

**RED TAPE REDUCTION: IMPROVING THE COMPETITIVENESS OF AMERICA'S SMALL MANUFACTURERS**

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**HEARING**

BEFORE THE

COMMITTEE ON SMALL BUSINESS  
HOUSE OF REPRESENTATIVES

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## **RED TAPE REDUCTION: IMPROVING THE COMPETITIVENESS OF AMERICA'S SMALL MANUFACTURERS**

**WEDNESDAY, MAY 19, 2004**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS  
*Washington, D.C.*

The Committee met, pursuant to call, at 2:34 p.m. in Room 2360, Rayburn House Office Building, Hon. Donald Manzullo [Chairman of the Committee] presiding.

Present: Representatives Manzullo, Chabot, Velazquez, Christensen and Tiahrt.

Chairman MANZULLO. Good afternoon. We had a series of five votes and so we are running late. We were advised that it will be at least three hours before the next series of votes and we should be out of here way before then.

Good afternoon. I want to especially welcome Dr. John Graham, the Administrator of the Office of Information and Regulatory Affairs or OIRA for being here to discuss the review of manufacturing regulations. The initiative addresses an often-lamented but rarely examined issue—the regulatory burdens facing America's manufacturers and, in particular, its small manufacturers.

Recent economic indicators demonstrate that the President's economic policies are having a positive impact on manufacturing. Production is up and firms have even begun to hire new workers. But more must be done to ensure that the seed of recovery in America's small manufacturers takes firm hold and grows long. To do that, America's manufacturers must maintain their edge in productivity and competitiveness against firms throughout the world.

Yet, that remains markedly difficult when the regulatory regime is far more complex and daunting than those in many other parts of the world. The approximately 22 linear fee of the Code of Federal Regulations is just the starting point for regulatory compliance. Agencies then issue hundreds of thousands of pages of supposedly "non-mandatory" guidance documents. Further complicating the situation is the continued updating and issuance of new regulations and guidance. And while not all regulations and guidance documents apply to all manufacturers or in all situations, deciphering this hoard of information is more than a full-time job. For small businesses, this is an arduous task where reaching the mountaintop of compliance is met with an avalanche that puts these small businesses back at the base of the mountain requiring them to start the process again.

No person is suggesting a return to the Dickensian nightmare of unending labor in dark factories amid soot-induced nights at noon-time and fetid pools of water surrounding unceasing dilapidated tenements. That is almost poetic, isn't it? Pretty good.

The question is not whether some regulation is necessary to maintain—We have got to put some, you know, I mean we just read these terse words all the time. It is important to get this out.

The question is not whether some regulation is necessary to maintain the standard of living and life that we enjoy in this country. Rather the question is whether the marginal gains of regulation come at too high a price. To anyone who has followed the activities of this Committee, it comes as no surprise that the high price may be the loss of America's small business industrial base. Without a healthy small business industrial base, this country will not be able to provide the high quality jobs that allow people to buy homes, cars, eat in restaurants, travel and purchase consumer goods that are part and parcel of our standard of living. Dr. Christensen should notice I threw in the word "travel," slightly important to the Virgin Islands, isn't it?

More importantly, without the underpinnings of a sound manufacturing economy, it is highly unlikely that America will have the resources to maintain the health of its people and environment that it currently enjoys.

America's small manufacturers should not have to fight their own government along with foreign competitors and foreign governments. They can succeed if they only have to cope with the market and not the predilections of federal regulatory agencies.

I will recognize now the ranking member of the full Committee, the distinguished young lady from New York for her opening statement.

[Chairman Manzullo's statement may be found in the appendix.]  
Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Small businesses, our main job creator, face a significant number of challenges today, many more than those of their corporate counterparts. And one of the biggest barriers that they have to overcome is federal regulations. These are placing a heavy burden on our nation's small enterprises, particularly those in the manufacturing sector.

A recent study reported that for firms employing fewer than 20 employees the annual regulatory burden is nearly \$6,975 per employee, almost 60 percent more than that of firms with more than 500 employees. This is not right and something needs to be done to change it.

Although the Bush Administration has acknowledged this unfairness and promised to help, nothing has been done. While republicans claim that reducing the regulatory burden is a priority, the Bush Administration holds the record for the largest increase in federal paperwork in a single year. This Committee is very aware of these regulatory burdens. We have held several hearings on this topic. And I was fortunate to be able to sit on Congressman Schrock's Subcommittee hearings on this very issue.

In those hearings we learned that small businesses do not have the proper points of contact within these agencies. And in addition, a number of federal agencies are not complying with current laws

which intend to reduce the regulatory burden that oftentimes affect these small firms. Through the convergence of this failure to comply with current law and the sudden explosion of paperwork, the Bush Administration has managed to worsen the situation for small firms. This has created a paper storm for our nation's small businesses, leaving them submerged in paperwork and seeing no assistance from the federal government.

Today we will look at the effects that the paperwork burden is having on our economy, particularly within the manufacturing sector. This sector cannot afford to be overwhelmed and burdened by paperwork and regulations. Employment within the manufacturing sector remains at a 53 year low with 2.7 million manufacturing jobs lost over the past three years. It is unclear at this point just how much of an impact these increasing paperwork requirements are having on our nation's small manufacturers. But clearly given the tenuous state of this sector even minor impact can resonate throughout the whole industry.

Under the direction of President Bush, Dr. John Graham has undertaken an effort to identify those regulations that create the most barriers for manufacturing and the process for evaluating and developing less burdensome rules. To explore this issue more we will be hearing from Dr. Graham, the Administrator for the Office of Information and Regulatory Affairs. This office is in charge of reviewing regulations and then providing relevant feedback on how these regulations will comply under current law.

The OIRA's primary responsibility is to reduce the paperwork burden in small businesses that has resulted from the federal government. Through this examination and discussion it is my hope that we can find a balanced solution to reduce the regulatory burden on our country's small manufacturers. There has been an overwhelming spiral of paperwork that has been thrown onto our small enterprises. And I hope that we will specifically improve those regulations that are impacting small businesses.

There is no reason that these vital businesses should be carrying the disproportionate weight of these regulatory burdens, wasting valuable time and money on paperwork requirements. The strength and recovery of our economy depends on the vitality of our nation's small businesses and small manufacturers. And we must work to ensure that they are not drowning in these regulations.

I look forward to hearing the testimony of the witnesses today. Thank you, Mr. Chairman.

[Ranking Member Velazquez's statement may be found in the appendix.]

Chairman MANZULLO. Thank you.

We have invited to sit on our panel Congressman Todd Tiahrt from Kansas. Todd leads the Task Force on Competitiveness. Our hearing today is one of seven hearings that deal with this issue of making America's businesses more competitive. And I would recognize Congressman Tiahrt.

Mr. TIAHRT. Thank you, Mr. Chairman. It is very appropriate, I think this is a debate that we should be having in America. We have in Congress over the last generation created barriers that keep us from bringing jobs back into America. And I think that Congress needs to take on the responsibility of undoing what has

been done to some degree so that we can free up people who keep and create jobs here in America so that they can go out and do what they do best.

I think this administration is, if you look at the average numbers of pages of regulations released is down from previous administrations. And I am interested to hear the testimony that we have.

But I think that the 8,000 pages of regulations that were left behind by the previous administration and forced this Bush 43 to implement has been responsible for the increasing amount of paperwork that has come from this administration. So I think we look at the causes, root causes obviously in Congress, and we need to address that. The administration though can multiply the number of pages or reduce them. And I think these hearings are going to help point out where we can reduce the paperwork burden and make a difference for those people who want to keep and create jobs.

I do have a formal testimony that I would like to submit for the record if it is okay and then go ahead with the witnesses.

Chairman MANZULLO. That will be submitted without objection. [Representative Tiahrt's statement may be found in the appendix.]

Mr. TIAHRT. Thank you, Mr. Chairman.

And just in closing, we have come up with eight issues along with bureaucratic red tape that you are dealing with and paperwork burden. Our Careers for the 21st Century also addressed keeping healthcare costs down, lifelong learning, trade fairness, tax relief and simplification, energy self-sufficiency and security, research development and innovation and, in conclusion, lawsuit abuse and litigation management. All these things are issues that are driven by Congress. And over the last generation Congress has raised the bar for small businesses especially and it has made it difficult to keep and create jobs in America because of that.

So as we go through these hearings that you have scheduled and as we go through legislation on the House I hope that we will find it in our heart to reduce the burden for people who keep and create jobs. And this is a very good initiative and I strongly support what you and the minority are doing here.

And with that I will just pass it back to you. Thank you.

Chairman MANZULLO. Thank you, Congressman Tiahrt.

It is my pleasure to introduce Dr. John Graham who is the head of the Office of Information and Regulatory Affairs. Dr. Graham has appeared before our Committee I think at least two or three different occasions. He has a reputation as a person who likes to resolve disputes. And done a tremendous job off on a journey to examine every regulation as it pertains to manufacturing. And that is his own initiative.

So we are just really pleased and blessed to have him working with us. And, Dr. Graham, we look forward to your testimony.

**STATEMENT OF THE HONORABLE JOHN D. GRAHAM, PH.D.,  
OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OF-  
FICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C.**

Dr. GRAHAM. Thank you very much. Good afternoon, Mr. Chairman, members of the Committee. It is an honor to be here at a

Committee hearing on regulatory reform of the manufacturing sector, particularly with the Chairman himself well-recognized as Mr. Manufacturing in the House of Representatives, at least by some people. And we appreciate the advocacy you have given to this cause for many years.

I am going to say a few words about what we have done in the Administration to date in the area of regulatory reform. What we have is a huge plate of unfinished business and there certainly is a large portion of that. And then say a few words about our recent manufacturing initiative.

The approach in this Administration toward regulatory reform has been a hard look, science-based approach at regulations. We do this through OMB enforcement of our executive orders and our regulatory analysis requirements. And, quite frankly, we are not interested in regulatory proposals that do not have a sound basis in science, in engineering and in economics.

We enforce that through OMB Circular A4 which now defines state-of-the-art cost/benefit analysis for regulatory proposals. As you know, Mr. Chairman, we work closely with Tom Sullivan and his colleagues at the SBA Advocacy Office and they help target for us proposals that are likely to be harmful to small businesses and they help us generate alternatives that can mitigate that burden while fulfilling important public objectives of regulation.

While these are the process activities we have under way, the question is do we have any evidence of any results from this activity? Now I would like to talk with you about this chart that is on my right here, to give you a historical perspective on how the growth of the regulatory state has been restrained under this administration and under this Congress.

If you look over the last 15 years or so at the unfunded mandates these are the regulations imposed on the private sector or on state and local government but for which the federal government does not send a check to pay for them. So I am excluding the whole budgetary part of the debate and will let my OMB budget side colleagues have that discussion. But this is the private sector unfunded mandate for growth that has occurred over the last 17 years. And it is about \$100 billion per year total extra burden of regulation, of unfunded mandates. And it is not distributed evenly across those previous administrations.

There was a substantial amount during the Reagan years. Those are only the last two years of Reagan for which we have data. We are trying to dig back further and go all the way back through the eight years of the Reagan Administration.

Then we have the Bush 41 years. And this is obviously not a partisan chart because the most heavily regulation-oriented administration in this period quite frankly is the Bush 41 years.

The Clinton Administration is quite substantial.

In this Administration we are adding regulatory burdens at the level of about \$1.8 billion per year.

When you say to me, Dr. Graham, how can you be here to say that that is an accomplishment that we are adding \$1.8 billion a year? First point is, that is an 80 percent reduction in the growth rate of major federal regulations in this Administration. If you

imagine if we had that success on the budget side of this fiscal house where we would be today in comparison to that chart.

The second point, which is a cautionary remark, is that we are in the fourth year of this Administration. The data historically show that it is the fourth year that is often the worst from a standpoint of increasing regulatory costs on the private sector and state and local governments.

Now, these are the new burdens of federal regulations. Where is the unfinished business? The most significant area of unfinished business is the sea of existing regulations that are already out there from the previous 100 or so years of federal regulatory activity. In fact, since OMB began taking records in 1981 there have been 100,000 new regulations cleared through the Office of Management and Budget. About 1,000 of them were estimated to cost the economy more than \$100 million.

To the best of our knowledge most of these rules have never been evaluated to determine what their actual effectiveness was or what their costs were. In this Administration we have taken the modest step of asking for public nominations of rules that need to be reformed or modernized or outmoded rules that can simply be eliminated.

In the year 2001 we received 71 nominations—excuse me, we received 23 nominations from 71 commentors. In the year 2002, after a greater outreach, we received 316 nominations from 1,700 commentors. This 2002 solicitation quite frankly overwhelmed the meager staff of OMB to handle this exercise. And we referred these proposals to the federal agencies for evaluation. We have now roughly 100 of these regulatory reforms under way or recently completed.

Let me conclude with a few remarks about our most recent manufacturing initiatives. In our report to Congress this year we have asked for public nomination of regulations, guidance documents and paperwork requirements that impact the manufacturing sector that need a hard look to determine whether they are necessary or whether they can be made less burdensome.

Why have we selected the manufacturing sector of the economy? The data show quite clearly when you compare the different sectors of the American economy the one sector that bears the disproportionate burden of regulatory costs is the manufacturing sector. And as you have noted, Mr. Chairman, it happens that this is the same sector that has been the slowest from an employment perspective to move out of the recession we were in. Though it is good news recently that we have seen additional employment in this sector as well.

This hearing comes at a very good and interesting time. We are due to receive the nominations from the public tomorrow on reforms of the manufacturing sector. And we are looking forward to a large number and substantial number of nominations that will have merit.

We will then compare these nominations with the agencies, evaluate them and develop a final report to both the president and the Congress on which of these reforms should be implemented and can make a difference. The good news is this Administration is making progress in slowing the growth of the regulatory state. It

is a critical part of the President's Six-Point Plan to stimulate the economy. While we are making progress we have, as you know, a long way to go and we will need your help in this Committee to give us the kind of support we need to make this happen.

Thank you very much. And I look forward to comments and questions.

[Dr. Graham's statement may be found in the appendix.]

Chairman MANZULLO. Thank you, Dr. Graham.

When is the—let me rephrase that. I believe it was an executive order of the president that asked you to undertake this review?

Dr. GRAHAM. Well, there was an executive order from the president strengthening the role of small business evaluation with regard to regulatory impacts. But actually this particular initiative came out of a Commerce Department comprehensive evaluation of the state of the manufacturing sector of the economy and recommended a hard look by the Administration at the existing regulatory systems impacting manufacturing.

So in fairness, I think the Commerce Department had a very important role to play in the development of this.

Chairman MANZULLO. Doctor, could you walk us through how you evaluate these regulations? I know you are looking at thousands of regulations and in the process you are trying to at least call Congress' attention to the conflicting ones and to try to resolve them. How do you manage that volume of regulations?

Dr. GRAHAM. Well, Mr. Chairman, quite candidly, you referred to thousands. And even the hundreds that we are evaluating now, the hundreds of new regulations being developed by the agencies and sent to us, that work load is substantial with regard to the several dozen people we have at OMB to evaluate those rules.

So when we take a special initiative like this and say we are also going to look at existing regulations that are nominated, quite frankly we need to reach out to our agency colleagues, whether they be in the Labor Department, whether they be in the Environmental Protection Agency, to help us evaluate these nominations. And, quite frankly, that is where the tension begins because there are lots of people in the agencies, quite frankly, who have a strong stake in those existing regulations. Yet we are asking them to go in and look at those and take a serious look at whether they can be made less burdensome.

Chairman MANZULLO. And then as you—let us take a look just call it regulation X just for the heck of it, that a company will I guess call it a nomination will say, Dr. Graham, this is the burden is oppressive here. It is called regulation X and it impacts two or three or four different agencies. Then do you have team meetings on these with agencies? How does that work?

Dr. GRAHAM. Well, I think the—

Chairman MANZULLO. Without getting specific because I know that you cannot.

Dr. GRAHAM [CONTINUING] Right. Well, we are in the process of designing how we will handle the nominations this year. In 2001, which was the first year we engaged in this activity, we had, as I mentioned, we had 23 nominations from 71 commentators. That was a sufficiently manageable number of nominations that my staff at OMB made an initial evaluation of those nominations and we

identified prior rules for reform. OMB designated priority rules for reform.

In 2002 we had 316 nominations from 1,700 commentors. That overwhelmed our ability to competently try to develop and OMB designated priority list. So, quite frankly, we are going to look very hard at the nominations we get this year, the quality of them, the level of thought provided by the commentors. And then we need to make a decision about whether we are going to rely primarily on OMB evaluations first or whether we are going to collaboratively work with the agencies to identify those priorities.

Chairman MANZULLO. What authority, if any, does OMB have to take let us just call it an agricultural regulation that there has been a lot of comment on, a lot of friction, and let us say there is an agreement for some resolution; what do you do in a case like that?

Dr. GRAHAM. Well, the authority to ultimately make the regulatory decisions in almost all instances resides in the responsible regulatory agency. So our role is as a persuader, a cajoler, in some cases an instructor to take a hard look at a specific matter. But in the final analysis it is the agency that makes that decision. And that is the role that we have had at OMB for a substantial period of time.

Chairman MANZULLO. So the office in the federal government that would be best at calculating the cumulative cost of regulations on manufacturers would be your office?

Dr. GRAHAM. Well, actually there is a developing capability in the Commerce Department I should add on that subject.

Chairman MANZULLO. Could you develop that for us?

Dr. GRAHAM. One thing I want to make clear is that the two dozen professionals in OMB who review regulations they are generalists. They are not specialists in small business. They are not specialists in manufacturing. They are not specialists in any particular kind of regulation, whether it be homeland security or whatever. They have an overall generalist background and they, of course, try to learn over time and with experience how to evaluate these proposals.

But it is very critical when we get, for example, a rule where there may be a small business impact we go right to the SBA Advocacy Office to Tom Sullivan and his specialists and we look for guidance from them on whether this is an important one for the small business community?

What is encouraging about the Commerce Department development is they are talking about developing a specialized staff in the Commerce Department that has expertise, data and experience on manufacturing related issues. That will be of enormous value to OMB if they can follow through and make that happen.

Chairman MANZULLO. Congressman Velazquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Dr. Graham, I commend you for your seeking regulatory review from nominations that recommend improvements on regulations that have an impact on manufacturing and small businesses. My staff attended some of the sessions and they were filled with businesses nominating regulations to be reviewed.

We have looked at your previous solicitations in 2001 to 2003 and we note that you have had some 1,800 recommendations over those two years. From what we can tell you categorized 23 recommendations in 2001 as new high priority projects and 34 in 2003 as new high priority projects with some carry-over from 2001. Almost most of these applied to four agencies: Transportation, EPA, Labor and HHS. And I am really surprised that the IRS had very few of those nominations.

Judging by what I hear from small businesses I would have thought that IRS would have led the list. What is the explanation for that?

Dr. GRAHAM. That is an excellent question. We have looked historically at the kinds of proposals that have been made for reform of IRS to reduce paperwork burden, to reduce burden on business. What you find when you look very carefully at a host of IRS issues is that, quite frankly, the Congress through the tax code has done most of the damage right in the way the tax code is written. And once you have the tax code written in some way, while IRS does have some discretion in how they write their regulations and their interpretative regulations, oftentimes that discretion is not large.

I think a lot of people in the business community realize that in order to make major fundamental change in the burdens from Treasury regulation and IRS regulation in particular you are going to have to have a much simpler tax code than we have today.

Ms. VELAZQUEZ. I understand the part that the Congress played in terms of the tax code. But we conducted one of the hearings in the Subcommittee on Small Businesses with Congress Schrock and IRS was testifying, and some of the regulations did not have anything to do or they were just it is their attitude and disregard for the impact, the economic impact that those regulations will have on those small businesses.

Dr. Graham, it is also surprising that you were able to get 1,700 nominations last year and ended up with only 34 new reform projects. Do you feel you have the staff resources to oversee current regulations, rules plus do all the reports and studies that you are called upon to do and oversee these projects?

Dr. GRAHAM. Let me start by making sure we are talking about the same numbers and the same facts. The way we look at it, OMB did designate in 2001 23 of the reforms as high priority.

In 2002 we never did designate any of the 316 as high priority. We did notice that a number of those 316 were already being looked at by federal agencies in various ways and, hence, we simply have asked them to provide us status reports on those. And it may be that you are referring to the others that we asked them to evaluate.

Ms. VELAZQUEZ. And those various agencies like which ones, for example?

Dr. GRAHAM. I think the list of agencies that you gave actually those are the busiest regulators in town. And it should not surprise us that most of the reform nominations we are getting are in Transportation, EPA, Labor and Health and Human Services.

Ms. VELAZQUEZ. And then at the end of your testimony you said that you needed support from Congress. That is in terms of the laws that we pass or resources and the budget?

Dr. GRAHAM. Well, I think it is important that we get support in all of those dimensions. And even modest things like this hearing we think this is very important to providing an understanding for the public of why are we focusing on manufacturing regulation. Because the rising cost of producing goods and services in this country is in fact related to employment, to jobs, to community welfare. We need at the most modest level of hearings like this an understanding of why it is that we are reforming manufacturing regulations.

Ms. VELAZQUEZ. It takes more than hearings, Dr. Graham.

Dr. GRAHAM. It does.

Ms. VELAZQUEZ. It also takes resources and money.

Dr. GRAHAM. Right.

Ms. VELAZQUEZ. We are voting on the budget today. Is the budget adequate?

Dr. GRAHAM. Well, we are going to look at the nominations we get, which are due in tomorrow, and we will make a careful determination. And if we cannot handle it all within OMB we will recruit Commerce and SBA Advocacy and the agencies. And if we determine that is not adequate I will be back here asking the Congress for more resources, I can assure you of that.

Ms. VELAZQUEZ. That, if you do not get other directives coming from the White House.

Thank you, Dr. Graham.

Chairman MANZULLO. Congressman Tiahrt. Congressman Chabot has no questions. Go ahead.

Mr. TIAHRT. Thank you, Mr. Chairman.

Dr. Graham, it seems like if I was going to focus on where regulatory problems were the greatest I would look at which agency was delivering the most regulations. And Transportation according to CRS is way above most other agencies.

In 2003, for example, DOT released 1,141 regs. And the next closest was Treasury which was 402 and then Department Commerce was then 272. So there are a huge number of rules I should say, not regs, rules that are released.

How do you determine where you are going to target your efforts because you cannot take them all on? And is it what OMB recommends or do you go targeting on your own and figure out areas like hours of service? Hours of service is going to be a big problem for small businesses. Small business trucking companies and delivery companies. And it seems like that would be one where, you know, we could target other transportation issues they want to retire. How do you determine which ones you are going to look at?

Dr. GRAHAM. Well, the nomination process is wide open with regard to any agency's regulations. And in both 2001 and 2002 we have received a significant number of nominations that relate to the Department of Transportation. And there is a lot of regulation coming out of the Department of Transportation. So I think your basic premise of your question is correct.

Now, we will analyze the quality of the technical and economic case that underpins each of these nominations in order to determine which of the ones we ought to push the hardest on agencies to move in the near term and which can be moved on a more delib-

erate pace. So the case that these nominators make for these particular reforms are very important.

Mr. TIAHRT. Do you do a cost/benefit analysis when you look at rules and regulations?

Dr. GRAHAM. Our role at OMB is actually review the cost/benefit case that agencies make for a regulation or for a reform of a regulation. So my two dozen staff we are engaged in reviewing those cost/benefit analyses.

Mr. TIAHRT. According to data I got from CRS, the source was OMB, they say the last ten years between October 1, 1993 and September 30, 2003, the benefit from rules and regulations versus the cost of all agencies, and they put a range, so the benefit was from \$62 billion to \$168 billion. The costs were from \$34 billion to \$39 billion. So if you take care of the midpoint of those two ranges it says that you get a \$3 benefit for \$1 cost.

I don't know exactly how you estimated benefit for regulation because if this is true all we have got to do is write, you know, another \$200 billion worth of—\$100 billion worth of rules and regulations then we will get enough benefit to balance the budget. So I am not sure we can really regulate our way into benefits. I am not sure where the concept of, you know, the benefit that we get by it comes from or how you estimate that. And I would be curious, how to you estimate a benefit from a rule or regulation?

Dr. GRAHAM. Well, if every regulation proposed had the same ratio of benefit to cost as the ones that you are describing then the logic of what you are saying would be infallible. But in fact we know that regulations vary enormously in how much benefit they have and what their burdens are.

And in fact the majority of those \$100-plus billion in benefits are attributable to a handful of regulations from one office in one agency, the Clean Air Office within EPA that is reducing the amount of diesel exhaust and other forms of particulate pollution in the air. That is where most of those benefits are from.

If you look at all the other regulations that are covered in that report the benefit/cost case is much murkier.

Mr. TIAHRT. So it is not as clear?

Dr. GRAHAM. That is right.

Mr. TIAHRT. One of the things we addressed yesterday on the Floor when we voted in trying to clean up some of the regulatory problems are just the frequency of reports. Some small businesses are burdened with quarterly reports. And, you know, is there some breakpoint like 200 employees, 150 employees, 100 employees where we can say this data really is not that essential that we have a quarterly report? Perhaps an annual report would be better. In doing so we could reduce their regulatory burden on that particular rule or regulation by 75 percent.

Is that part of the scenario you looked at is frequency of rules and regulations?

Dr. GRAHAM. Yes. And that is the kind of a proposed reform that one of the commentators might suggest in a particular regulation. Maybe the reporting requirements should be annual rather than quarterly. Those would be quite sensible kinds of suggestions.

Mr. TIAHRT. We wish you the best of luck.

Dr. GRAHAM. I will be needing your help, sir.

Mr. TIAHRT. Please call.  
Thank you, Mr. Chairman.

Chairman MANZULLO. Thank you. Congresswoman Christensen, who was a physician, knows something about regulations. I look forward to your questions.

Ms. CHRISTENSEN. I have been on the bad side of it when I was in practice. I hope we will have CMS, the new CMS administrator come in also.

Good afternoon, Dr. Graham. There was a study done by I guess it was the Committee on Government Reform that says that total government paperwork had increased substantially under the Bush Administration to an estimated 8.1 billion hours in fiscal year 2003. How much—And last year Americans spent over 700 million more hours filling out government paperwork than in the last year of the Clinton Administration. So it also says the largest annual increase in paperwork burden ever measured occurred under this Bush Administration in fiscal year 2002.

How do you reconcile that with what we see on the graph?

Dr. GRAHAM. Right. Paperwork burdens are an important cost of regulation but they are only one element of the cost. So, for example, if you require a manufacturing enterprise to install new equipment or new machines in order to address an issue that is also a cost of the regulation.

This chart shows the total extra cost of major rules, not just the paperwork. What is driving your numbers is changes in the tax code, okay, which cause more people to have to fill out more detailed tax forms. Okay. Whereas this is including all the regulatory costs whether they be paperwork, equipment, capital or labor or whatever.

Ms. CHRISTENSEN. So when Congresswoman Velazquez asked you about IRS and you said that, well, Congress is the one that created all of that paperwork—

Dr. GRAHAM. Not all of it but a good chunk of it.

Ms. CHRISTENSEN [CONTINUING] Well, a good chunk of it. So you do not automatically or periodically do a review regardless of where those regulations emanate from?

Dr. GRAHAM. Yes, to give you a feel for it, of the total paperwork in the American economy that you are referring to if you look at all agencies, 80 percent of it is attributable to the Treasury Department. Most of that—

Ms. CHRISTENSEN. And you do not review it?

Dr. GRAHAM [CONTINUING] Most of that is due to IRS. And most of that is attributable to the way the tax code is written itself.

We do review in the cases where IRS has discretion on exactly how to frame a regulation based upon the tax code we do review those paperwork burdens. But let us not confuse big versus small issues. The big issue is you have got a complicated tax code, you make it more complicated through tax cuts sometimes, and you will increase paperwork burden.

Ms. CHRISTENSEN. Okay. I am not sure, I was trying to get an answer to this. Those graphs are in 2001 dollars?

Dr. GRAHAM. Correct.

Ms. CHRISTENSEN. Would it look the same—would not that blue line, the last Bush 43 be higher if you did it in today's dollars?

Dr. GRAHAM. All of the, all of the charts would go up a little bit if you used today's dollars because they are all being expressed in 2001 dollars.

Ms. CHRISTENSEN. Yes.

Dr. GRAHAM. So it would not affect the relative heights of the chart.

Ms. CHRISTENSEN. It would not affect the relative.

Dr. GRAHAM. Right.

Ms. CHRISTENSEN. Seems to me it would.

You also said in response to the Chairman that you make the recommendations to the agency. What are your expectations of that agency when you make those recommendations?

Dr. GRAHAM. Our expectations either—

Ms. CHRISTENSEN. Yes. And what action do you take, what follow-up kind of action would you take after those recommendations are made if there is no response from the agency?

Dr. GRAHAM [CONTINUING] We are looking for either implementation on behalf of the agency of the recommendation or, alternatively, a cogent rationale for why it is they have chosen not to implement the recommendations.

In our report to Congress we publish each year a rule by rule explanation of what happened to each of the reform nominations that we have been discussing in this hearing so far. And, quite frankly, in some cases the agencies come back to us, CMS for example, thank you, Dr. Graham, we were very interested in your reform nomination but we do not think it is a particularly good idea.

And I will let you be the judge if you want to look through some of those examples whether you thought the merits of that argument were with the commentor, with OMB or with the agency.

Ms. CHRISTENSEN. So after you make the recommendations there is nothing that you can enforce?

Dr. GRAHAM. In some cases we will go further and we will have a comment—we will invite the agency over to OMB, we will have a more detailed discussion of that issue and try to persuade them that in fact that is appropriate. But when you are dealing with 316 nominations you are only going to be able to have a detailed inquiry with regard to a modest number.

Ms. CHRISTENSEN. And do you prioritize? I do not know where my time is. And do you prioritize these so that you would maybe focus on the ones that have been deemed for whatever reason to be more important?

Dr. GRAHAM. In 2001 we did. In 2002 we had so many we simply referred them to the agencies for their evaluation. We have tried it both ways. This year with the manufacturing reforms we are going to look at what we have and we are going to take whatever strategy we think would be most effective in getting the work done by the agencies.

Ms. CHRISTENSEN. Okay. Thank you.

Chairman MANZULLO. Dr. Graham, thank you for coming this afternoon. We are always excited about the way you go after all this paperwork.

I recall about three years ago when—actually it was longer than that, during the Clinton Administration when the Hope Scholarship was passed this gives a \$1,500 per child tax credit to families

earning under X amount of dollars per year for higher education purposes. And the Senate asked I believe it was Treasury Secretary Rubin about a particular provision that required 7,000 colleges, universities, trade schools and community colleges within our country to report as to the source of the money that was coming to the school, I guess for the purpose of verifying that it was coming from the student.

And he said, well, the cost of verification would be the cost of a stamp. Not criticizing the secretary, but that provision got written into the bill. And IRS took a look at it. And we were contacted by Northern Arizona University. The cost is about \$100 million a year in regulatory compliance.

And Charles Lazotti and I from the IRS and I sat down and he said this is not good. And for four years IRS withheld permanent regulations until we could come up with a legislative fix that eliminated that burden.

And I think this is what happens when members of Congress say, well, let us just throw this provision in. Sometimes it is a last minute amendment and it causes that type of regulatory nightmare.

So just when you said that Congress causes a lot of problems in the IRS code I will concur with you on that.

Again thank you for your testimony. Your complete statement will be made part of the record. And thanks again for coming, Doctor.

Dr. GRAHAM. Thank you. Appreciate it.

Chairman MANZULLO. Appreciate it so much.

If we could get the next panel to come up.

Our second panel, we welcome the second panel here. The first witness is John Arnett, Government Affairs Counsel, Cooper and Brass Fabricators Council. And, John, look forward to your testimony.

**STATEMENT OF JOHN ARNETT, COPPER & BRASS  
FABRICATORS COUNCIL, INC.**

Mr. ARNETT. Thank you, Mr. Chairman, members of the Committee, and good afternoon. I am, as the Chairman states, John Arnett, Government Affairs Counsel for the Copper and Brass Fabricators Council. The Council's 21 member companies were listed in our submission. And we would like to thank you for inviting us to participate in this hearing today.

The Council's member companies collectively account for about 80 to 85 percent of the brass milled products produced in the United States each year. These consist of copper plate, sheet, strip, foil, rod, bar, pipe and tube. And these products are used mainly in the automotive construction and electrical/electronic industries. Many of the Council's members meet the definition of small business, but not all, under the Small Business Administration standards.

The costs of regulatory compliance on manufacturers in the U.S. are, by any reasonable estimate, an enormous burden. As the Manufacturing Alliance recently concluded in a 2003 study, the compliance costs in the economy are in the order of \$850 billion, \$160 billion of that falls on manufacturing alone. And the burden is grow-

ing larger. The net result is that, as the Manufacturing Alliance artfully stated, “compliance costs for regulations can be regarded as the ‘silent killer’ of manufacturing competitiveness,” particularly when you compare it to an industrial trade and some of the regulatory burden reductions that are being undertaken in other countries.

In March of 2002 when the Office of Management and Budget and OIRA asked for public nominations of regulatory reforms the Council enthusiastically responded by submitting seven regulations that it deemed to be costly with little or no benefit. As Dr. Graham testified, and as outlined in OIRA’s 2003 Report to Congress or OMB’s report, they received a total of 316 distinct reform nominations and submitted 161 of those for agency review. The Counsel was heartened that five of their seven nominations were referred to EPA and to OSHA.

Of the five Council nominations referred, one was deemed by EPA to be worthy of action and two were cast into the undecided category for further review. The Council is encouraged that three of the nominations were targeted for reform or additional study. However, we were disappointed that two—are disappointed that two years later, two years after the process began that none of the regulations have been changed in any way. Indeed, it is our understanding that of the 161 rules and regulations in total referred to the agencies, none of the referrals has resulted in any substantive changes to this point. Clearly, the goal of eliminating wasteful regulations has yet to be achieved.

What then can explain the apparent encouraging procedure but the lack of substantive results. It is the Council’s view that the following problems with the procedures may have short-circuited the completion of reforms. And I think these problems need to be addressed in the current round of submissions:

The method used by OMB and OIRA during the initial screening process is unknown, and there is no opportunity for input and clarification during this process from those of us who nominated the regulations;

Once referred to agencies, there is no opportunity for the nominating entity to answer questions that may arise in the agency’s mind. If the agency is unclear on what we are saying there is no opportunity to contact us, there is no dialogue;

There is no explanation for the agency decisions that they finally make, especially when the decision is not to pursue reform and the agency is completely in its right to make that decision;

The agencies, finally, the agencies appear to be able to make any decision regarding referred regulations without justifying that decision or even explaining how they arrived at it.

To correct this greater transparency in the screening process, some explanations by the agencies in support of their decisions, and a requirement that agencies justify a decision not to consider a proposed reform might help resolve these problems to some extent. Further, communications between the nominating entity and the agency and OIRA after the regulation is referred to the agency might improve the agency’s understanding of the problems cited and suggested solution.

In spite of our reservations, the Council commends OMB and OIRA and the agencies for their execution of the initial 2002 process. We believe the process has the potential for illuminating regulatory provisions that create burdens with little or no gains. OMB this year seeks public nominations of regulations affecting manufacturing in particular. And tomorrow we will submit a list of eight regulations for consideration.

Just very quickly, if adopted some of these eight would help, for example, eliminate unnecessary testing for pollutants in water discharges when it can be demonstrated that there is zero chance that the pollutants are in the water;

Could remove from the definition of "volatile organic compound" those compounds that are not volatile. And it is true that the VOC has no—the definition of VOC has no volatility component;

Third, focus the attention of the SPCC, the Spill Prevention, Control, and Countermeasure rule on larger facilities and away from the very small risks that have never, it has never been demonstrated they create a risk;]

Fourth, focus storm water regulations on effective but inexpensive best practices, rather than focusing on construction of facilities for capturing and basically treating rainwater;

Eliminate the "double" waste treating of water discharges due to lack of removal credits to Publicly Owned Treatment Works;

Permit the concentration of hazardous waste through evaporative dryers, thereby reducing shipping volume to waste treatment facilities and resulting transportation and energy savings;

And permit the use of ships stairs and spiral stairs instead of rung ladders in certain manufacturing situation with an improvement of safety in plant sites.

We appreciate the Committee's attention to inefficient and unnecessary regulations that are the silent killers of manufacturing processes and look forward to OIRA's response to our submissions.

Thank you, Mr. Chairman.

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

Chairman MANZULLO. Thank you.

Our second witness is B.J. Mason, President, Mid-Atlantic Finishing out of Capitol Heights, Maryland, on behalf of himself and the National Association of Metal Finishers. We look forward to your testimony.

#### **STATEMENT OF B.J. MASON, MID-ATLANTIC FINISHING**

Mr. MASON. Thank you, Mr. Chairman. Thank you to the Committee.

Chairman MANZULLO. B.J., do you want to pull the mike a little bit closer to you?

Mr. MASON. There you are. Is this better?

Mid-Atlantic Finishing in Capitol Heights, Maryland, is a corporation that I started about 28 years ago. We now have 35 employees down from four years ago of about 75. We have been providing gold, silver, nickel, tin, copper, conversion coatings for the defense industry, the medical, tooling, telecommunications, computer, electronics and a whole host of other industries.

On the regulatory front my industry has worked closely with agencies like the EPA and the state and local regulators as well as

environmental groups on many voluntary, cooperative projects to reduce the industry's environmental footprint to the greatest extent possible.

Before I go on I might just say too that it sounds to me like I am what everybody has been talking about here today, a small, a small industry. So I guess I feel kind of special. Thank you.

Chairman MANZULLO. You are special. That is why you are here. Mr. MASON. Thank you, sir.

We are pleased that in the late 1990s former President Gore formally recognized the finishing industry's environmental leadership with his 'Reinventing Government' award in response to our demonstration that it is indeed possible to reconcile environmental and economic and competitive goals.

This experience, however, pointed out to me that there is much more room for improvement on how the federal government evaluates its own regulations and that it is absolutely essential to have a process in the big picture, can flag and change regulatory requirements that do not add value to either the environment, public health or the economy, and can identify with some reasonable level of accuracy the costs and benefits of regulations at every stage of the rulemaking process.

I would point out that for my industry there are heavy consequences that ensue from not having rigorous, systematic review of a wide range of regulations, whether they are major rules or not.

I would like to briefly illustrate with a specific example. In the past several years the metal finishing industry committed over \$1 million to challenge the rule called MP&M. This was an EPA regulatory issue which was imposed on top of already restrictive wastewater controls based and we felt the rule was based on improper science analyses. After a continuous series of deliberations over several years, EPA ultimately concluded that no further regulations were warranted for the metal finishing industry.

In the end, while this was good news, I was troubled by two things:

First, by the fact that even with a well run early SBREFA process to assess small business impact, the proposed rule's estimates of costs and benefit was highly erroneous. In fact, EPA's costs are vastly underestimated. And estimates of pollutants likely to be reduced from the industry were off by a few orders of magnitude.

Second, I was troubled by the fact of one senior EPA official who I happen to respect very much—that was written for me—noted after completion of the rule that but for the fact that the metal finishing industry had to spend one million dollars on analysis, the regulatory process worked for this rulemaking.

Mr. Chairman and members of the Committee, surely there is a better way to spend a million dollars. And that was a million dollars that was spent by owners of small businesses in a very troubling economic time the last three to four years which is the worst that I have seen in the 25 years that I have been in the business. And we were not making money to be able to spend that kind of money, but we did.

In light of this experience the industry has reviewed several regulations that can be modified without causing adverse environmental or health impacts. We have focused more intently on the

cost of these measures for several reasons, one being the fact that many of our competitors in the global economy do not carry the same obligations and responsibilities that we do. At the same time, we are not looking for environmental rollbacks or a ticket to polute.

In my written testimony I provided a brief sketch of the several regulatory reform nominations that we made to Dr. Graham and the White House Office of Management and Budget. They happen to cut across all major programs at EPA—air, water, waste—and if implemented could potentially achieve over \$100,000 in savings for companies like mine with annual sales of between \$2 and \$3 million. These changes in the written testimony are: streamline the EPA's wastewater pretreatment program, allow an exemption for federal air permitting procedural requirements if companies are already complying with stringent federal air emission controls, and update the federal hazardous waste framework to allow recycling of our metals under certain conditions.

I happened to be at another of these Committee meetings when one of my colleagues reported about the metals that are being forced to be put into landfills. As I have said for 12 years to EPA, we will mine those landfills one day when we run out of resources.

Mr. Chairman, we determined that modest changes for these three regulations could provide significant savings of costs, could mean the difference between being profitable and being forced to shut down operations or lay off workers.

I would like to close with an example of yet another critical regulation in the pipeline for my industry which raises the importance of an informed, rigorous review process. This is OSHA's PEL proposal that will be proposed in October. The industry has presented a detailed analysis in the SBREFA panel process last month with analysis and documentation showing that all facilities with annual sales of \$1.5 million and 20 employees, would have to spend 60 times that, or over \$300,000 per facility, to achieve the very low limits to be proposed by OSHA. We have submitted data that we are not opposed to lower limits, we are just opposed to anything that is really not necessary and ask them to look at our analyses.

I hope that some of the issues I have raised today will point out the need for and the potential value of an improved process for regulatory review and oversight of federal agency actions. I believe this can be done responsibly and in a way that minimizes the regulatory burdens, protects human health and environment, and allows small businesses the opportunity to compete successfully in the global market.

Thank you, Mr. Chairman and members of the Committee for the opportunity to appear today.

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

Chairman MANZULLO. Well, thank you very much.

Our next witness is Andrew Bopp. I have been given a phonetic.

Mr. BOPP. Yes.

Chairman MANZULLO. Obviously people mispronounce your last name.

Mr. BOPP. It looks like "bop."

Chairman MANZULLO. On a few occasions.

Andrew is the Director of Public Affairs for the Society of Glass and Ceramic Decorators in Alexandria, Virginia, been with them since 1995. And we look forward to your testimony.

**STATEMENT OF ANDREW BOPP, SOCIETY OF GLASS AND CERAMIC DECORATORS**

Mr. BOPP. Thank you, sir. And thank you, members of the Committee.

The Society of Glass and Ceramic Decorators represents manufacturers that decorate glass—

Chairman MANZULLO. Andrew, could you pull the mike a little bit closer to you?

Mr. BOPP [CONTINUING] Sure.

Chairman MANZULLO. And then maybe tip it up a little. There you are. You have to speak directly into it. Go ahead.

Mr. BOPP. The Society of Glass and Ceramic Decorators represents manufacturers who decorate glass and ceramic mugs, tumblers and similar items. Things like this, pretty basic things. There are 300 member companies nationwide that decorate these types of items and they are facing severe competition from overseas, primarily from China. The Chinese were first with ceramics, that is why it is called China.

Most SGCD members are small, often family-owned companies. These companies cannot afford to hire staff to focus on regulatory compliance. In fact, many of these companies are unable to employ engineers at their facilities let alone environmental, safety or other experts. Regulatory burdens often fall on the owner or other key staff who are also responsible for production, purchasing, marketing, sales and other business functions.

Burdensome and unnecessary regulations significantly contribute to the cost of doing business in the U.S. This leads to the loss of manufacturing jobs to overseas competition. It is critical that existing regulations undergo careful review to determine whether regulatory goals can be achieved in a less burdensome way.

I am here today to encourage this Committee to support OIRA in its efforts to review burdensome regulations that have a major impact on small business. To illustrate, we believe OIRA has been and hopefully will continue to be helpful in reviewing EPA's Toxic Release Inventory Lead Rule. This rule has proven to be extremely burdensome for small glass and ceramic printers and other small manufacturers. Some of the colors used in glass and ceramic decoration cannot be produced without lead. This does not create environmental risk and very little ends up as waste.

When fired, the colors become chemically part of the glass or ceramic mug. Almost all of these colors are used to produce the ware. SGCD member companies work closely with FDA and other federal and state agencies to guarantee the safety of all these wares.

In spite of this, hundreds of these small companies as well as small companies in other manufacturing sectors were entangled in EPA's January 2001 lead rule changes that lowered the annual reporting threshold from 10,000 pounds to 100 pounds. I want to emphasize that that is lead used, not released to the environment. The TRI program is burdensome, especially for the 75 percent of lead filers that are small businesses due to the complicated anal-

ysis and calculations that are required to comply. Classic paperwork burden.

However, when lowering the reporting threshold, EPA disallowed existing burden relief options for small business such as a simplified Form A and de minimis allowance that are available for other TRI substances. A massive effort is being undertaken by small business operators to comply with this rule. A review of 2001 TRI data, which is the latest available for this new rule, indicates that over 2,600 manufacturing companies reported zero environmental release of lead or lead compounds. All this work to show zero.

In SIC 32, which includes glass and ceramic printers, 532 complicated Form Rs—and complicated, I should have brought in the book but it is a very big book, it is a very complex form. Think about your most complex IRS form and start there. Five hundred thirty-two complicated Form Rs were filed in 2001. The cost was estimated by EPA to be \$7,400 per facility. Of these forms, 46 percent of companies reported on-site release to the environment of less than one pound in SIC 32. In a fairly typical case, a small decorator reported zero on-site release after spending more than 180 hours to compile data and complete a TRI Form R.

This is a type of program where you have to compile the information as you move through the year and then file the paperwork. You cannot just pay somebody to do it, which happens in a lot of IRS cases.

Even after the forms are filed, the burdens continue. In December 2003, a glass decorator received a Notice of Significant Error from EPA for its 2002 TRI report. One week later, the company received a second copy of the same notice that finally listed the error which was then corrected. In February 2004, the company received yet another notice listing 12 new technical errors. Let me emphasize, this company was reporting zero environmental lead release. In addition to burdening small manufacturers, this appears to me to be inefficient use of EPA's time also.

It is encouraging, however, that EPA is now reviewing options, through its Stakeholder Dialogue, to simplify TRI reporting. Two elements under review are critical to reducing the reporting burden. A simplified Form NS for insignificant lead reporters is needed for companies that have shown on-site lead release of ten or fewer pounds. In addition, Form A, range reporting and de minimis allowances should be reinstated for lead reporters. Useful public information would not be lost, small business burden would be eased. It seems like a very good thing to do.

This week, SGCD like many of the others is submitting comments to OIRA in response to their request for information on specific regulatory burdens. OIRA in our opinion is ideally positioned to review these regulations given their vantage point as an outside observer. An agency that is implementing a regulation, and the businesses or others who must comply, do not have this perspective.

We believe this review process should be ongoing at OIRA so that the Administration can follow through on efforts to achieve burden reduction. In addition, I urge Congress to address staffing short-

ages at OIRA. Lack of adequate staff is obviously a major obstacle to enabling the agency to fulfill its burden reduction mission.

I appreciate the opportunity to address the Committee today. And I do believe that a cooperative effort by OIRA, EPA and stakeholders can lead to completion of the TRI burden reduction process within a year. I also believe that OIRA can be of great help in addressing the other rules that others have raised.

Thank you very much.

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

Chairman MANZULLO. Well, thank you for your testimony.

Mr. Arnett, I would like to call your attention to page 2 of your testimony. Do you have it in front of you?

Mr. ARNETT. Yes, sir.

Chairman MANZULLO. It is if you go down to the second full paragraph where you state "indeed" at the bottom, "Indeed, it is our understanding, that of the 161 rules and regulations in total referred to agencies by the OMB, none of the referrals has resulted in any substantive changes." Did you want to comment on that?

Mr. ARNETT. Yes, sir. If you are wondering where I got that, I got that from the National Association of Manufacturers' analysis I think—

Chairman MANZULLO. Okay.

Mr. ARNETT [CONTINUING] In the comments that they, the draft comments that I reviewed from the NAM. That was a statement that they made and I took it from there.

I think there were a lot of referrals to the agencies but I do not think any conclusive action, nothing has concluded on any of the measures that were referred, as I understand it.

Chairman MANZULLO. I think that parrots Dr. Graham's statement that he can only do so much.

Mr. ARNETT. Exactly.

Chairman MANZULLO. But here we have an outstanding public servant that obviously has the interests of business people at heart, reviews these regulations, kicks it back to the agencies and nothing happens. What suggestions would you have there?

Mr. ARNETT. As we said in the comments here, I think opening up a line of communications. I think what happens possibly with some of these regulations—and I hope I have not given the impression in these comments that we are not appreciative of the efforts that OIRA and OMB in general made the last three years in gathering these and submitting to the agencies. We are very appreciative of that. And that is why we participated in 2002 and are doing so again this time because we think the system represents the potential for really shining a light on some ridiculous regulations.

Once the regulations gets reviewed by OIRA and gets sent to the agencies this seems to be where it breaks down. And I think the problem is the communications. I would love to see a communications link from the agency to the entity that nominated the regulation so that perhaps it isn't totally clear from a one or two page description of the problem and a recommended solution exactly what the nominating entity is proposing or is suggesting that it is a problem and a solution. And if we could get some line of communications with the agencies—and this could be breakdown on our

end as well. Perhaps we need to step up to the plate better and be the aggressor here in contacting the agency, I don't know. As this process unfolds this year we plan to be more aggressive.

But I just think a communication to the agency. And then some method of holding the agency more accountable for the answer and for their analysis and the timing of their analysis. I mean maybe the agencies are still reviewing some of the ones from 2002. But it just seems like it is a pretty lengthy period of time and there should have been a response by now.

Chairman MANZULLO. And I have a question for Mr. Bopp with regard to the—I will have to be frank with you, Society of Glass and Ceramic Decorators is a new one to me. We have a lot of associations in town. But these, these are companies, Andrew, that will either get a domestically made mug or mug made in China and then put, for example, what you have on there?

Mr. BOPP. Yeah, that is correct.

Chairman MANZULLO. What is the process of putting that, the eagle on there, how do they do that?

Mr. BOPP. In this case this would be actually a decal process. It is either done through screen printing directly onto the mug using ceramic colors or a decal is printed which is then either hand applied or machine applied to the mug. And that decal is printed with ceramic colors so basically it is the same as if it were screen printed. And that is generally for things like this with tighter registration, where the colors come closer.

Interesting to say where they get the mug from, 95 to 98 percent come from China. Cost of labor, that is the way that market is going. It is very difficult to get a mug that would be made in the United States. A good deal of the decorated mugs still come from this country but that is something that is shifting pretty quickly also.

Chairman MANZULLO. I guess my question, you anticipated my question, is that I am sure China does not have the same regulations that we do with regard to the environmental protection required of the people in your industry. That is not saying that we want to lower the standards. But if you can go back, if it is a decal of a company just pressing on a decal there would be no—

Mr. BOPP. Right.

Chairman MANZULLO [CONTINUING] Emission of any type; would that be correct?

Mr. BOPP. Exactly.

Chairman MANZULLO. Okay. Now, does your association also represent the companies that make the decals?

Mr. BOPP. Yes, we do.

Chairman MANZULLO. So you do both steps?

Mr. BOPP. Right.

Chairman MANZULLO. So it would be in the companies that make the decals that would have the emissions?

Mr. BOPP. In theory. There really are no emissions that you would think of with smokestacks with fumes going up.

Chairman MANZULLO. Okay. Give me a better word?

Mr. BOPP. Yes. It would be really just excess material—

Chairman MANZULLO [CONTINUING] Okay.

Mr. BOPP.—which would be held until it is used again. I mean the colors are fairly expensive. If they are disposed of it is more in the way of rags and things like this. It is not—that is why almost half of the companies do not emit any, any excess lead to the environment, which is what makes this rule so burdensome.

I mean it is paperwork, again it is comparing, this industry is really fiercely competing with China. Obviously it is very labor intensive so quite a few of the larger plants have already gone to China. Either Chinese competition or Western European and American companies moving plants there. I mean it is the fact of the costs of doing business. And this is one more very costly step for companies that makes it that much harder to compete. And if you are a large company, that much more of a factor in deciding, well, where do we put our next plant?

Chairman MANZULLO. I looked at the price of some mugs out there, some decorated mugs. And there are some that are still made in America.

Mr. BOPP. Absolutely. There definitely are. And—

Chairman MANZULLO. But on the shelf the ones that come from China are not any cheaper.

Mr. BOPP [CONTINUING] That is true.

Chairman MANZULLO. Why is that? What is going on there?

Mr. BOPP. Interestingly, the vast majority like I said do come from China. It may say “made in China” on the bottom because the mug is made in China but it was still decorated in the U.S. So there are some variables that occur there.

As far as pricing, that could be built into our members are not the ones who then sell, they sell through distributor chains and things like this. So it would not necessarily hold that the wares sold in this country whether it is decorated here or in China would be that much of a different cost. The difference is in the cost in actually producing the mug.

And of interest, one of the major manufacturers of domestic ceramic mugs is located actually in Arizona. And they are looked at quite often by groups who buy bulk mugs, let us say House of Representatives, that want it to say “made in the United States,” or let us say a labor union that wants it to say that. And they, they pay more.

Chairman MANZULLO. What is the name of the company?

Mr. BOPP. Catalina China.

Chairman MANZULLO. Catalina China?

Mr. BOPP. Right. It is in Tucson.

Chairman MANZULLO. And they are, they are the only manufacturers of mugs in the United States?

Mr. BOPP. They are the only large, significant, yes.

Now, I do not want to confuse that with tableware companies. There are still companies like Homer Laughlin China—is a large company that does make tableware in this country. But as far as blank mugs that are then sold to the small printers, Catalina is pretty much it.

Chairman MANZULLO. There are a lot of charitable and political organizations.

Mr. BOPP. Yes.

Chairman MANZULLO. I put on a golf event, that is the political side of being a member of Congress, and we order out hats and towels and keys and everything and I insist that it be made in America. And we found quite interesting in the first order of hats that came in I said wanted these made in America. And the vendor said, well, they are not made in America.

Mr. BOPP. Right.

Chairman MANZULLO. And so they came and they were shredded. And then we got a hold of Michelle Goodwin in Phoenix.

What is the name of her company, Dan? Who makes hats and the same things that you have been having, we were trying to find out as to who is left in the industry in order to let people know who want to buy American that these companies should be patronized.

Mr. BOPP. Absolutely. There are quite a few of them. In fact, previous testimony before the Subcommittee on Reg. Reform one of the decorators who actually does a lot of the House of Representatives mugs that you will find in the gift shop is from Baltimore, Maryland. So when you are buying from her you are buying an American decorated mug.

However, when you would order something like that you should specify to her or whoever you order them from that their materials should come from the U.S. Because they, they are doing the work here but that blank mug itself very likely is coming from China, although it does not have to. Although, like I said, the vast majority of it does because it is a fairly labor intensive, fairly low tech process.

Chairman MANZULLO. Okay. Mr. Mason, you have got an industry, the plating industry that gets creamed on everything. And your industry absolutely is necessary to manufacturing. Could you give us just a couple of examples of how your industry, the chemicals that you use? How does it, show us the processing of manufacturing as to how companies like yours come into play?

Mr. MASON. Well, think about an aluminum machined housing that in my particular case is for the infrastructure of the telecommunication industry. The infrastructure is what is in the little shed or the little house underneath the cell tower that you see along the highways. And the towers themselves pick up the signals, transport them down to the little room and then the frequencies start to change and the signals go out, whether it is Motorola or AT&T or Cingular, whoever it is.

That particular little house contains filters and resonators and all these things that make all this work. And they are silver plated. And the reason they are silver plated, Mr. Chairman, is because the frequency travels very well on the silver surface because silver, even though it may tend to oxidize, it does not lose its electrical characteristics. Whereas gold, another noble metal, will lose its characteristics where silver does not as it starts to tarnish.

Chairman MANZULLO. So your company would be involved in the silver plating of that housing?

Mr. MASON. That is one particular instance.

Chairman MANZULLO. Okay.

Mr. MASON. And the chemicals that we have to use is to make this whole process work because we have a blank piece of alu-

minum that needs silver on it. But you cannot just take that blank piece of aluminum and dip it into the silver tank because nothing will happen to it.

So you go through these various processes which we call pretreatment. And in our industry pretreatment is about 95 percent of what happens. The silver plating that we ultimately use is just the last step. But in that process going to the silver plating tank you have alkaline solutions, acid solutions, cyanide solutions, just about every nasty chemical that you can imagine or think of we use them all. And we use them all with caution and with understanding and knowing that we know what we are doing there. We take, obviously, safety precautions, and environmental precautions.

I mean I am eight miles from right here so I cannot hide from EPA. In fact, I am very proactive, I have them in my facility as often as they will come so I can show them what we do. You know, the very idea of them writing regulations and not ever seeing an industry that they are writing regulations for, to me has always been silly. So we invite them to come and look.

Chairman MANZULLO. Do they come?

Mr. MASON. Yes, they do. It started about 12 years ago under a program called CSI, the Common Sense Initiative under Administrator Browner. And we started working very closely with the industry. Yes, they do come. They pay attention. And we have, I feel, a very good relationship generally with the agency.

The problem, and I think it was said very clearly here today, the problem with the agency is that you have a lot of people within that particular agency that write regulations because that is what they want to do. And even though, I mean I testified that our industry spent a million dollars for a faulty regulation. I mean that regulation probably would have put 50 percent of us out of business. It was absolutely not necessary, it was done with poor science, yet it was ready to pass.

And I would tell you, Mr. Chairman, if you would ask me what can you do? I hope we all do not have to spend a million dollars to stop a ridiculous regulation that would have meant nothing to anyone, not our industry, not the public, not the environmental people, no one. Yet that is what it took.

So back to your issue with chemicals, yes, we work with them all. We treat them with the respect they deserve. We do not put them in the ground, the air or anything. We put them nowhere that we are not allowed to do. And our industry does a pretty good job.

Chairman MANZULLO. Appreciate that.

Congresswoman Velazquez?

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

This question is really for any of you if you have followed the regulatory panel system that is run by OIRA and the Office of Advocacy, as you may know, there is a proposal before this Committee to increase the use of this process. And we may mark up the bill H.R. 2345 and vote on it in a few weeks. So if you or any of your industry have followed the panel process I would like for you to comment on these questions.

Have you found the panel process useful? Is it costly to your members in terms of resources? Do you find that agencies do or do

not do their homework in preparation for these panels? In other words, do they just rely on the panels to sort out the numbers and, therefore, do not do their homework? Has advocacy and/or OIRA been helpful to you in this process? Are there ways they can be more helpful? Do you think it is better for us and for you to spend the money up front when the regulation is promulgated in having a panel process or instead create a system that requires us to look back at a regulation after three, five or ten years when we have actual costs on which to base our review?

Mr. Arnett?

Mr. ARNETT. Yes. We have not participated. I assume you are talking about the regulatory or Flexibility Act SBREFA panel?

Ms. VELAZQUEZ. Correct.

Mr. ARNETT. And we have not had an opportunity as of yet to participate in any of those panels. I have been and participated with coalitions in a number of regulations where there had been panels. I came in toward the end. So I cannot—I am not in a very good position really to address the questions that you have raised on that.

Ms. VELAZQUEZ. Yes. Mr. Mason?

Mr. MASON. I know our industry has participated. I personally have not. I know our lobbyists have and other members of our industry.

If you would like we can get comments to you after the meeting and would be happy to.

Ms. VELAZQUEZ. That would be helpful.

Mr. Mason, I was interested in your industry's job participation in the pilot process on the Regulatory Flexibility Act. In your case it was for the OSHA PEL rule?

Mr. MASON. Yes, ma'am.

Ms. VELAZQUEZ. It surprises me that OSHA's estimate of the cost for complying was off by a multiple of 60. It sounds as though that was not even helpful and it cost you a lot of money to hire analysts to help make your case. Is that common in your members dealing with federal agencies?

Mr. MASON. Well, this was on top of just going through MP&M, the metal, products and machinery rule where we spent a million dollars. I would say it is getting more common because we are challenging today rules and regulations that will affect us going forward as opposed to maybe not having done that in years past, so.

Ms. VELAZQUEZ. Can you recommend any action that will help bring the estimates back to reality without causing all these costs for your businesses?

Mr. MASON. The only thing that I would say is communications. If we have an opportunity to address a proposed rule before it is proposed, and we have gotten a lot of that help with EPA, if we have that opportunity I think that would help a lot.

Ms. VELAZQUEZ. Okay.

Mr. MASON. But it takes a lot of work, a lot of time. And most of us who do this still have a business to run and a job to do at that business, so it is very difficult to be able to do that.

Ms. VELAZQUEZ. Mr. Arnett, let us talk about OIRA. And I heard you when you said that of the recommendations that you submitted after two years no action has been taken. What would you rec-

commend in terms of giving some teeth to this process to make it more than just window dressing?

Mr. ARNETT. Yeah, the breakdown appears to be at the point after the referral has been made to the agency. I think OIRA and in consultation with the Small Business Administration Office of Advocacy does a very thorough analysis of the submissions. The only thing I would add there would be is participation by the nominating entity should come into play there in some way.

The same when the submissions were made we did not hear anything for about a year and then we got the 2003 report and then we learned that we had pretty good success in getting referrals. Because not all submissions to OIRA were referred. Out of the 316 I think only 162.

So at that point that is the only thing I would suggest at that point.

Now, in terms of I am not sure how you give OIRA more authority to force the agencies to take action and to take action in a particular length of time. I suppose it may involve some statutory changes. Congress may have to address that issue. In the Regulatory Right to Know Act I suppose it could be strengthened at that point because that I think is the vehicle that authorized OIRA to make these submissions to the agency. And I have not reviewed that act. A thorough review of that act might reveal some mechanism in there to give OIRA more authority.

But I think it is clear that OIRA makes the submission and then I do not think they even feel that they have any recourse at that point to force the agency to take some kind of action. And they may not in all cases. It would require review and probably more manpower than OIRA presently has because I think they would have to determine in their own minds whether maybe the agency was realistic in its response not to take action.

So it requires some judgment on their part.

Ms. VELAZQUEZ. I, you know, it just really when you come to OMB and OIRA being under OMB, heads of agencies are so fearful of OMB. So maybe the budget process might be an avenue.

Mr. Bopp, you mentioned in you statement Congress needs to address staff shortages at OIRA. How do you know that?

Mr. BOPP. We are aware that OIRA right now is below what it has been, its assigned staff level.

Ms. VELAZQUEZ. How are you aware? Who told you?

Mr. BOPP. I believe I heard that through a meeting at National Association of Manufacturers perhaps.

Ms. VELAZQUEZ. So OIRA is telling that to the association?

Mr. BOPP. I am not sure where they heard that. But someone at NAM brought that up.

Ms. VELAZQUEZ. There has to be a staffing problem when two years later no action has been taken. And the problem that we have is that when we bring agencies to come before us and testify regarding the adequacy of the budget submitted by the president they say that everything is fine and that they can operate with that budget.

So it is surprising for me to read or to listen to your testimony talking about the lack of staffing because when they come before us and we ask them, Do you have the resources? they say, Yes, we

do. So if they are telling me that they do not need more money I am not going to fight with them to give them more money.

Mr. BOPP. That is true. I mean they would have to ask.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman MANZULLO. This Small Business Committee has oversight jurisdiction over any regulation or law impacting small businesses. So we are going to send a letter to all these agencies asking them to respond to us within 14 days as to what, if anything, they have done with regard to the recommendations that were made.

John, if you want to work with Barry Pineles on that to help us bring together or have any other suggestions. And then we are going to send them over there and say we want you to answer. And then we will have a hearing and just bring them in, line them all up. What have you done? Seems to be the only thing that works around this place.

I have a final question. Did any of you get involved in the ergonomics debate in 1990 when OSHA greatly underestimated the cost of that? Or was it—What did I say?

Mr. ARNETT. I worked on that issue with the National Coalition on Ergonomics. And were you talking about the—there was a SBREFA panel I think on it.

Chairman MANZULLO. Yes.

Mr. ARNETT. But I was not involved in that.

Chairman MANZULLO. Were any of you involved in that SBREFA panel?

Mr. BOPP. No.

Chairman MANZULLO. Okay. We had the head of OSHA at the time come out to Rockford, Illinois. I cannot think of his name. He had testified here. John Crenshaw or something like that, whatever his name was. And he came to Rockford. In fact, one of our manufacturers invited him and said why don't you take a look at what we are doing. I told the manufacturer, I said you invite OSHA to come out. He said yes.

So he came out and Cedric Blazer at Zenith Cutter and Tool showed him what he was doing. And then the administrator by coincidence was testifying before our Committee the next week. And he said it was very interesting because, he said, we just saw the most amazing thing at a constituent's place.

I said, What happened? Well, he said, they were working on some big piece on one bench and he said instead of picking it up and carrying it over to another bench for another machine application he said they put it on a cart and they shoved it off one table, put it on the cart, rolled it to another table and then did their sequential machine process there.

And I said, Well, that is the reason we had you out there was to show that he does not need your ergonomics regulation, he in fact was doing everything possible himself to come up with these different plans. I said, how could you ever come up with some type of a plan to regulate that?

I said, let me give you a hypothetical. I said, my brother has a restaurant and, I said, under this plan if somebody washing dishes develops carpal tunnel, I said, then Frank would have to file a report with the Department of Labor. And I said, how else could you wash dishes?

He said, well, he said,—No, wait a minute, he did not give the answer. He refused to answer it. I only know of one way to wash dishes.

And Congressman Bill Pascrell who was on the Committee at that time and a great friend of ours looked at me and he said, Don, he says, instead of washing dishes this way, he said, wash them this way. They can go in the opposite direction. And we had made our point.

Well, listen, we appreciate your testimony. Would have been helpful with regard to today's hearing from this panel is the fact that we will be sending a follow-up letter with a drop dead date on it as to why these agencies have not complied with these regulations or with the recommendations from OIRA from two years ago. I know that that will make them move faster on the new set of regulations that come about. That is the purpose of this hearing.

Again we want to thank you for coming and the hearing is adjourned.

[Whereupon, at 4:15 p.m., the Committee was adjourned.]

DONALD A. MANZULLO, ILLINOIS  
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

**Congress of the United States**  
**House of Representatives**  
107th Congress  
**Committee on Small Business**  
2501 Rayburn House Office Building  
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Statement of Donald A. Manzullo  
Chairman  
Committee on Small Business  
United States House of Representatives  
Washington, DC  
May 19, 2004

Good afternoon and I want to especially welcome, Dr. John Graham, the Administrator of the Office of Information and Regulatory Affairs or OIRA for being here to discuss the review of manufacturing regulations. The initiative addresses an often-lamented but rarely examined issue – the regulatory burdens facing America’s manufacturers, and, in particular, its small manufacturers.

Recent economic indicators demonstrate that the President’s economic policies are having a positive impact on manufacturing. Production is up and firms have even begun to hire new workers. But more must be done to ensure that the seed of recovery in America’s small manufacturers takes firm hold and grows long, inextinguishable roots. To do that, America’s manufacturers must maintain their edge in productivity and competitiveness against firms throughout the world.

Yet, that remains markedly difficult when the regulatory regime is far more complex and daunting than those in many other parts of the world. The approximately 22 linear feet of the Code of Federal Regulations is just the starting point for regulatory compliance. Agencies then issue hundreds of thousands of pages of supposedly “non-

mandatory” guidance documents. Further complicating the situation is the continued updating and issuance of new regulations and guidance. And while not all regulations and guidance documents apply to all manufacturers or in all situations, deciphering this hoard of information is more than a full-time job. For small businesses, this is an arduous task where reaching the mountaintop of compliance is met with an avalanche that puts these small businesses back at the base of the mountain requiring them to start the process again.

No person is suggesting a return to a Dickensian nightmare of unending labor in dark factories amid soot-induced nights at noontime and fetid pools of water surrounding unceasing dilapidated tenements. The question is not whether some regulation is necessary to maintain the standard of living and life that we enjoy in this country. Rather the question is whether the marginal gains of regulation come at too high a price. To any one who has followed the activities of this Committee, it comes as no surprise that the high price may be the loss of America’s small business industrial base. Without a healthy small business industrial base, this country will not be able to provide the high quality jobs that allow people to buy homes, cars, eat in restaurants, travel, and purchase consumer goods that are part and parcel of our standard of living. More importantly, without the underpinnings of a sound manufacturing economy, it is highly unlikely that America will have the resources to maintain the health of its people and environment that it currently enjoys.

America’s small manufacturers should not have to fight their own government along with foreign competitors and foreign governments. America’s small manufacturers

can succeed if they only have to cope with the vicissitudes of the market and not the predilections of federal regulatory agencies.

When OSHA adopted the ergonomics rule, it did so without adequately addressing the cost on small business or whether the rule would have actually prevented workplace injuries. Congress, working with President Bush, ensured that small businesses would not have to absorb the cost of that regulation. Instead small businesses were able to invest the billions that compliance would have cost in capital, hiring workers, and making themselves more competitive in the global marketplace.

I adamantly reject the notion that a sound small business industrial base cannot coexist with a safe workplace and healthy environment. Today's hearing is about OIRA's efforts to identify those regulations that provide little benefit to factory workers, their small business employers, or the environment yet impose obstacles in America's efforts to compete in the world marketplace. I also would expect that the process, subsequent agency review, and revision be completed with all deliberate speed. I know that under the excellent leadership of Dr. Graham, OIRA will do its best. This Chairman expects all federal agencies that have regulations identified by Dr. Graham to their best or they will be answering to this Committee.

Dr. Graham is to be applauded for undertaking this initiative. My concern is that many years may go by before such an effort is undertaken again. If the process proves fruitful, I believe that the periodic review of regulations on small manufacturers be made permanent, either through amending the periodic review requirements of the Regulatory Flexibility Act or in separate legislation. I would be interested in hearing the opinion of all witnesses on that subject.

STATEMENT  
of the  
Honorable Nydia M. Velázquez, Ranking Democratic Member  
House Committee on Small Business  
Hearing on “Red Tape Reduction: Improving the Competitiveness of  
America’s Small Manufacturers”  
May 19, 2004

Thank you, Mr. Chairman.

Small businesses, our main job creator, face a significant number of challenges today – many more than those of their corporate counterparts. And one of the biggest barriers they have to overcome is federal regulations – these are placing a heavy burden on our nation’s small enterprises, particularly those in the manufacturing sector.

A recent study reported that for firms employing fewer than 20 employees, the annual regulatory burden is nearly \$6,975 per employee – almost 60 percent higher than that of firms with more than 500 employees. This is not right – and something needs to be done to change it.

Although the Bush administration has acknowledged this unfairness, and promised to help, nothing has been done. While Republicans claim that reducing the regulatory burden is a priority, the Bush administration holds the record for the largest increase in federal paperwork in a single year.

This committee is very aware of these regulatory burdens. We have held several hearings, and I was fortunate to be able to sit in on Congressman Sherock’s subcommittee hearings on this very issue. In those hearings we learned that small businesses do not have the proper points of contacts these agencies. And, in addition, a number of federal agencies are not complying with current laws, which intend to reduce the regulatory burden that often times plague small firms.

Through the convergence of the failure to comply with current law and the sudden explosion of paperwork, the Bush administration has managed to make the situation worse for small firms. This has created a perfect storm for our nation's small businesses, leaving them submerged in paperwork, and unable to get any assistance from the federal government.

Today we will look at the effect the paperwork burden is having on our economy, particularly within the manufacturing sector. This sector cannot afford to be overwhelmed and burdened by paperwork and regulations. Employment within the manufacturing sector remains at a 53-year low, with 2.7 million manufacturing jobs lost over the past three years.

It is unclear at this point just how much of an impact these increasing paperwork requirements are having on our nation's small manufacturers. But clearly, given the tenuous state of this sector, even minor impacts can resonate throughout the whole industry.

Under the direction of President Bush, Dr. John Graham has undertaken an effort to identify those regulations that create the most barriers for manufacturers, and a process for evaluating and developing less burdensome rules. To explore this issue more, we will be hearing from Dr. Graham, the administrator for the Office of Information and Regulatory Affairs (OIRA).

This office is in charge of reviewing regulations, and then providing relevant feedback on how these regulations will comply with current law.

OIRA's primary responsibility is to reduce the paperwork burden on small businesses that has resulted from the federal government. Through this examination and discussion, it is my hope that we can find a balanced solution to reduce the regulatory burden on our country's small manufacturers.

There has been an overwhelming spiral of paperwork that has been thrown onto our small enterprises, and I hope we will specifically improve those regulations which impact small businesses.

There is no reason that these vital businesses should be carrying the disproportionate weight of these regulatory burdens – wasting valuable time and money on paperwork requirements. The strength and recovery of our economy depends on the vitality of our nation's small businesses and small manufacturers, and we must work to ensure that they are not drowning in these regulations.

I look forward to hearing the testimony of the witnesses today.

**Testimony of Representative Todd Tiahrt  
Before the House Small Business Committee  
May 19, 2004**

Mr. Chairman, Ranking Member Velazquez, and Members of the Committee, I appreciate the opportunity to appear before you today to discuss the burdensome impact of excessive regulation on small businesses, particularly by the Occupational Safety and Health Administration (OSHA).

OSHA was created in 1971 to ensure a safe and healthy workplace for workers throughout our nation. And over these past thirty-three years, America's workplaces have become safer and more secure. However, during this time, OSHA has also developed an affliction which many federal agencies share. Yes, those same federal agencies which -- while created to do good-- have instead become an unwelcome visitor bearing gifts such as more regulation and misguided oversight.

The affliction to which I am referring is an appetite for too much control of the day to day lives of American workers and their employers. This is particularly true in the residential construction industry where OSHA seemed to unfairly target small home builders in Sedgwick County, Kansas.

In June of last year, I was contacted by a group of homebuilders in Wichita who were frightened by the prospect of having to stop working in order to avoid fines from OSHA. These constituents told me that OSHA was planning to fine builders for plastic coffee cups on the ground and workers' failure to wear earplugs while operating a wet-vac. While seemingly minor issues to most of us, these fines, which some in the community claimed could be as high as \$50,000, would effectively put a small businesses such as those in the residential construction industry "out of business."

While OSHA claimed that these reports were exaggerated, there is no way that I can exaggerate the impact that OSHA's hostility and excessive regulation can have on an already fragile Wichita economy.

As the Air Capital of the World, nowhere else will you find so many top-name general aviation aircraft manufacturers located within such close proximity. And in addition to general aviation, we also manufacture major structural components for large commercial airliners. It has been said that

what Detroit is (or was) to the automobile, and what Silicon Valley is to the computer-chip, Wichita, Kansas is to the airplane.

Wichita proudly claims as corporate citizens The Boeing Company, Cessna, Raytheon and Bombardier Aerospace's Learjet division. As a result, Wichita supplies components of two-thirds of the world's commercial airliners and manufactures 60% of the world's general aviation aircraft.

As you are aware, the aviation industry was the first to feel the effects of the economic downturn following the terrorist attacks of September 11. And just as in all economic slowdowns, it will be the last to recover. That means 12,000 laid-off aircraft manufacturing workers in our community.

The last thing Wichita needs is a federal agency running around harassing small businesses and operating as though it would rather push paper and impose fines than work with employers to create a safe and healthy work environment. The construction industry is strong, but not strong enough to withstand a federal agency bent on creating a harsh business climate.

In the case of these small construction companies, OSHA chose surprise visits, ill-conceived compliance guidelines, and an adversarial demeanor to achieve everyone's goal of a safer, more secure workplace. As a result, many small contractors in our area were forced to stop working in order to avoid unfair fines which could have been as much as \$7,000 per infraction, no matter how insignificant. Under this approach, OSHA was doing more to hurt employees than to help them by threatening the ability of the men and women of the residential construction industry to make a living.

Mr. Chairman, OSHA should not be hazardous to the health of businesses in our nation. The men and women who operate these small businesses -- which are the backbone of our economy -- have every right to expect OSHA to be a partner in achieving a safer work place, not to be an adversary.

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

May 19, 2004.

Mr. Chairman, and Members of this Committee, thank you for inviting me to this hearing to discuss our initiative on regulatory reform. I am John D. Graham, Ph.D., Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. Prior to joining the Bush Administration, I served as a faculty member at the Harvard School of Public Health, where I founded and directed the Harvard Center for Risk Analysis.

First, I would like to briefly describe to the Committee the origins of our manufacturing reform initiative. Streamlining regulation is a key plank in the President's Six-Point Plan for the Economy. The last twenty years have witnessed an explosion of new federal rules and paperwork requirements that burden consumers, businesses, taxpayers and State and local governments. Many of these regulations undoubtedly are essential to protect consumers, workers and the environment; however, their cumulative burden is onerous, especially for small businesses and others trying to create new jobs. Recent studies show that regulations have significantly raised the cost of doing business in the United States, especially for manufacturers.

The Administration is moving on several fronts to facilitate the streamlining of regulation. First, we have insisted that new federal regulations be supported by good science and economics to ensure that they are necessary and cost effective, and have worked closely with the Congress to limit the number of new laws that would spawn unnecessary regulatory burdens. We are happy to report significant success in this regard: even by conservative estimates, this Administration has slowed the growth of burdensome new rules by at least 75% when compared to the previous Administration, while still moving forward with crucial safeguards for homeland security, human health, and environmental protection.

We are also working to streamline the sea of existing federal regulations, which is a humbling and difficult task. As with the federal budget, actually shrinking the absolute burden of imposed regulatory cost is much more difficult than slowing its growth. Our primary approach to date has been a series of solicitations for reform nominations. As a result of our first two reform solicitations in 2001 and 2002, the Administration is working on reforms to over 100 rules, guidance documents, and paperwork requirements.

In OMB's 2004 Draft Report on the Congress on the Costs and Benefits of Federal Regulation on February 13, 2004, we included an expanded review of the impacts of regulations on small business, and an expanded review of the impact of regulation on the manufacturing sector.

In short, our Report confirms once again the relatively large burden that regulation imposes on small businesses, and demonstrates the need for an effective voice for small business during the regulatory review process. We also found that the cumulative regulatory burdens on the manufacturing sector are larger than the costs imposed on other sectors of the economy -- and disproportionately large for small and medium-sized manufacturers. One study found that manufacturing firms face a regulatory burden approximately 5 times greater than the average firm, and even when adjusted by the number of employees, manufacturing firms face a regulatory burden per employee approximately 1.7 times greater than the average firm. Environmental regulations impose the largest burden; followed by economic regulations, which include direct controls on the structure of certain markets; tax compliance; and workplace rules; which include categories such as employee benefits, occupational safety and health, and labor standards.

In addition to our work on this issue, the President's Council of Economic Advisors recently reported that, while manufacturing is beginning to share in the economic recovery, the rebound in manufacturing employment has not been as rapid as in other sectors. A recent Commerce Department report included a broad-based review of manufacturing policy and also recommended that federal regulations be re-examined for reform.

Because of these findings, we decided to launch this Administration's 3<sup>rd</sup> solicitation of reform nominations, and for this reform initiative we decided to solicit reforms relevant to the manufacturing sector. We encouraged commenters to suggest specific reforms to regulations, guidance documents or paperwork requirements that would improve manufacturing regulation by reducing unnecessary costs, increasing effectiveness, enhancing competitiveness, reducing uncertainty and increasing flexibility. We are particularly interested in reforms that address burdens on small and medium-sized small manufacturers, where burdens tend to be relatively large. In addition, because studies have found that tax compliance was particularly burdensome for small businesses, we solicited nominations on ways to simplify IRS paperwork requirements.

In the report, we requested that commenters concentrate on presenting us, to the extent possible, a quantitative or qualitative benefit-cost case that can be made for the reform. We must approach regulatory reform with care because many rules governing this sector may produce substantial benefits for workers, consumers and the environment. Even where the benefits of rules are substantial, it makes sense to search for more cost-effective ways of achieving those benefits; for example, replacing outdated command and control regulations with market-based policy instruments. Whenever the costs of rules are substantial, the search for cost-effective reforms is critical.

We also requested that commenters focus on reforms that the agency or multiple agencies have statutory authority to make. Even nominations that agencies have the authority to pursue often require notice and comment rulemaking, thus it is likely to require a bit of time to enact a substantial number of reforms.

Reform nominations are due at OMB by May 20, 2004, and we will release those nominations as soon as possible. In consultation with the relevant departments and agencies, we will then identify a group of promising reform nominations. Our 2004 Final Report to Congress on the Costs and Benefits of Federal Regulation will report in detail on the progress on this initiative.

In closing, let me assure you that this Administration understands the needs for regulatory reform of the manufacturing sector. The progress we have made so far is a direct result of the President's leadership. Reining-in regulatory costs is a critical part of the President's six-point plan to stimulate the economy, create jobs and foster economic prosperity for all Americans. We also acknowledge that we have a considerable way to go.

Thank you very much for the opportunity to appear today. I am willing to answer any questions you may have.

U.S. House of Representatives  
Before the Committee on Small Business  
Hearing on Red Tape Reduction: Improving the  
Competitiveness of America's Small Manufacturers  
(May 19, 2004)

Good afternoon. I am John Arnett, Government Affairs Counsel for the Copper and Brass Fabricators Council ("Council"). The Council's twenty member companies are listed in Attachment 1. Thank you for inviting us to appear before the Committee today. The Council appreciates the Committee's review of the Office of Information and Regulatory Affairs' (OIRA) initiative on unnecessary regulations burdening small manufacturers.

The Council's member companies collectively account for between 80 percent and 85 percent of the total U.S. production of all copper and copper-alloy products, including plate, sheet, strip, foil, rod, bar, pipe, and tube. Examples of the wide range of important uses to which our semi-fabricated products are put to use include the production of electrical connectors for automobiles and computers, ammunition components, marine hardware, forgings and machined parts of all kinds, tubes for piping systems, bushings, bearings, gears, building hardware, copper plumbing tube and fittings, plumbing, heating, air-conditioning and refrigeration components, aircraft parts, valve bodies and components, rivets and bolts, heat exchanger and power utility condenser tubing, communications systems, welding rod, optical goods, keys and locks, and lead frames for semiconductor devices. Many Council member companies meet the definition of small businesses (750 employees or less) under the Small Business Administration standards, and all of our companies are classified under the 1997 North American Industrial Classification System code 331421, "Copper rolling, drawing, and extruding."

The costs of regulatory compliance on manufacturers in the U.S. are, by any reasonable estimate, an enormous burden. Specifically, in a 2003 study of the costs of regulatory compliance on manufacturing prepared for the Manufacturing Institute of the National Association of Manufacturers (NAM), The Manufacturing Alliance (Alliance) estimated that the total burden of environmental, economic, workplace, and tax compliance on the economy is in the order of \$850 billion with \$160 billion falling on manufacturing alone.<sup>1</sup> The Alliance estimated that this burden was the equivalent of a 12 percent excise tax on manufacturing production, and that it had increased in real terms by 15% over the previous five years. At the same time, a qualitative review of international regulatory reform efforts revealed that most of the United States' trading partners had undertaken aggressive regulatory reform efforts focusing partly on general regulatory streamlining. The net result is, as the Manufacturing Alliance artfully stated, "[c]ompliance costs for regulations can be regarded as the 'silent killer' of manufacturing competitiveness." With our trading partners aggressively pursuing regulatory reforms,

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<sup>1</sup> The National Association of Manufacturers and the Manufacturers Alliance, "How Structural costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness," by Jeremy A. Leonard, December, 2003.

the anti-competitive effects of regulations on manufacturing could only worsen without an equally aggressive look at our own regulatory burden.

Against this backdrop, the Council supported and welcomed the passage into law of the Regulatory Right-to-Know Act in 2001 (RRKA). In March of 2002, the Office of Management and Budget, responding to RRKA requirements, published in the Federal Register its first "Draft Report to Congress on the Costs and Benefits of Federal Regulations." As required, the OMB called for public nominations of "...regulatory reforms to specific regulations that, if adopted, would increase overall net benefits to the public..." The Council enthusiastically responded to this call for nominations by submitting a list of seven regulations that it deemed to be costly with little or no benefit. All seven regulations were either environmental or workplace safety measures. The Council provided specific recommendations for changes that would reduce the burden or increase the benefit of the regulations with no loss of environmental protection or worker safety.

In its 2003 report to Congress, the OMB reviewed its procedure for handling the nominations that had been received in response to its 2002 request. From 1700 nominating entities, OMB received a total of 316 distinct reform nominations. The OMB vetted the nominations and arrived at a list of 161 rules or guidance documents to submit to the agencies for review. The Council was heartened that five of its seven nominations were apparently referred to agencies (EPA and OSHA) for review. The agencies were required to respond to the nominations in one of four ways: 1. Regulations already under review or already revised. 2. New regulations that the agency will work on. 3. New regulations on which the agency is undecided. 4. New regulations that the agency deems low priority or unnecessary. Of the five Council nominations referred to agencies by the OMB, one was deemed by the agency (EPA) to be worthy of action, and two were cast into the undecided category requiring further study. The remaining two were "reforms that the agency decided not to pursue." The Council appreciates the time and consideration that OMB and the agencies devoted to its nominations. Further, the Council was encouraged that three of the nominations were targeted for reform or additional study. However, the Council is disappointed that two years after the process began, none of the regulations, even those deemed worthy of action, have been changed in any way. Indeed, it is our understanding, that of the 161 rules and regulations in total referred to agencies by the OMB, none of the referrals has resulted in any substantive changes. Clearly, the goal of eliminating wasteful regulations has not yet been reached.

What, then, can explain the apparent encouraging procedure but lack of substantive results. It is the Council's view that the following problems with the procedures may have short-circuited the completion of reforms:

- The method used by OMB and OIRA during the initial screening process is unknown, and there is no opportunity for input and clarification during this process.

- Once referred to agencies, there is no opportunity for the nominating entity to answer questions that may arise, or to clarify misunderstandings about the proposed reforms.
- There is no explanation for the agency decisions, especially when the decision is NOT to pursue.
- The agencies appear to be able to make any decision regarding referred regulations without justifying that decision, or even explaining how they arrived at it.

Greater transparency in the screening process, some explanations by the agencies in support of their decisions, and a requirement that agencies justify a decision not to consider a proposed reform might resolve the above problems to some extent. Further, communications between the nominating entity and the agency and OIRA after the regulation is referred to the agency might improve the agency's understanding of the problem cited, and suggested solutions.

In spite of the above reservations, the Council commends OMB, OIRA, and the agencies for their execution of the initial RRKA reform process. We believe the process has the potential for illuminating regulatory provisions that create burdens with little or no gains, especially those that are inefficient in their requirements, or those that are no longer necessary. We therefore welcomed the February 20, 2004, Federal Register notice that OMB would once again seek public nominations of regulations in need of reform to fulfill the requirements of the RRKA. The Council especially commends the OMB for seeking nominations of regulations affecting manufacturing in particular, and we will submit a list of six regulations for consideration. Our comments to be filed with the OMB are contained in Attachment 2.

These nominations include six regulations from 2002 that are being re-submitted, and two new regulations. Since no final action has been taken on the earlier submittals, we have included six of these in our current submittal. If adopted, these reforms would, for example:

- Eliminate unnecessary testing for pollutants in water discharges when it can be demonstrated that there is zero chance that the pollutants are in the water;
- Remove from the definition of "Volatile Organic Compound" (VOC) those compounds that are not volatile.
- Focus the attention of the Spill Prevention, Control, and Countermeasure (SPCC) rule on larger facilities and away from the small risk represented by small businesses storing and handling small quantities of oil;
- Focus stormwater regulations on effective but inexpensive best practices, while eliminating costly construction projects for capturing and treating rain.
- Eliminate the "double" waste treating of water discharges due to the lack of removal credits to Publicly Owned Treatment Works.

- Permit the concentration of hazardous waste through evaporative dryers, thereby reducing shipping volume to waste treatment facilities and resulting transportation and energy savings.
- Permit the use of ship stairs and spiral stairs instead of rung ladders in certain manufacturing situations for improved safety.

In conclusion, we appreciate the Committee's attention to inefficient and unnecessary regulations that are the "silent killers" of manufacturing competitiveness. The RRKA regulatory reform nomination process initiated by OMB and OIRA during 2002 was an excellent beginning for bringing some visibility to those regulations that cost much but benefit little. Some improvements in the procedures for evaluating the nominations, and for agency accountability in deciding the nomination's fate, will provide further improvements.

On behalf of the member companies of the Council, thank you for this opportunity to appear before you today.

May 18, 2004

Ms. Lorraine Hunt  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
NEOB, Room 10202  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

**RE: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulation:  
69 Fed. Reg. 7987, February 20, 2004**

Dear Ms. Hunt:

On behalf of the Copper and Brass Fabricators Council, Inc. ("Council"), set forth below are comments in response to the Office of Management and Budget ("OMB") Notice and Request for Comments, "2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations," published in the February 20, 2004 Federal Register at 69 Fed. Reg. 7987. (Hereafter "Draft Report"). The Council welcomes the opportunity to nominate specific existing regulations for regulatory reform with the goal of increasing the overall net benefits to the public. We also welcome the opportunity to comment on problematic agency guidance documents.

The Copper and Brass Fabricators Council is a trade association that represents the principal copper and brass mills in the United States. The 20 member companies (see attached appendix A for a list of member companies) together account for the fabrication of more than 80% of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries. Many Council member companies qualify as small businesses (750 employees or less) under the definitions of the Small Business Administration, classified within the 1997 North American Industrial Classification System code 331421, "Copper rolling, drawing, and extruding."

The nominations listed below are the result of a survey of some of the technical professionals within the industry who deal with regulations at the operating level on a daily basis.

**I. Lead/TRI Rule: Restoration of *de minimis* Exemption:**

**Agency:** U.S. Environmental Protection Agency.

**Citation:** 40 C.F.R. 372.

**Authority:** Emergency Planning and Community Right-To-Know Act (EPCRA); Toxic Chemical Release Forms, 42 U.S.C. 11023.

**Description of Problem:** On April 17, 2001, the U.S. Environmental Protection Agency finalized a rule that revised EPCRA by lowering the Toxic Release Inventory (TRI) reporting threshold for lead to 100 pounds. Previously the threshold was 25,000 pounds manufactured or processed, or 10,000 pounds otherwise used. Those who exceed the annual threshold were required to report usage and releases of lead beginning with the July 1, 2002 annual TRI report. In addition to lowering the reporting threshold, the new rule eliminated the *de minimis* exemption for reporting facilities. Previously, under the *de minimis* exemption, a reporting facility could disregard very small amounts of lead (less than 1%) that may be contained in mixtures or other trade name products used by the facility. With the loss of the exemption, the facilities now must spend resources tracking minute quantities of lead that may be contained in mixtures or other trade name products imported into the facility.

**Proposed Solution:** Restore the *de minimis* exemption for lead TRI reporting.

**Estimate of Economic Impacts:** Estimated ten to twenty hours preparation time per facility for each of thousands of facilities in exchange for very little benefit. Including the small quantities of lead contained in mixtures and trade name products in a facility's threshold manufacture, process or otherwise use determinations is unlikely to sweep very many additional facilities into the TRI reporting scheme. Furthermore, for those already reporting, the small quantities will not likely increase the reported usage and releases to a significant or useful degree.

**II. Stormwater Regulations:**

**Agency:** U.S. Environmental Protection Agency

**Citation:** 40 C.F.R.122.26

**Authority:** Clean Water Act, 33 U.S.C. 1342(p)

**Description of Problem:** The EPA is required under the Clean Water Act to issue permits to point sources controlling the discharge of pollutants to the nations waters. This includes discharges of storm water runoff from industrial activities. In 1990, EPA issued Phase I regulations requiring certain categories of storm water dischargers associated with industrial activity to obtain authorization to discharge storm water under a storm water permit. As part of the permit process, industrial dischargers are required to develop and submit Storm Water Pollution Prevention Plans using Best Management Practices. When the regulations were promulgated, the controls necessary to meet permit requirements were expected to be low-cost and low-technology, including such items as good housekeeping, preventative maintenance, spill prevention and response, employee

training and proper material handling. However, as the program has evolved, the present requirements for satisfactory SWPPP's now frequently include major construction expenses for capturing and treating stormwater before discharging to the waters of the United States. It is suspected that these major expenses may be incurred for minimal reductions in pollutant discharges in most cases.

**Proposed Solution:** Minimize the costs for obtaining stormwater permits by focusing on the low-cost, low-technology best management practices requirements as originally intended.

**Estimate of Economic Impact:** Indeterminate.

III. **Spill Prevention Plans: Threshold Quantity too Low:**

**Agency:** U.S. Environmental Protection Agency.

**Citation:** 40 C.F.R. 112

**Authority:** Clean Water Act; Oil Pollution Act of 1990, 33 U.S.C. 2701-2761.

**Description of Problem:** In 1973, the U.S. Environmental Protection Agency (EPA) issued the Oil Pollution Prevention Regulation based on the requirements contained in the Clean Water Act of 1972. The regulation was codified at 40 C.F.R. 112, and was revised in 1991 and 1994 based on the requirements of the Oil Pollution Act of 1990. The regulation requires industrial facilities to develop and implement spill prevention, control, and countermeasures (SPCC) plans. The SPCC requirement applies to all facilities that have aboveground storage capacity of more than 660 gallons in a single tank, or an aggregate aboveground storage capacity of more than 1,320 gallons, levels that are too low and burdensome to small businesses in particular. The current interpretation of 'oil' has expanded over the years and in addition to new and used petroleum oils, greases, fuels, and some solvents, now even includes waterbase oils for machining fluids which may be 95% water, and vegetable oils. Compounding the problem is an interpretation of 'aggregate' to include drums that may be spread over several acres at a site. Furthermore, a proximity to waterways trigger is too broadly defined in the regulation; in many cases a surface stream a mile away from a facility triggers the SPCC requirement. As a result, the low threshold sweeps many small facilities into the program that represent little risk to the waterways of the United States.

**Proposed Solution:** A higher threshold would relieve the burden on small businesses without altering significantly the protection of the environment. A more precisely defined description of "reaching a waterway" would also provide relief at little risk to the waterways. Clarification of 'aggregate' to mean drums that are stored at a single location would also provide significant relief. This definition is followed in the Clean Air Act, section 112(r), where a process threshold determination for Risk Management Programs is based on volume of inter-connected storage vessels to include "any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process."

**Estimate of Economic Impact:** Not estimated.

**IV. Definition of Volatile Organic Compound (VOC):**

**Agency:** U.S. Environmental Protection Agency.

**Citation:** 40 C.F.R. 51.100

**Authority:** Clean Air Act, 42 U.S.C. 7401 et seq.

**Description of Problem:** The definition of volatile organic compound (VOC) as found in 40 C.F.R. 51.100(s) and as applied by the U.S. EPA has no volatility element and therefore disregards whether a compound is even volatile at all. The definition defines VOCs very broadly as any carbon compound, but appropriately narrows the definition somewhat by limiting VOCs to those carbon compounds that "participate in atmospheric photochemical reactions." VOCs are of concern because they are ozone precursors. Certainly, photochemical reactivity is one measure of an organic compound's ability to be an ozone precursor, but is not the only measure. A carbon compound must also be volatile to be an ozone precursor. The EPA recognized this when they promulgated a rule on VOC Emission Standards for Consumer Products in 1996, and included a volatility threshold (0.1 mm Hg) as part of the rule. In the consumer rulemaking process, the EPA acknowledged that the definition of VOC was extremely broad as stated in 40 C.F.R. 51.100(s) and included virtually any organic compound not specifically exempted. A volatility component in the definition was needed and was inserted. The problem is exacerbated by the EPA's treatment of the 'photochemically active' exemption. All organic compounds are assumed to be participants in atmospheric photochemical reactions. A petition with extensive test results must be submitted to the agency, and the petitions are rarely granted.

**Proposed Solution:** Include a vapor pressure threshold of 0.1 mm Hg below which a carbon compound would not be considered volatile and would not meet the definition of Volatile Organic Compound.

**Estimate of Economic Impact:** Unknown.

**V. Removal Credits for POTW's:**

**Agency:** U.S. Environmental Protection Agency.

**Citation:** 40 C.F.R. 403.7

**Authority:** Clean Water Act, 33 U.S.C. 1251-1387

**Description of Problem:** Under the provisions of the Clean Water Act, limits are placed on the amount of a pollutant that an industrial water discharger in a particular industrial category is allowed to discharge. In many cases, the effluent from the industrial discharger is sent to a publicly owned treatment work (POTW) and the effluent undergoes further treatment. As provided by statute and under procedures outlined in 40 C.F.R. 403.7, POTWs with the capability to remove pollutants may apply for authorization to grant "removal credits" to facilities which discharge to the POTW, for the purpose of avoiding the unnecessary expense of treating the effluent twice. The effect of the removal credit is to grant to the NPDES permit holder a higher limit on the subject pollutant than would otherwise be allowed, with no increase in the level of that

pollutant ultimately discharged by the POTW to the waterways. Removal credits are most critical to indirect, categorical dischargers (those facilities, usually small businesses, which discharge to a POTW) whose volumes are too small to justify the investment in treatment equipment dedicated to their operations. If POTWs do not have removal credit authority, then the small indirect discharger is prevented from trucking waste to the POTW, even though the POTW has the capacity to treat the waste in question and the industrial discharger does not. As a result, the small discharger is required to invest in dedicated treatment facilities that are not economical to operate due to small volume, and POTWs lose a potential revenue stream. The problem arises from the unreasonable procedures established in 40 C.F.R. 403.7, which make it extremely difficult to obtain removal credits, and require testing procedures that do not accurately reflect the actual pollutant removal capability of the POTW. For example, 40 C.F.R. 403.7(b) requires that the POTW calculate the removal rate based on the average of the *lowest* half of the removal measurements taken according to listed procedures. As a result, many qualified POTWs are not granted removal credit authority, many are discouraged from even applying, and industrial users of the POTW must treat the effluents prior to the POTW treating the effluent, creating expenses with no benefit.

**Proposed Solution:** The regulations governing removal credits should be revised to more accurately reflect the total removal by the POTW. The overall procedures in 403.7 for a POTW to apply for removal credit authority should be modified to facilitate the granting of the authority when justified.

**Estimate of Economic Impacts.** National cost impact is not determined. The impact is especially onerous on smaller manufacturers who legitimately should be able to rely on the capability of the POTW to remove certain pollutants. For any POTW, several small businesses being served may each be required to install and operate unnecessary on-site treatment facilities because the POTW has not been granted authority to grant removal credits for pollutants that the POTW is fully capable of removing.

**VI. Safety Standards Not Permitting the Use of Ship Stairs and Spiral Stairs:**

**Agency:** Department of Labor, Occupational Safety and Health Administration.

**Citation:** 29 C.F.R. 1910.24 – Fixed Industrial Stairs

**Authority:** OSH Act

**Description of Problem:** OSHA regulations under some circumstances require the use of fixed ladders when spiral stairways or ship stairs would be safer. Under Walking-Working Surfaces regulations, the standard for Fixed Industrial Stairs is contained in 1910.24, which defines the requirements for stairs around machinery, tanks, and other equipment, and leading to or from floors, platforms, or pits. Section 1910.24(b) requires fixed stairs to be used in certain situations, and as defined in other sections, fixed stairs can only include conventional stairs. While 1910.24(b) permits an exception for fixed ladders where they are commonly used, such as for access to tanks, towers, and overhead traveling cranes, etc., no allowance is made for the use of ship stairs or spiral stairs unless they are wrapped around a structure with at least a five foot diameter. Furthermore,

section 1924(e) prohibits any stairs with an angle of rise greater than 50 degrees. Unfortunately, it is very common to have a tight location in industry where there is insufficient space for stairs with an angle of 50 degrees or less. Traditionally, these areas would use ship stairs that have separate handles from the stair tread but steps that are less deep than a traditional 8 inch to 12-inch step. Otherwise, a spiral stair was used which allowed a deeper tread. Under the present regulation, industries are required to use rung ladders in these locations, which is less safe than spiral stairs or ship stairs.

In a previous proposed rewrite of the walking and working surfaces standard, OSHA proposed to allow ship stairs. However, this rewrite was not promulgated and the needed reform was lost.

**Proposed Solution:** Revise the Walking-Working Surfaces regulations to permit the use of ship stairs and spiral stairs.

**Estimated Economic Impact:** Savings reside in fewer injuries to workers.

## **VII. Categorical Waste Water Sampling and Testing.**

**Agency:** Environmental Protection Agency.

**Citation:** 40 C.F.R. 403-471.

**Authority:** Clean Water Act

**Description of Problem:** For categorical wastewater dischargers, either direct dischargers or those discharging to Publicly Owned Treatment Works (POTW), the referenced regulation as contained in 40 C.F.R. 403-471 requires the discharger to sample and test for certain categorical pollutants. For example, a Copper Forming discharger covered by 40 C.F.R. 468, and a copper casting discharger under 40 C.F.R. 464 must sample and test for Total Toxic Organics, chromium, copper, lead, nickel and zinc under the former regulation, and Total Toxic Organics, lead, copper, and zinc under the latter. Some facilities in these categories do not use chromium or lead, and test results over the years have never indicated the presence of lead or chromium. Even so, the facilities must test the discharges for these pollutants under EPA interpretation of the regulations. Furthermore, in the case of a discharger to a POTW, the POTW also is required to test for these non-existent pollutants.

**Proposed Solution:** Categorical dischargers should not be required to test for all pollutants in the category when it can be independently shown that no possibility exists for certain pollutants to be in the discharge. One way to do this is to relieve the discharger of the requirement to sample for a pollutant as long as the sampling by the POTW continues to show that it is not present.

**Estimated Economic Impact:** Savings in the costs of testing for various pollutants for a large number of facilities.

**VIII. Thermal Treatment of Hazardous Waste****Agency:** U.S. Environmental Protection Agency**Citation:** EPA Guidance**Authority:** RCRA

**Description of Problem:** Under current EPA Guidance, hazardous waste generators are allowed to treat their hazardous waste without permit if conducted in compliance with standards applicable to "tanks and containers." Initially, EPA allowed evaporation of water when done in this compliance fashion. Later, EPA reversed this position and prohibited "thermal treatment" of hazardous waste. EPA included evaporation of water under this "thermal treatment" prohibition, primarily because direct-fired units were being used by some for incineration and combustion. However, an overbroad interpretation of the term "thermal treatment" by the EPA now prevents reasonable methods of simple evaporation of water to reduce the volume of hazardous waste. Without this or other means available, industry has been incurring the costly method of hauling primarily water to a licensed treatment facility to remove what might be only a few parts per million of a hazardous constituent. Although the EPA's position certainly addresses the concerns over incineration, it sweeps away the evaporation option that would reduce the expense without risk to the environment or public health.

If again allowed, evaporation of water could reduce the volume of hazardous waste generated and transported by some facilities by as much as 95% and allow the remaining 5% of truly hazardous ingredients to be shipped offsite for conventional treatment. The reduce volume of shipping would not only reduce cost, but reduce risk to the environment through a reduction in the volume shipped.

Water evaporation units to reduce the volume of water-oil mixtures are allowed by EPA even though some mixtures might contain levels of hazardous ingredients that would otherwise exceed the limits of hazardous waste. These units are usually employed for machining fluids that are 10% oil and 90% water and are exempt from permitting by most states.

**Proposed Solution:** The EPA should revisit this issue and permit the simple evaporation of water while retaining the prohibition against incineration/combustion.

The Council appreciates the opportunity to submit the above candidates for improvements in regulatory efficiency, and would welcome an opportunity to work with the agencies or the OMB/OIRA to more fully develop additional background information and cost/benefit analysis. If you have any questions, please feel free to contact the Council.

Sincerely,

John Arnett  
Government Affairs Counsel  
Copper and Brass Fabricators Council

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May 18, 2004

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**TESTIMONY**  
**House Small Business Committee**  
**May 19, 2004**

**B. J. Mason**  
**President, Mid-Atlantic Finishing, Inc.**  
**Capitol Heights, Maryland**

**On Behalf of**  
**National Association of Metal Finishers**  
**American Electroplaters and Surface Finishers Society**  
**Metal Finishing Suppliers Association**

Good morning, Mr. Chairman and members of the committee. I am B. J. Mason, President of Mid-Atlantic Finishing, Inc. We are a metal finishing “job shop” located in Capitol Heights, Maryland, and have 35 employees. I started the company in 1976, and for nearly 30 years we have provided gold, silver, nickel, tin, copper and conversion coating finishes for a range of industries, including communications, computer and electronics, defense, medical, tooling, and a host of others.

I am testifying today on behalf of the National Association of Metal Finishers (NAMF), the American Electroplaters and Surface Finishers Society (AESF) and the Metal Finishing Suppliers Association (MFSA). Together, these trade associations represent the management, technical/professional and supplier communities in the metal finishing industry.

Surface finishing plays a significant value-added role in the manufacturing supply chain. Virtually all metal products in commerce require the service of my industry. We make most of the things Americans come into contact with every day work better, look better and last longer. Our industry's role in corrosion protection alone in the U.S. provides an economic benefit to the nation of over \$200 billion a year.

#### **Voluntary, Cooperative Partnership with EPA**

On the regulatory front, my industry has worked closely with EPA and state and local regulators, as well as environmental groups, on many projects to reduce the industry's environmental footprint to the greatest extent possible. I viewed it as a complement that former Vice President Gore formally recognized the finishing industry's environmental leadership with his "Reinventing Government" award in response to our demonstration that it is indeed possible to reconcile environmental and economic competitiveness goals.

#### **Regulatory Review Process Needed to Identify Costs & Benefits Early**

This experience, however, pointed out to me how essential it is to have a process that: (1) in the big picture, can identify regulatory requirements that do not add value to either the environment, public health,

or the economy; and (2) can identify with some reasonable level of accuracy the costs and benefits of regulations at every stage of the rulemaking process.

I would point out that for my industry there are heavy consequences that ensue from NOT having an analytically rigorous, systematic review of a wide range of regulations – whether they are “major” rules or not.

In the past several years, the metal finishing industry unfortunately had to spend over one million dollars for technical, engineering and economic analysis to demonstrate that EPA’s Metal Products and Machinery (MP&M) rule – which imposed further regulations on top of already restrictive wastewater controls – was based on improper analysis. Fortunately, EPA later concluded that no further regulation was warranted for the metal finishing industry. I was troubled by the fact that one senior EPA official in the end noted that “but for the fact that the metal finishing industry had to spend one million dollars to correct these mistakes, the regulatory process worked for this rulemaking.” Surely there is a better way to spend a million dollars!

**Priority Regulatory Issues: \$100,000 Competitiveness Initiative**

This is not a unique experience for us. The metal finishing industry has closely evaluated several regulations that can be modified, we believe,

with nearly zero environmental impact. We have focused more intently on the costs of these measures for several reasons – one being the fact that many of our competitors in the global economy do not carry the same obligations and responsibilities that we do. At the same time, we are not looking for environmental “rollbacks” or a “ticket to pollute.”

I would like to give you a thumbnail sketch of the regulatory reform nominations that we have made to Dr. Graham and the White House Office of Management and Budget. They happen to cut across all of the major programs at EPA – water, air and waste:

- 1) *Streamlining EPA's Wastewater "Pretreatment" Program:* We believe that EPA's wastewater “pretreatment” program can be modified so that small companies are allowed to comply with fewer, less costly and complex rules for discharging wastewater to a local treatment authority. We can keep companies fully accountable to the public under the program, but without extraneous and repetitive reporting, record keeping and sampling requirements that provide little or no additional environmental benefits.
- 2) *Getting an Exemption from Federal Permitting Requirements for Companies Complying with Stringent Emission Standards.* Many metal finishing facilities are regulated by both very stringent

emissions control requirements under the federal Clean Air Act and have state and local air permits governed by federal law.

Requiring an additional layer of federal permitting – that essentially codifies in a repetitive format everything we are already required to do – simply increases our costs and burdens without achieving further environmental benefits.

- 3) *Encourage Recycling of Treatment Sludge.* As this committee heard two months ago from my colleague, John Lindstedt of Artistic Plating in Milwaukee, the average metal finishing shop “throws away” in landfills about \$40,000 worth of recyclable metals each year. We would like to update federal waste regulations to reflect the fact that the hazards of this our treatment products have changed since the rules were written 25 years ago. Allowing this material to shed its status a “hazardous” will help us avoid regulatory compliance costs and recover value from our metals from recycling.

Mr. Chairman, modest changes for just these three regulations could provide a net benefit of approximately \$100,000 a year for a small metal finishing facility with average annual sales of only two to three million dollars. This represents a significant savings that could mean the difference between being profitable and being forced to shut down operations or layoff

more workers. Please keep in mind that these three examples represent only a small sample of the 80-100 different paperwork, training, reporting, recordkeeping or substantive regulations to which our industry is subject.

### **OSHA Chrome PEL Rulemaking: Burdens In the Pipeline**

The burdens imposed on U.S. manufacturers directly from regulatory requirements are staggering. In a recent report on costs, the National Association of Manufacturers (NAM) noted that the regulatory burdens create a distinct competitive disadvantage compared to our major trading partners. Unfortunately, these burdens continue to mount and take their competitive toll on small metal finishers and other U.S. manufacturers.

For example, OSHA has initiated a rulemaking to reduce existing workplace chromium exposure limit. OSHA recently estimated that the cost of compliance with the new limits under consideration would be approximately \$5,000 annually for small metal finishing facilities. OSHA has not accounted for many fundamentally obvious equipment and compliance costs. Industry representatives recently presented a detailed analysis in the SBREFA panel process stating that small facilities (facilities with annual sales of \$1.5 million and 20 employees) would have to spend 60 times that – or over \$300,000 annually per facility – to achieve the very low limits proposed by OSHA.

On top of the \$100,000 burden from the rule changes I've discussed, this new cost is likely to close 30-50% of companies in this segment of the industry. We hope that OSHA will consider all relevant analysis we're providing and advance a strong worker protection standard that is technically and economically feasible.

I hope that some of the issues I've raised today will point out the need for –and the potential value of– an improved process for regulatory review and oversight of federal agency actions. Ultimately, in this entirely new era we're operating in, most Americans would agree that we should elevate this issue to a national priority. I believe this can be done responsibly and in a way that minimizes regulatory burdens, protects human health and the environment, and allows small business the opportunity to compete successfully in the global marketplace.

Thank you, Mr. Chairman and the Committee for the opportunity to appear before you today.

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**United States House of Representatives  
Committee on Small Business**

Testimony of

**Andrew Bopp**  
**Director of Public Affairs**  
**Society of Glass and Ceramic Decorators**

515 King Street, Suite 420  
Alexandria, VA 22314

on

**Red Tape Reduction:  
Improving the Competitiveness of America's Small Manufacturers**

May 19, 2004

The Society of Glass and Ceramic Decorators represents manufacturers that decorate glass and ceramic mugs, tumblers and similar items. SGCD's 300 member companies are facing fierce competition from overseas .. especially from China.

Most SGCD members are small – often family-owned – companies. These companies cannot afford to hire staff to focus on regulatory compliance. Many of these companies are unable to employ engineers in their facilities .. let alone environmental, safety or other experts. Regulatory burdens often fall on the owner or other key staff who are also responsible for production, purchasing, marketing and other business functions.

Burdensome and unnecessary regulations significantly contribute to the cost of doing business in the U.S. This leads to the loss of manufacturing jobs to overseas competition. It is critical that existing regulations undergo careful review to determine whether regulatory goals can be achieved in a less burdensome way.

I am here today to encourage this Committee to support OIRA in its efforts to review burdensome regulations that have a major impact on small business. To illustrate .. we believe OIRA has been .. and hopefully will continue to be .. helpful in reviewing EPA's Toxic Release Inventory lead rule. This rule has proven to be extremely burdensome for small glass and ceramic printers and other small manufacturers.

Some of the colors used in glass and ceramic decoration cannot be produced without lead. This use does not create environmental risk, and very little ends up as waste. When fired – the colors become chemically part of the glass or ceramic mug. Almost all of these colors are used to produce the product. SGCD and member companies work closely with FDA and other federal and state agencies to guarantee the safety of all wares produced.

In spite of this, hundreds of these small companies as well as small companies in other manufacturing sectors were entangled in EPA's January 17, 2001 lead rule changes that lowered the annual threshold for Toxic Release Inventory lead reporting from 10,000 pounds to 100 pounds. It is important to emphasize that this is lead used .. not released to the environment.

The TRI program is burdensome .. especially for the 75 percent of lead filers that are small businesses .. due to the complicated analysis and calculations required. However, when lowering the reporting threshold, EPA disallowed existing burden relief options for small business such as the simplified Form A and de minimis allowances that are available for other TRI substances.

A massive effort is being undertaken by small business operators to comply. A review of 2001 TRI data indicates that over 2,600 manufacturing companies reported zero environmental release of lead or lead compounds.

In SIC 32 which includes glass and ceramic printers, 532 complicated Form Rs for lead and lead compounds were filed in 2001. The cost was estimated by EPA to be \$7,400 per facility. Of these forms, 46 percent of companies reported on-site release to the environment of less than one pound. In a fairly typical case, a small decorator reported zero on-site release after spending more than 180 hours to compile data and complete a TRI Form R.

Even after the forms are filed, the burdens continue. In December 2003, a glass decorator received a Notice of Significant Error from EPA for its 2002 TRI report. One week later, the company received a second copy of the same notice that listed the error which was corrected. In February 2004, the company received yet another notice listing 12 new technical errors. Let me emphasize, this company was reporting zero environmental lead release. In addition to burdening small manufacturers, this is an inefficient use of EPA's time.

It is encouraging that EPA is now reviewing options – through its Stakeholders Dialog – to simplify TRI reporting. Two elements under review are critical to reducing the reporting burden. A simplified Form NS for insignificant lead reporters is needed for companies that have shown on-site lead release of ten or fewer pounds. In addition, Form A, range reporting and de minimis allowances should be reinstated to lead reporters. Useful public information would not be lost, but small business burden would be eased.

This week, SGCD is submitting comments to OIRA in response to their request for information on specific regulatory burdens. OIRA is ideally positioned to review federal regulations given their vantage point as an outside observer. An agency that is implementing a regulation .. and the businesses or others who must comply with a regulation do not have this perspective.

This review process should be ongoing at OIRA so that the administration can follow through on efforts to achieve burden reduction. I urge Congress to address staffing shortages at OIRA. Lack of adequate staff is obviously a major obstacle to enabling the agency to fulfill its burden reduction mission.

I appreciate the opportunity to address this Committee today. I believe that a cooperative effort by OIRA, EPA and stakeholders can lead to completion of the TRI burden reduction process within a year. I also believe that OIRA can be of great help in addressing the many other unnecessarily burdensome regulations that affect small businesses.



OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

May 18, 2004

**Via Facsimile and Electronic Mail**

The Honorable Donald Manzullo  
Chairman  
Committee on Small Business  
United States House of Representatives  
2361 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Red Tape Reduction: Improving the Competitiveness of America's Small Manufacturers**

Dear Chairman Manzullo:

On May 14, 2004, the Office of Advocacy of the U.S. Small Business Administration (Advocacy) submitted the enclosed comments and nominations for regulatory reform to the Office of Management and Budget (OMB). The comments relate to OMB's *Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations*. The nominations respond to OMB's call for public nominations of reforms to reduce regulatory burdens on small and mid-sized businesses in the manufacturing sector.

To the extent that they may be helpful as the Committee considers ways to improve the competitiveness of America's small manufacturers, we ask that the Committee enter these comments and attached materials for the Record. We appreciate the Committee's diligence in helping America maintain its competitiveness by creating an environment where entrepreneurship can flourish. We commend your leadership and we join you in calling on agencies to remove barriers that stifle job growth. If you have any questions about our comments or reform nominees, please call Suey Howe at (202) 205-6144 or Keith Holman at (202) 205-6936.

Sincerely,

A handwritten signature in black ink, appearing to read "T. M. Sullivan".

Thomas M. Sullivan  
Chief Counsel for Advocacy

Enclosure



OFFICE OF THE CHIEF COUNSEL FOR ADVOCACY

U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

May 14, 2004

Ms. Lorraine Hunt  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
New Executive Office Building, Room 10202  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

**Re: Comments on the OMB Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations, 69 Fed. Reg. 7987 (February 20, 2004)**

Dear Ms. Hunt:

The Office of Advocacy of the Small Business Administration (Advocacy) is pleased to submit the following comments on the *Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations (Draft Report)* issued by the Office of Management and Budget (OMB). Advocacy's comments focus primarily on the adequacy of the discussion of regulatory impacts on small businesses. Advocacy believes that an improvement in the quality of Federal agencies' analyses during rulemakings is necessary for OMB to prepare a more comprehensive report on the costs and benefits of Federal regulations in general and to ensure that future reports quantify the impacts on small businesses. This letter also responds to OMB's request for nominations for reform to reduce regulatory burdens on small businesses in the manufacturing sector and to simplify paperwork burdens under Internal Revenue Service (IRS) requirements.

Congress established Advocacy pursuant to Public Law 94-305<sup>1</sup> to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA. Among Advocacy's primary statutory mandates is the requirement to measure the direct costs and other effects of government regulation on small business, and to make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations on small business.<sup>2</sup> In addition, the Chief Counsel for Advocacy is required by section 612 of the Regulatory Flexibility Act (RFA)<sup>3</sup> to monitor agency compliance with that legislation. The RFA requires Federal agencies to consider the impacts of their regulatory proposals on small entities, and to determine whether there are effective alternatives that would reduce the regulatory burden on small entities. In fulfillment of the President's Small Business Agenda, Advocacy and OMB's Office of Information and Regulatory Affairs (OIRA) signed a memorandum of understanding and are working together to

<sup>1</sup> 15 U.S.C. § 634a *et seq.*

<sup>2</sup> 15 U.S.C. § 634b(3).

<sup>3</sup> 5 U.S.C. § 601 *et seq.*

implement Executive Order (E.O.) 13272, *Proper Consideration of Small Entities in Agency Rulemaking*.<sup>4</sup> E.O. 13272 underscores the importance of agency compliance with the RFA and Advocacy's role in giving a voice to small businesses in the Federal rulemaking process.<sup>5</sup>

#### **The Costs and Benefits of Federal Regulations**

Advocacy recognizes that OMB faces significant obstacles in preparing the annual reports to Congress required by the "Regulatory Right-to-Know Act."<sup>6</sup> OMB's efforts are limited by its dependence on agency estimates of costs and benefits. The *Draft Report* includes a regulatory accounting statement that reflects major gaps in cost and benefit information provided by the regulating agencies. Only six of the twelve new major "social regulations" – those carrying a cost of at least \$100 million annually – carry monetized estimates of both costs and benefits.

This lack of information from the agencies inhibits OMB's ability to prepare a comprehensive report of Federal regulatory activity as contemplated by the Regulatory Right to Know Act. The agencies' failure to provide data on the costs and benefits of their rules also contravenes Executive Order 12866,<sup>7</sup> which requires this information for OMB's review of major rules, and creates a barrier to public comment on those rules. This lack of transparency is particularly difficult for small businesses. When agencies fail to undertake the impact analysis under E.O. 12866, it is also likely that they will not produce analyses of small entity impacts under the RFA and E.O. 13272, which direct agencies to properly consider small entity impacts during rulemaking under the RFA.

To improve the quality of OMB's reports under the Regulatory Right-to-Know Act, OMB must receive better data from agencies, which in turn requires agencies to improve their data collection and analysis. Advocacy believes that focusing on improving the quality of agencies' analyses will enable OMB to produce a better, more complete regulatory accounting report to Congress, and improve agency rulemaking.

Another problem is that, by focusing on major rules, the *Draft Report* does not address the costs and benefits of the vast majority of agency rulemakings finalized in the preceding year. In 2004 only 11 percent (37 of 349) of the final rules published in the *Federal Register* were major rules. Of those 37 rules, 25 were "transfer rules" and therefore were not included in the regulatory accounting statement's costs and benefits totals. Thus, the 6 rules that actually were accounted for in the *Draft Report* represent just under 1.7 percent of all Federal regulations in 2003. Although non-major rules by definition impact the economy significantly less than major rules, they too can impose serious burdens on small businesses. In fact, some of the most important small business impacts come from non-major rules, specifically because these rules tend to be more narrowly focused on certain industries rather than broad segments of the economy. Additionally, while it is appropriate that "transfer rules" should not be included in the accounting

<sup>4</sup> 67 Fed. Reg. 53461 (August 16, 2002).

<sup>5</sup> E.O. 13272 requires Federal agencies to implement policies to ensure that the interests of small entities are considered when new rules and regulations are developed.

<sup>6</sup> See § 624 of the FY 2001 Treasury and General Government Appropriations Act, enacted as part of Public Law 106-554 (December 21, 2000), 114 Stat. 2763A-161.

<sup>7</sup> Exec. Order 12,866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

statement for net economic costs, they also carry costs for small businesses which more often than not are on the negative end of the mandated regulatory transfers. Accordingly, Advocacy recommends expanding the estimate of costs and benefits from Federal rules to include those costs and benefits embodied in non-major rules.

Similarly, rules promulgated by independent regulatory agencies can be just as costly as major rules issued by other Executive branch agencies. However, rules from independent agencies are not covered by E.O. 12866, and thus many of these rules carry no cost or benefit estimates when issued. Advocacy supports extending the requirements of E.O. 12866 to independent regulatory agencies. Recognizing the ambitious nature of that recommendation, Advocacy suggests that as an interim step, independent agencies be strongly encouraged to conduct regulatory analyses in accordance with OMB Circular A-4.<sup>8</sup>

#### **The Impact of Regulatory Costs on Small firms**

The *Draft Report* does not quantify the costs and benefits of Federal regulations on small firms, beyond referencing a 2001 Advocacy-sponsored study by Drs. Crain and Hopkins. The Crain-Hopkins study estimates that per employee regulatory burdens on the smallest firms, those with fewer than 20 employees, are 60 percent greater than burdens on firms with more than 500 employees.<sup>9</sup> While Advocacy is in the process of updating the Crain-Hopkins report, it should be noted that the Crain-Hopkins report provides a measure of the cumulative total of Federal regulations, not detail on the flow of new regulations as the *Draft Report* does. Advocacy supports the idea of a small business regulatory accounting statement in the *Draft Report*, based on small business regulatory impact analyses provided to OMB by the agencies. The production of such estimates would require agencies to undertake full and proper analyses of small business impacts, both costs and benefits, as agencies are currently required to do by the RFA and E.O. 13272, and as directed by OMB's recent Circular A-4.

#### **Guidelines for Regulatory Analysis**

Advocacy commends OMB for the release of Circular A-4, OMB's newest guidance for performing proper regulatory analysis. We believe that the new Guidelines in Circular A-4 will improve regulatory analyses under E. O. 12866. The new Guidelines should also lead to improved small business impacts analyses as well, because proper analyses of small business impacts under the RFA can only follow from a thorough and proper regulatory analysis. By following the Guidelines laid out in Circular A-4, agencies should be able to greatly improve the accuracy and usefulness of their regulatory analyses. The new Guidelines in Circular A-4 also call on agencies to properly address the effects of regulatory actions on small businesses. In addition, the accompanying Regulatory Accounting Worksheet queries agencies to enter estimates for impacts on small business, wages, and economic growth.

<sup>8</sup> OMB Circular A-4, *Regulatory Analysis* (Sept. 17, 2003); the Circular can be viewed at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>.

<sup>9</sup> See *The Impact of Regulatory Costs on Small Firms*, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins (October 2001), available at <http://www.sba.gov/advo/research/rs207tot.pdf>.

To enforce agency compliance with E.O.12866 and Circular A-4, Advocacy strongly recommends that OMB issue return letters on a rule-by-rule basis. Return letters are clearly appropriate for agencies that do not follow OMB's Circular and complete proper regulatory Accounting Statements, including estimates for impacts on small entities, wages, and economic growth.

#### **Nominations for Regulatory Reform**

OMB requested public nominations for regulatory reforms relevant to the manufacturing sector of the U.S. economy and suggestions to simplify IRS paperwork requirements, which OMB recognizes "are particularly burdensome for small businesses."<sup>10</sup> The Office of Advocacy held a public outreach meeting on April 28, 2004, in order to receive suggested regulatory reforms from small business representatives. The attached list of regulatory reform nominations is not all-inclusive, but rather reflects Advocacy's recommendations based on our ongoing involvement in the regulatory process and input provided at the April 28 public meeting. We believe these nominations, if addressed, will reduce regulatory burdens on small businesses in the manufacturing sector and will simplify paperwork burdens under IRS requirements. The Office of Advocacy will work with each agency and OMB to review and move forward these and other reform nominations submitted to OMB. We have encouraged small business representatives to comment directly to OMB. Advocacy is submitting this letter in advance of the comment deadline to help prompt others to submit nominations for regulatory reform to OMB.

#### **Conclusion**

The Office of Advocacy fully recognizes the challenges confronting OMB in its efforts to fulfill the requirements of the Regulatory Right-to-Know Act. Through OMB's efforts to improve Federal agencies' compliance with E.O. 12866, OMB will improve the accuracy of agency data. This in turn will make the annual reports to Congress more accurate and useful, while also improving the quality of agency rulemakings and sensitizing agencies to their responsibilities under the Regulatory Flexibility Act. For additional information or assistance related to these comments, please contact Suey Howe at (202) 205-6144 or Keith Holman at (202) 205-6936.

Sincerely,



Thomas M. Sullivan  
Chief Counsel for Advocacy

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<sup>10</sup> 69 Fed. Reg. 7987 (February 20, 2004).

**Nominations for Regulatory Reform  
May 2004**

**Submitted by the Office of Advocacy  
U.S. Small Business Administration**

**Name of rule, policy or guidance:** Hazard Communication Standard

**Regulating agency:** Occupational Safety and Health Administration (OSHA)

**Authority for rule, policy or guidance:** 29 CFR 1910.1200

**Description of what existing rule, policy or guidance does:** This rule requires manufacturers of chemicals to assess the hazards of exposure those chemicals and to communicate those hazards to employers and employees through labels, material safety data sheets, and training. The rule requires employers who use these chemicals to communicate the hazards to their employees through a hazard communication program of information and training. Employers are required to keep their hazard communication program, including the Material Safety Data Sheets (MSDSs), up-to-date following any change in the information provided by the chemical manufacturers.

**Affected small businesses:** Any small business using a chemical for which there is an MSDS.

**Regulatory burden(s) imposed:** The primary burdens associated with this rule include providing the training, documenting the training, keeping the training and documentation up-to-date, and making sure the appropriate MSDS is available to the employees. The rule references information provided by standard-setting groups such as the American Conference of Governmental Industrial Hygienists (ACGIH) and requires changes to MSDSs and training documentation when these groups update their information on chemicals.

**Proposed burden reduction:** Removing the link between the OSHA standard and the actions of ACGIH would resolve the problem of small businesses having to keep up with changes that can occur at any time with little or no notice to the employer. Businesses large enough to employ a certified industrial hygienist might be in a position to monitor the actions of ACGIH, but most small businesses cannot. However, they are out of compliance with the HazCom regulation when they fail to notice that the MSDS in their workplace is out of date. The rule should require that OSHA publish each change in an MSDS for notice and comment.

**Anticipated benefit(s) for small entities:** Small employers would have some notice of what changes might be required in their HazCom programs, and would not have to spend resources monitoring the actions of ACGIH.

**Name of rule, policy or guidance:** Occupational Exposure to Hexavalent Chromium

**Regulating agency:** Occupational Safety and Health Administration (OSHA)

**Authority for rule, policy or guidance:** OSH Act (29 U.S.C. 651). Under court order, OSHA is preparing to issue this health standard by January 18, 2006. *Order, Public Citizen Health Research Group, et al., v. Chao*, 2003 WL 22158985 (3<sup>rd</sup> Cir., April 2, 2003). OSHA has recently concluded a panel process required by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. Sec. 609. A Notice of Proposed Rulemaking is due on or before October 4, 2004.

**Description of what existing rule, policy or guidance does:** Reduces the permissible exposure limit (PEL) for airborne concentrations of hexavalent chromium from 100 micrograms per cubic meter, in order to reduce the incidence of lung cancer in affected workforce.

**Affected small businesses:** There are over thirty industries which would be affected, including chrome and chromate producers, electroplaters, pigment producers and printers, welders, painters, foundries, Portland cement producers, and some construction companies.

**Regulatory burden(s) imposed:** Maintaining the exposure level at worksites in the various industries requires the use of monitoring and ventilation equipment, administrative controls, training, and respirators, in some instances. Ventilation systems are designed by engineers to meet the specific PEL. Changes in the PEL require costly design changes, equipment upgrades, and additional training. In addition, OSHA is considering imposing costly medical management requirements, including post-employment physicals. The industries represented on the SBREFA panel addressing the OSHA proposal reported that most workplaces are already achieving exposures of less than 25 micrograms per cubic meter, one-quarter of the current PEL. They also told OSHA that the range of PELs under consideration by the panel, from 10 micrograms per cubic meter down to one-quarter of one microgram per cubic meter, was neither technologically nor economically feasible. Several small entity representatives to the panel said that the available data does not support a link between current exposure levels of hexavalent chromium and an increased risk of lung cancer.

**Proposed burden reduction:** Set the PEL at a technologically and economically feasible level. Several industries reported that costs associated with a PEL within the range under consideration by OSHA would put many companies out of business. Virtually all of the industries involved in the SBREFA panel process challenged OSHA's exposure data, as well as OSHA's technological and economic feasibility analyses. In some industries, many small businesses would fail as a result of some of the options contained in the draft proposed rule. OSHA's estimate of costs for small businesses in general industry ranged

from \$142 million to \$463 million. Panel members believe that these numbers represent only one-tenth of the actual costs of compliance.

**Anticipated benefit(s) for small entities:** Small entities in every industry are already achieving low levels of exposure to hexavalent chromium, and therefore are already avoiding any increased risk of lung cancer among their workforce. Setting the PEL at an achievable level would mean that these businesses would not suffer the enormous economic consequences of trying to achieve an unachievable PEL. Some facilities would have to spend millions to achieve the PEL, while others would simply not stay in business.

**Name of rule, policy or guidance:** Hours of Service of Drivers; Driver Rest and Sleep for Safe Operation

**Regulating agency:** Federal Motor Carrier Safety Administration (FMCSA)

**Authority for rule, policy or guidance:** 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73

**Description of what existing rule, policy or guidance does:** Sets maximum continuous hours of on-duty time per 24-hour period and per work week for commercial truck drivers; also sets minimum number of hours between days of work and between weeks. The purpose of the rule is to avoid accidents related to tired drivers of commercial vehicles.

**Affected small businesses:** Trucking companies, including long- and short-haul truckers; service companies, including utility and telephone companies; construction contractors; and wholesale and retail deliveries.

**Regulatory burden(s) imposed:** Drivers may only work 11 hours before taking a 10 hour break; the rule allows one day per week on which drivers may be working up to 16 hours. Drivers may work up to 70 hours within an eight-day period but must take a break of at least 34 hours before beginning a new eight-day period. Some businesses will incur the cost of hiring new drivers or curtailing operations to meet the new requirements. All businesses will incur training costs.

**Proposed burden reduction:** Redefining on-duty hours to allow deliveries to be made beyond the 11-hour maximum will save costs for businesses whose primary business is not trucking, such as a business which delivers its products locally more frequently than the once-per-week would allow.

**Anticipated benefit(s) for small entities:** These companies would not have to hire new drivers, and would have reduced training costs.

**Name of rule, policy or guidance:** Diesel Particulate Matter, Underground Metal and Nonmetal Mines, 30 CFR Part 57 (66 Federal Register 5706; January 19, 2001)(*amended at 67 Federal Register 9180; February 27, 2002*)

**Regulating agency:** Mine Safety and Health Administration (MSHA)

**Authority for rule, policy or guidance:** Federal Mine Safety and Health Act, as amended (30 U.S.C. 801 *et seq.*); 30 CFR Part 57.

**Description of what existing rule, policy or guidance does:** Among other things, the rule sets the permissible exposure limit (PEL) for diesel particulate matter in mines temporarily at 400 parts per million, until January 1, 2006, when the PEL is lowered to 160 parts per million (ppm). The purpose of the rule is to avoid an increased risk of cancer associated with prolonged exposure to diesel particulate matter.

**Affected small businesses:** Underground mining operations.

**Regulatory burden(s) imposed:** The PEL, set at 160 parts per million, goes into effect on January 1, 2006. Currently the PEL is set at 400 ppm. Maintaining the atmosphere inside a mine includes the use of air shafts, ventilation equipment, training, and respirators, in some instances. Ventilation systems are designed by engineers to meet the specific PEL. Changes in the PEL require costly design changes, equipment upgrades, and additional training. MSHA estimates the cost of the rule to be \$4,539 per mine per year (Preliminary Regulatory Economic Analysis, July 2003). Industry experts estimate such costs to be many times larger than the MSHA numbers. MSHA costs do not include costs for engineering and design of new systems, or costs for improved ventilation, nor do they account for increased nitrogen dioxide in mines using filtering methods required by the new rule. Costs of compliance with the PEL of 160 ppm for one mine thought to be representative of the industry were estimated to be about \$1.5 million. (Testimony of National Stone, Sand, and Gravel Association, MSHA Public Meeting on Proposed Rule for Diesel Particulate Matter Exposure of Underground Miners; October 7, 2003)

**Proposed burden reduction:** Maintain the current PEL (400 ppm), and allow worker rotation as an administrative control to reduce exposures. Worker rotation is not allowed as an administrative control if there is exposure to a cancer-causing substance, but the scientific basis of the link between an increased risk of cancer and exposure to diesel particulate matter has been challenged. A recent study by the National Cancer Institute and the National Institute of Occupational Safety and Health has failed to find such a link.

**Anticipated benefit(s) for small entities:** Reducing the PEL to 160 ppm would eliminate some of the burden of compliance with the new PEL. Mines have already been incurring costs for compliance with the current PEL of 400 ppm. There is a significant possibility that currently available engineering, equipment and training may not achieve compliance with the rule under any circumstances.

**Name of rule, policy or guidance:** Toxics Release Inventory (TRI) Reporting

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §11023.

**Description of what existing rule, policy or guidance does:** This rule requires the reporting of information on the releases and other waste management of EPCRA section 313 chemicals to the public from facilities in their communities.

**Affected small businesses:** Approximately 25,000 small businesses that process, manufacture or use more than a threshold amount of section 313 chemicals.

**Regulatory burden(s) imposed:** The rule requires the annual reporting of chemical release and waste management information at a cost in excess of several hundred million dollars per year.

**Proposed burden reduction:** EPA can reduce the cost of reporting in a variety of ways: (1) expanding the number of filers eligible to use a "short-form" annual form (Form A), (2) enhancing Form A to include reporting of a range of amounts of section 313 chemicals, rather than a specific number, (3) introducing a new Form NS, for facilities with no significant changes from previous baseline years, and (4) allowing reporting of a range of amounts of Section 313 on the long-form (Form R) report.

**Anticipated benefit(s) for small entities:** More than 20,000 small businesses will have substantially reduced reporting costs under these options.

**Name of rule, policy or guidance:** Integrated Urban Air Toxics Strategy

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Section 112(d) of the Clean Air Act, 42 U.S.C. § 7412(d).

**Description of what existing rule, policy or guidance does:** Under the Urban Air Toxics Strategy, EPA plans to develop standards to control toxic air pollutants from area sources. *See* 64 Fed. Reg. 38706 (July 19, 1999). Area sources are those sources that emit less than 10 tons per year of a single hazardous air pollutant (HAP) or less than 25 tons of a combination of HAPs. EPA has identified 55 area source categories that may be regulated in the near term. EPA may require these area sources to install hazardous air pollutant controls that EPA deems to be Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT).

**Affected small businesses:** Dry cleaners, wood treating facilities, automobile painting shops, and paint stripping operations, among other industries in 55 area source categories.

**Regulatory burden(s) imposed:** Area sources subject to control may be required to install and operate MACT/GACT control technology, with associated monitoring and recordkeeping requirements. Depending upon whether MACT or GACT requirements are imposed, the cost to each business may range from several thousand dollars per year to hundreds of thousands of dollars per year.

**Proposed burden reduction:** Because a significant number of area sources are small businesses (e.g., dry cleaners), EPA should commit to conducting small business review Panels with Advocacy and OMB prior to developing any MACT/GACT standards for area sources. The Small Business Regulatory Enforcement Fairness Act (SBREFA) provides for the convening of a small business review panel whenever a planned EPA rule is expected to have a significant economic impact upon a substantial number of small entities.<sup>1</sup>

**Anticipated benefit(s) for small entities:** Developing MACT/GACT standards through the SBREFA Panel process will lead to standards that achieve the emission reduction objectives of the Urban Air Toxics Strategy without unduly burdening small businesses.

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<sup>1</sup> The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. 104-121, section 609(b).

**Name of rule, policy or guidance:** Spill Prevention, Control and Countermeasure (SPCC) Plans

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Oil Pollution Act of 1990, 33 USC §§ 2701-2761

**Description of what existing rule, policy or guidance does:** EPA promulgated a rule in July 2002 requiring facilities that store “oil” (including vegetable oil and asphalt) above certain threshold levels and that are located near waterways to prepare and implement spill prevention, control, and countermeasure (SPCC) plans. These SPCC plans are required to be certified by a professional engineer.

**Affected small businesses:** Tens of thousands of small businesses, including farms, construction sites, and small manufacturers.

**Regulatory burden(s) imposed:** The costs, including the cost of the professional engineer’s certification of the SPCC plans, cost in excess of hundreds of millions of dollars in one time costs.

**Proposed burden reduction:** EPA can eliminate the applicability of the professional engineer requirements for small facilities, and reduce the stringency of some of the technical requirements that are part of the SPCC plans, such as the replacing the requirement to perform costly integrity tests of tanks that can be characterized as “low risk” tanks with a visual inspection requirement. This would still achieve the overall objectives of the SPCC requirement while achieving substantial cost savings.

**Anticipated benefit(s) for small entities:** The cost savings could exceed tens of millions of dollars per year to tens of thousands of small businesses.

**Name of rule, policy or guidance:** Brick Manufacturing Air Toxics Rule

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Section 112(d), Clean Air Act, 42 U.S.C. § 7412(b).

**Description of what existing rule, policy or guidance does:** This rule requires hazardous air pollutant controls for hydrogen chloride (HCl) and particulate matter (PM) from brick manufacturing plants in excess of a production-based threshold. The controls must meet the standard that EPA deems as Maximum Achievable Control Technology (MACT), with associated monitoring and recordkeeping requirements.

**Affected small businesses:** The rule affects approximately 80 small businesses in an industry of about 100 firms.

**Regulatory burden(s) imposed:** Existing brick kilns are required to retrofit their facilities with MACT controls, whereas the regulated emissions are typically below the level of regulatory concern.

**Proposed burden reduction:** EPA can consider a variety of risk-based and technical approaches to reduce the stringency of the rule, or exempt some of the 80 small facilities from the rule.

**Anticipated benefit(s) for small entities:** Facilities would not be required to install and operate MACT controls on their facilities, yielding substantial cost savings with little or no effect on the environment. Similar risk-based approaches have been used by EPA for industrial boilers and the plywood industry.

**Name of rule, policy or guidance:** Definition of “Solid Waste”

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, 40 C.F.R. §§ 260-261.

**Description of what existing rule, policy or guidance does:** EPA currently includes spent materials, sludges, by-products and scrap metal as hazardous wastes under RCRA, which are subject to costly hazardous waste management requirements. The RCRA “solid waste” definition includes recycled materials that are not immediately returned to an industrial process as substitutes for raw material feedstock.

**Affected small businesses:** The rule affects tens of thousands of small businesses who recycle chemicals and metals.

**Regulatory burden(s) imposed:** The rule subjects legitimate recycling, which poses little environmental risk, to complex and costly RCRA regulations, at a cost of hundreds of millions of dollars annually.

**Proposed burden reduction:** EPA can exclude legitimate reuse, recovery and recycling from RCRA.

**Anticipated benefit(s) for small entities:** Facilities will not be required to meet the costly and complicated RCRA hazardous waste management requirements. This action would yield significant cost savings, with very little commensurate risk to the environment.

**Name of rule, policy or guidance:** Reclamation of F006 Sludge

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*, 40 C.F.R. § 261.

**Description of what existing rule, policy or guidance does:** This rule subjects etching, finishing, and electroplating sludges containing cadmium, hexavalent chromium, nickel, or cyanide as a hazardous waste subject to RCRA hazardous waste management requirements.

**Affected small businesses:** The rule affects tens of thousands of small businesses that generate etching, finishing, or electroplating sludges.

**Regulatory burden(s) imposed:** This rule subjects these sludges to the full RCRA hazardous management regulations, despite the fact that F006 sludge is reclaimed for its metal content, and does not pose an environmental risk.

**Proposed burden reduction:** EPA can exempt these sludges from treatment as a hazardous waste under RCRA, so long as the facility properly reclaims the metals content of the F006 sludge.

**Anticipated benefit(s) for small entities:** Facilities would not be required to meet the costly and complex RCRA requirements.

**Name of rule, policy or guidance:** Pretreatment Streamlining Rule

**Regulating agency:** U.S. Environmental Protection Agency

**Authority for rule, policy or guidance:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

**Description of what existing rule, policy or guidance does:** EPA requires companies that discharge small amounts of water pollutants to publicly-owned treatment works (POTWs) to treat their discharges before they are sent to the POTWs and meet monitoring and recordkeeping requirements. The POTWs, in turn, are required to maintain records and perform other administrative duties with respect to the small-volume dischargers.

**Affected small businesses:** EPA's small discharger pretreatment requirement affects approximately hundreds of thousands of small businesses that are industrial users and thousands of small POTWs.

**Regulatory burden(s) imposed:** The rule imposes reporting and pollution control requirements on industrial users and POTWs.

**Proposed burden reduction:** EPA can reduce the costs on small industrial users and POTWs by exempting smaller industrial discharges below an agreed-upon threshold from reporting or additional controls.

**Anticipated benefit(s) for small entities:** Small entities (small businesses and small communities) would have reduced reporting and pollution control costs.

**Name of rule, policy or guidance:** Control of Listeria Monocytogenes in Ready-to-Eat Meat and Poultry Products. The final rule was published on June 6, 2003, in the *Federal Register* at 68 Fed.Reg. 34207.

**Regulating agency:** Department of Agriculture, Food Safety and Inspection Service (FSIS).

**Authority for rule, policy or guidance:** 9 C.F.R. 430, *et seq.* and FSIS Directives 5000.1, 5400.5, 8080.1, 10,200.1 and 10,240.4.

**Description of what existing rule, policy or guidance does:** The rule amends current regulations to require that official establishments that produce certain ready-to-eat meat and poultry products take measures, including creation of hazard analysis and critical point (HAACP) plans, to prevent product adulteration by the pathogenic environmental contaminant *Listeria Monocytogenes*, especially after the product has been exposed to the environment after lethality treatments.

**Affected small businesses:** Meat processors.

**Regulatory burden(s) imposed:** Industry representatives believe that the rule was not adequately analyzed economically and scientifically because the rule asserts that the impact on small and very small businesses will be minimal. Industry believes that FSIS' estimated cost of compliance of approximately \$1,600 per year for each of the 10,000 plants is grossly underestimated. In contrast, industry representatives estimate the cost per small and very small meat processor of approximately \$12,000 for each year of the ten-year period used in the study. Industry representatives used cost estimates of new equipment and/or plant reconfiguration plus interest over the ten years of \$80,000 per plant and a very reasonable cost of outside expert technical assistance for compliance and periodic testing of \$4,000 per year for ten years. Based on the above, industry believes that the total cost per plant is \$120,000 over a ten-year period. This may very well be a low figure for many smaller plants.

The costs are over 7.5 times those projected by FSIS and for many very small processors may dictate the economic decision to cease business. And those are likely to be average costs for all plants, not taking into account the likely higher costs of compliance for small and very small processors. It may well be that the costs per plant approach closer to \$200,000 rather than \$120,000 over the ten years of the study. FSIS figures led OMB to estimate a regulatory cost to industry of \$16,600,000 per year or \$166,000,000 over ten years (see OMB Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations, noticed at 69 FR 7987). Industry believes that the true costs are closer to \$120,000,000 per year and over \$1.2 billion over the ten years.

**Proposed burden reduction:** Industry is requesting a return to a pre-HACCP regulatory regime in which FSIS inspectors actually inspected the operations of the plants rather than paperwork compliance, in which uniform guidebooks for plant safety and hygiene compliance were issued, and in which plant operators could access a point of written or oral contact for compliance advice. Industry believes that this would be far more likely to result in safe products reaching the consuming public than the current HACCP/Listeria Rule.

**Anticipated benefit(s) for small entities:** The proposed burden reduction will result in a significant cost saving for small meat processors.

**Name of rule, policy or guidance:** Food labeling: Use of the Term “Fresh” for Foods Processed with Alternative Non-Thermal Technologies. (65 Fed. Reg. 41029, July 3, 2000).

**Regulating agency:** U. S. Food and Drug Administration (FDA)

**Authority for rule, policy or guidance:** 21 C.F.R. § 101.95

**Description of what existing rule, policy or guidance does:** In this regulatory action the FDA sought to restrict the term “fresh” in food labeling. The statutory provision in question, 21 C.F.R. § 101.95, applies to foods and provides the definition for the term “fresh” in connection with food labeling. Producers may not claim that a product is “fresh” if it has been frozen, thermally processed or preserved, unless said product is impliedly known by the public to be processed or preserved, like pasteurized milk.

**Affected small businesses:** FDA’s action is expected to affected small bakeries and bakery suppliers.

**Regulatory burden(s) imposed:** The American Bakers Association (ABA) has attempted to get the FDA to amend 21 C.F.R. §101.95 to allow the use of the term “fresh” for bakery products. If the FDA does not amend the regulation it will result in limiting the bakers’ ability to properly label and sell their product. Also, this will result in confusion on the part of the consumer.

**Proposed burden reduction:** The ABA submits that bakery products are consistent with the FDA’s approach which expressly permits “fresh” claims for pasteurized milk and other foods that do not mislead consumers. The ABA asserts that the bakery industry takes a number of steps to assure that its products are fresh (e.g. shelf rotation of product and sell-by dates) and that the consumer knows that bakery products contain preservatives. Therefore, the ABA believes that if the FDA amends the regulation a significant barrier will be removed allowing bakers to properly label and sell their product.

**Anticipated benefit(s) for small entities:** If the FDA does not amend the regulation it will result in limiting the bakers’ ability to properly label and sell their product. Also, this will result in confusion on the part of the consumer.

**Name of rule, policy or guidance:** Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Dkt. No. 02-278, FCC 03-153)

**Regulating agency:** Federal Communications Commission (FCC)

**Authority for rule, policy or guidance:** 47 U.S.C. § 227; 47 C.F.R. Parts 64 & 68

**Description of what existing rule, policy or guidance does:** On July 25, 2003, the FCC issued a final rule revising the FCC's implementation of the Telephone Consumer Protection Act of 1991 to govern commercial facsimile communications between associations and their members as well as businesses and preexisting customers. The revised rule would require the sender of a "commercial fax" to have written authorization from the recipient. This requirement places a substantial burden on manufacturers and other businesses by compelling them to obtain the signed written consent of each recipient before any commercial fax may be sent. This would severely impede the ability of associations and businesses to communicate with their customers or make them aware of events and products that would be of interest to them.

**Affected small businesses:** Any manufacturer or other small business that uses a fax machine as part of doing business.

**Regulatory burden(s) imposed:** The rule would require any manufacturer or small business that uses the fax machine in the course of doing business to have written permission from the recipient of any commercial facsimile communication before a facsimile can be sent.

In February 2004, the U.S. Chamber of Commerce conducted a fax-based survey of its small business members in order to evaluate the economic impact of the FCC's revised rule. The U.S. Chamber's "2004 No Fax Survey" was sent to 20,000 members and more than 1,700 responded. Manufacturing, trade association/chambers of commerce, construction, and retail industries together comprise nearly two-thirds of all respondents. Of the respondents, 99 percent said that they used fax communications in the course of doing business.

The results of the survey showed that the cost to the average small business would be at least \$5,000 in the first year, and more than \$3,000 each year thereafter. Small business respondents indicated that it would take, on average, more than 27 hours of staff time to obtain the initial written consent from their customers and an additional 20 hours each year to keep the forms current.

The National Association of Wholesaler-Distributors (NAW) conducted an Internet-based survey of small business members of NAW. The survey was sent out to 550 individuals (representing about 265 companies) in November 2003 and NAW received 212 responses. The responses estimated the median initial cost at \$5,500, and the average annual cost of compliance at \$10,000.

**Proposed burden reduction:** The FCC should withdraw the rule or modify the rule to continue the established business relationship exemption. Both can be done through a response to the petitions for reconsideration filed with the FCC.

**Anticipated benefit(s) for small entities:** Small businesses would no longer be required to get written permission of the recipients of commercial faxes if there is an established business relationship. This would save small businesses the costs of obtaining, storing, and accessing these written permissions.

**Name of rule, policy or guidance:** Sec. 179; Election to expense certain depreciable business assets

**Regulating agency:** Department of Treasury/Internal Revenue Service (IRS)

**Authority for rule, policy or guidance:** 26 U.S.C. § 179

**Description of what existing rule, policy or guidance does:** Businesses can currently “expense” up to \$100,000 in equipment in any given tax year under section 179 of the Internal Revenue Code. This is indexed for inflation for 2004 and 2005, but this limit is scheduled under current law to revert to \$25,000 for 2006 and thereafter.

**Affected small businesses:** All small businesses putting into service depreciable property over \$25,000 after 2005.

**Regulatory burden(s) imposed:** Depreciable property over \$25,000 placed in service after 2005 will be subject to the recordkeeping and computational requirements of IRS’ standard depreciation schedules. These requirements are complex, with numerous different “class lives” applicable to different categories of property.

**Proposed burden reduction:** As part of the ongoing effort to simplify tax compliance for small businesses, and, where possible, simply to reduce tax costs for small businesses (particularly where those tax costs also spur economic investment), SBA’s Office of Advocacy recommends that OMB continue to support legislation to have section 179 “expensing” limits enacted in 2003 be made permanent.

**Anticipated benefit(s) for small entities:** Section 179 expensing allows many small businesses to eliminate recordkeeping for depreciable property entirely. In addition, accelerating depreciation entirely in the year property is placed in service, represents significant capital cost recovery benefits and cash flow assistance.

**Name of rule, policy or guidance:** Notice of Proposed Rulemaking: Excise Taxes; Communications Distance Sensitivity; REG-141097-02

**Regulating agency:** Department of Treasury/Internal Revenue Service (IRS).

**Authority for rule, policy or guidance:** 26 U.S.C. § 4252.

**Description of what existing rule, policy or guidance does:** IRS proposes to eliminate the statutory requirement of distance sensitivity in determining whether certain services are “toll telephone services” and thus subject to the federal excise tax. This statutory requirement has been in place since 1965. At least one court opinion (Office Max, Inc. v. United States, No. 1:03CV961 (N.D. Oh. 2/13/04)) has ruled against the Internal Revenue Service’s interpretation of this provision.

**Affected small businesses:** All small businesses using toll telephone service.

**Regulatory burden(s) imposed:** Taxation (at 3%) where before there was no taxation.

**Proposed burden reduction:** Withdraw proposed regulations. SBA’s Office of Advocacy suggested this last year, along with numerous other groups. The regulations have not been issued in final form.

**Anticipated benefit(s) for small entities:** Small businesses will no longer be required to file refund claims for excise taxes improperly collected on their toll telephone services.

**Name of rule, policy or guidance:** “Statutory Employees” – Bakery Drivers

**Regulating agency:** Department of Treasury/Internal Revenue Service (IRS).

**Authority for rule, policy or guidance:** 26 U.S.C. § 3121(d)(3)(A).

**Description of what existing rule, policy or guidance does:** Classifies commissioned delivery drivers for bakeries as “employees” (as opposed to “independent contractors”), despite the fact that they operate independently (pick their own paths, determine what speeds they will drive, etc.) and usually have a substantial investment in the tools of their trade (truck, often have to purchase or license a route from a baker). According to industry representatives, this happens even when a baker is dealing with a corporate distributor – the driver/employees of the corporate distributor are treated as the bakery’s employees for employment tax purposes. This represents a purposeful divergence from the common law determination of employee vs. contractor status.

**Affected small businesses:** All bakers using commissioned delivery drivers. North American Industry Classification System definitions 311811 (retail), 311812 (commercial). Retail bakers are predominantly small businesses (99.7% under 500 employees), as are commercial bakers (95.6% under 500 employees).

**Regulatory burden(s) imposed:** Requires withholding of taxes, accounting for such, and quarterly and annual reporting of such withholdings.

**Proposed burden reduction:** Enact a small bakery exception, defined as bakeries with less than 100 production employees (this is from several state VOC standards, modified to specify “production” employees to avoid circularity) or less than 120,000 pounds total production per day averaged over all operating days in any one month (BAAQMD definition, increased by 20%).

**Anticipated benefit(s) for small entities:** Reduced recordkeeping costs.

**Name of rule, policy or guidance:** Section 168(k); Bonus Depreciation

**Regulating agency:** Department of Treasury/Internal Revenue Service (IRS).

**Authority for rule, policy or guidance:** 26 U.S.C. §168(k).

**Description of what existing rule, policy or guidance does:** Certain depreciable property placed in service before 2005 qualifies for additional depreciation (50%) in its first year of use. This was an increase from the “bonus depreciation” of 30% provided by prior law (the increase to 50% was made by 2003’s Jobs and Growth Tax Relief Reconciliation Act). Bonus depreciation is scheduled to sunset for all years after 2004.

**Affected small businesses:** All small businesses putting into service depreciable property after 2004.

**Regulatory burden(s) imposed:** Very little paperwork is reduced by bonus depreciation since the unbonused portion of property is still depreciated over the normal “class life” applicable to that property. The burden is increased taxation in the first year of use (this evens out over the following years since there is less basis in the property to provide deductions in subsequent years).

**Proposed burden reduction:** Advocacy recommends that OMB support legislation to make the 50% bonus depreciation permanent.

**Anticipated benefit(s) for small entities:** Earlier cash flow benefits from increased short term depreciation. It has been pointed out by some practicing commentators on this provision that it only helps profitable businesses, since, for unprofitable businesses it will only increase their net operating losses, which are of limited tax use, particularly in strained economic times. However, “bonus depreciation” is not mandatory, and any unprofitable taxpayer can still elect out its provisions.

This reform would provide no paperwork or computational burden reduction. The entire benefit is earlier cash-flow from accelerated depreciation.

**Name of rule, policy or guidance:** Mobile Machinery Exemption – Federal Excise Taxes

**Regulating agency:** Department of Treasury/Internal Revenue Service (IRS).

**Authority for rule, policy or guidance:** 26 U.S.C. §4051, 26 C.F.R. § 48.4051-1(a)(2).

**Description of what existing rule, policy or guidance does:** To quote the Association of Equipment Manufacturers (“AEM”), “Under the proposed rule, which would revise 26 C.F.R. Part 48, IRS would effectively eliminate an excise tax exemption that has been in place since 1956, when the Highway Trust Fund began. IRS would now decide that “mobile machinery vehicles” are taxable “highway vehicles,” for purposes of the 12% federal excise tax on the sale of new trucks imposed under Internal Revenue Code (IRC) §4051, the federal tax on fuels consumed in highway vehicles imposed by IRC §§ 4041 and 4081, the fuel tax credits and refunds allowed under IRC §§ 6421 and 6427, the federal tax on the use of heavy highway vehicles imposed by IRC §4481, and, in some instances, the federal excise tax on heavy tires imposed by IRC §4071. This action, which eliminates a tax exemption which has been in effect for nearly half a century, amounts to the administrative imposition of three and perhaps four new federal taxes at a time when economic conditions are the hardest they have been in a decade.”<sup>1</sup>

**Affected small businesses:** The mining industry, consisting of over 7,600 firms, 98 percent of which are small businesses. Other small-business-dominated industries that are adversely affected are: oil drilling, water drilling, utilities, commercial construction, timber harvesting and pruning, tower erectors, and equipment leasing. Countless other firms, small and large, will also be adversely impacted by newly non-exempt heavy vehicles being subjected to four new excises, as well as being newly required to file excise tax forms.

**Regulatory burden(s) imposed:** Increased paperwork and tax burdens. AEM and the Specialized Carriers and Rigging Association state the following: “SC&RA reports that 78% of its membership that operates cranes and other mobile machinery vehicles have gross annual earnings of under \$5 million. Only 10% of its members have annual earnings in excess of \$12.5 million. The new taxes that IRS proposes will thus fall disproportionately on small businesses, most of them already strained by the poor economic conditions.”<sup>2</sup>

**Proposed burden reduction:** Leave the “mobile machinery exemption” in place. It is the Office of Advocacy’s understanding that Congress desires to reinforce its support for this exemption by including specific mobile machinery language in both versions of the currently-pending highway bills, H.R. 3550 section 9301 and S. 1072 section 5301).<sup>3</sup>

<sup>1</sup> <http://www.aem.org/Govt/Contrib.asp?A=151>

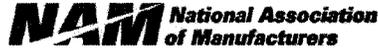
<sup>2</sup> *Id.*

<sup>3</sup> However, note that the current version of the JOBS Act, in sec. 896 of that legislation, explicitly provides that mobile machinery will be treated as a highway vehicle. It may well be that where JOBS sec. 898 states

**Anticipated benefit(s) for small entities:** Maintaining the “mobile equipment exemption” will mean that numerous small businesses will not be required to familiarize themselves with the intricacies of several federal excise taxes at all, simply because they own and operate heavy equipment making little use of the public roadways.

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"(A) IN GENERAL. -- A vehicle described in subparagraph (B) shall be treated as a highway vehicle ..." it should read "shall not be treated as a highway vehicle."



Michael Elias Baroody  
Executive Vice President

June 2, 2004

The Honorable Donald Manzullo  
Chairman  
Committee on Small Business  
U.S. House of Representatives  
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the National Association of Manufacturers (NAM), I applaud you and your committee for holding a hearing May 19<sup>th</sup> on "Red Tape Reduction: Improving the Competitiveness of America's Small Manufacturers." This is a topic of deep importance to the NAM and its 14,000 members.

The NAM was not able to offer testimony during the May 19<sup>th</sup> hearing. At the time, the NAM's resources were focused on meeting the May 20<sup>th</sup> deadline to submit comments to the Office of Management and Budget (OMB) on the *2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations* (Draft Report) and we were unable to participate in the hearing. Given the importance of the subject to the NAM and its membership, I request that this letter be included in the hearing record. In addition, I hope that the NAM's submission to OMB on the Draft Report, which is attached, can also be made part of the hearing record.

The National Association of Manufacturers is the nation's largest industrial trade association. The NAM represents 14,000 member companies (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country.

The NAM's member companies consistently report that the sheer amount of regulations and their attendant paperwork are a problem. Especially for small manufacturers, it is not so much that one or two particular regulations cause them problems. Rather, it is the number of regulations with which they have to deal. In addition, small manufacturers are much more affected than larger manufacturers by what are considered "non-major" rules under E.O. 12866 since small companies are generally in only one industry and the vast majority of non-major rules are industry-specific.

*The Impact of Regulatory Costs on Small Firms*, a 2001 report by Mark Crain and Thomas Hopkins for the Office of Advocacy of the Small Business Administration (Crain and Hopkins), makes two salient points about regulation: that manufacturing as a sector is

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disproportionately affected by regulations and that small firms are more affected in terms of cost per employee than mid-sized or large firms. (Crain and Hopkins acknowledge that their methodology does not attempt to capture the benefits of regulation.)

Indeed, Crain and Hopkins concluded that the cost per employee for small firms (fewer than 20 employees) in general was \$6,975, which is 60 percent more than the cost per worker of \$4,463 for firms with more than 500 employees. In manufacturing, this disparity was even wider, as the cost per employee for small firms (fewer than 20 employees) was \$16,920, or 127 percent higher than the \$7,454 cost per employee for mid-sized firms (20–499 employees) and 140 percent more than the \$7,059 cost per employee for large firms (500 or more employees).

In addition, Crain and Hopkins note that manufacturing is the hardest hit sector with respect to the burden of regulation. This is principally due to the disproportionate impact of environmental regulation on manufacturing, but the sector bears a heavier share of safety and health regulations as well. Crain and Hopkins found that the total cost of regulation to business was \$497 billion, of which \$147 billion fell on the manufacturing sector. Overall, Crain and Hopkins found that the total cost of regulation to the entire U.S. economy was \$843 billion.

In December 2003, the NAM released *How Structural Costs Imposed on U.S. Manufacturers Harm Workers and Threaten Competitiveness* (NAM Report, available on the Internet at [www.nam.org/costs](http://www.nam.org/costs)), which looked at structural costs — those imposed domestically “by omission or commission of federal, state and local governments” — in the United States as compared to our nine largest trading partners.<sup>1</sup> Beyond regulatory costs, the NAM Report looked at excessive corporate taxation, the escalating costs of health and pension benefits, the increased costs of litigation and rising energy costs (especially natural gas). The NAM Report concluded that these costs add a conservatively estimated 22.4 percent to the cost of production from U.S. plants and ranks similar costs in nine major trading partners. The regulatory component, which constituted 3.5 of the 22.4 percent cost disadvantage, is vastly understated as it includes only pollution-abatement expenditures — the sole regulatory cost-compliance data available across countries. By updating the Crain and Hopkins study, the NAM report estimated total regulatory compliance costs for 2003 of \$850 billion.

The NAM’s submission took exception to the Draft Report’s finding that estimated annual costs of federal regulatory programs from October 1, 1993, to September 30, 2003, were \$34 billion–\$39 billion and the estimated annual benefits of federal regulatory programs for the same timeframe ranged from \$62 billion to \$168 billion. While neither Crain and Hopkins nor the NAM Report estimated benefits, the Draft Report cost estimate is far below either the Crain and Hopkins figure for 2000 of \$843 billion or the NAM Report estimate for 2003 of \$850 billion.

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<sup>1</sup> Canada, Mexico, Japan, China, Germany, United Kingdom, South Korea, Taiwan and France

The NAM recognizes that the Office of Information and Regulatory Affairs (OIRA), which takes the lead in drafting the annual report for OMB, must rely on the estimates of costs and benefits that it receives from the agencies. The NAM noted in this year's submission to OMB, as well as in comments on previous draft reports, that OMB must do a better job of enforcing E.O. 12866 and other applicable executive orders and statutes with the agencies if it is ever to improve the regulatory accounting portion of the annual cost-benefit report required by the Regulatory Right-To-Know Act (Section 624 of the FY2001 Treasury and General Government Appropriations Act).

The problem with the status quo is demonstrated by the fact that OIRA reported on only six major rules for this year. This is partially due to OIRA dismissing 25 of 37 major budgetary programs as nothing more than transfer costs.<sup>2</sup> More to the point — of the remaining 12 major rules, only the six reported on were monetized for their costs and benefits.

On the other hand, OIRA in particular needs additional resources in order to meet fully the goals of the Regulatory Right-To-Know Act. When OIRA was first established as part of the Paperwork Reduction Act of 1980, it had approximately 90 staff members. For various reasons, Congress consistently cut authorized personnel for OIRA throughout the 1980s and, while a few of these positions have been restored, OIRA now has fewer than 60 staff members. The NAM encourages the Committee on Small Business to work with the Committee on Government Reform, the Committee on the Judiciary, the Committee on Appropriations and any other committees that the Committee on Small Business deem relevant to try to secure more adequate staffing for OIRA.

OIRA has taken some recent steps to try to improve the estimates that it receives from the agencies. Specifically, these include the issuance of Circular A-4, the Peer Review Guidelines, the Information Quality Guidelines, as well as working with the National Academy of Sciences and the Institute of Medicine to try to determine ways to improve estimates of environmental, health and safety regulations.

One suggestion that the NAM made to OMB to improve agency estimates would be to have selected agencies review the actual costs and benefits of at least some rules that have been in place for more than 10 years that were monetized at the time of promulgation. These results could then be compared against the agency's estimates during the rulemaking process. Such an exercise has the potential to provide a basis for refining the estimates used while a rule is being promulgated.

Since the NAM suggested that the Department of Commerce play a role in the review of regulations two years ago, its comments on the Draft Report encouraged OMB to provide at least

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<sup>2</sup> In its comments, the NAM noted that there could be indirect or other opportunity costs that would not be present but for the existence of the budgetary programs.

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some discussion about the planned role for the Department of Commerce. *Manufacturing in America: A Comprehensive Strategy To Address the Challenges to U.S. Manufacturers*, released by the Department of Commerce in January 2004, recommends that there be an Office of Industry Analysis under the new Assistant Secretary of Commerce for Manufacturing and Services that would "assess the impact of proposed rules and regulations on economic growth and job creation before they are put into effect." This office apparently would complement OMB's designated regulatory review function under E.O. 12866. Therefore, the NAM believes that, before being finalized, the Draft Report should address how OMB envisions the future relationship between OIRA and Commerce. Most importantly, the NAM hopes that the regulatory review role of the Office of Industry Analysis is viewed as permanent rather than temporary.

The NAM is member-led, so it solicited its membership to nominate regulations, including tax compliance and paperwork requirements, that could be improved. The NAM's Regulatory Improvement Task Force then reviewed the regulations nominated to determine which ones should be highlighted and to try to ensure that the ones turned in to OIRA met at least some of the criteria described by the Draft Report. All four criteria are that ". . . (1) a benefit-cost case (quantitative and/or qualitative) can be made for the reform; (2) the agency or multiple agencies have statutory authority to make the suggested change; (3) the reform recommendation gives due consideration to fair and open trade policy objectives; and (4) the rule or program is important."

In reviewing its nominations two years ago, the NAM was disappointed to learn that no regulation it had nominated had changed. This time, we tried to do a better job of meeting OIRA's criteria and we also plan to do a better job of following up with OIRA, especially since its focus this year is on regulations relevant to the manufacturing sector.

With the short timeframe available, it was difficult for the Regulatory Improvement Task Force to perform a cost-benefit analysis for any of the regulations nominated. In assessing the other criteria, however, the task force has tried to limit the recommendations to those that do not need a statutory change, will continue or enhance fair and open trade, or are important. While the criteria in the Draft Report use an "and," meaning that all four requisites should be met, the NAM's comments to OIRA express a hope that it will pursue improvements for deserving regulations, whether they meet all of the requirements or not.

In particular, a few regulations nominated by the NAM may require a statutory change. While nothing can be done administratively to improve these regulations, the reason why the NAM nevertheless nominated these is to call their attention both to OIRA and the relevant agency that there is a statutory problem that they need to work with Congress to correct. In addition, some nominations may seem trivial, but they were important enough for a company to take the time to report them. Anything that the Committee on Small Business could do to initiate the necessary statutory changes would be welcome.

An example of a seemingly trivial change that can easily — and should — be made is an OSHA rule found at 29 C.F.R. §§1910.106 and 1910.107, dealing with fire standards when using resin in boat building. When these sections of the *Code of Federal Regulations* (C.F.R.) were promulgated in 1969, OSHA incorporated the then-current National Fire Prevention Association (NFPA) standards into the rule. Thirty-five years later, the 1969 standards are still in the C.F.R. even though the industry has repeatedly petitioned OSHA to update them. Entities subject to this regulation could, technically, be cited for adhering to modern fire standards rather than 1969 standards. As the NAM noted two years ago and again in this year's comments to OIRA, one can only imagine what OSHA would do to a manufacturer that did not keep Material Safety Data Sheets up to date.

Two general suggestions in the NAM OMB submission that should be of particular interest to the Committee on Small Business are that agencies should make on-line forms available in multiple formats and that small business liaisons should regularly inform known small businesses affected by the agency's regulations of changes in requirements. Both would greatly assist voluntary compliance — especially by small businesses — and save them time and money as they comply.

In nominating regulations where improvement could especially make a difference in terms of lightening the regulatory burden and enhancing voluntary compliance, the NAM focused on the Particulate Matter and Ozone National Ambient Air Quality Standards; the Toxic Release Inventory; the Definition of Solid Waste; Spill Prevention Control and Countermeasures; SARA Title III; the FCC "Do Not Fax" rule; and the Family and Medical Leave Act (FMLA). While it is submitting other regulations that also need improvement, the NAM hopes that OIRA can give special attention to these seven. The NAM included the first six in Appendix A of its OIRA comments.

Suggested improvements for the FMLA are included in a separate Appendix B since the NAM submitted these nominations both with its general comments and under separate cover in 2002. Unfortunately, however, nothing has changed to improve the FMLA regulatory scheme despite the 2002 Supreme Court decision of *Ragsdale v. Wolverine Worldwide* (122 S. Ct. 1155 [2002]). This decision, striking down the Department of Labor's notice requirements as not consistent with the statute, was the first FMLA case to be heard before the Supreme Court.

OIRA has jurisdiction over the FCC's Do-Not-Fax Rule only to the extent that it can turn down an information collection (paperwork) request. Even if it takes this action, however, it can be overruled by majority vote of the full commission, which is the rule for all independent commissions. Since the FCC so far has greatly minimized the potential burden of this rule — especially for small businesses — the NAM would appreciate your committee taking an interest in this rule and what the FCC has done. A large coalition of business and trade groups, including the NAM, is supporting legislation to restore the "established business relationship" exception to

the fax ban. In addition, the NAM hopes that this rule also highlights the problem of independent commissions not taking cost-benefit analysis seriously because they do not have to. Perhaps the Committee on Small Business could further explore what it could do to improve the quality of regulations issued by independent commissions, at least to the extent that they affect small businesses.

The NAM also appreciated the emphasis that the Draft Report placed on improving IRS rules and paperwork, especially since 80 percent of the federal paperwork burden results from compliance with IRS rules. In general, the business community supports the ability of IRS to issue regulations and other guidance in a timely manner to clarify unclear and/or ambiguous statutory language.

At the same time, we recognize the need for IRS to work to make it easier for business taxpayers to comply with an increasingly more complex federal tax code. In fact, the burden of complying with current tax rules is consistently ranked by the NAM's small and mid-sized manufacturers as one of the top five tax areas that represent the greatest burden to them. The NAM encourages the relevant congressional committees, including the House Committee on Small Business, to play a larger oversight role and help rein in unnecessarily complex and burdensome paperwork requirements.

There are several specific actions that IRS could take to reduce the burden of tax law compliance. These include streamlining forms by eliminating duplicative or unnecessary information, (*e.g.*, Form 5471 on foreign entity reporting); avoiding, wherever possible, retroactive rulings or making them optional for taxpayers; continuing efforts to accelerate the guidance process; and easing recordkeeping requirements.

In conclusion, the NAM is disappointed that OMB continues to struggle with meeting the goals of the Regulatory Right-To-Know Act. On the other hand, the NAM understands that OIRA needs more resources and is taking action to improve the quality of the estimates that it receives from the agencies. Still, both OMB (through OIRA) and Congress need to place greater pressure on the agencies to continue to improve the raw information that they provide for the yearly report on the costs and benefits of federal regulations. The NAM also appreciates the emphasis on regulations relevant to manufacturing and plans to work with OIRA, the Small Business Administration and the appropriate congressional committees, including the Committee on Small Business, to ensure that at least some improvement to regulations governing manufacturing are made as a result of this exercise.

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Thank you, Mr. Chairman, for the opportunity to offer these comments on behalf of the National Association of Manufacturers. Please let me or Larry Fineran, the NAM's vice president, Regulatory and Competition Policy, know if you or other committee members have any further questions or need clarification of any point. Mr. Fineran can be reached at either (202) 637-3174 or lfineran@nam.org.

Sincerely,



Michael E. Baroody  
Executive Vice President  
National Association of Manufacturers