail, this provision could undermine law enforcement and regulatory safeguards that protect

[1] The prepared statement of Ms. Acheson appears in the Appendix on page 68.

the public from a whole range of safety, health, or environmental hazards and implement other important public policies.

Failure to report information may mean serious harms go undetected and unremedied. We recognize that the vast majority of small businesses are law abiding and both the Federal statutes, as Mr. Spotila has alluded, and administration policies already understand and respond to the special challenges that small businesses face and accommodate the needs of small business in assessing penalties, among other ways.

For example, under both SBREFA and other Federal statutes, agencies have adopted policies in assessing civil penalties to consider good faith efforts to comply with the law, the impact of civil penalties on small businesses and other appropriate factors. The policies compliment ongoing agency efforts specifically designed to help small businesses understand and comply with the law.

By contrast, the penalty waiver provision in S. 1378 goes far beyond helping companies that have made a good faith effort to comply with the law. It does not streamline record keeping or reporting requirements. Instead, it would reduce those burdens only for those who violated the law, even for unscrupulous businesses who have made a calculated decision to save on the cost of complying with reporting or record keeping requirements. This result would put law abiding businesses at a competitive disadvantage and could endanger the public.

We appreciate the changes that have been made to the bill to allow agencies to impose penalties under certain circumstances. My written statement explains why those limited exceptions do not address our fundamental concern that the bill undermines the reporting and record keeping system as a whole, eroding the primary purpose for it, impairing the underlying goal of obtaining information to prevent and avert harm.

By creating a broad presumption in general against the imposition of civil penalties for violations of information collection requirements, even though we fully understand this is for a first-time waiver, the bill undermines the deterrent effect of penalties in general and makes it easier for small businesses not to comply with the law. This is the exact opposite of existing law and policy, which keeps intact the integrity of regulatory programs but allows agencies to focus on whether there are mitigating circumstances, that is, equities in the businesses' favor with regard to a violation. The practical result of this bill is that agencies will be able to impose penalties and enforce the law, but only when it is too late and after the harms have already occurred.

The bill also includes many ambiguous terms that will lead to litigation and may be a trap for the unwary small business. There is a real danger that small businesses will be lulled into believing they are immune from civil penalties for certain conduct when, in fact, they are not.

Finally, we also have questions about the provision prohibiting States from imposing civil penalties for certain first-time violations, particularly if that were interpreted to impact upon the States' abilities to enforce their own laws.

In conclusion, the Department remains committed to promoting small businesses and working effectively with OIRA and other

agencies of the Federal Government and with Congress to reduce any unnecessary burdens on small businesses without jeopardizing essential reporting functions designed to protect the American public. However, we cannot support this bill because of the first-time waiver provision. Thank you very much.

Senator VOINOVICH. Thank you very much.

One of the things that has come out today is that there is a lot of effort by the government to really try to create a better environment for businesses to be successful in terms of government regulation and paperwork. In your testimony, Mr. Spotila, you talked about the June 12, 1995, White House Conference on Small Business. But then you go on to say that since your confirmation, you have made it a priority at OIRA to move forward with some things, but this is 1999.

Last month, you issued a bulletin giving new guidance to agencies on preparing their fiscal year 2000 information collection submissions to OMB. The bulletin calls on agencies to describe in detail their initiatives to reduce the information collection burden on small businesses through changes in regulation. We hope that the agencies will take a hard look at existing burdens and try to identify steps to relieve the burden on small businesses. OMB will then publish a description of these agencies and fiscal year 2000 information collection.

Jere Glover—he talked about one issue that it took him 2½ years to get something done. In spite of all of the rhetoric, the fact of the matter is that there is some real resistance, I think, in some agencies to do what it is that Congress has wanted. One of the things that has hit me since becoming a member of the U.S. Senate is the fact that the Administrative Branch of government, in many instances, frankly just ignores the Legislative Branch and goes on and does their own thing. As a result of that, the frustration continues to build up, and Mr. Spotila, I congratulate you on the fact that you are moving forward with this.

The other observation I have is that I can understand, Ms. Acheson, the Justice Department's attitude towards this. There are some specific things that you think need to be corrected in this legislation and we would be glad to hear from you, in the same way with you, John, but from what I hear, it is like everybody is out to try—and I can understand from the Justice Department that is the kind of people you are dealing with—but this legislation is aimed at trying to relieve some first-time errors that individuals make that do not involve criminal activity, violate the Internal Revenue Code, or involve the health and safety of individuals. If we can make it more specific so it is clear that that is the case, we will be more than happy to do that.

At the same time, I think that it is a worthy endeavor to try to create an environment where, as I say, simple mistakes that are made by businesses can be taken care of. The fact that that exists, I do not think, and I would be interested in hearing some of the other witnesses on it, is going to increase the number of people that are out trying to take advantage of their customers or the Federal Government.

Mr. Spotila, you said that you have SBREFA. You have been around. Do you think SBREFA is working?

Mr. SPOTILA. I think that SBREFA has actually done a considerable amount of good. It is working imperfectly. Actually, I would defer to Mr. Glover, who tracks it much more closely than I do.

I think it is working in several areas. It is working in the development of regulations, particularly the use of the panels that OIRA, SBA, EPA, and OSHA all participate on. I think that has helped the process, by getting small business owners involved at an earlier stage in the development of regulations.

I think that the creation of the ombudsman was constructive, to look at enforcement issues all around the country with representation from the 10 regions and the holding of public hearings. I think that has been constructive. Peter Barca was the first enforcement ombudsman and has done a good job.

I think that the waiver provision that I referred to in my testimony is, in fact, good policy. I did notice there were some—I think a reference that you may have made, Senator, that you feel that agencies have not done as much as they should to implement that provision. We are not directly involved at OMB in enforcing that, but I would be more than happy to work with you and your staff and the Committee to try to be of assistance there, because the President supports this and we certainly want the agencies to proceed in good faith here.

So it has been constructive. It has done a number of positive things, and in that regard, even in the area of the Reg Flex Act, that it has been a step in the right direction. So there are a lot of positive things about it.

Senator VOINOVICH. Mr. Glover, would you like to comment on that?

Mr. GLOVER. I believe that SBREFA is one of the best pieces of legislation Congress has passed in recent history. It has done a whole bunch of things to help the government change the way it views small business people.

As to the specific provision on enforcement and penalties, I would say that there, it is certainly not proven that it has been effective yet. I think that it goes part of the way, but it certainly—your legislation goes further.

The problem we are not talking about in many instances where small businesses are being fined under current situations, but we are talking about a perception of every small business. The reason that I support the legislation is it goes directly to that perception.

There are certainly some fine points and examples, but I will tell you, when we passed Equal Access to Justice in 1980, which provided that the government sued a small business person and was not substantially justified, the small business could recover those attorneys' fees. When that legislation was passed, I heard the same kind of cries that, oh, the sky is falling. This will cost us $50 million in attorneys' fees to small businesses. During that whole process, the average has been less than $1 million, and they expanded it beyond small businesses to include individuals, consumers, and nonprofit organizations. So in their total, it has been less than $1 million.

I do not think that the sky will fall. I think that perhaps we can tune and tweak the language a little bit, but I think that the overall need is to change the perception in the businessman's mind that

there is somebody out to play "gotcha" with them. I know that a lot has been done to change that within the government, and certainly more should be done, but the perception out there is just as real today as it was 3 years ago when SBREFA was passed.

Senator VOINOVICH. You have had an opportunity to hear from Mr. Spotila and Ms. Acheson, and if I listen to their testimony carefully, the impression is that, somehow, if this passes, that there is going to be an increase in individuals who are going to deliberately take advantage of this waiver provision because they know that they will not be nailed on that first-time offense. I just would like your comment on that.

Mr. GLOVER. First of all, I do not believe any small business is going to be that careful planning their paperwork. If I were advising small businesses, as I did in the private sector as an attorney, you would never want them to waste that one waiver, because once they have lost it, they have lost it forever and you want to save it for something you really did not know about that was going to cause you great harm, first.

Second, the law that you are supposed to comply with, the underlying regulation that says you must do something, you are still obligated to do it, and if you do not do that, this waiver provision would not kick in. So most of the complaints that I have heard or the examples that I have heard, the small businesses involved who did not do the paperwork also violated the law, and especially where there are examples involving health and safety, and I think those, clearly, we all agree were situations where we would not want to waive the paperwork requirements and the fines and pay health and safety issues.

So I think that you do not see the examples that are there. So I think for those two different reasons, I am not concerned about it as they are.

Senator VOINOVICH. I would like Ms. Acheson or Mr. Spotila to comment on the issue of giving an unfair competitive advantage over a competitor in terms of filing these papers. Do either one of you want to give me an example of what you are talking about?

Mr. SPOTILA. Senator, the examples that I used in my testimony show areas of concern. In fairness here, we are all very much in agreement conceptually on the idea that small business owners who proceed in good faith should not be inadvertently fined. I think where we may have some difference of opinion, and maybe a common understanding of the need to work together to look at this language with some care and precision, is in the implementation of how we proceed from that conceptual agreement.

Our sense is that if you do have a situation where, for example, a small airline carrier does not need to keep manifests because they figure they will not be caught, we not only undermine a statute but they are not bearing a cost that everyone else has to bear, so their competitors——

Senator VOINOVICH. But the point is that the assumption in your testimony and what you are saying now is that the one-time waiver is going to be something that allows them continually to do that. We are talking about a first-time failure of an individual to report something that is required by the Federal Government.

Mr. SPOTILA. I understand that, Senator. Let me explain and clarify further. In the case of the air carrier, we do not have very many accidents a year. It is at least possible that a small carrier would conclude that it is unlikely there would ever be an airplane accident, and therefore unlikely that anyone would ever catch them. No one actually comes by and looks at this in the absence of an accident.

So you would find out the first time a plane crashed and you did not have a manifest of the passengers who were aboard. At that point, the carrier would not be fined, very possibly, because it was a first-time violation. But we would lose our ability to carry out a different statute that the Congress just recently passed, for very good reason, to protect the families of victims, because someone made a calculation that they could get away with it and that it was unlikely there would be a crash. That is the kind of thing we are talking about.

In different areas, there could be similar, unintended consequences.

Senator VOINOVICH. In other words, you think because they would not get fined the first time that they might do that because they knew they would not get nailed?

Mr. SPOTILA. It is hard to predict what anyone specifically would do. I think that the concern that has been expressed to us, in this case by the Department of Transportation, is that that could be a result. It is certainly not what anyone intends, but we need to be careful that in starting with good intentions, we do not impose something that would lead to unintended consequences, and that is the point we are trying to make.

Senator VOINOVICH. OK. Any other comments?

Ms. ACHESON. Senator, I would just say that in the written testimony we submitted, there are several examples of failure to come forward with required information. There is an example of a crib manufacturer, another of a painting business where complaints had been submitted to the crib manufacturer and they never turned them over to the Consumer Product Safety Commission, although they were well aware they needed to do that. The spray painting business was putting VOCs out into the environment and they knew full well that if they reported that, as they were required to do, they probably would be shut down until their operation was changed. Both of those situations had pretty grim results.

Now, whether a motivation was competitive advantage, I do not know, but I think there are—and they are certainly on the margins. None of us is suggesting that this would be a common occurrence. But it is always the bad actor that ruins the day for everybody.

I would just underscore, I have had the pleasure of working with OIRA before John was the head of it, but when he was over being the counsel for the Small Business Administration, he and I together worked with the people who were then in charge of OIRA.

When SBREFA was coming into being, and even before that under the administration's initiatives, and I would agree that perhaps imperfectly is the adverb to be used, but on the other hand, the amount of effort, and I can see it in the very few areas that

the Department of Justice is responsible for operational sort of proactive regulatory activity, the DEA and pharmaceutical and other kind of drug activity, the Civil Rights Division and the Americans with Disabilities Act, we were headed in the right direction.

But SBREFA and the administration policies, I think it is fair to say, kicked us forward in the appropriate part of the anatomy and we have been aggressively working with the constituencies in small business, many of them, to have them understand what the requirements of these acts are, to work with them proactively. We have architects in the Civil Rights Division to help people figure out what this means, not just conceptually, but with respect to their particular problem, their particular structure, their particular operation. The same in the DEA. We get together with the industry regularly. We have been very proactive to try and get them to comply and understand, work toward a situation where we eliminate this issue of violations.

I think that is the direction all of us here, at least John and I, would support coming at this from, not so much in the waiver. We can do more on the other end of this to eliminate situations of violations, first-time or otherwise. We will work as hard as we can on that front. Thank you.

Senator VOINOVICH. Thank you very much.

Our next panel is Robert Smith, President of Spero-Smith Investment Advisers, Inc., who represents Small Business United; Jack Gold, the President of Center Industrial, on behalf of the National Federation of Independent Business; and Deputy Chief Gary Warren, who is with the Baltimore County Fire Department, International Association of Fire Chiefs, representing them this morning.

I would like to welcome our third panel. Mr. Smith, we would like to hear from you first.

TESTIMONY OF ROBERT SMITH,[1] PRESIDENT, SPERO-SMITH INVESTMENT ADVISERS, INC., ON BEHALF OF NATIONAL SMALL BUSINESS UNITED

Mr. SMITH. Mr. Chairman, thank you for allowing me to appear before you. I am the President of Spero-Smith Investment Advisers in Beachwood and a small business owner. I am a member of the Board of Trustees and currently Vice Chair of Advocacy for National Small Business United, the Nation's oldest small business advocacy organization. Additionally, I am a board member and incoming Chairman of COSE, the Council of Smaller Enterprises. COSE, as you know, is a division of the Greater Cleveland Growth Association, of which I am also a trustee and a member of its Government Affairs Council. I reside in the 10th District of the great State of Ohio and am one of your constituents, the chief sponsor of this legislation.

I want to thank you and Senator Lincoln for your leadership and understanding of the serious dilemma that paperwork presents for America's 24 million-plus small businesses. On behalf of NSBU's 65,000 members in all 50 States, I applaud you and support this legislative effort to bring sanity to the paperwork requirements

[1] The prepared statement of Mr. Smith appears in the Appendix on page 86.

that we face. NSBU has been a long supporter of a strong and viable Paperwork Reduction Act, which was passed originally in 1980. Despite the best intentions of the Paperwork Reduction Act, however, small business has been fighting for years to fill the holes that Federal regulatory agencies have punched into the law.

If you ask any small business owner their opinion of the required paperwork, their responses overwhelmingly will indicate there is redundancy and excessiveness in the filing process. Let us take, for example, the pool and spa industry. If a dealer services a pool, they must comply with OSHA's hazard communications standard. If they have more than 100 pounds of chlorine on site, which all pool and spa dealers do, they must also comply with SARA Title III. Added to this, there is the Department of Transportation shipping papers and the Department of Agriculture specialized documentation requirements.

In sum, the government requires similar and duplicate information from the same company in a different format to several regulatory agencies, which results in wasted time and money for small business owners. Nevertheless, the fine for noncompliance with any of the above could exceed the company's income for the year. Plus, the IRS, the EEOC, and various State and local governing bodies add to above requirements and create a paperwork nightmare.

Agencies must seek ways to eliminate duplication of paperwork. The paperwork requirements for filing mandatory emergency plans are an excellent example. As you know, many agencies require emergency plans, such as a plan for hazardous waste, a fire report, a leak report, or a stormwater plan.

As one small business owner recently informed me, he must maintain nine separate notebooks, each containing a different emergency plan. From these notebooks, he has to scramble to find the booklet that covers the particular area when agencies regulating that area come to inspect the paperwork that is due. Inevitably, the paperwork due dates are all different and require him to keep a separate calendar simply dedicated to these dates. This is not uncommon, and it would be useful if the various agencies came together with small businesses and agreed to file less paperwork and work hard to eliminate duplication or contradictory requirements.

Another serious problem with these complicated and duplicative layers of paperwork is that it is easy for a well-meaning small business to overlook a requirement or a deadline because they did not have dedicated compliance staff to research the vast Federal and State regulatory paperwork quagmire.

Dealing with pensions and health care plans, as you might expect, presents a very significant paperwork burden for the average small business owner. Atop any list of unnecessary and burdensome paperwork is an aspect from the group health insurance requirements. We know that many employer group plans are contributory to some degree. In small business, the vast majority of plans require some degree of employee contributions toward premiums.

The current tax law allows employers to establish so-called flexible benefit plans, or Section 125 plans, so employees can make their contributions on a pre-tax basis. This tax savings feature re-

duces the net cost to the employee and enables the employer to increase employee enrollment as a result, an obvious plus for both sides.

The IRS requires that employees have a plan document and summary plan description and that they file Form 5500 at year's end in order for such premium payments to qualify for the tax-preferred status. Failure to file a 5500 Form can result in a penalty of up to $1,000 a day, without limit. The Form 5500 was designed for pension tax reporting. It is over 6 pages long, 10 with schedules, and according to the IRS, it takes over 11 hours to complete. Yet, the form is not intended for this purpose and the IRS does virtually nothing with the form when they receive it.

As a result of this, this may be the single greatest abuse by business-paying taxpayers in America. Very few of the employers who are required to actually file this actually do file it, leaving them with a significant exposure.

A final example is the very complicated IRS Notice 9852. This requires 401(k) plans and other plans with employee contributions to provide employees with an annual notice of their rights under the plan. This notice duplicates virtually every point in the summary plan description that the DOL requires that plan trustees provide to eligible plan participants. Employers who fail to provide this annual notification stand the risk of being fined and possibly having their plan disqualified. If the summary plan description is a vital summary of employee rights, then why is another notice required to repeat that which they have already been given?

Every year, National Small Business United conducts a survey with Arthur Andersen's Enterprise Group, a survey of the small business community to assess attitudes, concerns, and needs. Repeatedly, small business owners have been asked to identify the most significant challenges to their business growth and survival. Some issues come and go from the top ranks, but regulatory burdens and paperwork requirements are consistently in the top three challenges.

There is a serious message here which we must continue to address. These issues go hand in hand and small business owners and the groups that represent them need to continue to work with Congress to ensure that small businesses do not see an unfair number of regulations and paperwork requirements come out of this town and bury them in our hometown.

To have a once-yearly list of all paperwork requirements for small business is invaluable. The bill calls for the paperwork requirements to be published on the Internet. It would be my suggestion, on top of this requirement, if Federal agencies provided a plain English explanation and listing of their paperwork requirements to small business owners, many through associations like NSBU and COSE and the others before you, simply because if the information does not get to the small business owner, it is not valuable. The establishment of an agency point of contact for small business is another excellent idea.

Finally, there are certain times when all businesses, even small businesses, are not in compliance with every law, regulation, and form that this town and their State and local governments provide. On the first occasion of a Federal paperwork mistake, the Voin-

ovich-Lincoln bill calls for suspension of the fine. This is the critical aspect of this bill and something that NSBU has been lobbying in favor for for many years.

On behalf of NSBU and our 65,000 members, I believe the Small Business Paperwork Reduction Act Amendments of 1999 lead us in the proper direction and it is legislation that should pass this Congress.

Mr. Chairman, I commend you for addressing this longstanding problem. Thank you for allowing me to be a witness here before you today.

Senator VOINOVICH. Thank you. Our next witness is Jack Gold.

TESTIMONY OF JACK GOLD,[1] PRESIDENT, CENTER INDUSTRIAL, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. GOLD. Mr. Chairman and Members of the Committee, I wish to thank you for allowing me to testify in support of S. 1378, the Small Business Paperwork Reduction Act. My name is Jack Gold. I am the founder, owner, and operator of Center Industrial, located in Edison, New Jersey. I am proud to be a member of the National Federation of Independent Business and I am honored to be presenting this statement on behalf of NFIB's 600,000 small business members nationwide.

Center Industrial is a family-owned and operated business. Four of my eight employees are family members, and after 36 years, I am in the process of passing it on to the next generation. We supply major industry contractors and other small businesses like ourselves with products that keep their businesses operating on a day-to-day basis. Some examples of our products are hand tools, power tools, safety products, and general hardware.

I am here to testify on the need for the legislative waivers for first-time paperwork violations, as contained in the SBPRA of 1999. I believe small business owners deserve a break when they make an honest mistake, no one was hurt, and the mistake is corrected.

My support for this legislation is based on my experience with a Department of Transportation inspection. I sincerely believe that my experience mirrors the stories of many small business owners. We feel that regardless of how hard we try to comply with all the rules and regulations, a government inspector can fine us regardless of our spotless record or whether we immediately correct any unintentional mistakes.

On August 13, 1998, we were inspected by the DOT. This was our first contact with the DOT. We were originally told that it was a routine inspection, but later discovered the inspection was prompted by an anonymous complaint given by two disgruntled employees that were dismissed for company theft. The inspectors were given full access to our facility and files because, as far as we were concerned, we had nothing to hide. They were provided with any and all information that they asked for.

After the inspection, we were told that certain products were hazardous and that we lacked shipping documents and training for

[1] The prepared statement of Mr. Gold appears in the Appendix on page 94.

the sale and handling of these products. They were muriatic acid, which is a pool cleaner, fire extinguishers, and pine power, which is a cleaner. It never occurred to us that any of these items required special papers or triggered training requirements because anyone can walk into a Home Depot, Lowe's, or Wal-Mart and purchase these same or comparable items, throw them in his or her trunk, and drive away without giving it a second thought. We did not think these products posed any danger. I would never intentionally place anyone, especially my family, in harm's way.

Once the inspectors explained that some of our products were deemed hazardous and that other products required shipping papers, we took the necessary steps to comply. We purchased the DOT's training CD–ROM and went from there. Training manuals were created and reference guides were purchased. We are currently training all of our employees, even though we are only required to train the two or three employees involved with shipping. We identified which products required special shipping papers and drafted a fill-in-the-blank shipping paper and shipping checklist. Copies of the master product list, shipping paper, and checklist are now posted in our shipping and receiving area.

My daughter, Mary Ritchie, helps me run Center Industrial. When we went through the process of researching what steps we needed to take to come into compliance, she spoke with Colleen Abbenhaus of the DOT on a regular basis. We were thankful for Ms. Abbenhaus' assistance, but we were under the impression that if we did everything by the book, the original citation would be considered a warning. This assumption was based on Ms. Abbenhaus' repeated use of the expression, "if there is a fine," when explaining our situation.

Well, there was a fine. In January 1999, we were presented with a penalty of $1,575. We were particularly offended by the wording of the ticket that read, "If within 45 days' receipt of this ticket you pay the penalty, the matter will be closed. If you submit an informal response or request a formal hearing, you may be subject to the full guideline penalty of $4,500." This, to us, was perceived as a Federal agency's attempt to intimidate a small business so that they would not question the agency's actions.

We are not asking to be excused from any obligations of the regulations, but what does this experience tell me and other small business owners? It says no matter how hard you try to make your business safe for your employees, customers, neighbors, and family members, in the end, if a government inspector wants you, they can get you. The government cannot tell me that they care more about my family's safety and my company's reputation than I do. It seems to me that DOT inspectors have more of an incentive to simply issue tickets that say, pay us or we will run you out of business, than they do to help us understand how to comply with all these rules and regulations.

It only makes sense in cases where there is paperwork violation and no one is put in harm's way, business owners may be given a reasonable amount of time to comply before fines are issued. We have been left with the feeling that DOT misled us. We feel that DOT wanted to impose a fine from the moment they entered our building, no matter what we did.

I thank you for this opportunity to tell you my story in hopes it will make a positive difference in the way agencies treat small business owners in the future. I am now happy to answer any questions. Thank you.

Senator VOINOVICH. Thank you. Deputy Chief.

TESTIMONY OF GARY E. WARREN,[1] DEPUTY CHIEF, BALTIMORE COUNTY FIRE DEPARTMENT, ON BEHALF OF THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Mr. WARREN. Good morning. I am Deputy Chief Gary Warren of the Baltimore County Fire Department. I am responsible for the hazardous material and special operations in Baltimore County, Maryland, and serve on the Hazardous Material Committee of the International Association of Fire Chiefs, the IAFC. It is on behalf of the IAFC that I appear here today. I would like to thank the Committee for allowing me to address the concerns shared by my fire service colleagues to the Small Business Paperwork Reduction Act.

Local fire departments are the primary providers of fire suppression and local hazardous material response service throughout the United States. I need not remind the Committee that, like politics, all instances involving dangerous chemicals are local. The Small Business Paperwork Reduction Act seeks to provide relief to small business from Federal paperwork requirements.

America's fire departments have no quarrel with the intent of the bill. However, we are concerned that relaxing the threat of fines against the businesses that will not comply with existing safety regulations will have the effect of relaxing compliance. Relaxing compliance leads to delayed compliance and even non-compliance, which is at the heart of our concern.

There are approximately 60,000 incidents in the United States each year that involve dangerous chemicals. Many of these involve transportation accidents, as well as chemical inventories by businesses both large and small. The issue of concern is chemical inventory reporting required under Title III of the Superfund Amendments and Reauthorization Act, SARA, of 1986.

In an emergency, fire fighters are expected to enter structures to protect life, property, health, and the environment. Advance knowledge of the presence of dangerous chemicals is crucial to our ability to protect ourselves. We must be aware of their presence to avoid serious injury or worse. An injured fire fighter cannot render aid to civilians or protect property and the environment. He also diverts attention from these priorities as his fellow fire fighters come to his aid.

The SARA Title III reporting requirements apply to several hundred chemicals that are considered extremely dangerous. Exceptions are already in place for many of these for up to quantities of 10,000 pounds. There are small reporting thresholds for chemicals that are particularly lethal, such as sodium cyanide, used in limited industrial production. It is also better known for use in our State penitentiaries in the gas chamber. If that chemical is present

[1] The prepared statement of Mr. Warren appears in the Appendix on page 99.

in a facility to which we must respond in an emergency, we need to know before we respond to the alarm.

We understand that legislation provides exemptions that authorize fines where the "agency head determines that the violation had the potential to cause serious harm to the public interest, or that the head of the agency determines it is a violation presenting danger to the public health or safety." This is closing the door after the fact. In our view, this language is broad. Who is the agency head, how does he determine danger, and by what definition?

We understand that the exemptions are well intentioned. However, they will not strengthen and will probably weaken the fire department's ability to collect information necessary to ensure public safety.

The existing requirements under SARA Title III is not onerous. In fact, I have personally assisted small business owners in completing the required paperwork for submission. It takes about an hour the first time for its completion. The original document can be resubmitted each year with minor changes, such as quantities on hand and the date on the form.

When my grandfather started out in the fire service in 1921, my dad in 1937 at the age of 14, and myself in 1968 at age 16, we had very little knowledge of what we were going to be subjected to as it relates to chemicals. Years later, I feel confident that America's fire service can handle any event that may confront our responders. Our elected officials receive credit for that by passing legislation that protects the citizens and the responders.

My daughter, a fire fighter EMT since age 18, who is now 21, and my son, now 14, look forward to carrying on the tradition of being a fire fighter. I am concerned that their health, like so many fire fighters before them, will be in jeopardy by not knowing what chemicals are present prior to the emergency. We need to protect the future fire fighters, like my daughter and son, by ensuring compliance.

Mr. Chairman, I would like at this time to comment on Mr. Glover's comment regarding gasoline, if permissible.

Senator VOINOVICH. Why not?

Mr. WARREN. Thank you, sir. As Mr. Glover stated in his testimony, all the fire chiefs he contacted knew about gas stations and they knew that they had flammable liquids. I would certainly hope that everyone in the fire service would know that, so I am very proud of that fact. However, I would assure you that every fire chief—every fire chief—would want to know where and what chemicals are stored in their jurisdiction. Their fire fighters' health and safety depend on that information.

To restate, existing dangerous chemical reporting requirements authorized under SARA Title III are a crucial life safety tool available to local fire departments. Any unintended relaxation of the requirement is unacceptable. The requirement itself is not onerous. I urge you not to fix a system that is not broken.

Mr. Chairman, I would again thank you for allowing me, a fire chief, to testify before your Committee. This is the highest honor that I could be afforded as a citizen of this country, and I thank you, sir.

Senator VOINOVICH. Thank you for being here, Deputy Chief.

It is kind of an interesting thing. We have the Chief and we have you, Mr. Gold, and I could not help but think, I do not know whether any of the products that they came in and said that were not labeled were the kind of products that were hazardous, that if you had a fire, that the Chief would come in and take care of it.

The issue that hits me is, is the situation any better or worse if, in your case, after you were made knowledgeable of the fact, that you were penalized as a result of it. It seems to me the problem you had is, you did not know about the requirements, is that right, Mr. Gold?

Mr. GOLD. Absolutely.

Senator VOINOVICH. Were any of these hazardous chemicals that, in effect, would be a threat to a fire fighter if you had had a fire at your place?

Mr. GOLD. In my opinion, no. I have been in business for a long time and never had an accident, always looked out for—when there were not these rules, going back in the 1960's and the 1970's, you always had to watch out for yourself and your people. In small business, the people that work for you are as much family as your family and you certainly are not going to be responsible in any way to harm them, so you are not going to do anything silly. It is just a matter of daily routine.

Senator VOINOVICH. I guess the point I am making is that you said you were not aware of them. So whether you were fined or not fined really made no difference whatsoever because you were not aware of it. The issue is that if this legislation had passed, would it have made any difference in terms of your initial situation?

Mr. GOLD. No, absolutely not. We are watching out for ourselves without any kind of legislation. The fine in no way would change the situation. We were made aware by the DOT. We took the steps for the proper corrections on items that we did not know about. We complied with whatever they told us. We did not know what the rules and regulations were up to that point. We just ran a business as safely and as honestly as possible.

Senator VOINOVICH. One of the things that is of concern to me is that it would be the—for instance, Chief, in your city, what do you do to inform businesses about the labeling requirements? How do they find out about it?

Mr. WARREN. Mr. Chairman, in Baltimore County, the fire service is responsible for the LEPC, the Local Emergency Planning Committee. Under the Local Emergency Planning Committee, we host an annual seminar. For example, our recent one was on terrorism. Ones prior to that were on SARA reporting.

Senator VOINOVICH. What is SARA reporting? I am sorry.

Mr. WARREN. The SARA reporting is under the Superfund Amendments and Reauthorization Act. What you are required is, depending on quantities of chemicals, which is where substantial fines usually occur against business, what happens is the individual company, depending on quantities, they have to determine what product they have on their premise up to the 10,000 pounds or if it is on the extremely hazardous substance list, that ranges anywhere from 1 to 500 pounds. So 1 pound, a company would have to report under the extremely hazardous——

Senator VOINOVICH. So that is a Federal law that they are required——

Mr. WARREN. That is a Federal law that we at the local level, and I think throughout the country, what you will find, utilizes to ask industry or have industry proceed with keeping us informed as to what they have. On an annual basis, they provide that information to us. The fire service in our jurisdiction is the depository for that. When an incident occurs at a SARA reporting facility in our jurisdiction, when the alarm goes out, the last thing that the dispatcher says, whether it be an issue for an alarm bell sounding or an actual fire, the last thing the dispatcher advises the company is that it is a SARA reporting facility, which automatically notifies those companies——

Senator VOINOVICH. It tips you off.

Mr. WARREN [continuing]. That says they have chemicals at that property, whether it be extremely hazardous or whether it just be in bulk quantity.

Senator VOINOVICH. How do the businesses in your area know about those regulations?

Mr. WARREN. The businesses, through different mailings that the fire department goes ahead and sends out——

Senator VOINOVICH. So, in effect, you are the local enforcer of the Federal regulations——

Mr. WARREN. Yes, sir.

Senator VOINOVICH [continuing]. And you have a provision in your community where you send out notices about these various items and indicate that reports need to be filed if they are present.

Mr. WARREN. Every jurisdiction in the country, under the LEPCs, are required, as far as under the EPA, should be seeing that information gets out to each jurisdiction or each entity as far as business to see that they comply. We, as a fire service, are proactive in seeing that we get into all of our mercantile buildings to do inspections. When we do the inspections, if we come across larger quantities of hazardous materials, then the fire department sends our hazardous material team to those events.

The one thing, if I can, sir, when you talk about fines and them being levied, and hearing some of the fines that were levied as far as with $1,500, for a small business, that is substantial. However, I can tell you of two different instances in my county, one involving a brewery which resulted in 33,000 pounds of ammonia being released, which was actually the largest ammonia leak in the country's history. Only after we got into the issue of levying the fine of $25,000, of threatening to use that, did they go ahead and follow through with the proper reporting of the release, not of what the product was but of the release, which is another part of the Federal mandate.

We also entered into problems with this particular event where we usually recoup the cost of the protective gear, which is pretty substantial to the fire service. Only through additional fines did the company decide that they were going to go ahead and settle the case.

Another incident involved a plating company that had 10 pretty substantial-sized tanks of chemicals that they dipped the plating in. We had no knowledge of it. Our fire fighters responded for a

structure fire. They were in plastic tanks because of being acid. The tanks had melted away, and before we realized what had occurred, our fire fighters were in jeopardy in 6 inches of chemical goop. As we went back——

Senator VOINOVICH. In that instance, were you notified? Was that a case where you did not have that notice of——

Mr. WARREN. We had no information, and one of the things that you sometimes find is that the company comes in, they set up, there is no information, and as we are going through our inspection throughout the year, the following year is when we find them—not fine, as far as monetary-wise, but find them in the area.

Senator VOINOVICH. In that instance, do you think they deliberately did not do what they were supposed to have done?

Mr. WARREN. No, I do not think they deliberately did it. But I think that one of the things that we have to be concerned about is you have the companies that started out as Ace Plumbing and the following year, because they did have a problem, they are now Ace Plumbing, Inc., which changes them. They have now gotten their one chance and they are now back again——

Senator VOINOVICH. Trying to do another. Well, I am interested in your testimony and perhaps what we need to do is just—I mean, the legislation, quite frankly, is not meant to deal with the problem that you have been referencing today, that that would be excluded from the legislation. It would not be included, period. You would be out of this. I mean, the same law that is in effect now would be in effect tomorrow if this passed. We do not intend to include anything of the sort that you have described here today in this legislation, and if you think that it still does that, we will be glad to sit down and talk to you about it. How is that?

Mr. WARREN. Fair, sir. Thank you very much.

Senator VOINOVICH. OK. I would just like to again ask the question, do you think that because this legislation would pass, that there would be, Mr. Gold, in your case, or Bob Smith, in your case, or among your membership, a tendency on the part of your members to be less conscientious about doing what it is that they are supposed to be doing, that some would deliberately, as alluded to by Mr. Spotila and Ms. Acheson, would deliberately kind of try to ease out of something because they knew they would not get nailed on the first occasion? I would like your comment about that.

Mr. GOLD. I do not believe so. I believe that a small businessmen just takes the proper precaution, and once he is informed that he might be not in compliance or whatever it might be, the education, the awareness at that point, he is going to take the proper steps. He is not going to look to get out of anything or he is not going to look to escape anything. He is going to do what is right, and I believe that. I believe he is going to do what is right.

Senator VOINOVICH. Do you still have a lot of anxiety every day that you may be violating some rule or regulation?

Mr. GOLD. Well, we went through the whole thing. I have a daughter who is an extremely intelligent girl, if I say so myself. I buy her very cheaply these days because she is raising my three grandchildren and she works for small pay, as many small businesses in this country do.

She belongs here because she took this thing to the ultimate. She went out and bought manuals, she bought the CD–ROM, she sat people down, and, in fact, she annoyed me because she sat in my office and proceeded to tell me, you have to know what is going on. This is your company.

We took it quite seriously, and that is why we were offended by the fact that we were led differently and all of a sudden we were hit with this fine. If they had come back and if they had seen what we had done, in my opinion, there would be no reason for a fine. We had taken all the proper precautions, again, thanks to Mary. I think we reacted in the proper manner and we are offended by it. To be honest with you, we are offended by it because we feel like if we had done nothing, we would have been treated the same way, and that is just not a fair thing to happen.

Senator VOINOVICH. So the issue is that you did conscientiously try to do what you were supposed to have done and you would have liked to have had the person who was in charge to be in a position where they could have waived that first penalty in the event that they felt that you had complied and done your best about complying with the rules and regulations.

Mr. GOLD. Sure, Senator. There are checks and balances, hopefully, in every system. If they had taken the time to come back, I am sure there are businesses that would try to circumvent the law, but this was not in this case, and if she had come back or they had come back and they had seen what we had done, my opinion is that the only answer was to give us the proper warning and I would say they would say that we had done—maybe even use us as the example, that we had done it the right way, and that is what is offensive about it. Thank you.

Mr. SMITH. Senator, I would add that the idea that the waiver would encourage business owners to develop an attitude of non-compliance just is not reasonable. The safety issues are too important to us and our employees and our families, and to get away from complying with Federal laws, it would just be overwhelming if we ever developed that kind of attitude. So I do not think that is going to be a major incentive to be non-compliant.

Senator VOINOVICH. I think that we need to sit down with some of the folks that have got problems and see if we can work out some of the differences. I just wonder if some of the same testimony, and your representatives from your organizations could probably share that with me, were in attendance over in the House, they seemed to have some major problems with this legislation and it got to the floor and was passed. I guess the question I have is, where were they then?

We have obviously got some more work to do and I apologize that there are not more members here. It is my first year in the Senate. One of my frustrations is we bring in some wonderful people who travel in many instances long distances at great inconvenience to come here to testify before the U.S. Senate and everybody is so busy that they do not get an opportunity to hear first-hand from the witnesses themselves. I wish I could tell all of you that we all read all of the testimony. We do not. We rely on staff to do it, and I guess the only comfort that I would have is if we look around this room we have staff here. Obviously, Chief, if we had had a fire last

night or something and the media had been interested, maybe we would have had a packed house because you were here to testify.

But the work of government goes on. We try to deal with things that are significant. We are concerned about the health and safety of our citizens and we are also concerned, as I said earlier in my remarks, that I think we need to understand that particularly your small businesses are very important to our country and to our well-being and to our competitiveness, and so we have got to try and balance these things and make sure that we protect the public and at the same time do the best we can so that you folks can hire people and pay taxes and contribute to society.

So thank you very, very much for coming here today. The meeting is adjourned.

[Whereupon, at 12:13 p.m., the Committee was adjourned.]

APPENDIX

IIB

106TH CONGRESS
1ST SESSION

H. R. 391

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1999
Received

FEBRUARY 22, 1999
Read twice and referred to the Committee on Governmental Affairs

AN ACT

To amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Paperwork Reduction Act Amendments of 1999".

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

1 and Budget), with the first such publication occur-
2 ring not later than one year after the date of the en-
3 actment of the Small Business Paperwork Reduction
4 Act Amendments of 1999; and
5 "(7) make available on the Internet, not later
6 than one year after the date of the enactment of
7 such Act, the list of requirements described in para-
8 graph (6).".
9 (b) ESTABLISHMENT OF AGENCY POINT OF CON-
10 TACT; SUSPENSION OF FINES FOR FIRST-TIME PAPER-
11 WORK VIOLATIONS.—Section 3506 of such chapter is
12 amended by adding at the end the following new sub-
13 section:
14 "(i)(1) In addition to the requirements described in
15 subsection (c), each agency shall, with respect to the col-
16 lection of information and the control of paperwork—
17 "(A) establish one point of contact in the agen-
18 cy to act as a liaison between the agency and small-
19 business concerns (within the meaning of section 3
20 of the Small Business Act (15 U.S.C. 631 et seq.));
21 and
22 "(B) in any case of a first-time violation by a
23 small-business concern of a requirement regarding
24 collection of information by the agency, provide that
25 no civil fine shall be imposed on the small-business

1 concern unless, based on the particular facts and cir-
2 cumstances regarding the violation—
3 "(i) the head of the agency determines that
4 the violation has the potential to cause serious
5 harm to the public interest;
6 "(ii) the head of the agency determines
7 that failure to impose a civil fine would impede
8 or interfere with the detection of criminal activ-
9 ity;
10 "(iii) the violation is a violation of an in-
11 ternal revenue law or a law concerning the as-
12 sessment or collection of any tax, debt, revenue,
13 or receipt;
14 "(iv) the violation is not corrected on or
15 before the date that is six months after the date
16 of receipt by the small-business concern of noti-
17 fication of the violation in writing from the
18 agency; or
19 "(v) except as provided in paragraph (2),
20 the head of the agency determines that the vio-
21 lation presents a danger to the public health or
22 safety.
23 "(2)(A) In any case in which the head of an agency
24 determines that a first-time violation by a small-business
25 concern of a requirement regarding the collection of infor-

1 mation presents a danger to the public health or safety,
2 the head of the agency may, notwithstanding paragraph
3 (1)(B)(v), determine that a civil fine should not be im-
4 posed on the small-business concern if the violation is cor-
5 rected within 24 hours of receipt of notice in writing by
6 the small-business concern of the violation.

7 "(B) In determining whether to provide a small-busi-
8 ness concern with 24 hours to correct a violation under
9 subparagraph (A), the head of the agency shall take into
10 account all of the facts and circumstances regarding the
11 violation, including—

12 "(i) the nature and seriousness of the violation,
13 including whether the violation is technical or inad-
14 vertent or involves willful or criminal conduct;

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

19 "(iii) the previous compliance history of the
20 small-business concern, including whether the small-
21 business concern, its owner or owners, or its prin-
22 cipal officers have been subject to past enforcement
23 actions; and

1 "(iv) whether the small-business concern has
2 obtained a significant economic benefit from the vio-
3 lation.
4 "(3) In any case in which the head of the agency im-
5 poses a civil fine on a small-business concern for a first-
6 time violation of a requirement regarding collection of in-
7 formation which the agency head has determined presents
8 a danger to the public health or safety, and does not pro-
9 vide the small-business concern with 24 hours to correct
10 the violation, the head of the agency shall notify Congress
11 regarding such determination not later than 60 days after
12 the date that the civil fine is imposed by the agency.
13 "(4) Notwithstanding any other provision of law, no
14 State may impose a civil penalty on a small-business con-
15 cern, in the case of a first-time violation by the small-busi-
16 ness concern of a requirement regarding collection of in-
17 formation under Federal law, in a manner inconsistent
18 with the provisions of this subsection.".
19 (c) ADDITIONAL REDUCTION OF PAPERWORK FOR
20 CERTAIN SMALL BUSINESSES.—Section 3506(c) of title
21 44, United States Code, is amended—
22 (1) in paragraph (2)(B), by striking "; and"
23 and inserting a semicolon;
24 (2) in paragraph (3)(J), by striking the period
25 and inserting "; and"; and

1 (3) by adding at the end the following new
2 paragraph:
3 "(4) in addition to the requirements of this Act
4 regarding the reduction of paperwork for small-busi-
5 ness concerns (within the meaning of section 3 of
6 the Small Business Act (15 U.S.C. 631 et seq.)),
7 make efforts to further reduce the paperwork burden
8 for small-business concerns with fewer than 25 em-
9 ployees.".

10 **SEC. 3. ESTABLISHMENT OF TASK FORCE TO STUDY**
11 **STREAMLINING OF PAPERWORK REQUIRE-**
12 **MENTS FOR SMALL-BUSINESS CONCERNS.**

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

16 **"§ 3521. Establishment of task force on feasibility of**
17 **streamlining information collection re-**
18 **quirements**

19 "(a) There is hereby established a task force to study
20 the feasibility of streamlining requirements with respect
21 to small-business concerns regarding collection of informa-
22 tion (in this section referred to as the 'task force').
23 "(b) The members of the task force shall be ap-
24 pointed by the Director, and shall include the following:

1 "(1) At least two representatives of the Depart-
2 ment of Labor, including one representative of the
3 Bureau of Labor Statistics and one representative of
4 the Occupational Safety and Health Administration.
5 "(2) At least one representative of the Environ-
6 mental Protection Agency.
7 "(3) At least one representative of the Depart-
8 ment of Transportation.
9 "(4) At least one representative of the Office of
10 Advocacy of the Small Business Administration.
11 "(5) At least one representative of each of two
12 agencies other than the Department of Labor, the
13 Environmental Protection Agency, the Department
14 of Transportation, and the Small Business Adminis-
15 tration.
16 "(6) At least two representatives of the Depart-
17 ment of Health and Human Services, including one
18 representative of the Health Care Financing Admin-
19 istration.
20 "(c) The task force shall examine the feasibility of
21 requiring each agency to consolidate requirements regard-
22 ing collections of information with respect to small-busi-
23 ness concerns, in order that each small-business concern
24 may submit all information required by the agency—
25 "(1) to one point of contact in the agency;

1 "(2) in a single format, or using a single elec-
2 tronic reporting system, with respect to the agency;
3 and
4 "(3) on the same date.
5 "(d) Not later than one year after the date of the
6 enactment of the Small Business Paperwork Reduction
7 Act Amendments of 1999, the task force shall submit a
8 report of its findings under subsection (c) to the chairmen
9 and ranking minority members of the Committee on Gov-
10 ernment Reform and Oversight and the Committee on
11 Small Business of the House of Representatives, and the
12 Committee on Governmental Affairs and the Committee
13 on Small Business of the Senate.
14 "(e) As used in this section, the term 'small-business
15 concern' has the meaning given that term under section
16 3 of the Small Business Act (15 U.S.C. 631 et seq.).".
17 (b) CONFORMING AMENDMENT.—The table of sec-
18 tions at the beginning of such chapter is amended by add-
19 ing at the end the following new item:

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

Passed the House of Representatives February 11, 1999.

Attest: JEFF TRANDAHL,
Clerk.

II

106TH CONGRESS
1ST SESSION

S. 1378

To amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 1999

Mr. VOINOVICH (for himself and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend chapter 35 of title 44, United States Code, for the purpose of facilitating compliance by small businesses with certain Federal paperwork requirements, to establish a task force to examine the feasibility of streamlining paperwork requirements applicable to small businesses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Paperwork Reduction Act Amendments of 1999".

1 **SEC. 2. FACILITATION OF COMPLIANCE WITH FEDERAL PA-**
2 **PERWORK REQUIREMENTS.**

3 (a) REQUIREMENTS APPLICABLE TO THE DIRECTOR
4 OF OMB.—Section 3504(c) of chapter 35 of title 44,
5 United States Code (commonly referred to as the "Paper-
6 work Reduction Act"), is amended—

7 (1) in paragraph (4), by striking "; and" and
8 inserting a semicolon;

9 (2) in paragraph (5), by striking the period and
10 inserting a semicolon; and

11 (3) by adding at the end the following new
12 paragraphs:

13 "(6) publish in the Federal Register on an an-
14 nual basis a list of the requirements applicable to
15 small-business concerns (within the meaning of sec-
16 tion 3 of the Small Business Act (15 U.S.C. 631 et
17 seq.)) with respect to collection of information by
18 agencies, organized by North American Industrial
19 Classification System code and industrial/sector de-
20 scription (as published by the Office of Management
21 and Budget), with the first such publication occur-
22 ring not later than one year after the date of the en-
23 actment of the Small Business Paperwork Reduction
24 Act Amendments of 1999; and

25 "(7) make available on the Internet, not later
26 than one year after the date of the enactment of

1 such Act, the list of requirements described in para-
2 graph (6).".
3 (b) ESTABLISHMENT OF AGENCY POINT OF CON-
4 TACT; SUSPENSION OF FINES FOR FIRST-TIME PAPER-
5 WORK VIOLATIONS.—Section 3506 of such chapter is
6 amended by adding at the end the following new sub-
7 section:
8 "(i)(1) In addition to the requirements described in
9 subsection (c), each agency shall, with respect to the col-
10 lection of information and the control of paperwork—
11 "(A) establish one point of contact in the agen-
12 cy to act as a liaison between the agency and small-
13 business concerns (within the meaning of section 3
14 of the Small Business Act (15 U.S.C. 631 et seq.));
15 and
16 "(B) in any case of a first-time violation by a
17 small-business concern of a requirement regarding
18 collection of information by the agency, provide that
19 no civil fine shall be imposed on the small-business
20 concern unless, based on the particular facts and cir-
21 cumstances regarding the violation—
22 "(i) the head of the agency determines that
23 the violation has the potential to cause serious
24 harm to the public interest;

"(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 a 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 a 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 cor-

1 rected within 24 hours of receipt of notice in writing by
2 the small-business concern of the violation.
3 "(B) In determining whether to provide a small-busi-
4 ness concern with 24 hours to correct a violation under
5 subparagraph (A), the head of the agency shall take into
6 account all of the facts and circumstances regarding the
7 violation, including—
8 "(i) the nature and seriousness of the violation,
9 including whether the violation is technical or inad-
10 vertent or involves willful or criminal conduct;
11 "(ii) whether the small-business concern has
12 made a good faith effort to comply with applicable
13 laws, and to remedy the violation within the shortest
14 practicable period of time;
15 "(iii) the previous compliance history of the
16 small-business concern, including whether the small-
17 business concern, its owner or owners, or its prin-
18 cipal officers have been subject to past enforcement
19 actions; and
20 "(iv) whether the small-business concern has
21 obtained a significant economic benefit from the vio-
22 lation.
23 "(3) In any case in which the head of the agency im-
24 poses a civil fine on a small-business concern for a first-
25 time violation of a requirement regarding collection of in-

1 formation which the agency head has determined presents
2 a danger to the public health or safety, and does not pro-
3 vide the small-business concern with 24 hours to correct
4 the violation, the head of the agency shall notify Congress
5 regarding such determination not later than 60 days after
6 the date that the civil fine is imposed by the agency.

7 "(4) Notwithstanding any other provision of law, no
8 State may impose a civil penalty on a small-business con-
9 cern, in the case of a first-time violation by the small-busi-
10 ness concern of a requirement regarding collection of in-
11 formation under Federal law, in a manner inconsistent
12 with the provisions of this subsection.".

13 (c) ADDITIONAL REDUCTION OF PAPERWORK FOR
14 CERTAIN SMALL BUSINESSES.—Section 3506(c) of title
15 44, United States Code, is amended—

16 (1) in paragraph (2)(B), by striking "; and"
17 and inserting a semicolon;

18 (2) in paragraph (3)(J), by striking the period
19 and inserting "; and"; and

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

22 "(4) in addition to the requirements of this
23 chapter regarding the reduction of paperwork for
24 small-business concerns (within the meaning of sec-
25 tion 3 of the Small Business Act (15 U.S.C. 631 et

1 seq.)), make efforts to further reduce the paperwork
2 burden for small-business concerns with fewer than
3 25 employees.".

4 **SEC. 3. ESTABLISHMENT OF TASK FORCE TO STUDY**
5 **STREAMLINING OF PAPERWORK REQUIRE-**
6 **MENTS FOR SMALL-BUSINESS CONCERNS.**

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

10 **"§ 3521. Establishment of task force on feasibility of**
11 **streamlining information collection re-**
12 **quirements**

13 "(a) There is hereby established a task force to study
14 the feasibility of streamlining requirements with respect
15 to small-business concerns regarding collection of informa-
16 tion (in this section referred to as the 'task force').

17 "(b) The members of the task force shall be ap-
18 pointed by the Director, and shall include the following:

19 "(1) At least two representatives of the Depart-
20 ment of Labor, including one representative of the
21 Bureau of Labor Statistics and one representative of
22 the Occupational Safety and Health Administration.

23 "(2) At least one representative of the Environ-
24 mental Protection Agency.

1 "(3) At least one representative of the Depart-
2 ment of Transportation.
3 "(4) At least one representative of the Office of
4 Advocacy of the Small Business Administration.
5 "(5) At least one representative of each of two
6 agencies other than the Department of Labor, the
7 Environmental Protection Agency, the Department
8 of Transportation, and the Small Business Adminis-
9 tration.
10 "(6) At least two representatives of the Depart-
11 ment of Health and Human Services, including one
12 representative of the Health Care Financing Admin-
13 istration.
14 "(c) The task force shall examine the feasibility of
15 requiring each agency to consolidate requirements regard-
16 ing collections of information with respect to small-busi-
17 ness concerns, in order that each small-business concern
18 may submit all information required by the agency—
19 "(1) to one point of contact in the agency;
20 "(2) in a single format, or using a single elec-
21 tronic reporting system, with respect to the agency;
22 and
23 "(3) on the same date.
24 "(d) Not later than one year after the date of the
25 enactment of the Small Business Paperwork Reduction

1 Act Amendments of 1999, the task force shall submit a
2 report of its findings under subsection (c) to the chairmen
3 and ranking minority members of the Committee on Gov-
4 ernment Reform and Oversight and the Committee on
5 Small Business of the House of Representatives, and the
6 Committee on Governmental Affairs and the Committee
7 on Small Business of the Senate.

8 "(e) As used in this section, the term 'small-business
9 concern' has the meaning given that term under section
10 3 of the Small Business Act (15 U.S.C. 631 et seq.).".

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions at the beginning of such chapter is amended by add-
13 ing at the end the following new item:

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

Testimony

of

Jere W. Glover

Chief Counsel for Advocacy

U. S. Small Business Administration

before the

Committee on Governmental Affairs

United States Senate

October 19, 1999

on

Small Business Paperwork Reduction Act Amendments of 1999

S. 1378

Good morning, Mr. Chairman and Members of the Committee. My name is Jere W. Glover. I am Chief Counsel for Advocacy with the U. S. Small Business Administration.

The Office of Advocacy was established by Congress 20 years ago as an independent entity to be a spokesperson for small business in the formulation of public policy. The Chief Counsel is, by law, appointed by the President from the private sector and confirmed by the Senate.

I am pleased to appear before this Committee to discuss an issue of extreme significance to small business, namely, regulatory paperwork and reports, and the burdens such mandates impose on small business. Before proceeding, however, please note that my comments are my own and do not necessarily reflect the views of the Administration or the Small Business Administration.

First, let me say that I endorse the concepts incorporated in the legislative proposal sponsored by Senator Voinovich and Senator Lincoln – S. 1378. It is very similar to that which I supported in testimony on March 5, 1998 before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight. The current proposal would require:

- annual publication of paperwork and reporting requirements imposed on small business;
- waiver of civil fines for first paperwork/reporting violations if corrected within a specified time period, except in certain circumstances where there is an overriding public interest concern; and
- the formation of a task force to study the feasibility of streamlining information collection from small business.

Why do I endorse these concepts? Paperwork and reporting requirements are a major cost problem for small businesses. Small companies do not have specific staff to complete the myriad of reports required by government. Often it is the owner or the CEO who must take on this task, making it a very high cost activity for small business, diverting a valuable resource from running the business to an activity that does not generate revenue or contribute to the firm's output. Despite reduction goals established for federal agencies by the Paperwork Reduction Act, the problem and the burden persist.

There is a "perception" problem, as well as a real one. I think it is fair to say that small businesses live in fear that an inspector or auditor will walk through their doors and find them in violation of some law, imposing penalties that will bankrupt them and wipe out life savings invested in their businesses. Reality? I do not know. The fear, however, is real. This gives added importance to the civil penalty waiver provision in the proposal. Significantly, it would implement a recommendation of the 1995 White House Conference on Small Business to the effect that agencies should not assess civil penalties for first time violators, where the violation is corrected within a reasonable time. S. 1378 adopts this approach for paperwork and reporting requirements that do not involve serious health and safety risks and contains other limited exceptions that address overriding public policy concerns. The proposal recognizes an implicit truism, namely that small businesses do not have the resources to track all paperwork requirements and are likely to learn of their legal obligations for the first time when an investigator walks in their door. Since compliance should be our regulatory objective, a waiver for first time violations makes eminent sense, and, if enacted, it should go a long way toward mitigating current fears.

As for the balance of the proposal, let me review some events, which I believe will be helpful to the Subcommittee's deliberations.

Let me start with the 1995 White House Conference on Small Business to which I referred in the preceding discussion of the civil penalty waiver.

About 1800 small business delegates participated in that conference and voted on 60 policy recommendations for administrative and/or legislative action. One of those recommendations, edited here in the interests of brevity, urged that Congress enact legislation that would require agencies to:

- simplify language and forms;
- sunset and reevaluate all regulations every five years with the goal of reducing the paperwork burden by at least 5 percent each year for the next five years;
- assemble information through a single source on all small business reporting; and
- eliminate duplicate regulations from multiple government agencies.

If I were permitted editorial license, I would substitute the word "reporting" for the word "regulations" in the last item, an issue I will address later in my testimony. As evidence of the pernicious nature of this issue, I need only remind you that paperwork burdens were also an issue addressed by the 1980 and 1986 White House Conferences on Small Business.

Clearly the proposed legislation addresses almost all the concerns detailed in this recommendation of the White House Conference on Small Business. Moreover, there is statistical information to justify the recommendation.

In the fall of 1995, the Office of Advocacy submitted to Congress: *The Changing Burden of Regulation, Paperwork and Tax Compliance on Small Business: A Report to Congress.* A major resource for that study was another report commissioned by Advocacy: *A Survey of*

Regulatory Burdens,(Research Summary attached), authored by Thomas D. Hopkins, Rochester Institute of Technology, a leading researcher in quantifying the impacts of regulations on business, especially small business. In brief, Advocacy reported to Congress that the total regulatory cost projected for 1999 would be $709 billion, with one-third of this cost attributed to "process" costs - primarily paperwork. Advocacy further reported that the average annual cost of regulation, paperwork and tax compliance to small business is 50% higher than for large business - actual dollar costs amounting to about $5,000 per employee per year. Keep in mind, however, that this cost is for all regulations, not just paperwork and reporting.

Unlike capital costs. which involve a one-time expenditure, process costs (paperwork) do not go away. They never disappear from the books.

The significance of this annual 50% cost differential is that it produces an inequitable cost allocation between small and large firms. This differential gives larger firms a competitive advantage in the marketplace, a result at odds with the national interest in maintaining a viable, dynamic and progressive role for small business in the economy. The information about the cost differential in both of these studies should also put to rest the canard that efforts to lessen the burden on small business are tantamount to "special treatment" and, ergo, unfair. Not so. Such efforts merely level the playing field and are sound public policy.

The Paperwork Reduction Act, which in and of itself was a good first start, did not focus on the disproportionate burdens that *mandated* reports impose on small business. The current proposal provides precisely that focus; the disproportionate costs to small business justify consideration of its provisions. Advocacy's research furnishes a rationale for mandating an analysis of how to simplify paperwork and reporting burdens on small business without sacrificing public policy objectives.

The first step toward simplification and the elimination of duplication is the compilation of the reports small businesses must file. This has never been done. Publication of this information in one place is likely to be a revealing eye-opener. The 1995 White House Conference on Small Business specifically recommended that the Federal government publish an inventory of all small business paperwork requirements. Such a publication would achieve two purposes. First, small businesses would be able to find, in one place, a description of all the paperwork requirements they must satisfy. This would be a vast improvement over the current state of affairs, where ignorance of regulations is a significant factor behind small business' first time violations. It should also help promote compliance, that is, if it is comprehensible and not overwhelming. Second, and perhaps most important, policymakers, both inside and outside the Federal government would have the opportunity to review this inventory and make informed decisions (1) about imposing new requirements, (2) about revising existing requirements or (3) about eliminating duplicative and unnecessary requirements.

The compilation should also help distinguish between requirements imposed by *regulation* and those imposed by *congressional mandate*. As you know, this distinction has been an issue in determining how well agencies are doing in achieving the paperwork reduction goals set by the Paperwork Reduction Act. The Administrator of the Office of Information & Regulatory Affairs (OIRA) has testified, as has the Government Accounting Office, in earlier congressional hearings that a factor contributing to the failure of agencies to reach goals has been added congressional requirements. The compilation will be a valuable tool for the work of the proposed task force and help focus discussions on ways to simplify and reduce reporting requirements.

One benefit likely to emerge from such a compilation is better identification of duplication and overlap in reporting. Policy makers will be better able to identify where duplication exists, and, given the right kind of analysis, where there is overlap with other reports. As you know, Advocacy reviews regulatory proposals to assess their impact on small business and to evaluate agency compliance with the Regulatory Flexibility Act. One of its tasks is to comment on the value and usefulness of proposed recordkeeping and reports. We have raised questions about how records will be used either by firms or by the agencies, the frequency of agency review of the data reported, and what decisions will be based on the information collected. On this point, I would like to share with you a very specific example of how regulatory reporting can be "off the mark" in achieving a stated policy objective. I believe the following example will underscore the value of the effort you are considering.

"Old Forms Die Hard"

Under the Emergency Planning and Community Right-to-Know Act, communities are entitled to information about the storage of hazardous materials in their communities. This information is useful in the event of accidents, for example, so that local officials will know how to deal with such incidents, the nature of the hazards with which they may have to deal, and what precautions to take. The reports mandated by regulation under this law required gas stations with 10,000 pounds of gasoline in underground storage tanks to file reports that they, in fact, store gasoline on their premises. It had never been clear to me how these reports enhance the community's knowledge. Particularly ironic is the fact that the estimated 200,000 gas stations—almost all small businesses—had to submit similar reports to three other state and local entities—800,000 pieces of paper annually, at a minimum, advising public officials that the gas stations have gasoline on their premises! And when they did not, they presumably put out signs saying:

"No gas today." Clearly this regulation did not save any trees nor tell the public anything it did not already know.

Advocacy first sought repeal of this requirement in 1987. After 2.5 years of my personal involvement, EPA finally repealed this reporting and paperwork requirement in February of this year. As a result of this repeal, Advocacy estimates that small businesses save over 500,000 hours annually—that is significant paperwork reduction and cost savings—not counting the agency paperwork storage costs that will be saved!

The agency is also considering additional paperwork relief under the "right-to-know" rule. EPA is further proposing to eliminate reporting by small sand, gravel and rock salt operations and converting to plain English the remaining reporting requirements applicable to storage of chemicals in excess of 10,000 pounds.

This is a major step forward. EPA's action eliminated duplicative reporting, helped small businesses and did not harm the environment. It is one of the best proposals I have seen. *It was worth the 2.5 year wait.* But we are still waiting for EPA to provide paperwork relief for small sand, gravel and rock salt operations!

This brings me to my final issue. It is a topic that I think the proposed task force will be able to address, particularly when armed with the information on the number and kind of reports small businesses must file. As the task force looks to the question of simplification and consolidation of reports, the compilation will demonstrate that some of the same information is repeatedly requested by federal agencies—whether it is IRS, Census, Labor, EPA, or other agencies. However, while each of these agencies may be asking for this information only one time, the small businesses responding to these requests have to provide the same information over and over again to different agencies. With Internet and other new technologies, there is a

better way for a small business to provide government agencies with the information they want with minimal burden on the business.

What I envision is a simple electronic form, which I call "Form 1," that a small business would complete online just one time. The company would input all of its basic essential information there, and then whenever an agency requests information, the business would submit the already-prepared information to the requesting agency through the Internet. Or even better, the business could submit this information a single time to a centralized database, and then, if an agency needs this information, the agency could access the database directly, rather than burden the company again with another request. As I said earlier, most agencies seek very similar, if not the exact same information from companies over and over again. This could be standardized. For agencies requiring additional information not already provided, the company can go ahead and send information without having to submit the entire set of basic company information again by simply attaching the additional information onto the electronic form that already contains the standard information.

As a prototype on the feasibility of this concept, we are currently working with the Office of Federal Procurement Policy on an initiative to consolidate various paper forms used in seeking government procurement onto a centralized electronic database. With this program, we hope to be able to demonstrate how an electronic process can save both small businesses and government contracting officers valuable time and resources while promoting active participation of small businesses in the federal procurement system.

The concept I laid out is an option that should be explored by the task force. It is within the realm of feasibility, thanks to the availability of advancing Internet technology and the fact that more and more small businesses are utilizing the Internet. This is an idea I have had for

some time and I am now convinced that the time is ripe for its implementation. The technology is here, but we need the commitment to make it happen.

In closing I want to emphasize that the proposal you are considering is conceptually sound and "right on the money." I cannot address the difficulty or cost of compiling the annual list of reports. If you are told that it will be difficult—that it will be costly—and—that it will be burdensome on agencies - this will surely be very clear and demonstrative evidence of the need for this compilation. Such arguments, rather than providing evidence to "deep-six" the proposal, gives you even more justification for determining exactly what reports small businesses must file with which agencies. However, this is not my expertise and I am sure others will address that issue. What I do know is that paperwork reduction is no one's priority except small business. Success will come when agencies fully realize how disproportionately small business is burdened by paperwork and reporting requirements and how anti-competitive the costs can be. There are often less burdensome alternatives to help agencies achieve their public policy objectives.

One promising item, the new Administrator of OIRA, John S. Spotila, is someone who knows the small business community well. As former general counsel at SBA he significantly reduced paperwork and SBA's regulations. His recent addition of Ronald Matzner to focus on paperwork reduction exclusively should yield significant results. I am optimistic that real progress can be made and I intend to work closely with them.

I want to thank the Committee for holding this hearing; it seems that every time we focus on a small business issue, things get better.

SMALL BUSINESS

Office of Advocacy

U.S. Small Business Administration

RESEARCH SUMMARY

No. 163
1995

A Survey of Regulatory Burdens

by Thomas D. Hopkins
Diversified Research, Inc.,
Irvington, New York
Completed under contract no. SBA-8029-OA-93

Purpose

Compliance with regulation imposes burdens on businesses for which they receive no explicit benefits or compensation. Despite widespread recognition that the scope of regulation is broad and its economic impact, large, systematic efforts to track and account for regulatory burdens on firms are uncommon.

This study is motivated by the Office of Advocacy's statutory mandate to "measure the direct cost and other effects of government regulations on small business" and to "recommend specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential." The purpose of this effort is to deepen knowledge of regulatory burdens, provide current information about these burdens, and illuminate the effects of such burdens on firms of different sizes.

Scope and Methodology

A nationwide telephone survey of 360 business firms was carried out in July 1994. The firms were drawn from three sectors of the economy that represented more than 80 percent of private employment in 1990--services, trade and manufacturing.

Fifteen 4-digit SIC code industries were chosen; each industry had between 50 and 70 percent of its jobs in small business and employed at least 100,000 workers. The 15 industries, while diverse, are not intended to be statistically representative of all industries in the sectors.

The study focuses on specific federal actions that regulate how businesses treat their employees and customers, and how they carry out their production or management activities. Four basic questions were investigated: (1) What perceptions do firms have of their regulatory burden? (2) What profile can be created of regulatory burden characteristics? (3) What regulatory cost components (dollar costs and time burdens) can be identified and assessed through such a survey? (4) What regulatory burden reduction issues emerge from the survey?

Highlights

- Nearly two-thirds of the surveyed firms believed they face more than minor regulatory burdens; a quarter of them described their burdens as "substantial."
- Firms with fewer than 50 employees reported the largest shares of revenues used to pay for their main regulatory burdens. Firms with 20-49 employees appeared to be hardest hit, spending nearly 20 cents of every revenue dollar on regulatory compliance (excluding capital costs).
- There are economies of scale in regulatory clerical work.

This Small Business Research Summary (ISSN 1076-8904) summarizes one of a series of research papers prepared under contracts issued by the Office of Advocacy, U.S. Small Business Administration (SBA). The opinions and recommendations of the authors of this study do not necessarily reflect official policies of the SBA or any other agency of the U.S. government. The Administrator of the SBA has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this agency. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

- The cost of clerical burden is disproportionately large for small firms; the larger the firm, the smaller the number of clerical hours spent on regulation per employee.

- Two areas dominated as the source of greatest concern to the businesses surveyed: federal tax compliance paperwork and payroll record keeping. Here again, the pattern of disproportional burden on small firms was reported. Simplifying reporting and record keeping requirements was a virtually universal reform request.

- Substantial variability in regulatory burdens perceived was observed across industries and regions. Firms complained that lack of regulatory clarity and frequent regulatory changes were major contributors to reduced profitability and restrained growth and innovativeness.

Ordering Information

The complete report, along with research summaries of other studies performed under contract to the SBA Office of Advocacy, is available on the World Wide Web at: http://www.sba.gov/advo/research

Printed copies are available from:

National Technical Information Service
U.S. Department of Commerce
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

TESTIMONY OF
JOHN T. SPOTILA
ADMINISTRATOR
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

October 19, 1999

Mr. Chairman, and members of the Committee: Thank you for inviting me here today to discuss S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999." While the Administration strongly supports the goal of easing the paperwork burden on small businesses, we are concerned that, as now drafted, S. 1378 could produce unintended negative consequences. We acknowledge the need to increase our efforts to reduce the burden imposed on small businesses by Federal reporting and recordkeeping requirements, and would welcome the opportunity to work with you to achieve real progress in this area. Nevertheless, we strongly feel that S. 1378 has flaws and needs to be modified.

Administration Efforts to Address the Burden on Small Businesses

At the direction of the President, the Administration has taken important steps to reduce the paperwork burden on small business:

- On April 21, 1995, the President issued a Memorandum to the heads of designated departments and agencies entitled "Regulatory Reform – Waiver of Penalties and Reduction of Reports." In this memorandum, the President directed that, "to the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses" in certain circumstances.
- A month later, President Clinton signed into law the Paperwork Reduction Act (PRA) of

1995, praising it as a "remarkable bill." He pointed out that "...we owe a great debt of gratitude to the members of Congress....who exercised the leadership to get this done..." Emphasizing his agreement with the Act, he remarked that it "recognizes that the private sector is the engine of our prosperity, that when we act to protect the environment or the health of our people, we ought to do it without unnecessary paperwork, maddening red tape, or irrational rules." He described the complexity of the paperwork problem: "This Paperwork Reduction Act helps us to conquer a mountain of paperwork that is crushing our people and wasting a lot of time and resources, and which actually accumulated not because anybody wanted to harm the private sector, but because we tend to think of good ideas in serial form without thinking of how the overall impact of them impacts a system that is very dynamic and very sensitive to emerging technologies, but which government does not always respond to in the same way." He then directed the agencies "to further reduce these burdens,...to continue to review their regulations, to eliminate the outdated and streamline the bloated." He added, "As we reform, we need not compromise the quality of life or the needed oversight from the government. But the truth is, we can actually improve the system by making it less hidebound and by innovating as Americans are innovating."

This has been a continuing theme for the President. On June 12, 1995, he spoke before the White House Conference on Small Business and again emphasized the importance of reducing paperwork and regulatory burdens on small business. As he stated, "We know that small business is the engine that will drive us into the 21st century...you employ most of the people, create more than half of what we produce and sell, and create more of the new jobs, and we need to respond to that."

We take this direction seriously and are continuing our efforts to reduce paperwork burdens on small business. There is much more to be done. Since my confirmation in July, I have made this a priority at OIRA. Last month, OMB issued a Bulletin giving new guidance to agencies on preparing their FY 2000 Information Collection Budget submissions to OMB. The

Bulletin calls on agencies to describe in detail their initiatives to reduce the information collection burden on small businesses through changes in regulation. We hope that the agencies will take a hard look at existing burdens and try to identify steps to relieve that burden on small businesses. OMB then will publish a description of these agency initiatives in its FY 2000 Information Collection Budget. This will give us a better picture of where we are and what more we must do to reduce small business burdens. We also want agencies to learn from each other and adopt strategies that have worked elsewhere.

This is a necessary step for OMB, but not enough in itself. Reducing paperwork burdens will require a comprehensive effort, with full participation by the agencies. In that vein, OIRA plans to work closely with the Small Business Administration to launch a new administrative effort to examine how we can develop new approaches that will measurably reduce paperwork burdens. SBA Administrator Aida Alvarez is cooperating fully. She has agreed to detail one of her senior career lawyers to OIRA for one year to spearhead our joint efforts with the agencies to tackle this problem. My good friend, Jere Glover, and I have talked at length on what needs to be done and how to do it. We envision setting up, right now, an interagency working group very much like the task force called for in S. 1378. We are going to get started now to examine what must be done and to develop recommendations. In enthusiastically agreeing to my request for help, both Aida Alvarez and Jere Glover have again demonstrated a strong commitment to working with OMB, other agencies, and the private sector to minimize paperwork burdens on small business. We very much look forward to working closely with you and other Members of Congress in this endeavor.

Concerns with S. 1378

These Administration initiatives provide important background for our discussion today. We acknowledge the problems faced by small business owners in complying with government

reporting and recordkeeping requirements. We know we need to work together to address that problem. Our concern is that a number of the provisions in S. 1378 may create unintended new problems that complicate our task and perhaps cause other harm. We need to be particularly careful, despite good intentions, not to adopt legislation that would create such adverse consequences.

Specifically, we are most concerned that the one-time waiver provision in Section 2(b) of S. 1378 would shield small entities that do not act in good faith – those that intentionally or knowingly violate applicable regulations – at the expense of the public good. We note that in testimony prepared for the House of Representatives, and in letters that are being sent to the Committee, a number of agencies responsible for regulatory enforcement have argued that the waiver provision would seriously hamper their ability to ensure safety, protect the environment, detect criminal activity, and carry out a number of other statutory responsibilities. We certainly believe that the supporters of S. 1378 do not intend for it to have these consequences, but we fear that it will have this effect.

The Department of Transportation (DOT) has pointed out that transportation operators in various modes of transportation must now report certain accidents to DOT. This reporting requirement serves important purposes. If a company fails to notify DOT promptly after an accident, information important to any accident investigation may be lost or destroyed. This, in turn, makes it harder for DOT to protect public safety. Companies who delay such reports until being notified by DOT of a violation may compromise public safety, even though it may not be possible to show that they caused "serious harm to the public interest" or "a danger to the public health or safety," the standards proposed in S. 1378. We must be careful not to create a situation in which negligent operators can delay their notification just to cover up their mistakes, all at the expense of the public good.

DOT points out further that its efforts to implement legislation requiring passenger manifests for virtually all airline flights into and out of the United States could be undermined by

S. 1378. These manifests make it possible to notify the families of victims if an accident occurs. If a small carrier decided to save money by deliberately ignoring the information collection and recordkeeping requirements, S. 1378 would essentially enable it to undermine the intent of other legislation.

EPA has given us another example of their concerns. Under the Clean Water Act, regulated entities must monitor and report pollution discharges. This can be important to EPA and the states in assessing environmental threats. A recent case in California illustrates this point. There, EPA and California's Central Coast Regional Water Quality Control Board were concerned that a company withheld and misrepresented data relating to the amount of sea life killed by a cooling-water intake system. This made it very hard to assess the extent of any damages the plant's operations were causing to water quality and sea life.

We already have a powerful tool designed to give protection to small business owners who act in good faith. On March 29, 1996, the President signed the "Small Business Regulatory Enforcement Fairness Act" (SBREFA), a statute which passed the Congress with bipartisan support. Section 223 of SBREFA essentially codified the President's April 21,1995 directive to agencies to provide waivers of first-time regulatory violations for small business owners who act in good faith. It directed the agencies to provide civil penalty waivers to small entities for violations of statutory and regulatory requirements under specified circumstances. These circumstances require that the small entity correct the violation within a reasonable time, that it not be subject to multiple enforcement actions, and that it not have acted willfully or in a way to pose serious healthy, safety, and environmental threats. This is a sensible approach that we support fully. It applies directly to the concern about first-time paperwork violators, since paperwork reporting and recordkeeping requirements are almost always based on regulation.

Small business owners understandably do not want to be fined for inadvertent paperwork violations. Most of them make a good faith effort to comply with governmental requirements for recordkeeping and reporting. They believe that if they act in good faith, they should not be

punished. They do not believe that those who act in bad faith or who try to abuse the system should get away with it. Indeed, they particularly do not want some competitor to get a cost advantage over them by enjoying immunity for deliberately ignoring known requirements.

If the protection in SBREFA is not sufficient to reach small business owners who act in good faith, without harming the public, it is reasonable to talk about adjusting it. There is no good reason, however, to extend this protection to entities that would deliberately and knowingly seek to avoid legitimate recordkeeping and reporting requirements. We are not aware of any significant problems with the implementation of Section 223. If there are gaps in Section 223 that need correction, we would be willing to work with you to craft an appropriate amendment. But, as it is now drafted, the Administration strongly opposes Section 2(b) in S. 1378.

The Administration is also concerned about the provision in section 2(a) requiring OMB to publish annually a list of all Federal collection requirements applicable to small-business concerns organized by North American Industrial Classification System code. We encourage all agencies to help small business owners understand what is required of them. We are very interested in communicating this information better. As currently drafted, however, the requirement in S. 1378 is not the right solution. It would be hard to implement, resource intensive, and difficult to keep current and complete. We could help small business owners more in this area by using our resources in different ways.

In this regard, I would mention a comment we received recently from the Small Business Administration's Office of Inspector General. Although acknowledging that small businesses would appreciate the convenience of a list that identifies applicable reporting requirements, it expressed concern about the feasibility of publishing such a list. It noted that an annual listing of upcoming information collections would require agencies to predict what collections they would require in the future. In many cases, this is not possible because agencies cannot anticipate all of the problems and situations requiring immediate investigation and data collection. The Office urged that Section 2(a) not be enacted in its current form.

Before closing, you have asked us for our views specifically on section (2)(c) of S. 1378, which would obligate agencies to "make efforts to further reduce the paperwork burden for small-business concerns with fewer than 25 employees." As we understand it, this provision is designed to ensure that agency efforts to reduce paperwork burden aim specifically at businesses with relatively few employees. We appreciate the unique circumstances these businesses face and do not object to this provision.

As I emphasized earlier, we sympathize with the goal of easing the paperwork burden on small businesses and would be willing to work with you to improve the language of S. 1378 to the point where we could support its passage. More generally, we would welcome the opportunity to work with the Committee to develop new approaches for alleviating paperwork burdens. We understand and share your concerns, and those of small business owners all across the land. This is a difficult problem to solve and we need to work together if we are going to make any real progress.

Thank you, and I would be happy to answer any questions you may have.

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Department of Justice

STATEMENT

OF

ELEANOR D. ACHESON
ASSISTANT ATTORNEY GENERAL
OFFICE OF POLICY DEVELOPMENT

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

CONCERNING

PAPERWORK REDUCTION FOR SMALL BUSINESSES
H.R. 391, AND S. 1378

PRESENTED ON

OCTOBER 19, 1999

INTRODUCTION

Mr. Chairman and members of the Committee. My name is Eleanor D. Acheson. I am the Assistant Attorney General for the Office of Policy Development at the Department of Justice. I am pleased to provide the Department's views on S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999." Earlier this session, we recommended that the President veto a similar bill, H.R. 391, and in the 105th Congress, we testified in opposition to H.R. 3310, similar legislation. Although we appreciate that changes have been made to the bill, the Department's concerns with the bill have not changed.

At the outset, I want to underscore that the Department of Justice strongly supports streamlining information collection requirements and helping small businesses to comply with reporting and recordkeeping obligations. Therefore, we support those provisions in S. 1378 that would facilitate compliance with Federal information collection requirements. This Administration has made it a priority to help small businesses thrive, and we are committed to reducing unnecessary reporting and recordkeeping burdens on all businesses. The Department of Justice would welcome an opportunity to work with you to achieve these goals in a common sense, effective manner that complements existing Administration efforts.

While we support this bill's goals of reducing burdens on small businesses, we have serious concerns with the provision that would waive civil penalties for certain first-time violations of reporting and recordkeeping obligations. This provision essentially provides one "free pass" for small businesses that violate information collection requirements. While we recognize the vast majority of small businesses are law-abiding, we oppose the bill because it would undermine basic principles of accountability, enforcement and deterrence that are the

underpinnings of important regulatory programs that protect Americans' well-being. This in turn creates real risks to the American public. The changes that were made to the bill do not address this fundamental problem. The provision is also unnecessary, because both the law and Administration policies already recognize the special challenges that small businesses face and consider those factors when penalties are assessed for violations. And finally, the penalty waiver provision does not reduce reporting or recordkeeping burdens. In fact, the provision reduces information collection burdens only for those who violate the law. This result would put law-abiding businesses at a competitive disadvantage and could endanger the public.

The civil penalty waiver would have adverse effects that I am confident the bill's sponsors did not intend. As I will describe, this provision could interfere with the war on drugs; hinder efforts to control illegal immigration; undermine transportation, worker and food safety laws; hamper programs to protect children and pregnant mothers from lead poisoning; and undercut controls on fraud against consumers and the United States. Those are just a few of the unintended consequences we foresee.

SMALL BUSINESS CONCERNS ARE RECOGNIZED IN EXISTING LAW

S. 1378 is unnecessary, because federal statutes and Administration policies already take into account the needs of small businesses in assessing penalties. Congress, for example, has taken steps to address concerns about fairness in regulatory enforcement, including the following:

- **The Small Business Regulatory Enforcement Fairness Act of 1996** (SBREFA), Pub. L. 104-121, Title II, §§ 201-224, 110 Stat. 857-862 (Mar. 29, 1996) (codified at 5 U.S.C. 601 note), requires agencies to provide compliance assistance to small businesses and to develop policies to provide for the reduction or waiver of civil penalties by a small entity under appropriate circumstances. SBREFA provides for these policies to apply where a

small entity discovers a violation through a compliance assistance or audit program, has made a good faith effort to comply with the law, and has corrected the violation within a reasonable period. SBREFA provides that these policies do not apply where the violation involves willful or criminal conduct; poses serious health, safety or environmental threats; or where the small entity has been subject to multiple enforcement actions by the agency. See Pub. L. 104-121, § 223. SBREFA also provides for the appointment of a Small Business and Agriculture Regulatory Enforcement Ombudsman, who is charged with hearing small business concerns about agency compliance or enforcement activities, and who can refer the concerns to the agency's Inspector General in appropriate circumstances. See Pub. L. 104-121, § 222. Many agencies have developed policies consistent with SBREFA.

- **Other Statutes**. Other statutes specifically direct an agency to consider the size of a small business in obtaining information from it or in assessing penalties. The Occupational Safety and Health Act, for example, requires the Departments of Labor and Health and Human Services to obtain information "with a minimum burden upon employers, especially those operating small businesses." 29 U.S.C. 657 (emphasis added). The Clean Air Act expressly requires appropriate consideration of certain factors in assessing civil penalties, including, among other things, "the size of the business," and "the economic impact of the penalty on the business." See 42 U.S.C. 7413(e)(1). The Consumer Product Safety Act sets forth criteria to determine the size of penalties, including the size of the defendant's business. See 15 U.S.C. 2069(b).

The Administration and federal agencies also have made a number of efforts to address small business concerns and provide relief from penalties when appropriate. Agencies routinely take into account a business's size and good faith efforts to comply with the law. These are just a few examples:

- **Memorandum on Regulatory Reform: Waiver of Penalties and Reduction of Reports**. On April 21, 1995, President Clinton issued a memorandum asking all agencies to reduce small business reporting requirements and to develop policies to modify or waive penalties for small businesses when a violation is corrected within a time period appropriate to the violation in question. This policy applies where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or a significant threat to health, safety, or the environment. The memorandum also directs agencies to reduce the frequency of regularly scheduled reports by one-half in appropriate circumstances. See Memorandum, "Regulatory Reform — Waiver of Penalties and Reduction of Reports," 60 Fed. Reg. 20,621 (April 21, 1995).

- **Department of Justice/Immigration and Naturalization Service.** The Immigration

and Naturalization Service (INS), when considering the imposition of penalties for Form I-9 violations (forms employers use to verify employment eligibility), is required by law to give "due consideration" to mitigating factors such as the size of the business, the good faith of the employer, the seriousness of the violations, whether the violation involved an unauthorized alien, and the history of previous violations. See Immigration and Nationality Act, § 274A(e)(5), 8 U.S.C. 1324a(e)(5). As a matter of policy, INS applies these same factors when considering penalties in non-reporting cases involving knowing hires, or continued employment, of unauthorized aliens.

- **The National Oceanic and Atmospheric Administration** has developed a civil penalty waiver and reduction program called the "Fix-It Notice." Under this program, dozens of minor, first-time violations that are technical in nature and that do not have a direct natural resource impact receive a Fix-It Notice that allows the violation to be corrected in lieu of a penalty. Hundreds of these notices have been issued instead of penalties.

- **The Occupational Safety and Health Administration** provides significant penalty reductions based on employer size, good faith and history of violations, with the smallest employers eligible for the largest reductions. Where information collection requirements do not materially affect workplace health or safety, OSHA has directed its field compliance officers not to issue citations.

- **The Environmental Protection Agency** has a "Policy on Compliance Incentives for Small Businesses," that provides for reductions or waivers of penalties for small businesses in appropriate circumstances. Under this and other policies, EPA has mitigated hundreds of thousands of dollars in penalties – including complete waivers of all penalties in appropriate circumstances – for small businesses that make good faith efforts to comply. Recently, EPA proposed to expand the options allowed under the policy that make it possible for more small businesses to obtain waivers or reductions of penalties. See "Proposed Modifications to the Policy on Compliance Incentives for Small Businesses," 64 Fed. Reg. 41116 (July 29, 1999).

These policies appropriately recognize that good faith efforts to comply with the law, the impact of civil penalties on small businesses, and other factors may appropriately be considered in assessing civil penalties. The policies complement ongoing agency efforts specifically designed to help small businesses understand and comply with the law.

We must all continue our search for effective ways to streamline and simplify reporting and recordkeeping requirements that apply to small businesses. But efforts to

streamline reporting should not undermine law enforcement or regulatory safeguards that protect the public from safety, health, or environmental hazards; fraud; or other risks. The rest of my testimony will focus on why information collection requirements are essential to a wide variety of protections on which we all rely, and why a civil penalty waiver for first-time violators may put the health and safety of our families and communities at risk.

IMPORTANCE OF INFORMATION COLLECTION REQUIREMENTS

By allowing one "free pass" for first time violations of information collection requirements, the bill appears to assume that these violations are not significant, or are merely "paperwork" infractions. We disagree. Congress has established information collection requirements for a very good reason. Reporting and recordkeeping requirements form the backbone of most federal regulatory programs designed to protect human health, safety, environment, welfare, and other public interests. Federal agencies collect information for many purposes such as monitoring compliance with health and safety regulations, preparing for emergencies, and detecting illegal conduct. The government needs the information to decide how to address or remedy dangers ranging from contaminated food to consumer fraud to illegal immigration. The public relies on the information to make educated choices about where to live, what to eat, where to invest, and what to buy. It is through information collected on a regular and timely basis that we can determine where dangers are, what protections are needed, and when action is necessary to remedy harms, deter future violations, and ensure a level economic playing field for those who abide by the law.

We rely on businesses to provide this information because they are the best sources of that information. They know what they are doing, and how they are doing it. 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. So instead, we ask businesses to keep records on certain important activities and to report that information on a regular basis to the government, to the public, or both.

When considering legislation such as S. 1378, it is important to remember that information collection violations can have serious on-the-ground effects. A company's failure to submit required information, or submission of inaccurate information, can mislead the public, regulators and law enforcement officials. Reporting violations may mean serious harms go undetected and unremedied. These are just a few examples that illustrate the importance of these requirements:

- Information allows law enforcement to detect drug trafficking and money laundering. Under federal statutes and implementing regulations, financial institutions must report cash transactions exceeding $10,000 to the Secretary of Treasury. See 31 U.S.C. 5311 et seq. A significant purpose of this requirement is to aid the federal government in criminal investigations. Among other things, this requirement is intended to prevent individuals who obtain cash through illegal activities, such as cocaine trafficking, from "laundering" the cash by purchasing cashier's checks or other negotiable instruments.

- Information protects our food supply. The Department of Agriculture's Hazard Analysis and Critical Control Point Rule, 61 Fed. Reg. 38,806 (July 25, 1996), requires food processors to retain records documenting their efforts to eliminate food safety hazards and prevent salmonella and fecal contamination. These recordkeeping requirements are essential to evaluating whether food processors are sufficiently safeguarding our food supply from dangerous bacteria.

- Information protects children from lead hazards. The Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851, requires persons who sell or lease housing to let buyers or renters know about lead-based paint hazards. That information is especially important to pregnant mothers and to families with young children. Even at low levels, lead poisoning can reduce a child's IQ, and can cause permanent developmental problems. By providing lead paint hazard information to families who

lease or buy housing, American families can make informed decisions about where to live and how to raise their children in a safe environment.

- Information helps ensure workplace safety. OSHA's worker right-to-know program in its Hazard Communication Standard requires a certain amount of recordkeeping to ensure that the program is effective. If a worker is unaware that a hazardous chemical substance is present in the workplace, he or she may be at serious risk of illness or death. In one incident, two employees died from asphyxiation in a confined space while cleaning a tank. Failure to follow OSHA's confined space standards which required monitoring and recording the level of contaminants in the atmosphere before employees enter confined work areas was a significant factor in these fatalities.

- Information helps prevent illegal diversion of controlled substances. The Drug Enforcement Administration implements recordkeeping and reporting requirements to verify the legitimacy of controlled substance sales and to ensure that drug inventories are not lost or improperly diverted. These requirements are critical to drug law enforcement, because these records enable DEA to identify sources of diversion and subsequently document criminal activity. For example, the records of a pharmacy were essential to DEA's identification and subsequent criminal prosecution of a physician who routinely wrote multiple prescriptions for the same patient for 120-150 doses of highly abused and trafficked controlled substances. Where pharmacies do not report, however, illicit diversions may be harder to detect and require more intrusive investigations. For example, a targeting effort identified a pharmacy suspected of selling commonly sought controlled drugs without prescriptions and of submitting fraudulent Medicare claims. An audit of the pharmacy revealed a shortage of over 85,000 dosage units of controlled drugs in a six month period. The lack of required records to account for those drugs supported the suspicion of criminal distribution but failed to provide definite proof. In that case, a civil complaint for recordkeeping violations was filed and a $35,000 fine resulted.

- Information helps warn against dangers posed by hazardous materials. Environmental statutes often require collection of information to ensure that the agency and the public are aware of and can address contaminants in drinking water, wastewater discharges, or the storage, transportation and disposal of hazardous wastes. For example, in response to the disaster in Bhopal, India, Congress enacted a requirement that companies annually report hazardous chemicals inventories to local fire departments and local and State emergency planning officials. See Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11022(a), (d). Chemical inventory information helps local officials prepare for emergency spills, fires, releases, or other potential disasters. If a facility fails to report hazardous chemical inventory information, local and State officials may never learn what chemicals are present and will not be able adequately to plan for or respond to fires or other disasters. Similarly, in order to protect both workers and the public from the hazards of asbestos, regulations promulgated under the Clean Air Act require advance notice of demolition or renovation of facilities that contain asbestos. See

40 C.F.R. §§ 61.145(b)(1)-(5); see also 42 U.S.C. 7412. If an entity does not provide notice before demolition or renovation begins, the public and demolition workers may be exposed to airborne asbestos fibers without their knowledge. Other examples are hazardous waste or oil spill reporting requirements that require immediate notification, to allow the federal government to assure that either the responsible parties clean up the hazardous releases or that the government does so in order to protect the public. See CERCLA, 42 U.S.C. 9603(b); Oil Pollution Act, 33 U.S.C. 1321(b).

- Information helps ensure drug safety. The Food and Drug Administration requires sponsors of human drug products to report all serious unexpected adverse drug experiences associated with the use of their drug products. See 21 C.F.R. § 314.80. These reports are required to enable the Administration to protect the public health by helping to monitor the safety of marketed drugs and to ensure that these drug products are not adulterated or misbranded.

- Information prevents fraud against the taxpayer. Virtually all procurement contracts with the federal government and participation in federal loan and grant programs depend on submission of information. This is also true of Medicare, Medicaid, and federal health care programs, where this dependency is of particular concern. Without this information, the government could not pay its contractors, health care providers and other program participants and would be unable to detect fraud and collect damages under statutes such as the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, Section 1128A of the Social Security Act, 42 U.S.C. 1320a-7a, and the False Claims Act, 31 U.S.C. 3729 et seq. In just 210 referrals under the Program Fraud Civil Remedies Act, the Department has approved requests by agencies to use administrative procedures to recover over $ 7 million in civil penalties.

- Information helps ensure compliance with immigration laws. In order to reduce the magnet of employment opportunities in the United States as an incentive to unauthorized immigration, the Immigration Reform and Control Act of 1986, 100 Stat. 3360-62 (codified at 8 U.S.C. 1324a), requires all United States employers to verify, through examining appropriate documents and completing the INS Form I-9, that their newly hired employees are authorized to work in the United States. Air carriers are required to provide INS officials with properly completed arrival and departure manifests, which are important not only to allow the INS to comply with Congressional immigration control requirements, but also to provide a non-immigrant with evidence of his or her legal status in the United States.

- Information helps protect investors. The federal securities laws mandate the protection of investors and the maintenance of fair, efficient and competitive securities markets. The regulatory system is based on requiring full, fair and truthful disclosure of material information so that investors can make informed choices.

These examples illustrate how information collection forms the backbone of regulatory programs on which we all rely to protect ourselves, our families and our communities. As I will describe below, S. 1378 undermines the fundamental safeguards provided by these requirements by making it easy for small businesses to be casual about or even to decide not to comply with information collection requirements. The consequences of these "paperwork" violations can be devastating.

UNINTENDED CONSEQUENCES OF CIVIL PENALTY WAIVER

While we do not know how the courts would interpret the bill's language, we expect that the proposed waiver of civil penalties may cause grave consequences to public health, safety or the environment that could be avoided. We appreciate that the drafters of the bill have attempted to address our previously expressed concerns about these risks by providing for some exceptions to the general penalty waiver rule. As I will explain below, however, we do not believe those provisions are adequate. Some of the unintended consequences of the penalty waiver provisions include:

Increased Noncompliance with Reporting Requirements by a Few Bad Actors

Most small businesses try hard to comply with the law. But there will always be some that take illegal shortcuts. This bill would reward those bad actors. It would provide those small businesses with one "free bite" at the information collection apple, even if the violations were committed knowingly and in bad faith. 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. These bad actors might make the calculated decision to save on the costs of complying with

reporting or recordkeeping requirements, while those who small businesses who abide by the law would incur those costs. This would give bad actors an unfair economic advantage over their law abiding competitors.

Impairment of Law Enforcement and Public Protection

Aside from allowing bad actors to have a "free pass" for reporting or recordkeeping violations, the bill would fundamentally alter the safeguards that are in place to ensure that regulatory programs indeed protect the public. By removing the deterrent effect of potential civil penalties, the bill makes it easier for small business to ignore the requirements of the law because there are no consequences until they are caught for the second time. This shifts the burden of detecting health, safety, or environmental risks from those in the best position to learn of actual or potential defects or risks to the regulatory agencies. The effect would be a wholesale revision of statutes whose protective effects rely on accurate, timely information. For example, the Consumer Product Safety Act, 15 U.S.C. 2051 et seq. (CPSA) recognizes that companies endanger public safety when they do not report actual or potential defects. Similarly, environmental statutes such as the the Clean Water Act, 33 U.S.C. 1251 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f-300j-26, depend on accurate and timely reporting to prevent serious environmental and health risks.

Let me offer you an example. A few years ago, the Department brought a civil penalty action under the CPSA against a manufacturer of juvenile products such as cribs, strollers, and car seats. The product involved was a toddler bed with widely spaced rails in its headboards, footboards, and side rails. Within two months of marketing the bed, scores of consumers notified the company that children were getting their heads and limbs caught between

the headboard and footboard metal railings. Contrary to law, the company did not notify the Consumer Product Safety Commission (CPSC) of any of these incidents. One year later, the company marketed side rails for the bed. Parents again quickly told the company that their children often got trapped in the side rails. The company once again sat on these complaints. Tragically, a child strangled and died in a footboard. It was only at this point that the company reluctantly informed the CPSC of the death and the serious complaints that foreshadowed the death. The CPSC determined that the company had violated a requirement that such product hazards be reported immediately. See 15 U.S.C. 2064(b).

Under S. 1378, an agency would be able to impose a penalty in a situation like this, but it would be too late. The CPSC should not have to wait until a child dies to impose a penalty. Although this tragic death happened under current law, the bill makes it more likely that such situations would occur, because the bill eliminates any incentives to timely report such hazards. Without timely notice of the danger, the CPSC would be unable to evaluate the need for a recall or to act in time to warn parents of the risk.

Let me provide another example. One small entity against which the Department brought a civil enforcement action operated for almost a decade with illegal and uncontrolled emissions of volatile organic compounds (VOCs). VOCs contribute to ground level ozone, or "smog." This business, which is one of the largest spray-painting operations for department store fixtures, was in an area of the country where ozone poses a severe pollution problem. Because the company had failed to provide information to the government before building the plant or to obtain required permits to construct and operate, the government was unaware of its operation and could not address the resulting degradation of air quality and harm to public health. Indeed,

the severe ozone pollution, to which this company illegally contributed, had already triggered restrictions on the ability of other companies to build facilities in that area. While the company also violated substantive standards, the company's failure to seek permits and to provide the government with information were information collection violations they had serious, real-world consequences — for the public and for other businesses. A civil penalty waiver would encourage such unlawful behavior, and inadequate record keeping and reporting during the period of violation would make it more difficult to discover and remedy the problem.

"SAFETY NET" PROVISIONS ARE INADEQUATE

Our concerns are not addressed by the exceptions in the bill that allow agencies to impose penalties under certain circumstances. Although we appreciate the efforts that have been made to address our concerns, the problem with these provisions is that they provide too little, too late. Because the bill undermines the reporting and recordkeeping system as a whole, the underlying purpose of obtaining information to prevent and avert harm is defeated. Without the information in the first place, agencies will have a hard time determining any of the potential harms. The practical result is that agencies will be able to impose penalties and enforce the law – but only when it is too late and the harms have already occurred. And under S. 1378, the opportunities for such harms to occur will multiply.

For example, S. 1378 allows an agency to impose civil penalties where the agency head determines that a violation "has the potential to cause serious harm to the public interest" or the violation "presents a danger to the public health or safety." Although this provision will allow after-the-fact imposition of penalties for lack of recordkeeping in certain dangerous situations, it would impede the agency's ability to detect and divert such situations because it

would encourage some bad actors not to keep required records. If a fertilizer facility does not keep required information on hazardous chemical inventories, local police and fire officials may not know how to respond when a fire starts at the facility and may unknowingly endanger themselves and the community. Fire fighters could waste valuable time trying to determine what chemicals are stored at the facility, or if they are not aware of the dangers, might enter the facility without proper equipment or protection. In such a case, an agency would not be able to make a timely determination that the violation had a potential to cause harm, because it simply would not have known about the violation until too late.

The criminal activity exception also provides the wrong standard. The bill allows an agency to impose a penalty where, based on the facts and circumstances, "failure to impose a civil fine would impede or interfere with the detection of criminal activity." This standard assumes that agencies can determine, based on a particular violation, whether imposing a penalty will affect the detection of criminal activity. In fact, the impact of a single violation may be difficult to evaluate or predict. It is the failure to provide information (such as reports from pharmacies that lead to discovery of drug diversion), and not the failure to impose a penalty, that interferes with detection of criminal activity. The failure to impose a civil penalty only increases the likelihood that certain bad actors will not file required reports.

Our concerns are further exacerbated by the provision that allows a six-month grace period for a company to correct a violation before a penalty is imposed. Allowing an additional six months to correct a violation may unnecessarily increase serious risks to the public. A violation of an important information collection requirement should be corrected immediately. For example, if an agency discovers through an inspection that a facility storing toxic materials

does not contain proper documentation that would alert emergency workers and others to respond to an accident if one should occur, it should not have to wait for six months before requiring that documentation. The fact that harm has not occurred before discovery of a violation does not mean the public should bear the risks associated with it for up to an additional six months.

Put another way, the reason that the fixes do not alleviate our concerns is because the approach of S. 1378 is fundamentally wrong. The problem with the bill is that it provides a presumption that there will be no penalties unless the agency shows aggravating factors. The result of such a presumption is, as I described above, that small businesses are less likely to comply with the law and agencies will lack critical information when it is needed. This is the exact opposite of existing law and policy, which provide for a presumption of penalties, unless the agency finds mitigating circumstances. The reason that approach is imbedded in the law is that the deterrent effect ensures the quality of information that is so necessary for the effectiveness of our regulatory programs, while allowing agencies and courts to waive or mitigate penalties under appropriate circumstances. Therefore, any attempts to fix the factors in the bill will not address the underlying conceptual weakness of the penalty waiver provision.

A Source of Litigation over New Defenses and a "Trap" for the Unwary

The Department of Justice also has serious concerns regarding ambiguous and confusing language that will make S. 1378 difficult to implement or to understand, and that will likely be a source of contentious litigation. For example, subsection 2(b)(2) provides that, if a violation presents a danger to public safety, an agency may waive a penalty when the violation is corrected within 24 hours of written notice. This section does not make sense for three reasons. First, agencies already have discretion to waive penalties, so it is unclear what this provision

adds. Second, regardless of whether the agency decides to waive a penalty, there should always be a requirement to correct a violation, especially if it will present a danger to the public. Third, it is difficult to understand how parts (A) and (B) of this subsection would apply. Part (A) permits an agency to waive a penalty if a first-time violation is corrected within 24 hours, and Part (B) directs an agency to consider factors such as the violator's good faith efforts, the nature of the violations, and the previous compliance history, in determining whether to provide a small business with 24 hours to correct the violation under (A). This is inappropriate and illogical, because the factors should be (and are) taken into account in determining whether to waive a penalty generally, not when determining whether to provide a small business with 24 hours to correct a violation.

The bill also includes many ambiguous terms that will lead to litigation and may be a "trap" for the unwary small business. Key terms such as "civil fines," "first-time violation," and "correction" of violations are undefined, so it is unclear when a small business may benefit from a penalty waiver. For example, it is unclear whether a "first-time violation" means the first time a business is caught with any violation, whether it means the first day of a continuous violation, or whether it is the first violation of a particular requirement. Similarly, the bill allows a small business six months to "correct" a violation before it is subject to a penalty. But again, what precisely does it mean to correct a violation? It would appear that certain violations can never be corrected. If, for example, a company has failed to perform a required test on a food or drug sample that has left the premises, it can never conduct that test. If it has failed to create a contemporaneous record concerning an accident, it may be unable to provide an accurate record several months later. There is a real danger that small businesses will be lulled into believing

they are immune from civil penalties for certain conduct when in fact they are not. Neither the uncertainty nor the costs of litigation that could result from this bill will benefit America's small businesses.

EFFECTS ON STATE ENFORCEMENT PROGRAMS

The provision prohibiting states from imposing civil penalties for first-time violations of "a requirement regarding collection of information under Federal law, in a manner inconsistent with the provisions of this [bill]" raises some additional questions. It is unclear precisely when this provision would apply. This provision may be intended to address the situation where states implement delegated federal programs, such as environmental or labor laws. In those contexts, however, states enforce their own independent statutory and regulatory authorities that have been approved by federal agencies as meeting minimum federal standards. If the sponsors were to revise this provision to reach these delegated programs, then the bill could have broad and intrusive impact on states' abilities to enforce their own laws. We urge the Committee to examine the effects of this provision more carefully, and to hear from state law enforcement personnel about the bill's implications for state enforcement discretion.

THE PENALTY WAIVER PROVISIONS DO NOT REDUCE "PAPERWORK" BURDENS

In addition to the problems discussed above, the penalty waiver provisions simply do not accomplish the goal of the bill – to reduce reporting and recordkeeping burdens. We agree that small businesses face a number of obstacles, including the need to provide information requested by federal, state and local governments. But as I described above, the government collects information or requires its dissemination for important and necessary reasons. The

solution is not to eliminate the requirement to report, but to address the means of complying with the requirements. Agencies and OMB can, and are working together and through administrative processes to streamline information collection requirements, reduce the number of necessary forms, and provide compliance assistance to guide small businesses through their federal reporting and recordkeeping requirements. This is why we support the provisions of the bill that directly address these burdens, such as establishing a task force to examine ways to streamline reporting and recordkeeping requirements.

CONCLUSION

The Department and the Administration remain committed to promoting small business and effectively implementing the President's guidance and the SBREFA requirements. We believe collection of information is vital to effective law enforcement and the protection of the public. We therefore do not support penalty amnesty beyond that provided in current law. The Department looks forward to working with the Committee to reduce any unnecessary burdens on small businesses without jeopardizing essential reporting functions designed to protect the American public.

NATIONAL SMALL BUSINESS UNITED

SIXTIETH ANNIVERSARY
1937-1997

1156 15TH STREET, N.W., SUITE 1100
WASHINGTON, D.C. 20005-1711
202-293-8830
FAX: 202-872-8543
WWW.NSBU.ORG

Testimony of Robert Smith

President of Spero-Smith Investment Advisers, Inc.

On Behalf of National Small Business United

Before the Senate Government Affairs Committee

October 19, 1999

Mr. Chairman, and members of the Senate Government Affairs Committee, thank you for allowing me to appear before you. My name is Robert Smith, I am President of Spero-Smith Investment Advisers, Inc., located in Beachwood, Ohio. I am also a member of the Board of Trustees -- and currently the Vice-Chair of Advocacy -- for National Small Business United (NSBU) the nation's oldest small business advocacy organization. Additionally, I am also a member of the Board of Trustees and the incoming chair of COSE (Council of Smaller Enterprises). COSE is a division of the Greater Cleveland Growth Association of which I am also a Board Member and a member of its Government Affairs Council. I also reside in the 10th district of the Great State of Ohio, and am a constituent of Senator George Voinovich, the chief sponsor of this legislation.

Foremost, I wanted to thank Senators Voinovich and Lincoln for their leadership and understanding of the serious dilemma that paperwork presents for America's 24 million plus small businesses. With the introduction of the Small Business Paperwork Reduction Act Amendments of 1999, you are attempting to help small businesses deal with the perpetual tidal wave of paperwork we are faced with day-in and day-out. On behalf of NSBU's 65,000 members, in all 50 states, I applaud you and support this legislative effort to bring sanity to the paperwork requirements we face.

NSBU has long been a supporter of a strong and viable Paperwork Reduction Act (PRA), which was passed in 1980. The Act authorizes the Office of Management and Budget (OMB)—through its Office of Information and Regulatory Affairs (OIRA)—to review all regulations being promulgated by executive branch agencies. This review is designed to centralize the regulatory process, end redundancy in data collection, simplify and reduce paperwork requirements, and ensure that small business is not inadvertently harmed by unreasonable federal regulations and paperwork.

The Act and the OIRA review processes are invaluable tools to harness bureaucratic excess. Left to their own devices and whims, agencies will be ignorant of requirements other agencies are placing on businesses, and will tend to require redundant and unnecessary information. Even though a given regulation or paperwork requirement

may seem reasonable on the surface, taken together with all other burdens placed on businesses by the federal government, that requirement could be seen as excessive. Without the centralized review process at OIRA, that holistic view could not be realized.

Yet, despite the best intentions of the PRA, small business has been fighting for years to fill the holes that federal regulatory agencies have punched into this law. Before one can assess the current bill, one must look back at the history of small businesses fight for paperwork reduction and reform.

A Brief History

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

Most federal officials who develop and promulgate regulations are largely unaware of the many activities and requirements of their fellow agencies. Information could be combined, and redundancies could be eliminated. In order to accomplish this goal, however, it is absolutely necessary that there be a centralized authority to examine the overall regulatory scheme of the federal government. The Paperwork Reduction Act simply intends to bring small business reality and a sense of regulatory necessity into the thinking of the federal bureaucracy--and eliminate a bit of redundancy at the same time.

In order to accomplish these goals, the PRA established OIRA within OMB. OIRA was given the authority and duty of preventing needless and redundant information requests from being imposed on the public. While the agencies are required to demonstrate the necessity of the data request and to publish it in the Federal Register for

public comment, a strong OIRA is necessary to provide an adequate check for these agencies. They can hardly be expected to police themselves.

But the original intent of the PRA and the work that OIRA was - and is - doing wasn't enough. Over the last decade there have been numerous attempts to amend and improve the Paperwork Reduction Act of 1980. Just in the 1990's alone, NSBU has testified numerous times in support of legislation that would bolster the PRA. We were here fighting the battle over the Nunn/Bumpers/Danforth bill, the Clinger-Sisisky bill, and even efforts through the Contract with America, NSBU has been there fighting the battle for small business on paperwork reduction. Just last year, NSBU worked with Rep. Jim Talent's office on H.R. 852, the Paperwork Elimination Act, which has passed the House, but is still awaiting action in the Senate.

The State Of Paperwork Today

If you ask any small business owner their opinion of the required paperwork, the responses overwhelmingly will indicate there is redundancy and excessiveness in the filing process. Let us take, for example, the pool and spa industry. If a dealer services a pool, they must comply with the OSHA Hazard Communication Standard. If they have more than 100 pounds of chlorine on site (which all pool and spa dealers do), they must also comply with SARA Title III. Added to this, there is the Department of Transportation's shipping papers and the Department of Agriculture's specialized documentation requirements. In sum, the government requires similar and duplicate information from the same company in a different format to several regulatory agencies, which results in a headache for small business owners. Nevertheless, the fines for noncompliance with any of the above could exceed the company's income for the year. Plus, the IRS, the EEOC and various state and local governing bodies add to above requirements and create a paperwork nightmare.

Duplication is another serious concern. Agencies must seek ways to eliminate duplication of paperwork. The paperwork requirements for filing mandatory emergency

plans are an excellent example. As you know, many agencies require emergency plans, such as a plan for hazardous waste, a fire report, a leak report or a stormwater plan. As one small business owner recently informed me, he must maintain nine notebooks each containing a different emergency plan. From these notebooks, he has to scramble to find the booklet that covers a particular area when agency's regulating that area come to inspect or paperwork is due. Inevitably, the paperwork due dates are all different and require him to keep a separate calendar simply dedicated to these dates. This is not uncommon, and it would be useful if the various agencies came together with small businesses and agreed to file less paperwork and work harder to eliminate duplication or contradictory requirements.

Another serious problem with these complicated and duplicative layers of paperwork is that it is easy for a well-meaning small business to overlook a requirement or a deadline because they don't have dedicated compliance staffs to research the vast federal (and state) regulatory paperwork quagmire.

Dealing with pensions and health care plans, as you might suspect, presents a very significant paperwork burden for the average small business owner. Atop any list of unnecessary and burdensome paperwork is an aspect from the group health insurance requirements. We know that many employer group plans are contributory to some degree. In small businesses, virtually every plan requires some degree of employee contribution toward premiums.

The current tax law allows employers to establish so-called "flexible benefit plans" or "section 125" plans so employees can make their contribution on a pre-tax basis. This tax savings feature reduces the net cost to the employee and enables the employer to increase employee enrollment as a result - an obvious plus for both sides. Virtually all small employers structure their plans to operate on this basis. There is no reason not to.

The IRS requires that employers have a plan document and summary plan description and that they file a Form 5500 at year's end in order for such premium

payments to qualify for the tax preferred status. Failure to fill a 5500 Form can result in a penalty of up to $1,000 a day, without limit!

The 5500 Form was designed for pension tax reporting. It is over six pages long (10 with the schedules) and, according to the IRS, it takes over 11 hours to complete - I don't think I have to even comment on how short-sighted their time estimates are. Yet, the form is not intended for this purpose and the IRS does virtually nothing with the form when they receive it. As a result this may be the single greatest abuse by business taxpayers in America. Very few employers file their required forms, but by so doing they are exposing themselves to significant penalties if they are caught.

A final example is the very complicated area is IRS Notice 98-52. IRS Notice 98-52 requires 401(k) and other plans with employee contributions to provide employees with an ***annual*** notice of their rights under the plan. This notice duplicates virtually every point in the "Summary Plan Description" that the DOL requires that plan Trustees provide to eligible plan participants. Employers who fail to provide this annual notification stand the risk of being fined and possibly having their plan disqualified. If the Summary Plan Description is a valid summary of employee rights then why is another notice required to repeat what they have already been given?

This poses a real threat for small businesses attempting to establish retirement plans. It is more work and it also lays a trap to catch them if they fail to provide the annual notice. It is my hope that as Congress and the Administration work towards increasing the abysmal savings rate in this country -- and making it easier for small businesses to provide retirement plans for their employees - they get serious about reducing the paperwork requirements that inhibit the formation of pension plans. I would suggest that if anything, IRS Notice 98-52 does is add another layer of "gotcha" to the process and another barrier and disincentive for small business owners.

There is a great deal of proof on this point. Every year National Small Business United conducts a survey with the Arthur Andersen's Enterprise Group a survey of the small business community to assess its attitudes, concerns, and needs. Repeatedly, small

business owners have been asked to identify the "most significant challenges" to their business' growth and survival. Some issues come and go from the top ranks, but "regulatory burdens" and "paperwork requirements" are consistently in posted in the top three challenges. There is a serious message here which we must continue to address. These issues go hand-in-hand and small business owners, and the groups that represent them, need to continue to work with Congress to ensure that small businesses do not see an unfair number of regulations and paperwork requirements come out of this town and bury them in their hometowns.

The Small Business Paperwork Reduction Act Amendments of 1999

NSBU's members - and all small business owners -- are on the front-line in a perpetual battle to stay in compliance and up to date with the myriad of mandates and paperwork that agencies like OSHA, IRS and EPA place upon them. The Voinovich/Lincoln legislation will be a significant aid for them in their efforts to stay in compliance. As you know, often times the hardest part about staying in compliance is knowing what you have to comply with and what the paperwork requirements are for a particular agency. This bill will help small businesses be more informed and will help alleviate major fines for innocent paperwork mistakes.

To have a once yearly list of all paperwork requirements for small business is invaluable. The bill calls for the paperwork requirements to be published in the Internet. It would be my suggestion that on top of this requirement, federal agencies provide a "plain English" explanation and listing of their paperwork requirements to small business owners, mainly through associations like NSBU and COSE and the others before you - simply because if the information doesn't get to the small business owner, then it isn't valuable.

The establishment of an Agency Point of Contact for small business is another excellent idea. These liaisons within the Agencies have worked well as required in a number of other laws and can only aid our efforts of staying informed and keeping in compliance.

But, as we all know, there are certain times when all businesses – even small businesses – are not in compliance with every law, regulation and form that this town and their state and local governments throw at them. On the first occasion of a federal paperwork mistake, the Voinovich/Lincoln bill calls for a suspension of the fine. This is a critical aspect to this bill, and something that NSBU has been lobbying in favor of for many years.

Honest men and women make honest mistakes. When our federal regulatory agencies realize this and accept the notion that not every single small business person with a paperwork violation is trying to pollute the environment, endanger his workers or gain a competitive advantage, then we have indeed made progress in reforming our government and returning it to the people.

This very bill, with some modifications, has passed the U.S. House of Representatives in the 106th and 105th Congresses. Now is the appropriate time for the United States Senate to pass this bill and take a very small step forward in helping the nation's 24 million small business owners in their efforts to combat the overwhelming burden of paperwork.

On behalf of NSBU and our 65,000 members, I believe that the Small Business Paperwork Reduction Act Amendments of 1999 lead us in the proper direction and is legislation that should pass this Congress.

Mr. Chairman, members of the Committee, I commend you for addressing this long-standing problem for small business. Thank you for allowing me to be a witness before you today.

STATEMENT OF
JACK GOLD
CENTER INDUSTRIAL
EDISON, NEW JERSEY

Subject: **Small Business Paperwork Reduction Act Amendments of 1999**

Before: **Senate Government Affairs Committee**

Date: **October 19, 1999**

National Federation of Independent Business
600 Maryland Avenue S.W., Suite 700 • Washington, DC 20024 • 202-554-9000 • Fax 202-554-0496

Mr. Chairman and members of the Committee. I wish to thank you for allowing me to testify in support of S.1378, the Small Business Paperwork Reduction Act (SBPRA). My name is Jack Gold. I am the founder and owner/operator of Center Industrial, located in Edison, New Jersey. I am proud to be a member of the National Federation of Independent Business (NFIB) and am honored to be presenting this statement on behalf of NFIB's 600,000 small business members nationwide.

Central Industrial is a family owned and operated business. Four of my eight employees are family members, and after 36 years, I am in the process of passing it on to the next generation. We supply major industry, contractors, and other small businesses like ourselves with products that keep their businesses operating on a day-to-day basis. Some examples of our products are hand tools, power tools, safety products and general hardware.

I am here to testify on the need for the legislative waiver for first time paperwork violations that is contained in the SBPRA of 1999. Small business owners deserve a break when they make an honest mistake, no one is hurt, and the mistake is corrected.

My support for this legislation is based on my experience with a Department of Transportation (DOT) inspection. I sincerely believe that my experience mirrors the stories of many small business owners. We feel that regardless of how hard we try to comply with all the rules and regulations, a government inspector can fine us -- regardless of our spotless record or whether we immediately correct any unintentional mistakes.

On August 13, 1998, we were inspected by the DOT. This was our first contact with the DOT. We were originally told that it was a "routine inspection," but later discovered that the inspection was prompted by an anonymous complaint, given by two disgruntled employees that were dismissed for company theft.

The inspectors were given full access to our facility and files because, as far as we were concerned, we had nothing to hide. They were provided with any and all information that they asked for. After the inspection, we were told that certain products were hazardous and that we lacked shipping documents and training for the sale and handling of those products. They were muriatic acid (pool cleaner), fire extinguishers, and Pine Power (cleaner). It never occurred to us that any of these items required special papers or triggered training requirements because anyone can walk into any Home Depot, Lowe's or Wal-mart and purchase the same or comparable items, throw them into his or her trunk, and drive away without having a second thought. We did not think that these products posed any danger. I would never intentionally place anyone, especially my family, in harm's way.

Once the inspectors explained that some of our products were deemed "hazardous" and that other products required shipping papers, we took the necessary steps to comply. We purchased the DOT's training CD-ROM and went from there. Training manuals were created and reference guides were purchased. We are currently training all of our employees even though we are only required to train the two or three employees involved with shipping. We identified which products required special shipping papers and drafted a "fill in the blank"

shipping paper and shipping checklist. Copies of the master product list, shipping paper, and checklist are now posted in the shipping / receiving area.

My daughter, Mary Ritchie, helps me run Center Industrial. When we went through the process of researching what steps we needed to take to come into compliance, she spoke with Ms. Collen Abbenhaus of the DOT on a regular basis. We were thankful for Ms. Abbenhaus' assistance, but were under the impression that if we did everything by the book, the original citation would be considered a "warning." This presumption was based on Ms. Abbenhaus' repeated use of the expression, "... if there is a fine..." when explaining our situation.

Well, there was a fine. In January of 1999 we were presented with a penalty of $1,575. We were particularly offended by the wording on the ticket that read, "If, within 45 days of receipt of this ticket, you pay the penalty, this matter will be closed. If you submit an informal response or request a formal hearing, you may be subject to the full guideline penalty of $4,500.00."

This, to us, was perceived as a federal agency's attempt to intimidate a small business so that they would not question the agency's actions. We are not asking to be excused from any obligations or regulations. But what does this experience tell me and other small business owners? It says that no matter how hard you try to make your business safe for your employees, customers, neighbors and family members, in the end, if a government inspector wants you, they can get you. The government cannot tell me that they care more for my family's safety and my

company's reputation than I do. It seems to me that DOT inspectors have more of an incentive to simply issue those tickets that say, "pay us or we'll run you out of business" than they do to help us understand how to comply with all these rules and regulations.

It only makes sense that, in cases were there is a paperwork violation and no one is put in harms way, business owners be given a reasonable amount of time to comply before fines are issued. We have been left with the feeling that the DOT misled us. We feel that the DOT wanted to impose a fine from the moment they entered our building no matter what we did.

Thank you for the opportunity to tell you my story in the hopes that it will make a positive difference in the way agencies treat small business owners in the future. I am happy to answer any questions.

Small Business Paperwork Reduction Act: Reporting Chemical Inventories

Statement by Chief Gary E. Warren

presented to

Committee on Governmental Affairs

of the

United States Senate

October 19, 1999

International Association of Fire Chiefs
4025 Fair Ridge Drive • Fairfax, VA 22033-2868
(703) 273-0911 • FAX (703) 273-9363

I am Deputy Chief Gary Warren of the Baltimore County Fire Department. I am responsible for hazardous materials and special operations in Baltimore County, MD, and serve on the Hazardous Materials Committee of the International Association of Fire Chiefs (IAFC). It is on behalf of the IAFC that I appear here today. I would like to thank the Committee for allowing me to address a concern shared by my fire service colleagues relating to the Small Business Paperwork Reduction Act.

Local fire departments are the primary providers of fire suppression and local hazardous materials response services throughout the United States. I need not remind the Committee that, like politics, all incidents involving dangerous chemicals are local.

The Small Business Paperwork Reduction Act seeks to provide relief to small business from federal paperwork requirements. America's fire departments have no quarrel with the intent of this bill. However, we are concerned that relaxing the threat of fines against businesses that will not comply with existing safety regulations will have the effect of relaxing compliance. Relaxing compliance leads to delayed compliance - and even non-compliance - which is at the heart of our concern.

There are approximately 60,000 incidents in the United States each year that involve dangerous chemicals. Many of these involve transportation accidents as well as chemicals inventoried by business, large and small. The issue of concern is chemical inventory reporting required under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

In an emergency, fire fighters are expected to enter structures to protect life, health, property and the environment. Advance knowledge of the presence of dangerous chemicals is crucial to our ability to protect ourselves. We *must* be aware of their presence to avoid serious injury or worse. An injured fire fighter cannot render aid to civilians or protect property and the environment. He also diverts attention from those priorities as his fellow fire fighters come to his aid.

The SARA Title III reporting requirements apply to several hundred chemicals that are considered extremely dangerous. Exemptions are already in place for many of these for quantities up to 10,000 pounds. There are smaller reporting thresholds for chemicals that are particularly lethal, such as sodium cyanide, used in very limited industrial applications in addition to its more well-known use by state penitentiaries in gas chambers. If that chemical is present in a facility to which we must respond in an emergency, we need to know *before* we respond to the alarm.

We understand that the legislation provides exemptions that authorize fines where the "agency head determines that the violation has the potential to cause serious harm to the public interest" or that the "head of the agency determines that the violation presents a danger to the public health or safety." In our view, this language is very broad. Who is the "agency head?" How does he determine danger? By what definition?

We understand that these exemptions are well intentioned. However, they will not strengthen and will probably weaken a fire department's ability to collect information necessary to ensure public safety. The existing requirement under SARA Title III is not onerous. In fact, I have personally assisted small business owners in completing the required paperwork for submission. It takes about an hour the first time it's completed. The original document can be resubmitted each year with minor changes, such as quantities on-hand and the date on top of the form.

To restate, existing dangerous chemical reporting requirements authorized under SARA Title III are a crucial life safety tool available to local fire departments. Any unintended relaxation of the requirement is unacceptable. The requirement itself is not onerous. I urge you not to "fix" a system that is not broken.

Again, thank you for allowing me to testify. I am happy to answer any questions the Committee may have.

November 12, 1999

Jere W. Glover, Chief Counsel for Advocacy

Responses to Questions from Senator George V. Voinovich

On S. 1378

1) **Do you think that S. 1378 is consistent with President Clinton and Vice President Gore's 1995 directive to Federal Agencies? Is it appropriate to codify this in legislation?**

Answer: Both the President and the Vice President have been strong supporters of reducing the paperwork burden on small business. That was the thrust of the 1995 directive to federal agencies. The value of S. 1378 is that it states a congressional intent to reduce paperwork and provides the tools for doing so.

2) **The President's memorandum directs federal agencies to modify or waive penalties. Can you tell me how many agencies have actually done this since the memorandum was issued?**

Answer: The Office of Advocacy does not track agency initiatives such as this but did remind agencies of their obligations under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to adopt compliance policies, part of which would address criteria for modifying or waiving penalties. Agencies were required by SBREFA to report by approximately July-September 1997 to the Senate and House Small Business Committees and to the Senate Committee on Government Affairs and the Judiciary House Committee on the scope of the policies and how many actions agencies took under the policies.

3) **S. 1378 would set up a task force to look at ways to streamline paperwork requirements. Do you have some examples of where agencies could do some streamlining that you believe the task force should look to?**

Answer: For some time, I have been promoting the idea of a simplifed form that would incorporate those bits of information commonly asked by federal agencies; reduce it to an electronic template that agencies and small business would then use over and over again to respond to various agency inquiries. Technology is making this possible and it can be accomplished without sacrificing privacy or secrecy. It just takes a commitment to do it. We are making some progress and the Office of Federal Procurement Policy is working closely with us to see how it could be integrated into some federal procurement programs.

4) **Do you think that OMB and federal agencies will reduce paperwork for**

small businesses on their own, without the added structures that S. 1378 puts in place?

Answer: One problem that has to be addressed is the identification of reports that have been mandated by legislation. These reports agencies cannot eliminate. On others that have been created through regulatory action, agencies have been known to eliminate unnecessary paperwork. I described some actions in my testimony on October 19, 1999. I am referring particularly to reports that were eliminated that had required gasoline stations to notify communities that they stored gasoline on their premises – information that was clearly known without the reports.

But the real problem is the cumulative effect of reporting requirements imposed by various agencies on a small business. This is the burden that the inventory mandated by S. 1378 will highlight and hopefully trigger some analysis of what information is truly needed in the public interest and where streamlining can best take place.

Questions Posed by Senator George V. Voinovich
to OIRA Administrator John T. Spotila
Concerning S. 1378

1) In your testimony, you said that you are concerned about the requirement that OMB publish an annual list of all Federal paperwork requirements applicable to small businesses. You say it would be hard to implement, would be resource intensive and would be difficult to keep current. Could you please elaborate why you think this provision will be difficult to implement?

Answer: Publishing an annual, comprehensive list of Federal paperwork requirements that are subject to the Paperwork Reduction Act and that apply to small businesses organized by the North American Industrial Classification System (NAICS) code, as would be required by S. 1378, would be highly resource intensive. Most information collections apply to the entire range of business types and sizes, rather than just to small businesses or to specific NAICS codes. Moreover, the term "small business" encompasses a large number of entities. Small businesses within a NAICS code may have varying degrees of paperwork requirements because Federal agencies are attempting to ease regulatory burdens on small businesses by excluding or relieving regulatory requirements applicable to small businesses. At the Federal level, it is the comprehensive nature of compiling a list that would make the effort labor, time, and coordination-intensive. Federal agencies' limited resources are better used if they are directed toward compliance assistance and paperwork reduction efforts.

2) Does this Administration want agencies to keep a "double whammy" – to be able to impose a civil fine on top of an enforcement action against a small business for a first-time paperwork violation that does not threaten public health or safety?

Answer: If the underlying paperwork requirements are appropriate, it is sensible to use effective enforcement actions to help ensure compliance. An enforcement action may or may not involve the use of civil fines, depending on the specific violation. We have seen no evidence indicating that a problem exists with regard to agencies penalizing single paperwork violations twice, or that civil fines are duplicative of other enforcement actions.

While we view civil fines and penalties as an important aspect of regulatory enforcement, we also want agencies to use discretion when imposing fines and to take into account mitigating factors so that small businesses are not unduly penalized. Below are some examples of agency efforts to reduce their reliance on fines when regulating small businesses.

- **Immigration and Naturalization Service.** When INS considers imposing penalties on employers that violate requirements to verify employment eligibility, it gives "due

consideration" to mitigating factors such as the size of the business, the good faith of the employer, the seriousness of the violations, whether the violation involved an unauthorized alien, and the history of previous violations. As a matter of policy, INS applies these same factors when considering penalties in non-reporting cases in which employers knowingly hire or continue to employ unauthorized aliens.

- **Securities and Exchange Commission.** In 1997 the SEC instituted a policy to consider reducing or waiving penalties if, among other things, a small entity made a good faith effort to comply, its violation was isolated, and it attempted to remedy the harm it caused. SEC reported that it obtained only $43,000 in civil penalties from small entities in 1997, when it would have been entitled, given the facts of the violations, to impose penalties of up to $135 million.

- **The National Oceanic and Atmospheric Administration.** NOAA has developed a civil penalty waiver and reduction program called the "Fix-It Notice." Under this program, dozens of minor, first-time violations that are technical in nature and that do not have a direct natural resource impact receive a Fix-It Notice that allows the violation to be corrected in lieu of a penalty. Hundreds of these notices have been issued instead of penalties.

- **The Occupational Safety and Health Administration.** OSHA provides significant penalty reductions based on employer size, good faith, and history of violations, with the smallest employers eligible for the largest reductions. Where information collection requirements do not materially affect workplace health or safety, OSHA has directed its field compliance officers not to issue citations.

- **Consumer Product Safety Commission.** Whenever there is a major change in CPSC's policies or procedures that affect small businesses, CPSC issues guidance and provides grace periods for businesses to come into compliance. According to the Commission, it rarely focuses on small businesses that do not appear to be aware they were violating the law. Such small businesses, while they may need to take corrective action, are not automatically subject to penalties if they are unaware that the agency has changed its interpretation.

- **The Environmental Protection Agency.** EPA has policies that require every enforcement action to consider mitigating factors such as the size of a company's business, the effect the proposed penalty will have on a company's ability to continue in business, and a business' ability to pay the penalty. Additionally, two of EPA's policies – "Policy on Compliance Incentives for Small Businesses" and "Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" – provide for reductions or waivers of penalties for small businesses in appropriate circumstances. These policies encourage and reward small businesses that make good faith efforts to comply with Federal environmental laws. Under these policies, EPA has mitigated

hundreds of thousands of dollars in penalties – including complete waivers of all penalties in appropriate circumstances – for businesses that made good faith efforts to comply.

3) What were some of the most troublesome complaints you heard from small businesses while you were at SBA?

Answer: Small businesses told SBA that Federal and State regulatory, reporting, and recordkeeping requirements are often too complicated, duplicative, and hard to understand. Many small business owners also do not have the resources to hire staff or outside contractors to satisfy information collection requirements. They often must attend to reporting and recordkeeping requirements themselves, which reduces the amount of time they are able to devote to their small business enterprise. Federal agencies have attempted to address these issues by implementing policies such as the examples I provided in my response to question #5.

4) After having been at SBA, do you believe that there is a significant number of small businesses that would willfully violate paperwork requirements?

Answer: The vast majority of small business owners try hard to comply with regulatory and paperwork requirements. Nonetheless, there are always some businesses that seek to avoid compliance because of time or financial constraints, or to gain competitive advantage. Small business owners who comply with such requirements do not want their competitors to gain an unfair economic advantage by avoiding compliance. They believe that businesses that act in bad faith should be held accountable.

5) In your testimony, you mentioned that SBREFA (the Small Business Regulatory Enforcement Fairness Act) and the President's 1995 directive to Federal agencies provide protection to small business owners. Since that time, what streamlining of paperwork regulations has occurred? How many regulations have been eliminated?

Answer: The enactment of SBREFA, the President's 1995 Memorandum on "Regulatory Reform – Waiver of Penalties and Reduction of Reports," and the 1995 White House Conference on Small Business all helped focus attention on the need to treat small business owners fairly and reduce the burdens on them wherever possible. Over the past several years, Federal agencies have followed through with a number of important initiatives to address small business needs.

- **Small business tax reporting.** IRS recently made two changes designed to improve tax administration and reduce compliance burdens for small businesses. Currently, business taxpayers are required to use the Electronic Federal Tax Payment System (EFTPS) if they have annual tax deposits greater than $50,000. Beginning on January 1, 2000, taxpayers

will not be required to use EFTPS unless they have annual tax deposits greater than $200,000. As a result, approximately 65 percent of the taxpayers that now are required to use EFTPS will no longer be required to do so. Last year the IRS increased the minimum amount for requiring quarterly tax deposits from $500 to $1,000. Due to this change, approximately one-third of all small business employers will not have to deposit employment taxes.

- **IRS restructuring.** The IRS is engaged in a substantial restructuring effort that will establish four organizational units with end-to-end responsibility for serving specific groups of taxpayers. One of these units will be the Small Business and Self-Employed Operating (SB/SE) Division, which will serve the approximately 7 million taxpayers that are small businesses. Because the IRS recognizes that these taxpayers often face complicated tax issues, but may lack the financial resources to understand and address these issues, one primary focus of the SB/SE Division will be to teach small businesses about their Federal tax responsibilities and to work with them to develop less burdensome and more practical means of compliance.

- **EPA compliance assistance.** EPA provides compliance assistance to small businesses that are making a good faith effort to comply with environmental regulatory requirements. EPA has partnered with industry, academic institutions, environmental groups, and other government agencies to launch nine Compliance Assistance Centers to help small and medium-sized businesses and local governments better understand and comply with Federal environmental requirements.. Each Center explains, in plain language, the Federal environmental regulations that apply to a specific industry or government sector. The Centers provide compliance policies and guidelines, pollution prevention information, and sources of additional information and expertise.

We are seeing a new emphasis on more effective communication with the small businesses that are subject to Federal regulation. Below are two additional examples:

- **OSHA.** A booklet called Homesafe was developed by OSHA and the Homebuilders Association of Metropolitan Denver to help home builders better comply with the regulations that affect their industry. This pilot program uses a 67-page picture book to illustrate and simplify thousands of pages of regulations in the Code of Federal Regulations. The OSHA office in Denver has agreed that home builders who follow the 10-point list shown in Homesafe in good faith, and who do not have a history of serious OSHA violations, will not be fined if they also agree to abate any hazardous conditions identified during an inspection within a specified time limit.

- **IRS.** The IRS and the Small Business Administration prepared a CD-ROM entitled "Small Business Resource Guide: What You Need To Know About Taxes and Other Topics." This research tool is organized by the stages of a business's life cycle and includes small business tax forms and publications. In January 1999, the IRS initiated

The Small Business Corner on the IRS Internet site. It provides small business taxpayers with the information necessary to comply with their federal tax responsibilities. The IRS also recently hosted the "1999 Business and Professional Roundtable: Tax Forms Forum." At this forum, small business trade associations and tax practitioner organizations discussed their concerns about tax form complexity with IRS executives.

Agencies are also making a consistent and concentrated effort to inform the small business community of new rules and regulations, of rule changes, and of major program or policy revisions affecting the regulatory enforcement and compliance environment. EPA's Small Business Ombudsman (SBO), for example, serves as a one-stop source for compliance information. EPA publishes the SBO Update Newsletter, a quarterly update that contains information and guidance for small businesses on upcoming regulatory changes. It also includes state agency and EPA contacts and hotlines, information on SBREFA, and a description of EPA's penalty reduction policies.

Many of these examples appear in SBA's 1999 National Ombudsman's Report to Congress, "Securing Rights and Benefits for Small Business." I am submitting a copy for your consideration, along with copies of OMB's FY 1999 Information Collection Budget and OMB's Report to the President on the Third Anniversary of Executive Order 12866, "More Benefits Fewer Burdens." These reports contain additional examples of the Administration's paperwork burden reduction efforts.

S. 1378 , Small Business Paperwork Reduction Act Amendments of 1999
Follow-Up Questions from Senator Voinovich
to
The Honorable Eleanor D. Acheson, Assistant Attorney General,
Office of Policy Development, Department of Justice

Question 1: In your written testimony, you cite an example where if a paperwork violation occurred at a facility storing toxic materials, then there would be no documentation to alert emergency workers and others to respond to an accident. You continue on to say that an agency should not have to wait 6 months before that paperwork requirement is corrected.

S. 1378 clearly states that if a violation would have "a potential to cause serious harm to the public interest" or would "present a danger to public health or safety" then the Federal agency could impose a fine. There would be no 6-month grace period. The agency could impose the fine immediately or provide the business 24 hours to comply.

Are you saying that there is an agency in this Administration that would not consider the above example a violation that has "a potential to cause serious harm" or "present a danger to public health or safety?"

Answer: The Department agrees that in some circumstances agencies could determine that a reporting or recordkeeping violation at a facility storing toxic chemicals would have a potential to cause serious harm to the public interest or present a danger to the public health or safety, and would be able to impose a penalty in such a situation. It is unclear, however, whether an agency could make the determination in all situations, because sometimes the reporting violation is a step removed from the potential harm to public health or safety. We are also concerned that the terms in the exceptions are not established and will generate extensive litigation over what is "serious harm," the "public interest," or other undefined terms. And even aside from the example provided in my testimony, our concern regarding the six month compliance period remains. In some situations, it may not be clear whether a particular violation will cause serious harm or present a danger to public health or safety, yet it will be inappropriate to allow corrections to be done over a six month period. For example, the FAA requires passenger manifests for virtually all airline flights into and out of the United States to notify families of victims if an accident occurs. The failure to maintain such manifests will not result in a danger to public health and safety, and may not create a serious harm to the public interest, yet Congress mandated these manifests to be kept so that the names would be available in the unlikely event of an accident. If a violation is discovered (in the absence of an accident), it would do no good to require compliance in six months because the information will have become useless. If the violation is only discovered in the unfortunate event of an accident, it cannot be remedied at all.

The more serious concern we have about the bill, however, is that the whole structure of the penalty waiver provision sets forth a presumption that civil penalties are waived for all first time violations. As I mentioned in my testimony, the anticipated result of such a presumption is that small businesses are less likely to comply with the law and agencies and the public will lack critical information when it is needed. In such instances, agencies will be less likely to find out about violations until it is too late – when accidents or other harms occur. The purpose of enforcing reporting and recordkeeping requirements is to ensure that agencies and the public have necessary information when they need it, and we believe S. 1378 will undermine this goal.

S. 1378 , Small Business Paperwork Reduction Act Amendments of 1999
Follow-Up Questions from Senator Voinovich
to
The Honorable Eleanor D. Acheson, Assistant Attorney General,
Office of Policy Development, Department of Justice

Question 2: Can you tell me how many paperwork requirements have been streamlined or eliminated following SBREFA and President Clinton and Vice President Gore's 1995 directive to Federal agencies?

Answer: The Department of Justice has taken a variety of steps to implement the regulatory reinvention and elimination initiative of President Clinton and Vice President Gore and the requirements of SBREFA – by simplifying forms, reducing the burden or frequency of reporting requirements, and waiving penalties for "good faith" violations.

Many of these actions are set forth in detail in our report,*"Compliance Simplification and Enforcement Reform Under Sections 213 and 223 of the Small Business Regulatory Enforcement Fairness Act of 1666 (April 1998)"*. Although the Department has previously submitted a copy of this 29-page report to the Committee, we are enclosing a copy for the record of this hearing.[1] Additional examples of the Department reducing its information collection burden or improving the process are included on pages 99-104 of the OMB report *"Fiscal Year 1999 Information Collection Budget of the United States Government"* – a copy of which is also enclosed for the record.

The following examples are illustrative:

Waiver or reduction of penalties

- In 1998, INS adopted rules providing for the reduction, refund, or waiver of the $3,000 administrative fine imposed on carriers that transport improperly documented passengers, based on a carrier's overall success in screening out undocumented aliens. The rule also allows carriers to obtain even more favorable treatment by entering into a Memorandum of Understanding (MOU) with INS to undertake additional screening and training actions in exchange for a larger reduction of administrative fines.

- In 1998, INS published a proposed rule to implement an expanded good faith compliance provision that will relieve employers from strict liability with respect to minor,

[1] An earlier report, *"Summary Report to the President on Regulatory Reinvention (June 15, 1995)"*, which identifies additional actions that the Department and its regulatory components have taken, is also available for the Committee's information.

unintentional violations of the employment verification requirements. Since March 1997, Service field offices and attorneys have been following interim guidelines relating to the good faith compliance provision of the 1996 immigration legislation to ensure that all businesses will be treated in accordance with the law. The final rule is under consideration together with the broader 1998 proposal to revamp the forms and regulations relating to the Form I-9 process.

- A three-year review of DEA's non-criminal investigations in its diversion control program indicates that, in the cases where violations of a regulatory nature occurred, DEA did not seek civil penalties 75% of the time. The actions taken in lieu of fines included formal letters of admonishment outlining specific violations and corrective actions required, and administrative hearings followed by formal memoranda of understanding which hold the registrant accountable to a specific plan of compliance.

- DEA conducted a survey of diversion field offices during the first quarter of FY 98, in preparation for its SBREFA report. That survey of its compliance efforts showed that DEA had waived civil penalties in 93 non-criminal investigations involving a total of 352 regulatory violations – averting up to $8.8 million in potential civil penalties.

- The Environment and Natural Resources Division adopted a policy of compliance incentives for small businesses that participate in federal and state compliance assistance programs and promptly correct violations discovered therein. An eligible small business will not be subject to a civil penalty and will have a grace period in which to correct the violation under specified terms, if the violation was detected for the first time in the compliance assistance program and does not involve criminal conduct or a significant threat to health, safety or the environment.

Simplifying forms and paperwork processes

- In 1998, the Immigration and Naturalization Service (INS) published a proposed rule that would completely rewrite and clarify its regulations governing the employment verification process and substantially simplify the Form I-9. By limiting the variety of documents that may be used for verification purposes, this rule, when finalized, will reduce employer confusion over the multiplicity of acceptable documents, among other beneficial changes.

- Since 1996, the INS has also initiated a number of pilot programs to test the most effective methods for employers to quickly and accurately confirm work authorization for their newly-hired employees. Employer participation in these programs is voluntary and at no cost.

- INS has initiated a variety of programs – including the Port Passenger Accelerated Service System (PORTPASS) – to facilitate the entry of low-risk entrants into the United States at land border ports-of-entry and at airports. Through its Automated Alternative

Inspection Services, INS reduced the burden by over a half million hours for frequent travelers by cutting the number of required data elements, increasing automation, and providing for INS personnel to complete more information for respondents. INS will also begin pilot testing for the Advanced Passenger Information System, an electronic system to process information currently collected on the Arrival and Departure Record (Form I-94) that INS expects will eventually reduce the burden by over 300,000 hours.

- Since the beginning of this Administration, INS has reviewed over half of its regulations and forms and made many significant changes. INS has focused particularly on reducing paperwork, eliminating unnecessary requests for information, reducing supporting documentation requirements, and clarifying questions and instructions on forms to make them easier to understand and complete. INS has succeeded in canceling 19 forms and consolidating others, thereby reducing the burden of reporting requirements by approximately 2 million hours.

- The Bureau of Justice Assistance (BJA) allows small units of government to apply for grants with general concept papers instead of the full grant process, reducing the burden by 75 percent. BJA also simplified its Local Law Enforcement Block Grant program by shortening its grant application to one page and by allowing electronic submission of applications.

- The Office of Community Oriented Policing Services (COPS) has consistently sought to minimize burdens on grantees through the use of simplified application forms, streamlined renewal processes, and electronic access to grant funds.

<u>Reducing burden or frequency of reporting requirements</u>

- INS has exempted smaller airlines from a monthly reporting requirement on the collection of immigration user fees – so that only approximately two dozen of the largest air carriers are still required to submit this information on a monthly basis.

- The Office of Justice Programs (OJP) reduced the frequency of all programmatic progress reports that are not statutorily mandated from a quarterly to a semi-annual basis.

- DEA amended the manufacturer transaction reporting requirements in March 1997 to eliminate certain information from the reports and to reduce the reporting frequency from monthly to annually. DEA also reduced the reporting requirement for other categories of registrants from monthly to quarterly.

- In implementing regulatory requirements for the distribution and sale of List 1 chemicals (*i.e.*, chemicals essential for the processing of illegally produced controlled substances), DEA adopted a rule exempting from registration approximately 750,000 retail distributors of controlled over-the-counter products containing List 1 chemicals.

- DEA has developed a number of modifications to its regulatory and recordkeeping requirements based on consultations with the affected industries and practitioners, including its rules on the regulation of chemical mixtures, the use of faxed prescriptions, and the elimination of reporting requirements for various chemicals.

- DEA currently has underway two contract projects to allow the conversion of ordering and prescription systems for controlled substances from paper-based to electronic systems, including the maintenance of records electronically. These projects, undertaken at the behest of industry, will provide firms with more efficient means to distribute controlled substances and will provide more useful information to DEA at lower costs to the industry.

U.S. Department of Justice

COMPLIANCE SIMPLIFICATION AND ENFORCEMENT REFORM UNDER SECTIONS 213 AND 223 OF THE SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

The Department of Justice is not primarily a regulatory agency, and most of its vital investigative, prosecutorial, and other litigation and law enforcement activities do not involve the Department's own regulatory processes. Even so, the Department fully supports the regulatory reinvention and elimination initiatives of President Clinton and Vice President Gore. Beginning well before enactment of the Small Business and Regulatory Enforcement Fairness Act of 1996, the Department reviewed its existing regulations under Executive Order 12866 (issued in September 1993). Commencing in 1995, the Department continued re-evaluating its regulations by starting a top-to-bottom reinvention and elimination initiative to drop outdated provisions, eliminate unnecessary restrictions, and explain more clearly and concisely the remaining requirements in the Department's regulations.

Prior to but consistent with the intent of SBREFA, the Department has for many years been sensitive to the needs and concerns of individuals and small entities subject to its regulations, publishing a number of compliance guides and "plain English" manuals, providing assistance through toll-free telephone lines and outreach programs, and waiving or reducing civil penalties. Enactment of SBREFA in March 1996 afforded the Department another opportunity to focus on being more informative and flexible in the regulatory area while still meeting its law enforcement obligations.

Although the Department's formal obligations under SBREFA appear to be somewhat limited, it has nonetheless examined its existing guidance programs in light of § 213, its existing waiver or reduction of penalty programs in light of § 223 and is continuing to evaluate the need for additional programs so as to fully comply with the goals of these sections. The efforts of the Department under these sections and under other selected provisions of SBREFA are discussed in greater detail below.

IMMIGRATION AND NATURALIZATION SERVICE

INS recognizes that the employment verification process significantly impacts the business community. In order to ensure that businesses have ready access to the information they need, the Service is continuing its outreach efforts through various programs and written guidance. For example, INS is developing a fax-back capability for employer information and is making increased use of its Internet site. All materials relating to changes in the employment verification process will be made available though these channels. The Service will also work through trade and professional associations and similar organizations to inform the public. Through the use of

technology and working with businesses associations, access to information will be made easier for small businesses.

Additionally, INS has implemented changes affecting small business which Congress made to the Immigration and Nationality Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). As is set forth more fully below, INS has issued guidance to the field on the good faith compliance provision that allows employers to correct certain technical or procedural errors on Forms I-9, it has published a proposed document reduction rule, and it is implementing three new employment verification pilot programs.

1. Section 213, Informal Small Entity Guidance.

On October 29, 1997, INS's National Fines Office (NFO) prepared and distributed, to the airline industry, an illustrated guide for the proper completion and submission of Forms I-94 and I-92 entitled "Easy Come/Easy Go." The Service relies on Form I-94 to obtain a record of the arrival and departure of each nonimmigrant passenger who is required to submit Form I-94. The Form I-92 provides the Service with information regarding each aircraft's arrival and departure to and from the United States.

• **Employment Verification Pilots.** On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) into law. Among other provisions, the IIRIRA requires the Attorney General to test three methods of providing an effective, nondiscriminatory employment eligibility confirmation process, focusing on electronic confirmation. The three new pilots are: the **Basic Pilot**, the **Citizen Attestation Pilot**, and the **Machine-Readable Document Pilot**. These pilots are designed to test methods to quickly and accurately confirm work authorization for newly hired employees. Participation in the pilots is voluntary and at no cost to employers. To participate, an employer must have a touch-tone telephone and a personal computer with a modem. The Service will provide the software, and instructional and training materials. Employers must sign and comply with a Memorandum of Understanding that sets the terms and conditions of the pilot.

The Service is now recruiting small (50 employees or less), medium (50-250 employees), and large (over 250 employees) businesses for the Basic Pilot program in the states where the pilot is being conducted (CA, FL, IL, NY and TX). Currently, there are over 150 employers participating in the Basic Pilot. This number includes 30 sites participating with 50 employees or less. Employers interested in participating in a pilot should submit an Election Form (Form I-876) to the Service. This form is available on the Internet at http://www.ins.usdoj.gov, or may be obtained from the Systematic Alien Verification Entitlement (SAVE) Program by calling (202) 514-2317, or by writing to the Immigration and Naturalization Service, SAVE Program, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536. Detailed information on the pilots can be found in the September 15, 1997, edition of the *Federal Register*, 62 FR 48309.

Since May 1996, the Service has been conducting the Employment Verification Pilot (EVP) program with over 1,000 employers participating nationwide. There are small, medium and large businesses using the system, ranging from 15 to 34,000 employees. The Service is no

longer recruiting for the EVP. The EVP can be conducted for 5 years. Employers on EVP can continue to use the system until the program is terminated.

Employers participating in a pilot are provided with a Customer Service Help Desk toll-free telephone number available from 8 a.m. until 8 p.m., EST, Monday through Friday, to assist them with any problems regarding the verification system. Employers having policy questions concerning the employment verification pilots should call the SAVE Program.

The SAVE Program has met with representatives of the National Federation of Independent Business, the Society for Human Resource Management, the National Restaurant Association, the American Farm Bureau Federation, the College and University Personnel Association, and the Food Marketing Institute to provide a status update on the employment verification pilot programs. A demonstration of the system was given to the group along with informational materials. The representatives agreed to publish information regarding the pilots in their newsletters.

2. Section 223, Rights of Small Entities in Enforcement Actions.

The Service has long-established policies to provide for the reduction, or waiver, of civil penalties for small entities who violate statutory or regulatory requirements. On August 3, 1991, the Service issued a policy entitled, "Guidelines for Determination of Employer Sanctions Civil Money Penalties." This policy established procedures for setting penalty amounts in Notices of Intent to Fine issued against employers who violate § 274A of the Immigration and Nationality Act.

These guidelines provide for leniency in the case of a first-time violator by starting at the statutory minimum penalty and adjusting the proposed fine upward based on aggravating factors. Among the five factors that the Service considers when determining the amount of a fine is the size of the business. Some or all of the items that may be considered are the number of employees, rate of new hiring, amount of payroll, business revenue or income, net worth, assets, nature of ownership, length of time in business, nature and scope of business facilities, including number of divisions or sites, geographic scale (local, regional, statewide, national), etc. The "test" for this factor is whether or not the employer used all the personnel and financial resources at the business' disposal to comply with the law. A secondary "test" for this factor is whether an increased penalty amount would enhance the probability of compliance. Every Service case file for violators of § 274A will contain a "memorandum to file" explaining the rationale for the fine, and the application of this factor and other factors considered when deciding a fine amount. In Fiscal Year 1997, the Service investigated approximately 6,000 businesses, resulting in a Notice of Intent to Fine in 888 of those cases. In every case, the criteria explained above were applied to the assessment of fine. All business entities, therefore, whether large or small, qualified for consideration of reduction of the civil monetary penalties assessed by the Service.

Section 411 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), was enacted on September 30, 1996, and significantly amended the Immigration and Nationality Act (Act) by allowing employers who have made a good faith attempt to comply with

a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the Act. On April 7, 1998 at 63 FR 16909, INS published a proposed rule to amend Service regulations implementing Section 411 of IIRIRA. When final, this rule will ensure that the good faith compliance provision relieves employers from strict liability with respect to minor, unintentional violations of the employment verification requirements. Since March 1997, Service field offices and attorneys have been following interim guidelines relating to the good faith compliance provision of IIRIRA to ensure that all businesses will be treated in accordance with the law. The finalized rule will reduce employers' potential liability for violations of Section 274A(b) of the Act.

On February 2, 1998, the INS published a proposed rule "Reduction in the Number of Acceptable Documents and Other Changes to Employment Verification Requirements" at 63 FR 5287. Along with reducing the number of documents acceptable for employment verification, the proposed rule details the results of the Service's Regulatory Flexibility Analysis as required by Section 610 of the Regulatory Flexibility Act. The rule proposes to restructure and change the regulations pertaining to Section 274A of the Act by addressing concerns raised by the public as well as incorporating changes made to the law by IIRIRA.

On June 10, 1996, at 61 FR 29323 the Service published its proposed rule, "Screening Requirements of Carriers for Reduction, Refund, or Waiver of Fines," for mitigating fines imposed on air and sea carriers pursuant to 8 U.S.C. § 273, to encourage carriers to further reduce the number of improperly documented persons transported to the United States. Under this rule, mitigative incentives will be granted to carriers who take additional measures to intercept such persons. The final rule is currently undergoing pre-publication review.

DRUG ENFORCEMENT ADMINISTRATION

The purpose of DEA's Diversion Control Program is to prevent, detect, and investigate the diversion of controlled substances and chemicals from legitimate channels, while at the same time ensuring an adequate and uninterrupted supply of controlled substances and chemicals required to meet legitimate medical and commercial needs. This Program has long embodied the principles of SBREFA requiring that agencies provide guidance and respond to inquiries from small entities concerning compliance with applicable statutes and regulations. Similarly, DEA's program of regulatory enforcement is built upon a system of "progressive discipline" which will, as required by SBREFA, provide for the waiver or reduction of civil penalties under appropriate circumstances.

1. Statutory Framework.

The Controlled Substances Act of 1970 (CSA) requires that every person who manufactures, distributes, prescribes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, prescribing, dispensing, importation, or exportation of any controlled substance shall obtain a registration, unless exempted by law. In 1997, the registrant population was approximately 957,000 (consisting of approximately 845,000

practitioners; 61,000 retail pharmacies; 28,000 mid-level practitioners; and 13,500 hospitals. While this population includes large businesses, the vast majority of registrants qualify as small business entities.

In 1988, the Chemical Diversion and Trafficking Act (CDTA) was enacted, imposing regulatory controls on the distribution and sale of specified chemicals essential to the processing of illicitly produced controlled substances. With the passage of the Domestic Chemical Diversion Control Act of 1993 (DCDCA) and the Comprehensive Methamphetamine Control Act of 1996 (MCA), registration of wholesale distributors, manufacturers, importers and exporters of List I chemicals, as well as retail distributors of single-entity ephedrine products became a requirement. List I chemicals are most commonly sought for the illicit domestic production of controlled substances. Several, such as ephedrine and pseudoephedrine, are also active ingredients in widely available non-prescription products not previously subject to DEA regulation and control.

Approximately 3,000 companies involved in the manufacture or wholesale distribution of these chemicals have registered with DEA since this requirement took effect in November, 1995. Over 75 percent of the chemical registrants are wholesale distributors. ***By regulation, DEA exempted from registration approximately 750,000 retail distributors of controlled over the counter products containing List I chemicals***. In addition, approximately 1000 small businesses engaged in supplying medical kits are being exempted as a group.

2. Section 213, Informal Small Entity Guidance.

Based on the fact that the majority of DEA registrants are upstanding members of the medical and business communities who actively seek to prevent diversion, DEA has made the philosophy of communication and cooperation with its registrant population the cornerstone of its Diversion Program. To this end, DEA strives to maintain a good working rapport with industry through the efforts of Headquarters and field staff. Below is an outline of the programs DEA currently has in place to assist registrants.

- DEA's regulations provide that information regarding procedures under the regulations and instructions supplementing the regulations will be furnished upon request by writing the appropriate address at DEA. Under Title 21, Code of Federal Regulations, Part 1301.03 (21 CFR 1301.03), questions concerning regulations pertaining to controlled substances may be addressed to: The Registration Unit, Drug Enforcement Administration, Department of Justice, P.O. Box 28083, Central Station, Washington, D.C. 20005.

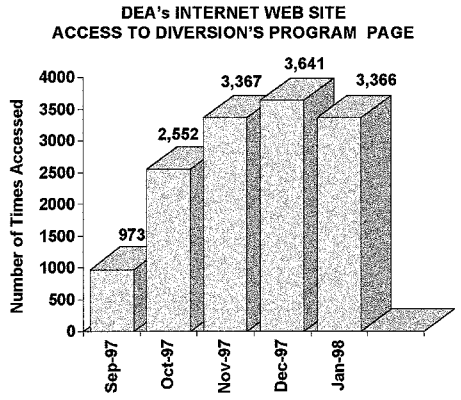
Under 21 CFR 1309.03, questions concerning regulations pertaining to List I chemicals may be addressed to: Drug Enforcement Administration, Office of Diversion Control, Washington, D.C. 20537.

In addition, the Diversion Control Program maintains over 50 field offices which registrants and the public may contact for assistance regarding the requirements of DEA's regulatory policy. A listing of the addresses and phone numbers for the DEA Field Divisions, all of which are staffed with Registration Assistants, is printed on the reverse of each application for

DEA registration or renewal of registration, is included in all informational booklets, and is included on the DEA Internet Diversion Program Page.

• DEA initially established its Homepage on the Internet in August, 1995. In September 1997, to further enhance the registrants' and the public's access to information and assistance concerning the Diversion Control program, the Office of Diversion Control (OD) developed a program page on DEA's Homepage. The Diversion Program page provides information for registrants about DEA field division offices; those offices with Registration Assistants; a screen outlining how to use the DEA toll-free telephone system to reach the Registration Unit at Headquarters, as well as general information concerning the Comprehensive Methamphetamine Control Act of 1996 (MCA). DEA's Internet address is: **http://www.usdoj.gov/dea**.

Since the Diversion Program page was added, the web site address has been included in publications forwarded to industry associations and to state/local regulatory bodies. It is included with applications for registration, and will be included on future printings of the DEA Registration Rolodex card. **DEA's web site has been accessed more than 3,000 times in each of the past three months.** The following chart illustrates not only the increased usage of this site, but indicates a consistent interest in the information provided.



Note: January's data is not complete. It was received from DEA's Office Services Section on January 28, 1998.

• Registrants may also contact DEA directly with any questions or requests for information via telephone. Industry may contact either the DEA field office in their area, or OD personnel at DEA Headquarters. In OD, the Liaison and Policy Section, as well as Operational Drug and Chemical Sections, are available to answer questions concerning DEA's regulatory policy, or in applying the law to the facts and/or circumstances involving small businesses. In addition, the Registration Unit (ODRR) at Headquarters provides information about registration requirements.

In December 1995, the Registration Unit began a toll-free, 24 hour-a-day telephone system **(800-882-9539)**. This system is equipped with a voice mail that may be used to request new or renewal applications for registrations, duplicate certificates of registration, DEA order forms, and changes of address. Messages left on the voice mail system are answered the very next morning by ODRR staff.

Callers may also speak with a Headquarters Registration Assistant during normal business hours from 8:30 am to 4:45 pm (Eastern Standard Time). Shortly, the hours of operation will be expanded to provide better service to the registrant population located in the western time zones. In September 1997, 10 additional positions were added to help improve DEA's response time with in-coming calls from registrants. The addition of these positions has greatly reduced the amount of time registrants are placed "on hold" before being connected to a staff member. The response time is being monitored daily and has been reduced to less than one minute barring rare instances of system overload. It should also be noted that each Field Division is staffed with a Registration Assistant who provides local access to information during specific business hours for that area of the country. Several, including Los Angeles and Denver, have instituted a toll-free calling system; others are scheduled to institute such a system in the future.

Since the implementation of the toll-free telephone system in December 1995, the Registration Unit has consistently documented more than 100,000 telephone calls from registrants per year between FY-95 and FY-97 (prior years' figures are not available). However, it should be noted that industry may also contact DEA field offices in order to request any information or publications they need. Field offices also report a significant number of calls and written requests for registration information. Quantitative information is being captured for future reports.

DEA is currently planning additional improvements to ODRR's telephone system. In order to further expand its capabilities, DEA has developed an integrated system that will allow personnel to access and/or update a registrant's electronic information record while speaking with the registrant on the telephone. Currently, Registration Assistants must either put a caller on hold, or call them back after accessing a separate terminal to complete a registrant's request. The new system will increase DEA's responsiveness to industry while simultaneously updating our records.

- DEA is developing new application forms that can be scanned directly into DEA's record system, substantially reducing data entry errors and decreasing the time it now takes to process an application and issue a registration. Under the new system, applicants and registrants will be able to pay by credit card.

- In addition to providing its registrant population access to DEA via a telephonic or written inquiry, DEA also provides a forum in which representatives from industry associations, their trade members, and small business entities may meet with DEA personnel to address any questions, or concerns they may have. Historically, DEA has always made this forum available to its registrant population. The following are a few recent examples of such conferences, meetings, and seminars that DEA sponsors.

The Office of Diversion Control (OD) sponsors working committee meetings with national associations that involve candid discussions of issues relating to the programs operated under the CSA as well as proposed regulations being considered by DEA or requested by industry. Attendees are asked in advance to provide information on any issues that they wish to have included on the agenda. The meetings provide an invaluable venue in which both the registrants and DEA can review the need for, and impact of, new regulations, policies and business practices on both the program and registrant activities. Follow-up written reports of the substantive issues discussed at the meetings are provided to all attendees. DEA has also sponsored meetings with national associations whose membership has been affected by newly enacted legislation. Over the years the following formalized working committees have been established: **1)** Practitioners, **2)** Distributors; **3)** Industry; **4)** Pharmacy; **5)** Regulatory; and **6)** Chemical.

OD also participates in numerous meetings/conferences at the national and local levels in the role of sponsor, speaker, or as a representative for DEA. The purpose of these meetings is to encourage the exchange of information on important issues and matters of concern to both industry and DEA.

○ Diversion Program Manager Conferences. In 1995, DEA established the supervisory position known as a Diversion Program Manager (DPM) to serve as a focal point between DEA field elements and the regulated industry and to provide consistent information and interpretation of program requirements as required by SBREFA. Periodic meetings between DPMs and Headquarters personnel are held to address policy issues and other matters of concern to industry, and to a formally alert them as a group to issues industry has raised through the various working groups. One such conference held during 1997 was actually a joint session which included not only the DPM's and Headquarters managers, but also three major associations representing the regulated industries. The most recent DPM conference was held in March 1998, in Denver, Colorado.

○ National Industry Conferences. DEA sponsors periodic meetings with representatives from the registrant population and their associations to discuss items of concern to the agency and industry as well as to identify programs to help prevent the diversion of controlled substances to illicit traffic. Follow-up written reports of the substantive issues discussed at the meetings are provided to all attendees. Such reports may then be distributed to the membership of the various associations as further amplification of DEA policies, regulations and proposed future initiatives.

Between September 9 - 11, 1997, OD personnel sponsored the "Eighth Pharmaceutical Industry Conference" in St. Petersburg, Florida. Items on the agenda included diversion and abuse trends of controlled substances, diversion prevention and control from industry's perspective, registration system enhancements, reporting requirements, distribution methods, use of a freight forwarding system, and an overview of the MCA.

○ Ad Hoc Meetings with Industry. In addition to the National Industry Conferences, DEA has historically conducted a variety of ad hoc meetings with representatives from specific industry groups or companies regarding issues that affect them. Below are just some of the recent examples of this type of meeting sponsored by DEA.

On June 16 and July 9, 1997, meetings were held between DEA and various members of industry that were affected by the passage of the MCA. The purpose of these meetings was to present information to these associations and their trade members concerning the increasing level of methamphetamine abuse in the United States, and to discuss what voluntary programs have been implemented, or were being developed, to stop the diversion of over-the-counter (OTC) products used in the illicit manufacture of methamphetamine.

On September 23, 1997, OD personnel met with representatives from the Nonprescription Drug Manufacturers Association (NDMA) at their request. This meeting clarified several of NDMA's concerns regarding the MCA and resulted in DEA agreeing to extend the deadline for chemical registration applications for handlers of products containing pseudoephedrine or phenylpropanolamine.

On October 1, 1997, OD personnel met with representatives from the National Association of Chain Drug Stores (NACDS) at their request. The purpose of this meeting was to discuss potential changes to the prescription regulations.

On January 21, 1998, a meeting was held between DEA and those associations representing prescribers and dispensers of controlled substances for the purpose of providing a venue in which information on current electronic signature/record capabilities and legislation could be presented and discussed.

DEA has also met with and responded to inquiries from representatives of individuals or groups seeking approval for commercial hemp cultivation. Based on their comments and concerns that current DEA security requirements are unnecessarily burdensome and an impediment to their proposed activities, DEA is conducting a review of possible modifications to those requirements.

Equally important are the seminars, presentations and meetings conducted by DEA field offices regarding the requirements of the Diversion Control Program. These include presentations at universities for medical or pharmacy students, meetings with state medical societies, and local groups representing parts of the registrant population as well as meetings conducted with individual companies. As these meetings are crucial in developing a cooperative relationship between DEA and industry, an informal survey was conducted to determine how many of these meetings DEA personnel attended. The survey revealed that during the first quarter of FY 98, field division and Headquarters personnel conducted an estimated 70 meetings, or the equivalent of one per business day.

3. Section 212, Compliance Guides.

DEA has been and continues to be very active in preparing Compliance Guides which provide advice to small business entities in an easy-to-understand format and which often obviate the need for registrants to contact DEA for further instructions. These manuals identify and clarify those parts of the regulations that apply to specific professional groups. DEA publishes and makes available to the regulated population, educational institutions, associations, and other national and state organizations representing the regulated population. These guidance manuals

designed are to assist registrants in understanding and meeting the requirements of the CSA: **1)** Physician's Manual; **2)** Pharmacist's Manual; **3)** Mid-Level Practitioner's Manual; **4)** Chemical Handler's Manual; and **5)** A Security Outline of the CSA.

Presently these manuals are being reviewed to clarify and update the regulations. DEA is also researching the possibility of adding these manuals to its Internet Homepage.

- DEA has provided to registrants a pamphlet entitled *"Customer Service Plan for Registrants,"* which outlines the standards DEA follows with concerning inquiries from industry. Also provided were Rolodex cards which listed Headquarters and local office contacts for obtaining information and guidance on the program. In the first quarter of FY 98, an estimated 36,000 manuals, Rolodex cards, DEA forms, and customer service plans, were disseminated.

- Another DEA publication entitled the *"Diversion Highlights"* is written specifically for and provided by DEA to associations for further distribution to their membership. This document provides general information concerning diversion trends and developments of interest to industry.

DEA's philosophy of communication and cooperation in the administration of the requirements under the CSA and CDTA has resulted in programs that incorporate much of the intent of SBREFA with respect to the requirement that agencies make information regarding their policies and regulations readily available. DEA has reviewed the specific requirements of SBREFA and has found that enhancements can be made to better conform with the requirements of the new law. However, these enhancements will consist primarily of adjustments to existing practices rather than the development of entirely new procedures which will also be applied to the chemical firms currently obtaining registrations under the MCA.

4. Section 223, Rights of Small Entities in Enforcement Actions.

A three-year review of non-criminal investigations indicates that in the cases where violations of a regulatory nature occurred, **75% of the time, civil prosecution was not sought.** The actions taken in lieu of prosecution included formal letters of admonishment outlining specific violations and corrective actions required, and administrative hearings followed by formal memoranda of understanding which hold the registrant accountable to a specific plan of compliance. Taking this review one step further and considering all diversion investigations conducted during a given year provides an even more striking picture. In FY 97, for example, Diversion field personnel initiated a total of 2293 investigations. The breakdown by category is as follows: 830 cyclic investigations of drug manufacturers/wholesalers; 555 investigations of suspected criminal drug diversion; 846 complaint investigations concerning controlled substances and 32 concerning chemicals; and 30 criminal investigations involving chemical diversion. It should be noted that although any of the categories of investigation mentioned above has the potential to uncover regulatory violations, the number of civil complaints filed for the same year totals only 107.

One aspect of DEA's regulatory program is to focus inspection of registrants at the wholesale manufacturer and distributor levels and to review registrants at the retail level as

complaints arise. The outcome of these investigations varies depending on the results of routine inspections, a large number of which warrant no action whatsoever. When violations do surface, the agency has a range of alternatives, short of civil penalties. The following provides a brief summary of alternatives used by DEA:

- DEA policy provides that during cyclic investigations of registrants, the investigators shall meet with the registrant's management to discuss the results of the investigation, including any violations that have been noted. Management is then provided an opportunity to present its views and take corrective action.

  - If a regulatory investigation uncovers violations, the registrant may be provided with a formal Letter of Admonition regarding the specific violations noted. The registrant is then requested to present his/her views regarding the violations and the corrective actions to be taken as a result. DEA field representatives are frequently requested to provide input regarding the firms intended corrections. These of Letters of Admonition are the most frequently applied alternative to civil prosecution.

  - The second alternative to filing a civil complaint is to hold an Administrative Hearing. Pursuant to 21 CFR § 1316.31, Special Agents-in-Charge (SAC) may hold an administrative hearing and permit any person against whom civil action is being contemplated an opportunity to present his/her views and proposals for bringing the alleged violations into compliance with the law. Such hearings often result in a formal agreement by the registrant to take the action necessary to prevent further violations, rather than a criminal or civil action.

A survey of diversion field offices revealed that during the first quarter of FY 98, there were a total of 93 investigations that revealed regulatory violations of the CSA in which civil penalties were waived through use of the above alternate sanctions. According to the survey, the investigations documented a total of 352 regulatory violations for which 81 Letters of Admonition were issued and 12 Administrative Hearings were held. Had those 352 violations been charged as counts in a civil complaint, each would have carried up to $25,000 in civil liability. **Use of the alternate sanctions in essence averted up to $8.8 million in potential civil penalties.** It should be noted that further action against a registrant is not pursued once the case is settled through one of the above sanctions provided the agreed upon corrective measures have been implemented.

The following chart shows the general trend in civil penalty cases for each year between FY 95 and FY 97 for the total amount of civil penalties collected, the number of civil cases opened, and the number of Administrative Hearings held and Letters of Admonition issued in lieu of potential civil penalties.

Diversion Control Program Statistics - Civil Penalties			
Drug/Chemical Cases	**FY-95**	**FY-96**	**FY-97**
Civil Fines	$8,937,044	$7,252,900	$3,703,955
Civil Cases	98	114	107
Administrative Hearings	31	20	39
Letters of Admonition	328	286	315

In each year, of the average 430 potential actions (civil cases, Letters of Admonition, and Administrative Hearings), approximately 75 percent involved alternative action being taken against violative registrants, which resulted in the waiver of potential civil fines. **Furthermore, civil penalties have decreased over 55 percent from FY 95 to FY 97.** Additionally, DEA Headquarters has provided specific advisories to the field regarding the requirements of SBREFA, DEA is reviewing its current methodology of reporting and maintaining statistical information from diversion field offices concerning the outcome of registrant violations.

FEDERAL BUREAU OF INVESTIGATION

The FBI has structured its activities providing guidance and assistance under SBREFA on a programmatic basis. The Bureau's program areas having SBREFA issues are discussed below.

1. Communications Assistance for Law Enforcement Act Implementation.

The Federal Bureau of Investigation (FBI) is currently engaged in implementing various requirements of the Communications Assistance for Law Enforcement Act (CALEA) (47 U.S.C. 1001 et seq.) for the Attorney General and on behalf of all Federal, State, and local law enforcement. The Telecommunications Contracts and Audit Unit, Finance Division, was tasked with the promulgation of Cost Recovery Regulations under CALEA section 109(e). Under the Cost Recovery Regulations (codified at 28 CFR 100), telecommunications carries will be able to seek reimbursement for certain CALEA compliance costs. The CALEA Implementation Section, Information Resources Division, has been tasked with the promulgation of the actual and maximum capacity requirements for the interception of the content of communications and call-identifying information that telecommunications carries may be required to effect to support all of law enforcement's electronic surveillance needs pursuant to CALEA section 104. The Final Notice of Capacity was published on March 12, 1998, at 63 FR 12218. The effective date of the Final Notice was March 12, 1998. The dates for compliance with the Final Notice are September 8, 1998, for submission of the carrier statement and March 12, 2001, for capacity compliance. Consistent with the intent of the Small Business Regulatory Enforcement Fairness Act of 1996,

(SBREFA), the FBI has sought the most flexible, least burdensome regulatory approach throughout the development of these CALEA regulations, particularly with regard to small entities.

The guiding principle in the development of the CALEA regulations is to allow the maximum range of compliance options to telecommunications carries dependant upon their own accounting systems and the configurations of their respective networks. Recognizing that these regulations could potentially have a significant impact on a substantial number of small entities, the FBI has consulted extensively with the Small Business Administration's Office of Advocacy and the Federal Communications Commission's Office of Communications Business Opportunities to ensure that no small entity would be disadvantaged by the Cost Recovery Regulations as drafted. The FBI has also consulted with the Small Business Administration's Office of Advocacy with regard to the Final Notice of Capacity. In addition to consultation at the rulemaking stage, the FBI intends to continue working closely with the Office of Advocacy to develop a Small Business Compliance Guide [Guide(s)] for both the Cost Recovery Regulations and the Final Notice of Capacity as required under Section 213 of Subtitle A of SBREFA.

The Guide for the CALEA Cost Recovery Regulations is currently being drafted and is anticipated to be released in 1998. At present, the Guide is expected to incorporate an in-depth discussion of the Cooperative Agreement process and of the personnel and procedures small telecommunications carriers can expect to encounter as they move through the reimbursement process. Also, as the Cost Recovery Regulations are implemented, a "Frequently Asked Question" section will be compiled, along with appropriate illustrative examples and detailed discussions of the more complex aspects of the fiscal accountability requirements. With regard to capacity, now that the Final Notice of Capacity has been published, the FBI will begin drafting a Capacity Guide. This Guide will address commonly asked questions regarding application of the capacity requirements to various types of networks.

The FBI intends to make these Guides available through telecommunications industry trade associations as well as through the Small Business Administration. Copies of these Guides will also be made available during all initial contacts with any telecommunications carries which might qualify as small entities under the Small Business Act. The FBI is committed to assisting small entities to receive equitable reimbursement under the Cost Recovery Regulations and to ensuring that small entities receive the assistance and clarity they need to determine the least burdensome means of meeting the capacity requirements given their specific networks.

Additionally, in order to better meet the needs of affected small entities and provide the informal guidance required by Section 213 of SBREFA, the FBI is in the process of establishing a toll-free CALEA hotline for small entities. Through this hotline, small entities will be able to contact the FBI's CALEA Small Business Liaison, enabling small carries to target their questions and requests for assistance efficiently and effectively. Specifically, the CALEA Small Business Liaison will be available to small carriers to assist in:

- answering both general and specific questions about the reimbursement process and capacity requirements;

- directing CALEA queries, whether technical or financial, to the appropriate government representative;
- assessing their current accounting systems to determine the best means of meeting the reporting requirements of the Cost Recovery Regulations;
- providing better clarity in capacity implementation alternatives based upon a carrier's specific network; and
- providing insight into government fiscal accountability requirements.

The FBI intends to implement a tracking system to monitor both the number of small entities affected and the effectiveness of the Guides and of the Small Business Liaison in assisting these small entities through the CALEA implementation process.

Finally, the FBI recognizes that some small telecommunication carriers (small entities) offering service in certain geographic areas with significant historical intercept activity may be obligated to afford significant interception capacity to all law enforcement under the Final Notice of Capacity. At the same time, the FBI also recognizes that the capacity requirements represent a critical means of safeguarding the public and, consequently, any exemption or relaxation from compliance would not be without cost. Therefore, to ensure that small entities are not unduly burdened, and in accordance with Section 223 of SBREFA, the FBI is developing a process whereby small entities may petition the Attorney General for reconsideration of their respective capacity requirements. The petition evaluation process will include consideration of a carrier's size, dynamics of the region in which the carrier operates, historical intercept activity, and law enforcement's electronic surveillance needs. The FBI anticipates having the petition process in place with ample time for small entities to evaluate their situations and file a petition if appropriate, and for the Attorney General to make determinations regarding such petitions prior to the Capacity compliance date.

2. National Instant Criminal Background Check System Regulations.

The FBI is preparing to publish a Notice of Proposed Rulemaking concerning the implementation of the National Instant Criminal Background Check System (NICS), mandated by the Brady Handgun Violence Prevention Act of 1994. To comply with Section 213 of SBREFA, the FBI will, prior to the effective date of the NICS final rule, prepare and make available a guide to assist small Federal Firearms Licensees (FFL). The guide will provide FFLs with a comprehensive description of the requirements of the NICS program and details concerning proper compliance.

Furthermore, to comply with Section 223 of SBREFA, "Rights of Small Entities in Enforcement Actions," the FBI will institute a policy to provide for the reduction--and under appropriate circumstances for the waiver--of civil penalties for violations of the NICS rules by a small entity. This policy will be formally instituted when the FBI has reached the point in the

rulemaking process of determining how NICS regulations will be enforced and the extent of penalties which may be imposed for violations.

3. National Stolen Passenger Motor Vehicle Information System Regulations

The FBI is preparing to publish a Notice of Proposed Rulemaking concerning the implementation of the National Stolen Passenger Motor Vehicle Information System (NSPMVIS), mandated by the Anti-Car Theft Act of 1992. To comply with Section 213 of SBREFA, the FBI will, prior to the effective date of the NSPMVIS final rule, prepare and make available a Small Entity Compliance Guide to assist small business throughout the motor vehicle industry, including insurers, dismantlers, recyclers, repairers, and salvagers of motor vehicles and motor vehicle parts. The Guide will provide affected small entities with a comprehensive description of the requirements of the NSPMVIS program and details concerning proper compliance with the system. The Guide will also contain a complete review of all comments and questions received from small entities prior to the issuance of the final rule.

Furthermore, in order to comply with Section 223 of SBREFA, "Rights of Small Entities in Enforcement Actions," the FBI will institute a policy to provide for the reduction--and under appropriate circumstances for the waiver--of civil penalties for violations of the NSPMVIS rules by a small entity. This policy will be formally instituted when the FBI has reached the point in the rulemaking process of determining how the NSPMVIS regulations will be enforced and the extent of penalties which may be imposed for violations.

CIVIL RIGHTS DIVISION

Disability Rights Section

The mandate of the Disability Rights Section of the Civil Rights Division is to provide equal opportunity for people with disabilities in the United States through the implementation of Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213. The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability. The ADA affects six million businesses and non-profit agencies, 80,000 units of State and local government, and 54 million people with disabilities. The Section uses a multi-faceted approach to achieve compliance. In addition to investigating complaints and litigating cases, the Section publishes regulations to implement the nondiscrimination requirements of title II (public services) and title III (public accommodations and commercial facilities) of the ADA; it certifies state and local accessibility laws that are equivalent to the ADA; and, it provides extensive technical assistance. The Section has also established an innovative mediation program to facilitate the resolution of ADA complaints without litigation. In addition, the Section coordinates the implementation of title II of the ADA and section 504 of the Rehabilitation Act by other Federal agencies. (A separate office described below, the Office of Special Counsel for Immigration Related Unfair Employment Practices, investigates violations of the anti-discrimination provisions of the Immigration Reform and Control Act.)

The Department of Justice's program to implement the ADA is subject to the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Department's primary responsibilities under the ADA are to publish, implement, and enforce the provisions of the law and the Department's regulations that prohibit discrimination based on disability in the programs, activities, and services of State and local governments, and in the operations of places of public accommodation. These responsibilities have been assigned to the Disability Rights Section. The Department shares ADA implementation obligations with the Department of Transportation (DOT) and the Equal Employment Opportunity Commission (EEOC). The EEOC and DOT bear the primary responsibility for providing SBREFA guidance to small entities subject to the employment and transportation requirements of the ADA.

1. Technical Assistance.

The Technical Assistance Program required by Section 506 of the ADA promotes voluntary compliance with the ADA by providing free information and assistance to businesses, State and local governments, people with disabilities, and the general public. The Department dedicates a substantial portion of its ADA implementation resources to promoting voluntary compliance by providing technical assistance to covered entities. This program is the principal mechanism through which the Department meets its SBREFA obligation to provide regulatory compliance information to small entities. Each year more than one million people are assisted by the Department and its grantees.

The ADA Technical Assistance Program provides up-to-date information about the ADA and how to comply with its requirements directly to the public. The Department also undertakes outreach initiatives to increase awareness and understanding of the ADA and operates an ADA technical assistance grant program to develop and target materials to reach specific audiences at the local level, including small businesses and other small entities.

Through the technical assistance program, the Department also develops and disseminates ADA publications; provides ADA training at meetings nationwide; and conducts outreach to broad and targeted audiences that have included mayors, local Chambers of Commerce, and millions of businesses. The Department produces a range of technical assistance documents, including Technical Assistance Manuals; *ADA-TA*, a technical assistance series that explains efficient ways that businesses and State and local governments may comply with the ADA; Question-and-Answer publications addressing specific topics; and other materials.

A major component of the Department's technical assistance program is the ADA Homepage on the Internet. The ADA Homepage permits members of the public to use the Internet to gain access to the Department's regulations, technical assistance materials, status reports, and settlement agreements. Individuals may also use the ADA Homepage to locate copies of the Department's letters responding to specific ADA-related questions. **The ADA Homepage receives 3 million "hits" per year.**

Another major component of the technical assistance program is the Department's ADA Information Line. The ADA Information Line is a toll-free telephone line that operates 24 hours

per day to allow members of the public to order ADA public information and educational materials. Callers may obtain material in standard print, in a variety of accessible formats (e.g., Braille, audiotape) or through the Department's "fax-on-demand" system. In addition, during normal business hours, the ADA Information Line is staffed by Department employees who respond to questions about Titles II and III of the ADA; research issues with staff architects, attorneys, or other specialists as needed; refer callers to other agencies or organizations as appropriate; and send out publications. **The ADA Information Line receives over 162,000 calls per year.** The ADA information line numbers are: 800-514-0301 (voice); 800-514-0383 (TDD).

The Department also works with trade associations and others to develop and disseminate materials tailored to meet the needs of specific audiences, including small businesses, mayors and town officials affected by SBREFA. Materials developed through grants and the Department's own technical assistance documents are disseminated to 15,000 local public libraries.

2. Section 213, Informal Small Entity Guidance.

To date, the Department has tried to maximize the impact of its technical assistance by providing general ADA compliance information to the public through the ADA Information Line, technical assistance manuals, and other initiatives.

The Department has published Technical Assistance Manuals that explain the requirements of the Department's ADA regulations. These manuals have been updated to include material responsive to inquiries received from covered entities and people with disabilities. In addition, the Department publishes other pamphlets and bulletins that will assist small entities. The Department's *ADA Guide for Small Business* was initially published in July 1996. The Department has distributed over 400,000 copies of this document in the past year. The *ADA Guide for Small Business* is also available on the Department's ADA Homepage.

The Department's principal mode of complying with the SBREFA mandate to respond to individual questions is through the ADA Information Line. This toll-free Information Line permits members of the public to consult with Department staff to obtain information about ADA requirements and copies of the Department's ADA publications. Department employees responding to information line callers research issues with staff architects, attorneys, or other specialists as needed; and refer callers to other agencies or organizations as appropriate. **During the past year, the Department responded to approximately 32,000 callers representing businesses, non-profit service organizations, State and local governments, architects, attorneys, people with disabilities, and others.** To comply with the reporting requirements of SBREFA, the Department asks callers if they represent a small business, a small government, or other small entity. This self-identification is voluntary. Based on the voluntary self-identification to date, **the Department estimates that 4,000 small entities consulted with Department staff in individual one-on-one calls through the ADA information line in the past year.**

The Department also utilizes the ADA Information Line to respond to letters seeking information or policy guidance. Using the telephone response system is helpful to the Department because it enables the Department to obtain additional information (including SBREFA reporting

information) before responding to the inquiry. Where information is exchanged solely through correspondence, the Department is generally not able to determine whether the writer represents a small entity because incoming inquiries from business or government entities rarely provide information about the size of the entity, and such inquiries often fail to provide sufficient information to enable the Department to provide meaningful assistance.

3. The ADA Enforcement Program

As stated above, the EEOC and DOT bear the primary responsibility for implementing SBREFA as it applies to the employment and public transportation requirements of the ADA. However, the Department is responsible for litigation involving violations by public transportation providers or public employers when EEOC and DOT are unable to negotiate voluntary settlements. The Department uses a multi-faceted approach to achieve compliance with the ADA. The Department's enforcement, certification, regulatory, coordination, and technical assistance activities, combined with an innovative mediation program provide a cost-effective and dynamic approach for implementing the ADA's mandates.

The Department's responsibilities are somewhat different under each Title of the ADA. Under Title I, the Department is the only Government entity that may initiate litigation against State and local government employers. Under Title II, the Department investigates complaints, conducts compliance reviews, and may initiate litigation in its own cases or in cases referred by other agencies, when voluntary remedies cannot be obtained. Under Title III, the Department initiates litigation involving private entities (primarily public accommodations and commercial facilities) where there is a pattern or practice of discrimination or discrimination involving an issue of general public importance. In addition, the Department may intervene or participate as *amicus curiae* in litigation initiated by private parties. The Department also funds a pilot project to facilitate the use of mediation to settle ADA disputes. This program now has mediators in 45 States and the District of Columbia.

4. Section 223, Rights of Small Entities in Enforcement Actions.

Section 223's requirement that agencies establish a policy or program for the reduction or waiver of civil penalties for violations of statutory or regulatory requirements by small entities is met by the Department's regulation's implementing the ADA. Under the ADA, the Department may seek civil penalties only in matters involving violations of Title III (public accommodations and commercial facilities).

The ADA itself established the civil penalty structure for Title III. The maximum penalty for a first violation is $50,000. The maximum penalty for subsequent violations is $100,000. No minimum penalty is required. By its language, the statute provides for recovery of penalties, and caps the amount that the Department may seek. The ADA also directs courts, in the calculation of civil penalties, to "give consideration to any good faith effort or attempt to comply with this Act by the entity." 42 U.S.C. § 12188(b)(5).

• Justice Department Regulations and Guidance On Civil Penalties

Fulfilling a statutory responsibility to interpret the ADA, the Department has issued regulations and a Title III Technical Assistance Manual that interpret the meaning of the statutory provision for civil penalties. 28 CFR § 36.504; Title III Technical Assistance Manual (Nov. 1993), § III-8.4000. In the Manual, the Department explains that a "subsequent violation" — which might make an entity liable for up to $100,000 in civil penalties — "would not be found until the Department brought a *second* suit against the same covered entity. The maximum penalty in each suit after the first suit is $100,000." Id. (emphasis in the original). The Manual goes on to confirm that the Department will consider good faith efforts by the covered entity to comply whenever considering the amount of civil penalties. Id. Thus, the maximum exposure any regulated entity — including chains and nationwide businesses — would face for civil penalties in a first litigation would be $50,000. Smaller entities, while perhaps equally liable for discrimination, have never paid even half that amount of civil penalties in the history of title III enforcement.

The Department uses all the tools provided by Congress to prevent discrimination, first by educating and informing the public about discrimination on the basis of disability, then later by investigation and litigation. In cases where an investigation is appropriate, it gives consideration to the size and resources of the entities being investigated. The Department understands that Congress intended that civil penalties be assessed in those cases where the entity has not made a good faith effort to comply with the ADA. The "good faith" standard employed by Congress assumes some knowledge of ADA obligations. Therefore, a large percentage of limited enforcement resources have been directed at outreach and technical assistance.

• Litigation Procedures Affecting Civil Penalty Awards

Litigation procedures required by the Department and the courts also restrict any large civil penalty awards to those instances where discrimination is blatant or egregious. In cases initiated by the Department, the Department files suit only after exhausting other available means of enforcement and dispute resolution. Requirements within the Department, both pursuant to Executive Order and pursuant to internal directives from the Attorney General, control the progress of investigations and litigation.

The Department first provides notice of an alleged violation to an entity charged with discriminating on the basis of disability. It seeks information from the alleged discriminating party whenever a complaint is opened for investigation. The entity is given an opportunity to respond to the claim, and an opportunity to discuss the matter with an investigator or an attorney informally. Only following full development of the facts and an open exchange of positions among the parties does the Department evaluate whether to recommend litigation.

Any decision to litigate is made by the Assistant Attorney General, Civil Rights Division, after consideration of a detailed legal analysis explaining the violations of law, including both legal theories that support the Department's position and arguments in opposition to the position. Even after a decision to litigate is made, the Department makes a final effort at voluntary

compliance. A final demand letter clearly specifying the requirements for the title III entity to come into ADA compliance is provided to the potential defendant before the complaint is filed in federal court. If the defendant elects not to cooperate in this attempt to resolve the matter short of litigation, the complaint is filed.

Even when a case proceeds to litigation, defendants still have the opportunity to come into compliance and limit their exposure for civil penalties. Typically, parties in litigation are required to meet to seek to resolve the dispute either under the supervision of the court or independently, within ninety days of filing the complaint. Parties are frequently required to certify to the court that they have not resolved the matter if a settlement is not reached. See Federal Rules of Civil Procedure, Rule 16. At that time, many courts have mandatory referrals for mediation before proceeding further. The Department endorses alternative dispute resolution and cooperates in those processes whenever appropriate. If mediation is unsuccessful, litigation ensues. If the United States prevails, the court may exercise its discretion to award penalties, taking into consideration the circumstances of the defendant. Thus, any claim for civil penalties to be ordered by a court as part of a final judgment must survive the gauntlet of review within the Department and the court.

• Civil Penalties Authorized By Voluntary Consent Decrees Entered In Lieu of Litigation

Generally, the civil penalties received by the Department in the past have been the result of voluntary consent decrees freely negotiated by the parties. The relatively small number of cases in which civil penalties have been assessed reflects the consideration given by the Department to the title III entities and their particular circumstances. Moreover, it shows the Department's strong preference for asking the title III entity to use its financial resources to bring itself into compliance with the ADA and to pay damages to injured parties, where appropriate. In those cases where protecting the public interest warrants a civil penalty, the Department has insisted on civil penalties, but those cases have been limited to blatant or egregious conduct by entities that were provided multiple opportunities to comply with the law and refused that opportunity.

Typically, a consent decree is seen by both sides as the opportunity to avoid the risk and costs associated with litigation. This method of voluntary compliance assures involvement by both parties in a workable solution for ADA violations and guarantees compliance in a reasonable time with enforceable terms and conditions. The Department has not yet had to seek judicial enforcement of the terms of a consent decree in federal court; however, in the event such an enforcement action were necessary, it would be likely that civil penalties would be deemed appropriate and Department would recommend that the Assistant Attorney General authorize Department to seek the civil penalty for a second violation from the court. In such an case, the Department would be required to return to the court for a second time, which fits the title III provision for enhanced penalties for a subsequent violation.

• Justice Department Record of Civil Penalties Awarded

Most title III investigations are resolved without litigation. In the six-year history of the ADA, the Department has actively participated in just over 100 lawsuits. Civil penalties have

been ordered in 11 cases from 13 regulated entities, ranging from civil penalties of a few thousand dollars (paid by each of two architects, a restaurant owner, and a hotel owner) to the single instance of payment of the maximum penalty allowed by the ADA for a first violation, $50,000 paid by the Friendly's Restaurant chain for barriers to accessibility in restaurants throughout its chain. Finally, only Harcourt Brace Publishers, Pleasant Travel Services (a conglomerate travel and resort business), Gibson's Department Stores, and Friendly's Restaurants have ever paid $25,000 or more in civil penalties for an ADA violation.

Office of Special Counsel for Immigration Related Unfair Employment Practices

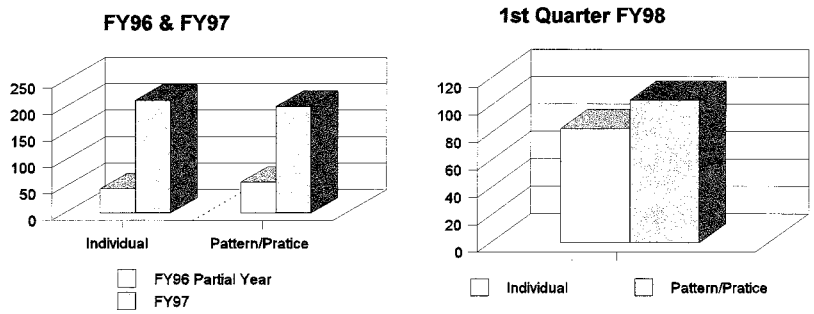
The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) investigates and prosecutes employers charged with national origin and citizenship status discrimination, as well as document abuse and retaliation under the anti-discrimination provisions of the Immigration and Nationality Act (INA), enacted as part of the Immigration Reform and Control Act of 1986 (IRCA). Congress enacted these provisions because of concern that some employers, subject to civil and criminal sanctions for knowingly hiring individuals unauthorized to work in the United States, might discriminate against U.S. citizens who look or sound "foreign" or immigrants possessing lawful employment authorization. OSC conducts a significant outreach and education program aimed at educating employers, potential victims of discrimination and the public about their rights and responsibilities under INA's anti-discrimination and employer sanctions provisions.

1. Early Intervention Program

As an important supplement to its litigation enforcement efforts, OSC initiated the Early Intervention Program in February 1996. In appropriate circumstances, early intervention can provide relief which is faster, cheaper and more effective than charge processing or may prevent discrimination before it occurs. Early intervention telephone calls fall into two categories, individual and pattern or practice. Individual callers are employees or prospective employees who have experienced a problem with an employer. Pattern or practice callers are employers who are experiencing problems with I-9 Employment Verification Forms or a particular employment verification problem with an applicant or employee which, if left unaddressed, would affect numerous employees or applicants. The frequency of each type of calls has steadily increased since 1996. *(See Telephone Interventions by Fiscal Year charts.)*

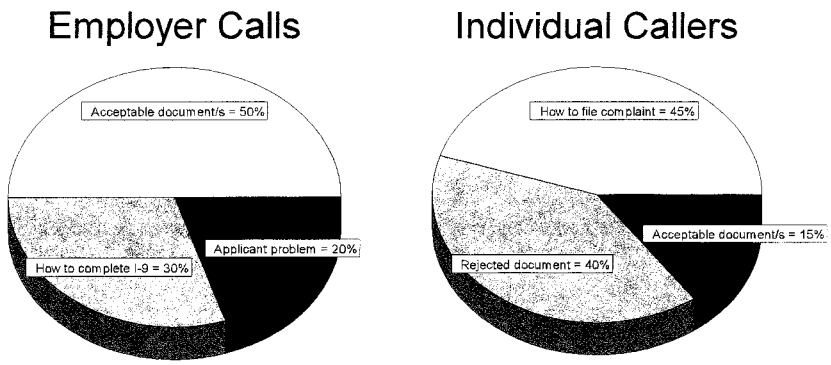
	Individual	Pattern/Practice
FY96	45	58
FY97	213	201
FY98 1st Qr.	83	104

Telephone Interventions by Fiscal Year



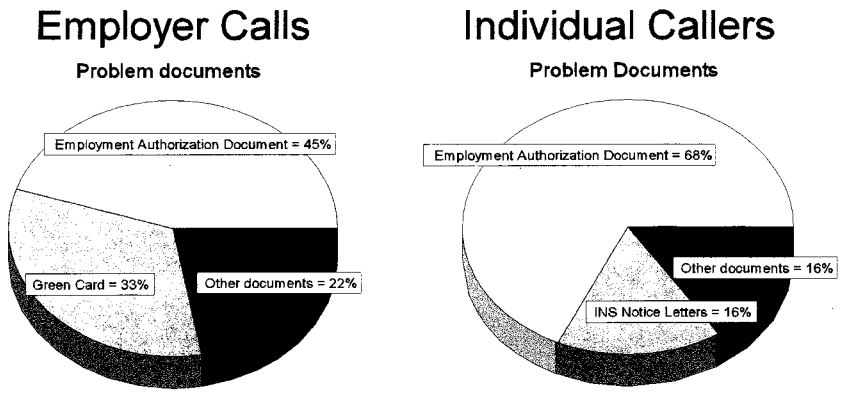
Employers frequently ask questions concerning I-9 Form procedures. They are most concerned about how to complete an I-9 Form or what are acceptable documents. They frequently seek answers or information with regard to a specific problem with an applicant or employee. Individual callers frequently seek assistance on complying with I-9 procedures. Their calls concern how to file a complaint against an employer, what are acceptable documents, or requests for assistance regarding documents that were rejected by an employer. *(See I-9 Form Related Telephone Interventions charts.)*

I-9 Form Related Telephone Interventions



Another category of calls from employers and individual callers concern specific problems they are having with INS issued documents. Employers experience problems with employment authorization documents, permanent residency or green cards, and other types of identity and employment authorization documents. Individual callers experience problems with employment authorization documents, INS notice letters, and other types of identity and employment authorization documents. *(See Document Related Telephone Interventions chart.)*

Document Related Telephone Interventions



2. Settlements and Penalties.

In FY1996 OSC settled 38 cases. Settlements fall into two categories, educational and monetary. Educational settlements do not result in any award of back pay to a victim or civil penalty. In FY1996, of the 38 cases that were resolved, 27 cases resulted in back pay awards or civil penalties. In FY1997, OSC had one educational settlement and resolved 17 monetary award cases. In the first half of FY1998, OSC has resolved 14 monetary award cases.

3. Employer Hotline.

Since the start of the employer hotline in 1996 through the end of 1997, OSC received 13,564 calls. The four major states are California (3,986), Texas (1,487), Florida (996), and Illinois (920). *(See Employment Information System Key State Employer Hotline Statistics table.)*

Employment Information System Key State Employer Hotline Statistics for April 19, 1996 to December 31, 1997

STATE	TOTAL	STATE	TOTAL
Arizona	226	Michigan	278
California	3986	Minnesota	113
Colorado	153	Missouri	123
Florida	996	New Jersey	301
Georgia	379	New York	720
Illinois	920	North Carolina	203
Indiana	129	Ohio	220
Iowa	68	Oklahoma	88
Kansas	134	Pennsylvania	276
Kentucky	49	Tennessee	155
Louisiana	313	Texas	1487
Maryland	535	Virginia	713
Massachusetts	378	Washington	572
		Wisconsin	49

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

The Attorney General has delegated to the Executive Office for Immigration Review (EOIR) certain aspects of her authority to administer and interpret the immigration laws, specifically: immigration hearings, review of immigration hearings, employment discrimination, document fraud, and employer sanctions hearings. EOIR currently employs a number of programs and policies designed to assist small entities and individuals in their dealings with the Office. Because the EOIR consists of adjudicatory components, it does not regulate small entities. Nevertheless, EOIR is committed to customer service and its formal programs for disseminating information in response to inquiries from the public are outlined below.

EOIR has an Internet website containing information such as EOIR's mission, its component parts, various motions and appeals regulations, FOIA request procedures, and Board of Immigration Appeals ("BIA") decisions. All of the information available on the website may be downloaded. **The Internet website receives approximately 4500 "hits" a week.** EOIR has a toll-free telephone number (800) 898-7180 for accessing basic case information such as status of motions, status of appeals and case determinations through a prerecorded menu driven voice messaging system. **The phone system received over 200,000 calls in February of 1998.** Additionally, EOIR recently placed "customer service" kiosks in several of its Immigration Courts. The kiosks permit aliens to review information about their cases by typing their "A" numbers into a stand-alone computer terminal located within the kiosk. EOIR also developed a

synopsis of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and provided it to the Federal Bar Association for distribution to its Immigration Section.

EOIR (which renders decisions in civil penalty actions brought by INS or by OSC regarding employment authorization, immigration-related discrimination, and document fraud violations) continues to allow discretion in the setting of civil penalties, within the statutory ranges, based on factors such as the size of the business, good faith, and severity.

Within EOIR, the Office of the Chief Administrative Hearing Officer (OCAHO) is the office most directly involved with employers. OCAHO also has policies designed to ensure fairness to small entities in its proceedings. By statute, OCAHO Administrative Law Judges (ALJs) hearing employer sanction cases are required to consider the size of the business before them when setting a penalty after a finding of liability. However, these ALJs may not waive a penalty or reduce a penalty below the statutory minimum. Endeavoring to exercise the limited discretion that the ALJs are permitted in employer sanction cases, OCAHO maintains an extensive database on the case law governing principles such as "size of a business" and "mitigation of civil money penalties" for guidance on these issues. The database is indexed, digested, and accessible to all of the ALJs hearing employer sanction cases.

OFFICE OF JUSTICE PROGRAMS

The Office of Justice Programs (OJP) works within its established partnership arrangements with federal, state and local agencies and national and community-based organizations to develop, fund, and evaluate a wide range of criminal and juvenile justice programs. Dedicated to comprehensive approaches, OJP's mission is to provide federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims.

OJP continues its support of small businesses and entities by assuring them equal access to the spectrum of grant programs the Office manages. Small entities in the field that need information or aid regarding grant programs are quickly accommodated by the staffs of the various offices and bureaus, as the following examples will demonstrate.

The SBREFA mandate does not appear to apply to the grant programs that are OJP's sole "regulatory" responsibility. As the desire and willingness to support small entities is already well ingrained in the"corporate culture" of OJP, no formalization of SBREFA requirements is therefore necessary. OJP, both through its contacts with the field and through the Justice Response Center, always stands ready to aid small entities. Further, OJP's three fines are not frequently invoked against entities of any size, and are not impacted by SBREFA.

Bureau of Justice Assistance

The Bureau of Justice Assistance, through its BJA Clearinghouse (a component of the National Criminal Justice Reference Service), shares BJA program information with State and local agencies and community groups across the country. Information specialists are available through the Clearinghouse to provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities.

BJA recently began to allow small units of government to apply for grants with general concept papers instead of the full grant process. This change has reduced the burden on such small governments by 75 percent. BJA's Local Law Enforcement Block Grant program helped small localities by shortening its grant application to one page and by allowing electronic submission of the applications. This change greatly simplifies the task of applying for these grants.

BJA maintains a detailed homepage on the Internet, allowing anyone with Web access the ability to download grant information, application material, and general information on the task and role of BJA.

Bureau of Justice Statistics

For the past several years, the Bureau of Justice Statistics has aided small entities by posting all information relevant to grants and publications on the Internet. This ensures that all small entities can quickly access any information they might need.

National Institute of Justice

The National Institute of Justice runs a small grants program for grants under $50,000 as a way for small or new grantees to have access to its grant programs. They also fund small amounts for secondary analysis of data sets that are in their archives. All NIJ-funded research projects require that the grantee submit a final report and a clean set of data in archivable format. Then new or small grantees can apply for funds ($10-50 thousand) to re-analyze the existing data sets, usually looking at different variables than the first researcher did. Thus NIJ helps small entities get grants that might not otherwise be available. The applications for these grants are shorter then most and require less preparation, also aiding the small grantee.

NIJ representatives also attend functions such as the annual meeting of the national association for college and university offices of sponsored research. At these, they meet many people from all over the country who are potential applicants, and can informally explain NIJ grant programs.

Office of Juvenile Justice and Delinquency Prevention

OJJDP trained communities, large and small, on implementing risk-focused prevention activities funded under the Title V - Incentive Grants for Local Juvenile Delinquency Programs.

OJJDP operates several list servers for grantees to facilitate communication between OJJDP and the grantees. These list servers provide an opportunity for grantees to raise issues and questions around regulatory and statutory requirements as well as to offer peer-to-peer technical assistance around programmatic issues.

OJJDP, through its Juvenile Justice Clearinghouse, links small entities and non-profits through a broad spectrum of services, i.e., a toll-free number; fax or fax-on-demand; on-line

through World Wide Web at http://www.ncjrs.org; OJJDP Home Page at http://www.ncjrs.org/ojjhome.htm; and the electronic bulletin board.

Office for Victims of Crime

The Office for Victims of Crime (OVC) administers and coordinates grants to State, local. and tribal units of government for the purpose of crime victim compensation, crime victim assistance, child abuse prevention and treatment, victims fights, and victims services. OVC's regulatory mandate provides many opportunities for interaction between Federal, State, local, and tribal governments. For example, in administering the program, the Director of OVC cooperates with and provides technical assistance to States, units of local government, and other public and private organizations or international agencies involved in activities related to crime victims.

Executive Office for Weed and Seed

Weed and Seed is a neighborhood-focused strategy for preventing and controlling crime and improving the quality of life. In FY97, 113 sites were funded by the Weed and Seed program, the majority of them meeting the criterion of small entities. In addition to funding, this program provides training and technical assistance on-site and via workshops.

Corrections Program Office

The Corrections Program Office meets regularly with the Association of State Correctional Administrators (ASCA) in order to discuss and receive input and feedback on CPO public policy decisions. ASCA is also actively involved, in addition to the Council for Juvenile Correctional Administrators, in assisting this Office in developing agendas for conferences and workshops and defining what are the technical assistance needs of States, localities and tribal governments.

Violence Against Women Grants Office

The Violence Against Women Grants Office has four grant programs that reach small entities, as defined. Through the STOP Violence Against Women Formula Grant Program, grants are made to states and territories, which in turn award subgrants to State agencies and programs, including but not limited to State offices and agencies; public or private nonprofit organizations; Indian tribal governments; nonprofit, nongovernmental victim service programs; and legal services programs. There are currently over 1500 subgrant recipients. A separate program awards STOP grant money to Indian tribal governments; 58 such grants will be awarded in FY98. Second, through the Grants to Encourage Arrest Program, States, Indian tribal governments, and units of local government are eligible for grants; 147 such grants were awarded, of which 13 were awarded to States and 3 to the District of Columbia. Through the Rural program, States, Indian tribal governments, local governments of rural States, and public and private entities of rural States are eligible. There are currently 26 grant recipients. Information on the size of organizations or jurisdictions receiving VAWGO grants or subgrants is not readily available, but a number include small entities and government.

VAWGO staff is highly responsive to all grantees, including small entities and governments. VAWGO's Program Managers have responsibility for all grants awarded within particular states or territories, enabling them to provide a full range of information to grantees on programs operating within a specific jurisdiction. Program Managers provide information on, among other things, compliance with agency regulations. Further, a Policy Analyst has responsibility for each of the grant programs, and is available to work with grantees on broader concerns they may have. In addition to this personal contact and oversight, VAWGO has convened a series of meetings and regional grantees conferences for recipients of STOP, Arrest, and Tribal grants, as well as for STOP State Administrators. A similar conference is being planned for Rural grant recipients. All of these activities have been helpful in achieving compliance with agency regulations and program goals and guidelines.

OFFICE OF COMMUNITY ORIENTED POLICING SERVICES

The primary activity of the Office of Community Oriented Policing Services (COPS) is the awarding of competitive, discretionary grants to benefit law enforcement agencies across the United States and its territories. To streamline the federal grant application and implementation process for police officer hiring under the 1994 Crime Act , the COPS FAST program discarded traditional grant forms and substituted a one-page form, enabling over 6,600 smaller communities to receive grant decisions awarding funds less than 6 weeks after the deadline for submission. Beginning in 1995, COPS required only annual or semi-annual programmatic reports, all of which are written in easily understood language and require only short answer or fill-in-the-blank responses. In 1996, COPS began offering a simplified renewal process for COPS FAST grantees. This process enables grantees to obtain additional police hiring funds through the COPS Universal Hiring Program by supplementing their previous COPS FAST awards rather than by submitting new application kits. Continuing these efforts to streamline the grant process, in 1997, the Office of Justice Programs Office of the Comptroller--which assists COPS in financial matters--introduced a touch-tone telephone draw down system for entities to access COPS grant funds.

The COPS Office also simplifies access to grant-related information through the COPS Internet site, which posts grant program information, training and technical assistance information, links to relevant community policing sites, and some grant application kits. In 1998, the COPS Office plans to offer grant applicants the option of submitting completed grant applications electronically via the Internet site. As the first rounds of the three-year COPS grants begin to expire in 1998, the COPS Office is also working to streamline the grant close-out procedure for COPS grantees. The COPS Office plans to provide grantees with timely notification of the grant close-out procedures and is simplifying and streamlining those procedures as much as possible. A streamlined close-out procedure should reduce the burden on small agencies traditionally associated with closing out a Federal grant.

Department of Justice Response Center

The Department of Justice Response Center (800) 421-6770 is a round-the-clock, toll free hot line that provides a one-stop informational service to State and local law enforcement agencies, to community-based and other entities, and to the general public. The center was established to provide information concerning the Department's implementation of the numerous programs

available under the Violent Crime Control and Law Enforcement Act of 1994. **Since it opened in September 1994, the Response Center has responded to approximately 240,000 callers, averaging 6,000 calls monthly.** The center continues to provide assistance and information about available grants and programs, funding opportunities, and dissemination of COPS and Office of Justice Programs (OJP) applications and publications. Through the Response Center, callers can also request information from the National Criminal Justice Reference Service (NCJRS). NCJRS is an information clearing house for statistical data and publications. Information can be obtained from the Response Center via person-to-person assistance and by a 24 hour FAX-on-demand system.

EXECUTIVE OFFICE FOR U.S. TRUSTEES

The Executive Office for United States Trustees (EOUST) assists the Attorney General and the Deputy Attorney General in supervising and providing assistance to the United States Trustees. These United States Trustees (who are Federal government employees) are responsible for supervising the general administration of cases filed under chapters 7, 11, 12 and 13 of the Bankruptcy Code and the conduct of private bankruptcy trustees (who are *not* Federal employees). Private trustees may be attorneys, accountants, or business-related professionals. Such individuals include persons who work either as sole practitioners or as members of law, accounting, or other firms ranging in size from small to large.

To ensure the appointment of responsible chapter 7 panel trustees who will properly discharge their fiduciary responsibilities, guidelines now require FBI background investigations of private trustees as well as credit and income tax checks. To promote accountability of private trustees, EOUST implemented reporting requirements, recordkeeping standards, and bonding requirements, and implemented case closing standards. With regard to private standing trustees under chapter 12 and 13 of the Bankruptcy Code, the United States Trustee Program has also instituted similar procedures regarding the submission of budgets, annual reports and audits to insure that the Program's oversight responsibilities are met.

To assist the United States Trustees in performing their statutory responsibilities, on June 2, 1997 at 62 FR 30172, EOUST published a final rule in the *Federal Register* implementing recently developed fiduciary standards for private standing trustees. This rule provides individual standing trustees greater freedom, within certain parameters, to manage and administer their operations while ensuring that fiduciary expense money is used only for the "actual and necessary" purposes provided for by statute.

To assist private trustees in complying with the fiduciary and case administration requirements, the Program has instituted training programs for private trustees and has issued handbooks, which represent operational policy and are intended as working guides for private trustees under United States Trustee supervision. Finally, EOUST notes that on occasion, the Program has had disputes with the private case trustees it supervises. The Program encourages trustees who have complaints to first seek resolution through the appropriate United States Trustee and, if unsuccessful at that level, to present the dispute to EOUST's Director. This approach helps avoid costly litigation. On October 2, 1997 at 62 FR 51740, EOUST published a Final rule formalizing procedures for the resolution of disputes through administrative mechanisms.

INFORMATION COLLECTION BUDGET

OF THE UNITED STATES GOVERNMENT

FISCAL YEAR 1999

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

Department of Justice

	Burden Hours (in millions)	Percentage Change from Previous FY
Actual FY 1998	25.82	-30.9%
Target FY 1999	37.37	44.7%
Target FY 2000	37.05	-0.8%

Need for Collection of Information

The Department of Justice (DOJ) collects information primarily to ensure compliance with Federal laws dealing with wide ranging activities and issues (e.g., immigration, drug enforcement, antitrust). The collective missions of DOJ are so diverse that they are conducted by 36 separate Departmental component organizations. The following 14 components collect information from the public in order to effectively accomplish their individual missions: Immigration and Naturalization Service; Civil Division Drug Enforcement Administration; Civil Rights Division; Federal Bureau of Investigation; Executive Office for Immigration Review; Office of Justice Programs; Foreign Claims Settlement Commission Community Oriented Policing Services; National Institute of Corrections; Criminal Division; U.S. Trustees; Antitrust Division; Justice Management Division.

Below is a description of the need for collection from the components imposing the greatest burden of information collection.

- Immigration and Naturalization Service (INS). INS collects information to provide for immigration and for the controlled entry and stay of non-immigrants. INS' mission is to determine the admissibility of persons seeking entry and to adjust the status and provide other benefits to legally entitled non-citizens in the United States with proper regard for equity and due process. INS collections constitutes over 90 percent of DOJ's information collection burden.

- Drug Enforcement Administration (DEA). DEA is authorized by the Comprehensive Drug Abuse and Prevention and Control Act (1970 P.L. 91-513) to enforce this law as it applies to the registration of handlers of controlled substances. The purpose of the Drug Diversion Control Program is to prevent, detect, and investigate the diversion of controlled substances from legitimate channels while ensuring that there is an adequate uninterrupted supply of these chemicals and pharmaceuticals to meet legitimate needs.

- Office of Justice Programs (OJP). OJP collects information for the Violence Against Women Grants Office in support of the Violence Against Women Act of 1994 (PL 103-22) by administering the Department of Justice's formula and discretionary grant programs. The program assists the Nation's criminal justice system in responding to the needs and concerns of women who have been, or potentially could be, victimized by violence.

Internal Management of Information Collection

The Attorney General appointed the Assistant Attorney General for Administration (AAG/A) to the position of Chief Information Officer (CIO) for the Department. As the Department's CIO, the AAG/A is responsible for the Department's implementation of the Paperwork Reduction Act (PRA) of 1995. This includes the evaluation of the need for the information, its estimated burden, the agency's plans for management and uses of the information, and whether each proposed collection meets the requirements of the PRA.

In accordance with DOJ's policy of centralized direction and decentralized implementation, the CIO provides the management direction to the component Senior Information Resources Management Officials (SIRMOs) who implement the PRA activities at the component level.

During FY 1998, IMSS experienced an increased number of new information collections due to a combination of statutory requirements and agency actions, and a significant increase in the renewal of existing information collections. As a result of the increased workload, the CIO directed that additional resources be added on a part-time basis to ensure that all collections were efficiently processed on-time. Despite this, over 100 collections were unintentionally allowed to expire in 1999. An automated system is under development that will provide management with the capability to track the individual information collections, monitor suspense dates, prepare all notices for publication, etc. This system is scheduled for testing in February 1999 and will hopefully lead to the elimination of further inadvertent expirations.

Burden Reduction Efforts and Goals:

The following components of DOJ are in the process of implementing initiatives that will result in significant burden reduction on the public.

- Immigration and Naturalization Service (INS). Due in large part to a number of new statutes (see list below), INS has not achieved burden reductions over the past several years. However, INS has taken some initial positive steps to reduce the burden on the public. The work accomplished by INS to date will help facilitate the application process for naturalization benefits, those foreign students seeking to enroll in U.S. universities and colleges, etc. INS intends to pursue the following activities in FY 1999 and FY 2000 to reduce burden on the public.

    - *APIS.* In an effort to streamline document handling and data processing, INS is testing a new procedure with a U.S. airline company that will allow an overseas check-in agent to scan a machine readable passport into the Advanced Passenger Information System (APIS), or if the passport is not machine readable, the check-in agent will manually key in the passport information into APIS. The system will then generate a machine readable Form I-94. The passenger will then only have to complete four data elements instead of 13 they currently must complete.

    - *Streamlining naturalization process.* As a part of its re-engineering of the naturalization adjudication process, INS has implemented, or is in the process of implementing, a significant number of new procedures that will streamline the adjudication process and help eligible naturalization applicants become U.S. citizens more quickly and with fewer administrative hurdles. INS also is providing more information in more ways to the public about the naturalization process that will help prospective applicants better determine whether they should apply.

- *Forms redesign initiative.* INS is implementing a forms revision initiative designed to make 23 of its most commonly used benefit petitions and applications more user-friendly for the public. The goal of the initiative is to redraft the forms from the customer's perspective, thus reducing the overall burden imposed on the public by at least 25 percent.

- Drug Enforcement Administration (DEA). DEA has worked diligently to reduce the burden of its requirements on industry by refining the requirements of the Diversion Control Program to minimize its impact on industry. This process involves a simplified registration process which includes a recordkeeping requirement based on the use of normal business records, and the use of reporting requirements that either focus on those transactions that are of concern, or can be satisfied through existing reports.

- Federal Bureau of Investigation (FBI). The Uniform Crime Reporting Program, recognizing the need for improved statistics and a need to modernize, is currently implementing the National Incident-Based Reporting System (NIBRS). The goal of the redesign is to modernize crime information by collecting data presently maintained in law enforcement records; a by-product of current records systems maintained at the state or local level. Data are submitted on computer tape or cartridge. While this will allow FBI to more effectively process information, it will not produce a reduction in burden.

- Community Oriented Policing Services (COPS). COPS achieved a 29.6 percent decrease in collection burden in FY 1998 by monitoring collections to ensure surveys are streamlined, remain active as long as the information is required, and eliminate duplicate collections.

Significant Burden Changes in Information Collection Burden During FY 1998

Decreases

- *Employment Eligibility Verification (Form I-9)* (OMB No. 1115-0136). This collection was reduced by approximately 2 million hours due to re-estimates of the burden and the number of respondents.

- *Application to Replace Alien Registration Card (Form I-90)* (OMB No. 1115-0004). This collection was reduced by approximately 851,000 hours due to re-estimates of the burden and the number of respondents. The level of activity decreased significantly with the March 1996 sunset of the old I-551 "Green Card Replacement Program." This form is scheduled for streamlining and re-engineering during FY 1999.

- *Arrival and Departure Record (Form I-94)* (OMB No. 1115-0077). This collection was reduced by approximately 564,000 hours due to the expected decrease in the number of individuals who will use this form during FY 1999.

- *Automated Alternative Inspection Services (Form I-823)* (OMB No. 1115-0174). INS has reduced the burden of this collection by nearly 579,000 hours. This reduction was achieved by reducing the number of required data elements, increasing automation, having INS personnel complete more information for respondents, and targeting frequent travelers, thereby reducing respondents.

- *Medical Certification for Disability Exception (Form N-648)* (OMB No. 1115-0205). This collection was reduced by nearly 840,000 hours due to re-estimates of burden and the number of applications filed.

- *Request for Payment and Payment Selection Sheet* (OMB Nos. 1103-0023 and 1103-0024). These two forms were eliminated due to the availability of electronic payment. This has resulted in a reduction of 38,800 burden hours. This reduction has been part of the overall effort by COPS to reduce burden through the timely elimination of unnecessary forms.

- *Application for FBI employment* (OMB No. 1115-0016). The burden associated with this collection declined by 20,816 hours due to fewer applications. All other significant changes in FY 1998 were the result either of the unintentional expiration of collections or the reinstatement of previously expired collections. Net expirations (expirations-reinstatements) resulted in a total of 9,842,108 burden hours removed from the DOJ records.

Increases

- *Application for Naturalization (Form N-400)* (OMB No. 1115-0009). This collection increased by approximately 1,557,000 hours due, in part, to the requirement for new quality assurance procedures that resulted in a second interview for many applicants and increased waiting periods and fingerprinting requirements.

- *Intra-company Transferee Certificate for Eligibility (For Blanket Petitions Only (Form I-129S)* (OMB No. 1115-0128). This collection increased by approximately 130,000 hours. This increase was caused by the strength of the U.S. economy that resulted in more foreign based companies locating affiliates, subsidiaries, and branch offices in the Continental U.S.

- *Application to Register Permanent Residents or Adjust Status and Supplement A (Form I-485)* (OMB No. 1115-0053). This collection increased by nearly 613,000 hours due to the Nicaraguan Adjustment and Central American Relief Act (NACARA). This increase is due to the requirement that applicants who want to apply for this benefit must file a form I-485.

- *Application for Asylum and Withholding of Removal (Form I-589)* (OMB No. 1115-0086). This collection increased by some 217,000 hours due to the redesign of the form to satisfy the concerns and requirements of the voluntary agencies and other interested parties.

- *Employment Authorization Document (Form I-765)* (OMB No. 1115-0163). The burden for this collection was increased by nearly 723,000 hours due in part to an increase in the number of aliens requesting authorization to work in the U.S. and due to the Haitian Deferred Enforced Departure (DED) program.

Significant Burden Changes in Information Collection Burden Planned for FY 1999

Decreases

- *Arrival and Departure Record (Form I-94)* (OMB No. 1115-0077). This collection will be reduced by approximately 334,000 hours due to the expected decrease of the number of individuals who will use this form. Additionally, Public Law 104-676 requires INS to implement the pilot for the electronic processing of arrival and departure information. This electronic processing, the Advanced Passenger Information System should result in additional decrease in burden of 300,000 hours.

- *Application for Naturalization (Form N-400)* (OMB No. 1115-0009). This collection is projected to decrease by approximately 417,000 hours due to the decline in the number of individuals becoming naturalized citizens since the demand has dropped in FY 1998 and this pattern is expected to continue in FY 1999. The streamlining of the naturalization process will also serve to decrease burden.

- *Application for Registration DEA Form-224 Application for Registration Renewal DEA Form-224A.* (OMB No. 1117-0014) -The burden for this collection will decrease by 10,350 hours due to conversion to electronic systems to submit applications via the Internet. This is part of the greater effort to minimize the burden DEA places on the public discussed above.

- *Innovative Community Oriented Policing Program* (OMB No. 1103-0034) This program application which creates a burden of 67,781 hours will be retired in FY1999.

Increases

- *Application to Replace Alien Registration Card (Form I-90)* (OMB No. 1115-0004). This collection is projected to increase by 51,233 hours because alien registration cards are expiring at the end of the first 10-year validity period which was mandated for these cards in 1989.

- *Petition for Nonimmigrant Worker (Form I-129)* (OMB No. 1115-0168). The level of increase in FY 1999 for this benefit is partially due to the number of petitions for H-1B professional non-immigrant workers. This specific nonimmigrant classification category will increase by 38,500 hours in FY 1999 due to the American Competitiveness Workforce Improvement Act (ACWIA) that raised the numerical cap from 64,000 to 115,000 on the nonimmigrant visas that can be granted for this benefit

- *Employment Authorization Document (Form I-765)* (OMB No. 1115-0163). The Executive Order that granted certain Haitian nationals relief from removal also granted them the opportunity for employment authorization. Consequently, INS estimates that the number of applications will increase along with the burden due to the number of eligible individuals who will apply for employment in the U.S. This is estimated to result in an increase of 113,000 hours.

- *COPS Count Survey* (OMB No. 1103-New). This new collection totalling 34,329 hours will assist COPS in monitoring the status of grants funded.

Significant Burden Changes in Information Collection Burden Planned for FY 2000

Decreases

- *Forms Consolidation* (Various OMB Nos.). This project which is projected to be completed by FY2000, will lead to the streamlining of up to 15 INS forms. The project also has as a goal, rewriting the forms in plain english. It is anticipated that the effort will yield a 25 percent reduction in burden for the forms revised.

- *Application for FBI employment* (OMB No. 1115-0016) Due to fewer applications, burden is expected to decrease by 47,048 hours.

Increases

- *Petition for Nonimmigrant Worker (Form I-129)* (OMB No. 1115-0168). It is projected that an additional 50,000 petitions for workers in specialty occupations will be filed, causing an increase of 100,000 burden hours.

- *Petition for Alien Relative (Form I-130)* (OMB 1115-0054). On November 24, 1998, INS published a proposed rule to amend the Department of Justice regulations to implement section 203 of NACARA. There are approximately 240,000 persons who have asylum applications pending with INS, as well as their qualified family members. Although not all of these people will qualify to the apply for lawful permanent residence, it is expected that the majority of them will file Forms I-485 during Fiscal Years 1999 and 2000. There will be an increase of one half hour per new applicant leading to an approximate burden increase of 60,000 hours.

Recent Statutes that Affect Information Collection Activities

Immigration and Naturalization Service (INS)

- Clarification of Eligibility for Relief from Removal and Deportation for Certain Aliens. (P.L. 105-100). This law, better known as the Nicaraguan Adjustment and Central American Relief Act (NACARA) was enacted during FY 1998 on November 19, 1997. The interim regulations were published May 21, 1998, and the effective date of the regulation was June 22, 1998. The program expires in FY 2000 on March 31, 2000. NACARA provides for the adjustment of status to permanent resident aliens of certain nationals of Cuba or Nicaragua who have been physically present in the United States since December 1, 1995, and who apply before April 1, 2000. The passage of this law served to increase the burden by almost 613,000 hours because, to apply for this benefit, applicants must complete and file Form I-485, Application for Permanent Resident Status.

- Omnibus Budget Act — H.R. 4276 (P.L. 105-277). Title IV, the American Competitiveness Workforce Improvement Act (ACWIA), of the Omnibus Bill increases the annual H1-B cap for professional nonimmigrants from 64,000 to 115,000 in FY 1999 and FY 2000; and then decreases the cap to 107,500 in FYs 2001 and to 65,000 thereafter. This will result in an increase in the number of I-129B petitions filed with the Service during the FY 1999 through FY 2001.

Federal Bureau of Investigation (FBI)

- Section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act), [P.L.103-159], Title I, 107 Stat. 1536 (18 U.S.C. 922) required the creation of two collections of information:

  - National Instant Criminal Background Check (OMB No. 1110-0026); 30,000 hours.
  - Federal Firearms Licensee Execution of Acknowledgment (OMB No. 1110-0027); 15,000 hours.

Office of Justice Programs (OJP)

- H.R. 6 Section 235 Part E: Grants to Combat Violent Crime. The Grants to Combat Violent Crimes Against Women on Campuses is a new grant program which is yet to be developed. If enacted, an appropriate collection of information will be established for this program.

STATEMENT OF
THE AMERICAN FARM BUREAU FEDERATION
TO THE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
REGARDING
S. 1378, THE SMALL BUSINESS PAPERWORK REDUCTION ACT AMENDMENTS OF 1999

OCTOBER 19, 1999

The American Farm Bureau Federation appreciates the opportunity to offer its views regarding S. 1378, the Small Business Paperwork Reduction Act Amendments of 1999. The American Farm Bureau Federation is the nation's largest general membership organization for farmers and ranchers. Farm Bureau members are involved in the production of all commercially produced agricultural commodities grown in the United States. Farm Bureau represents farmers and ranchers in all 50 states and Puerto Rico.

Experts put the cost of federal regulations borne by the private productive economy at $688 billion annually. This estimate is low because it does not include the cost of lost productivity.

We estimate that the cost of federal regulations on production agriculture exceed $20 billion annually. This estimate is based on farm production accounting for three percent of Gross Domestic Product and therefore three percent of the overall federal regulatory burden of $688 billion. We believe that the share of total federal regulatory costs borne by production agriculture is probably greater than $20 billion since farmers and ranchers are at the eye of the environmental regulatory storm due to our dependence on land, water and air.

Farm Bureau began its call for regulatory relief in 1976 with policies that recognized that federal agencies were, in effect, enacting more laws than the legislative branch via regulations. At that time we called for more Congressional oversight and termination of new agencies once problems are solved. Neither has occurred and the situation has worsened in the last 22 years. We hope that over time regulatory reform efforts will bring needed discipline.

The real costs of federal regulations are the lost opportunities for farmers and other producers. Instead of working on better ways to produce and deliver the bushels, bales, pounds and hundredweights of food, feed and fiber, farmers are wasting more and more of their creative human capital and management time consumed in useless paperwork.

Few farmers or citizens currently understand the goals of federal regulations. Needed regulatory reform will get at this problem by enhancing a citizen's right to know how and why federal regulations are made and what they are supposed to accomplish in plain English.

Needed regulatory reform will also require that cost-benefit and risk-assessment analyses and the consideration of reasonable alternatives be brought into the development of all new regulations. This is long overdue and will go a long way to fixing a broken federal regulatory process.

We hope that regulatory reform will increase government accountability by opening up the decision-making process and making it more understandable for everyone. Good public policy means that average citizens know what the government is trying to accomplish.

A recent report, "An Agenda For Federal Regulatory Reform," by scholars at the American Enterprise Institute and the Brookings Institution concluded, in part, the following: "Federal regulation is in urgent need of reform...If Congress continues to allow regulations to be produced without much attention to their full economic consequences, there is a very real danger that the standard of living that most citizens enjoy will slowly but surely erode..."

This hearing focuses on an important aspect of regulatory reform: paperwork relief. Farm Bureau has been strongly supportive of paperwork relief. We would like to take this opportunity to thank Chairman Thompson of the Governmental Affairs Committee for his longstanding leadership on regulatory reform issues, and Senator Voinovich for his leadership in convening this hearing on his legislation. S. 1378 makes several important regulatory reforms the American Farm Bureau supports:

- Suspends civil fines on small businesses for first-time paperwork violations to allow time for minor violations to be corrected;
- Requires federal agencies to create a hotline for small businesses that need answers and guidance when filling out federal paperwork;
- Authorizes the Office of Management and Budget to create a one-stop repository of paperwork regulations that affect small businesses, published in the *Federal Register* and on the Internet;
- Establishes a task force to study the feasibility of streamlining reporting requirements for small businesses.

In sum, many American farmers and ranchers accepted the end of farm programs with the hope that America's leaders would provide greater international trade opportunities and reduced regulatory burdens. We look forward to working with the 106th Congress to complete the promise of freeing agriculture from the negative influence of excessive and intrusive government regulation.

October 18, 1999

The Honorable Fred Thompson
Chairman, Government Affairs Committee
U.S. Senate
Washington, D.C. 20510

Dear Chairman Thompson:

On behalf of Associated Builders and Contractors (ABC) and its more than 20,000 contractors, subcontractors, material suppliers, and related firms across the country, I would like to express our support for S. 1378, the Small Business Paperwork Reduction Act Amendments of 1999, introduced by Senator Voinovich (R-OH) and Senator Lincoln (D-AR). ABC respectfully submits the following comments for the record.

The time and money required to keep up with government paperwork prevents small businesses from growing and creating new jobs. S. 1378 would give small businesses relief from federal paperwork requirements in four ways. First, it would waive civil fines for first-time paperwork violations if they do not present a threat to public health and/or safety, and if the small business owner corrects the violation. Second, it would establish a task force--including representatives from regulatory agencies--to study how reporting requirements can be streamlined. Third, it would establish a paperwork czar in each agency to serve as the point of contact for small businesses on paperwork requirements. Finally, the bill would provide access to a web page on the Internet containing a comprehensive list of all the Federal paperwork requirements for small businesses.

The time spent on paperwork for construction companies is growing at alarming rates. S.1378 builds on past efforts to reduce the paperwork burdens faced by small businesses without compromising public safety and health protections. According to a 1997 report, the total time spent filling out government forms in a year adds up to a little under 7 billion hours. One ABC member reported taking 33 hours over 4 days to fill out two forms.

ABC supports S. 1378 and thanks you for allowing this important issue to be heard by the Government Affairs Committee.

Sincerely,

Shane C. Downey
Washington Representative

Celebrating 50 Years of Building Merit Shop
Associated Builders and Contractors ■ 1300 North Seventeenth Street ■ Rosslyn, Virginia 22209
(703) 812-2000 ■ fax (703) 812-8200 ■ www.abc.org

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

OCT 25 1999

The Honorable Fred Thompson
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This provides the views of the Department of Labor on S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999." We have serious reservations regarding a number of the provisions of the bill; but we are particularly concerned that enactment of section 2(b) would adversely affect our ability to enforce a wide range of labor laws, including the laws safeguarding the health and safety of workers. If S. 1378 is presented to the President in its current form, I will recommend that he veto it.

The Department supports reducing unnecessary paperwork burdens on all businesses and is committed to helping small businesses comply with reporting and recordkeeping obligations. Today, the Department focuses more on obtaining voluntary compliance with the laws protecting American workers and their families, and less on simply enforcing rules. The Department also supports discretionary waivers of civil penalties in appropriate circumstances. We believe that it is reasonable to treat entities that make good faith efforts to comply differently from those that do not. The Department cannot support, however, a wholesale weakening of the protections afforded workers and their families, which section 2(b) of S. 1378 would do by eliminating basic principles of accountability and deterrence across a wide-range of worker protection laws.

Section 2(b) would prohibit Federal agencies, absent narrow exceptions, from imposing civil fines on small business concerns for first-time violations of an agency's collection of information requirements. This section also would prohibit States from imposing civil penalties on small business concerns for first-time violations of collection of information requirements under Federal law. The bill is not limited to small family-owned and operated businesses or so-called "Mom and Pop" stores. Small businesses covered by the bill include many entities with hundreds of employees and millions of dollars in annual receipts.

Eliminating penalties for first-time violations removes an important incentive for small employers to voluntarily comply without intervention. The vast majority of small businesses are law-abiding, and we have adopted practices to waive or reduce civil penalties when employers have acted in good faith to comply with information collection requirements. Section 2(b)'s "free pass" for first-time offenders, however, would give bad actors little reason to comply until they are caught, thereby rewarding bad actors and those who knowingly or in bad faith violate Federal information collection requirements.

Apparently, the bill is intended to preclude Federal agencies from imposing fines on small businesses for what are viewed as "insignificant" paperwork violations. Unfortunately, Section 2(b) would gut the vital safeguards provided workers and their families through labor, health and pension laws requiring the collection or dissemination of information.

For example, OSHA's Hazard Communication Standard requires employers to keep records and communicate information concerning hazardous materials and appropriate protective measures to employees. If a worker is unaware that a hazardous chemical substance is present in the workplace, he or she may be at serious risk of injury, illness or death. While the risk to the health and safety of an individual worker or group of workers is clear, some may argue under this bill that hazards facing workers do not qualify as a "danger to the public health and safety." Similarly, penalties for OSHA violations concerning written lockout/tagout programs, process hazard analysis at chemical plants, hearing conservation and toxic exposure monitoring records, all of which have a direct and significant impact on employee safety and health, could be rendered ineffectual in most instances by section 2(b). However, even if the bill were modified to make clear that the Department retained the authority to impose fines for any violation of reporting and recordkeeping requirements that may be a danger to a worker's health or safety, it would not overcome our fundamental objection to establishing a statutory "free pass" for first-time violators of all such requirements.

In another context, chemical manufacturing plants must develop procedures for their chemical processes that eliminate or greatly minimize the potential for catastrophic consequences, such as a violent fire or an explosion, which could kill people working in that plant and living in the surrounding area. In order to protect lives, this written procedure must be put in place <u>in advance</u> of the catastrophe. Removing the threat of a penalty reduces the likelihood that employers will develop the procedures

in a timely manner and increases the chances of a catastrophe.

In addition, the Mine Safety and Health Administration (MSHA) requires mine operators to submit ventilation and roof control plans and record hazardous conditions in a mine on a routine basis. MSHA's rules also require mine operators to measure and record levels of methane and other gases that can result in explosions or fires, miners' exposure to toxic materials, and to report injuries, illnesses, and fatalities. The Federal Mine Safety and Health Act of 1977 requires penalties for all violations. Historically, the threat of penalties has been found to deter violations of the law, including the rules mentioned above, thereby protecting workers who labor in one of the Nation's most hazardous occupations. By limiting MSHA's ability to impose fines for violations of rules regarding the collection and dissemination of information, S. 1378 puts miners at risk of a serious mine accident or death.

In the context of the Employee Retirement Income Security Act of 1974 (ERISA), section 2(b) of the bill would leave employee benefit plan participants with reduced safeguards. The Department considers even first-time violations of reporting and disclosure requirements related to worker's health and pension benefits to be serious. If reports on the status of pension or welfare plans are not filed, it would be impossible for the agency to provide workers with assurance that their pension and health benefits are secure. We would also be unable to assure workers and their families that they will be provided with copies of their summary plan descriptions, which inform them about their benefit plans.

Section 2(b) would also prohibit states from imposing civil penalties on small business concerns for first-time violations of collection of information requirements under Federal law. This amendment apparently intends to extend the bill's troubling features to our state partners that implement Federal programs -- such as the 25 OSHA State Plan states that administer and enforce worker safety and health laws -- even though a state's authority to impose penalties comes from independent state law. Not only would this provision further weaken protections afforded to American workers and their families, but, if it were to reach the state laws, we believe that it would run counter to fundamental principles of Federalism. Section 2(b) of S. 1378 would unduly limit state law enforcement discretion.

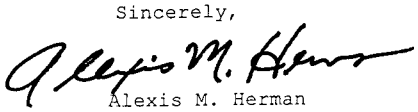
Swift and fair enforcement is a critical component of our strategy to provide quality workplaces and a prepared and secure workforce. Our goal is to find ways to "level-up" the manner in

which our Nation's workers and their families are treated -- such as eliminating unsafe working conditions, securing pensions and eradicating abusive child labor. However, by weakening enforcement, Section 2(b) of S. 1378 would broadcast a message that Congress is rewarding small businesses that violate important regulatory requirements, even if they violate the law in bad faith. At the same time, section 2(b) would create an economic disincentive for those employers who do comply with our laws and might cause them to take regulatory requirements less seriously.

For the reasons above, the Department of Labor urges the Committee not to report S. 1378 as currently written.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,



Alexis M. Herman

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 26 1999

THE ADMINISTRATOR

Honorable Fred Thompson, Chairman
Governmental Affairs Committee
United States Senate
Washington, D.C. 20510-6250

Dear Senator Thompson:

I am writing to express my strong opposition to S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999." The Environmental Protection Agency (EPA) opposes this bill because it would not achieve its objective of helping small businesses in a manner that preserves essential human health, safety, and environmental protections. In fact, businesses that timely comply with health and environmental laws could be placed at an economic disadvantage to small businesses that do not comply. S. 1378 is substantially the same as H.R. 391, to which the Administration has previously objected, and as with H.R. 391, I will recommend a veto of this legislation, should it be presented to the President in its current form.

The Agency has worked diligently to help small businesses comply with environmental laws, while our enforcement efforts take into consideration small business concerns. For example, consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA provides compliance assistance to small businesses that make a good faith effort to comply with environmental laws. Other small business assistance efforts at EPA include: technical assistance and outreach efforts conducted by EPA's Small Business Ombudsman and liaisons, funding support for small business assistance and outreach at the state level, and the establishment of nine Compliance Assistance Centers to help small and medium-sized businesses and local governments better understand and comply with federal environmental requirements. The centers were created in partnership with a diverse group of public and private organizations. (For your convenience, a copy of EPA's March 1998 "Report to Congress Pursuant to Section 213 of SBREFA," which provides a full discussion of the cross-EPA efforts to provide assistance to small entities, is attached.)

EPA also has a number of policies in place that reduce or waive penalties for small businesses in appropriate circumstances. Two of these policies encourage and reward small businesses that make a good faith effort to comply with federal environmental laws: the "Policy on Compliance Incentives for Small Businesses" (the "Small Business Policy"); and the

"Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations" (the "Audit Policy"). Under these policies, EPA has mitigated hundreds of thousands of dollars in penalties – including complete waivers of all penalties in appropriate circumstances – for businesses that made good faith efforts.

Penalties are an essential component of a fair and effective compliance program. They provide a deterrent for those who might ignore the law. Penalties are designed to ensure that agencies have important information necessary to protect human health and safety. Knowledge of an automatic amnesty from penalties for first-time violators undermines the deterrent value of an possible penalty. Additionally, unlike EPA's Small Business and Audit policies, which create incentives for environmentally responsible behavior and the self-discovery and correction of violations, S. 1378 would create *disincentives* for complying with environmental reporting requirements by its mandatory penalty waiver requirement. The message that S. 1378 sends is that small businesses need not follow environmental reporting requirements until a violation is discovered, because it is only *after* discovery of the violation that a company has a monetary incentive to comply with the law. Under S. 1378, there is little reason to comply with federal law until caught because a competitive advantage might be gained by ignoring the law -- for example, lower compliance costs during the time that the law is ignored.

Second, S. 1378 fails to provide sufficient protections for human health and the environment. Even though the bill creates an exception for violations that present a danger to public health or safety, the purpose of many reporting requirements is to *prevent* such situations in the first instance. It defeats the purpose of these requirements to require that the public actually be harmed or in danger before an enforcement action can be taken. The bill, in short, undermines prevention.

Third, the proposed legislation is deeply troubling because of the inherent assumption that reporting violations are not serious. Accurate, timely, and complete reporting is critical to many environmental protection programs at the national, state, tribal, and local levels, such as the regulation of restricted use pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), reporting hazardous chemicals under the Emergency Planning and Community Right-to-Know Act (EPCRA), and the regulation of hazardous waste under the Resource Conservation and Recovery Act (RCRA).

Under FIFRA, certified applicators must keep records of their use of the most dangerous group of pesticides. These records are critical for monitoring the use of pesticides and for investigating accidents and other incidents that might pose threats, including the identification of contamination sources.

Under EPCRA, facilities are required to report information on hazardous chemicals present at their facilities to state and local authorities so those authorities can be prepared to respond to emergencies. Failure to have this information available could expose fire fighters and other state and local emergency personnel to unnecessary risks.

Failure to provide RCRA information on the handling of hazardous wastes may also

present serious risks. Reporting requirements are often designed to give state and federal environmental protection officials knowledge of environmental compliance *before* any harm occurs. With that foreknowledge, these officials can take steps to *prevent* actual harm from occurring. Both large and small businesses can create significant environmental hazards through the handling, use, and transport of dangerous materials in residential areas, near sensitive ecosystems, or in the workplace. However, S. 1378 fails to encourage small businesses to report that vital information.

Thank you for your consideration. The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Carol M. Browner
Administrator

Attachment

cc: Honorable Joseph Lieberman, Ranking Minority Member

AFSCME®

American Federation of State, County and Municipal Employees, AFL-CIO

1625 L Street, N.W., Washington, D.C. 20036-5687
Telephone: (202) 429-1000
Fax: (202) 429-1293
TDD: (202) 659-0446
Website: http://www.afscme.org

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President
William Lucy
Secretary-Treasurer
Vice Presidents
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Columbus, Ohio
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Cleveland, Ohio
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St. Paul, Minn.
Gerard S. Middleton
Baltimore, Md.
Michael D. Murphy
Madison, Wis.
Henry Nicholas
Philadelphia, Pa.
Richard P. Olivo
Honolulu, Hawaii
Marshall Pierce
Sacramento, Calif.
George E. Popovich
Cleveland, Ohio

October 20, 1999

The Honorable Fred Thompson, Chairman
Senate Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to express our strong opposition to S. 1378, the Small Business Paperwork Reduction Act Amendments of 1999. This bill would jeopardize the health and safety protections for American workers by providing an incentive for violations of health and safety laws.

The stated purpose of this bill is to facilitate compliance with agency regulations and reduce the paperwork for small business owners. As currently drafted, this measure would neither reduce the paperwork for small business nor facilitate compliance but would merely give small businesses a "free pass" for their first reporting violation. In fact, not only does this bill fail of its essential purpose but it actually encourages noncompliance because it strips agencies of their ability to fine willful violators. Oftentimes, it is the threat of fines that forces employers to comply with safety and health laws.

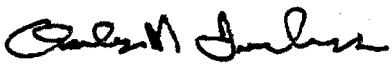
Under current law, agencies can and do routinely waive fines for first-time violators but not for deliberate and intentional disregard of statutory or regulatory requirements. Violators who make a good-faith effort to correct mistakes are spared imposition of fines. This balance between agency discretion and worker safety and health protection works well. The proposed Small Business Paperwork Reduction Act, on the other hand, provides no agency flexibility and could result in serious harm to workers.

The bill's exemptions for public health and safety violations do not adequately protect the health and safety of America's workers. The paperwork submissions themselves are the basis upon which agencies determine that a violation presents a danger. This situation necessarily requires paperwork to be filed in the first instance.

Even if the bill succeeded in its stated purpose, endangering the health and safety of workers for the sake of eliminating paperwork for small businesses is unacceptable. Thousands of Americans are killed on the job each year and millions more are maimed. Any reduction in the protections afforded workers could only lead to more deaths and more serious injuries.

We urge you to reject S. 1378 because of its inherent danger to America's workers and its promotion of willful violations of the law.

Sincerely,



Charles M. Loveless
Director of Legislation

CML:jcy

OMB WATCH
1742 CONNECTICUT AVENUE, NORTHWEST
WASHINGTON, D.C. 20009-1171
TELEPHONE: (202) 234-8494/FAX: (202) 234-8584
e-mail: ombwatch@ombwatch.org
URL: http://www.ombwatch.org/ombwatch.html

October 18, 1999

The Honorable George Voinovich
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Voinovich:

As an organization with years of experience working on regulatory issues, we are writing to express opposition to S. 1378, the "Small Business Paperwork Reduction Act Amendments." While we share the goal of reducing unnecessary paperwork, we do not believe this bill would accomplish that end. Instead, we fear it could have severe unintended consequences for public health, safety, and the environment.

Most disturbing is that S. 1378 would prohibit federal agencies from issuing civil fines to small businesses for first-time violations of paperwork requirements as long as the company complies within six months after being notified of the violation (with certain exceptions). Currently, when small businesses make a good-faith effort to correct mistakes, agencies almost always waive fines for first-time violators anyway. This makes sense to us. But under S. 1378, federal agencies would not have the flexibility to take steps against willful violators. And in fact, the bill could encourage more violations since small businesses would know they could avoid reporting requirements — without fear of fine — until they are caught for the first time. This would put businesses that comply with paperwork requirements at a clear disadvantage and send a troubling signal that the government does not take its laws seriously.

In doing so, S. 1378 would impair enforcement of public protections, since paperwork is the basis for monitoring compliance with the law. The enforcement of standards dealing with everything from environmental protection and food safety to nursing home care and worker health to drug laws and gun control all begins with the collection of information. A six-month delay in reporting on such protections, as allowed by the bill, would greatly upset data analysis and understanding of compliance.

It is also important to remember that reporting requirements are often designed to give agencies knowledge of compliance before any harm occurs, allowing time to take preventive steps. The bill's exceptions that allow for fines of first-time violators do not take this into account.

For example, an agency may sanction first-time violators if "the failure to impose a civil fine would impede or interfere with the detection of criminal activity." However, in discussing how this would undermine its efforts to detect drug trafficking and money laundering, the Justice Department pointed out that "the failure to provide information ... is what interferes with the detection of criminal activity," and that "it may be difficult for an agency to determine that the failure to impose penalties 'would' in a given case interfere with detection of criminal activity."

The bill also allows fines if "the agency determines that the violation presents a danger to public health or safety." But here again, it would be difficult for the agency to know

whether there is a danger to health or safety if it doesn't get the appropriate information to make that determination in the first place.

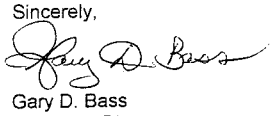
We appreciate that the bill allows agencies to require the correction of a violation within 24 hours after it is detected (rather than six months) where a health or safety matter is concerned. But this is still problematic. In the case of a chemical plant, for instance, the collection of information is essential to protect workers and the surrounding area, and to plan a proper response should an accident occur. It is of little value for a company to file emergency response information 24 hours after a chemical explosion.

We also believe S. 1378 starts from a flawed premise, namely that enforcement of public protections should be relaxed for small business, which often has a more difficult time complying with regulations than big business. From the public's perspective, it doesn't matter if a danger, such as exposure to a toxic chemical, occurs from a small business or a big business. The chemical is no less toxic and the health impact is no less severe. Public protections should be applied in an equal manner, safeguarding us all.

Nevertheless, we recognize that small businesses have unique concerns with regards to compliance. They often don't have teams of lawyers, for example, who can monitor agency regulations and paperwork requirements. The issue should not, however, be framed around the waiver of these rules. Rather, we should be looking to help small business comply with the rules. There are already a number of compliance assistance programs at the Small Business Administration and the agencies. If these programs are not working, then the Governmental Affairs Committee should focus on resolving this problem.

We should help small business. But at the same time, we should uphold vital public protections. Unfortunately, S. 1378 does not achieve the appropriate balance, and we must strongly oppose it.

Sincerely,



Gary D. Bass
Executive Director

cc: The Honorable Fred Thompson
The Honorable Joseph Lieberman
The Honorable Richard Durbin

Citizens for Sensible Safeguards

October 18, 1999

The Honorable George Voinovich
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Voinovich:

As the steering committee of Citizens for Sensible Safeguards, a broad-based coalition of hundreds of consumer, labor, environmental, and other public interest groups, we are writing to express opposition to S. 1378, the "Small Business Paperwork Reduction Act Amendments," which would waive fines for first-time violators of reporting requirements in certain circumstances.

Currently, agencies almost always waive fines for first-time violators anyway and give time to those acting in good faith to correct mistakes. But we are concerned that S. 1378 would strip agencies of the ability to take action against willful violators, and that it could actually encourage noncompliance with the law. With no deterrent of a fine, businesses could simply ignore reporting requirements until they are caught for the first time. This would have the perverse effect of putting law-abiding businesses at a competitive disadvantage and carry dangerous consequences for public health, safety, civil rights, and the environment.

The bill's exception that allows fines if "the agency determines that the violation presents a danger to public health or safety" is insufficient. Paperwork requirements are the basis for determining whether there is a danger to public health or safety. Without this collection of information, an agency would often be unable to make the determination of whether "the violation presents a danger to public health or safety," and moreover, would not be able to take preventive measures to head off any potential risk to the public.

Finally, it is important to point out that there is nothing in this bill that would reduce or eliminate paperwork; it merely grants immunity to violators of the law. This is the wrong approach. Rather than relaxing enforcement of important public protections — as S. 1378 implies — the emphasis should instead be on compliance assistance for small business, so that public protections are preserved, and enhanced with greater compliance, while burden is reduced. Accordingly, we strongly oppose S. 1378.

Sincerely,

AFL-CIO
AFSCME
American Public Health Association
Environmental Defense Fund
National Environmental Trust
Natural Resources Defense Council
OMB Watch
Public Citizen
The Arc of the United States
UAW
U.S. PIRG

1742 Connecticut Ave., NW Washington, D.C. 20009
Phone: (202) 234-8494 Fax: (202) 234-8584
E-mail Address: regs@rtk.net

U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

October 26, 1999

The Honorable Fred Thompson, Chairman
Committee on Governmental Affairs
340 Dirksen Senate Office Building
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The Department of Transportation would like to take this opportunity to present its views on S. 1378, a bill entitled

The Small Business Paperwork Reduction Act Amendments of 1999.

S. 1378 would require, among other things and with certain exceptions, that civil fines not be imposed on a small business for the first-time violation of agency paperwork requirements. In this regard, S. 1378 is essentially the same as H.R. 391, to which the Administration already objected. As with H.R. 391, the Secretary of Transportation would recommend a veto of this legislation, should it be presented to the President in its current form.

The Department shares the goal of trying to encourage compliance rather than relying in the first instance on the use of monetary sanctions. In this regard, the Department's agencies all have policies in place that allow and encourage waivers or reductions for first-time violators. Nevertheless, many of the Department's "paperwork" requirements in themselves produce important public protections. These include, among others, drug test reporting requirements for safety-sensitive employees, packaging and labeling of hazardous materials during shipping, and the placarding of trucks and railroad cars to allow emergency responders to handle dangerous shipments after an accident. Therefore, we continue to believe that any bill adopted by the Congress must allow agencies the flexibility to impose fines in cases of intentional or reckless violations or where there is a potential to cause harm.

Although we recognize that there has been some change in the language from H.R. 391 as introduced, we continue to strongly oppose S. 1378. One principal change is S. 1378's acceptance that the potential to cause serious harm to the public is grounds for failing to waive a fine, as is the presence of a danger to the public health or safety. Even with the revisions, fines for intentional or reckless violations would still not always be permitted under S. 1378. Many of our requirements would not be covered by these exclusions. For example:

• As required by Congress, the Department mandates the collection of passenger manifest information on certain flights, to aid in the notification of the families of accident victims. It is not clear that the failure to collect this would fall under the category of either "potential to cause serious harm" to the public or "presents a danger to the public" since the manifest would not be used unless an accident had already occurred.

• Similarly, the failure to carry shipping papers while transporting hazardous materials may result in unnecessarily calling a fire department to handle an incident involving hazardous materials. In the end, there may not have been any danger, and a court may find there was no potential for serious harm to the public interest or danger to health or safety, but an intentional or reckless action will have wasted the valuable time of fire safety personnel.

• The failure to report an accident in a timely manner could seriously hamper the accident investigation but not necessarily create a danger to safety; it might also be difficult to prove it had the "potential to cause serious harm to the public interest." We could have a similar problem if an operator failed to maintain a flight data or cockpit voice recorder.

Among other problems, the ambiguity in many of the terms used may negatively impact our ability to effectively enforce important requirements. It is not clear what "public interest" entails, how great the "harm" has to be before it is "serious," or whether a violation (*e.g.*, passenger manifest) that had potential to cause serious harm to the public interest, but no longer does because a critical event (e.g., the accident) has passed, is actionable.

The Department looks forward to working with you to address the reporting and recordkeeping burdens of small businesses while ensuring the safety of the public. Thank you for the opportunity to comment on this important legislation. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views to the Committee.

Sincerely,

Nancy E. McFadden

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ELIOT SPITZER
Attorney General

(212) 416-8050

November 2, 1999

The Honorable Fred Thompson
United States Senate
Committee on Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Joseph Lieberman
United States Senate
Committee on Government Affairs
706 Senate Hart Office Building
Washington, D.C. 20515

Re: S. 1378

Dear Chairman Thompson and Senator Lieberman:

I understand that the Committee on Governmental Affairs held a hearing on S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999," on October 19, 1999. I respectfully request that this letter be made part of the October 19, 1999 hearing record.

I am writing to express my concerns regarding those provisions of S. 1378 that would give small businesses presumptive immunity from first-time violations of federal and state laws designed to protect public health, safety, and the environment. While some small businesses have difficulty in understanding and complying with federal and state information gathering and reporting requirements, I believe strongly that the solution lies in improved education and compliance assistance activities rather than giving small businesses a "free pass" for violations of federal and some state laws. I am particularly opposed to the unnecessary infringement on state authority contained in Section (b), adding proposed Section 3506(i)(4) to Title 44.

As an initial matter, the information gathering and reporting requirements of our laws are essential tools which enable federal, state and local authorities to ensure that the public is protected from a wide variety of ills in areas of environmental protection, consumer protection and investor protection, to mention a few. Because governmental agencies do not have

unlimited resources, they must necessarily rely on regulated businesses to provide full and accurate information in response to the various federal and state reporting requirements. The integrity of most compliance programs requires full and accurate reporting by the regulated entities. For example, we need to encourage testing for toxic chemicals contained in air and water discharges to protect people and the environment, recordkeeping of controlled substances inventories to prevent diversion, and maintenance of records confirming of drug-testing of certain classes truck drivers to prevent accidents and deaths. We should not immunize the intentional disregard of legal obligations that most businesses routinely accomplish.

Federal and state agencies already consider a variety of mitigating factors when faced with violations, including the size of the violator, the complexity of the requirements of the law at issue, and the intent of the violator, in determining how to exercise their prosecutorial discretion. In most cases, they show leniency to first-time, unintentional violators. In New York State, regulating agencies often suspend penalties for first-time violators of information collection requirements, provided the business complies with the requirements in the future. Often, an inspector will just warn a violator and instruct the business to come into compliance quickly without seeking any violation. The proposed legislation unnecessarily restricts the exercise of prosecutorial discretion, raising the possibility that intentional violators of law can get a free pass before being subject to punishment for the intentional violation of important laws.

Moreover, S. 1378 may well have the exact opposite result of that intended. If this bill is enacted, inspectors may no longer overlook small businesses' minor violations, and instead may charge even the slightest violation to trigger the first-time immunity in order to avoid the restriction in the future. Rather than reduce paperwork and potential overzealousness, this bill could increase the burdens on small business and government.

The most objectionable element of the proposed legislation is the preemption of state enforcement efforts contained in Section (b) of the bill, which adds a new Section 3504(i)(4). State and local regulators are the officials with the closest contact with the regulated community. Given their close intimate knowledge of the businesses they regulate, they are in a much better position than Congress to judge whether a particular small business is deserving of leniency for a first-time violation. The analysis that these regulators undertake on a daily basis includes factors recognized by the proposed legislation, such as potential harm to public health and safety resulting from the violations, as well as a number of other factors, including, most importantly, the knowledge and intent of the violator. It is these street level inspectors and law enforcement officials who are best qualified to determine whether the paperwork violations are the result of company's intentional defiance of authority or understandable confusion on the part of a law-abiding business. Thus, the proposed legislation unnecessarily restricts the discretion of the officials who are in the best position to discern and excuse unintentional first-time violations of law.

Furthermore, the preemption requirements may be interpreted to reach beyond state enforcement of federal laws to inhibit a state's enforcement of its own laws. Many state laws, particularly in the area of environmental protection, serve to satisfy a state's obligation to enforce the minimum standards of federal programs delegated to the states. Thus, it is impossible to determine whether enforcement of various statutory or regulatory requirements falls within the definition of federal laws encompassed within the scope of the legislation. This ambiguity will serve to further inhibit states' ability to deal with violators in a thoughtful manner.

The preemption requirements shift the federal government's role in areas traditionally regulated by the states, such as public health and safety. The federal government should limit its efforts on ensuring that all state laws provide at least minimum level of protection to their public. State and local officials already have the incentive to deal fairly with their business community. For instance, every enforcer of environmental laws has heard the threats of businesses to close down and move to a neighboring state if enforcement action is taken. By establishing a threshold level of environmental protections, federal environmental laws serve the valuable purpose of reducing the perceived tension states constantly face between the need to attract and keep business, on the one hand, and the need to protect the public from pollution, on the other hand.

The jobs of State and local officials are difficult enough without further interference from Washington. To the extent that S. 1378 restricts the discretion of state and local officials, it constitutes an unwarranted restriction of their authority.

Thank you for considering my views on this matter.

Sincerely,

ELIOT SPITZER
Attorney General

cc: Honorable George Voinovich
Honorable Blanche Lincoln
Honorable Charles E. Schumer
Honorable Daniel Patrick Moynihan

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