

Congress of the United States

Washington, DC 20515

January 21, 2004

**MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND
REGULATORY AFFAIRS AND THE SMALL BUSINESS SUBCOMMITTEE ON
REGULATORY REFORM AND OVERSIGHT**

FROM: Doug Ose and Ed Schrock



SUBJECT: Briefing Memorandum for January 28, 2004 Hearing, "What is the Administration's Record in Relieving Burden on Small Business?"

On Wednesday, January 28, 2004, at 2:00 p.m., in Room 2247 Rayburn House Office Building, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a joint hearing with the Small Business Subcommittee on Regulatory Reform and Oversight on relieving burden for small businesses, especially enforcement fines and penalties that are sometimes levied for innocent first-time violations. The hearing is entitled, "What is the Administration's Record in Relieving Burden on Small Business?" It follows up on the Subcommittees' July 18, 2003 joint hearing entitled, "What is OMB's Record in Small Business Paperwork Relief?"

Congressional Action on Paperwork Reduction

In 1942, to reduce paperwork imposed on the public, Congress established a centralized review function for proposed paperwork. The Federal Reports Act (FRA) required the Bureau of the Budget (which became the Office of Management and Budget (OMB)) to review and approve each agency paperwork proposal. In 1980, the Paperwork Reduction Act (PRA) replaced the FRA and established an Office of Information and Regulatory Affairs (OIRA) in OMB, whose principal responsibility is paperwork reduction.

In 1995, Congress reauthorized the PRA and set government-wide paperwork burden reduction goals for Fiscal Years (FYs) 1996 to 2001. In 1998, after annual increases in paperwork, instead of decreases, Congress, in a provision in the 1999 Treasury-Postal Appropriations Act, required OMB to issue a report identifying specific expected paperwork reduction accomplishments in FYs 1999 and 2000. In 2000, Congress, in a provision in the 2001 Treasury-Postal Appropriations Act, required OMB to issue a report evaluating paperwork imposed by agency regulations ("regulatory paperwork"), including each major rule imposing over 10 million hours of burden, and identifying specific expected reductions in regulatory paperwork in FYs 2001 and 2002. The Internal Revenue Service (IRS) accounts for over 80 percent of all paperwork burden imposed on the public. In July 2002, after six years of increases in paperwork burden, the Appropriations Committee included a directive to OMB in House Report 107-575, which accompanied its 2003 Treasury-Postal Appropriations bill, to focus more of OMB staff attention on reducing IRS paperwork.

OMB Attention to Small Business Paperwork Reduction

In its September 2003 final annual regulatory accounting report, OMB did not present an impacts analysis on small business, as required by law. At the Government Reform Subcommittee's March 2003 regulatory accounting hearing, OMB pointed out that its final 2002 annual regulatory accounting report included an impacts analysis on small business; in fact, this "analysis" was less than 1-page (pp. 43-4). In post-hearing questions after the Government Reform Subcommittee's April 2003 paperwork reduction hearing, OMB confirmed that it continues to devote less than 1 full-time equivalent (FTE) to IRS paperwork burden reduction. In addition, OMB only identified e-government initiatives to reduce burden on small businesses, i.e., instead of any paperwork reduction initiatives to reduce frequency of small business reporting, introduce thresholds below which reporting is not required, use sampling versus universe reporting, create short forms for small businesses, etc.

Congressional Action on Small Business Burden Relief

Both in March 1998 and February 1999, the House passed small business burden relief bills (H.R. 3310 and H.R. 391, respectively) by wide margins (267-140 and 274-151, respectively). Among several provisions, both bills required agencies, in the case of first-time paperwork violations by a small business, to impose no civil fine unless the violation had the potential to cause serious harm to the public, would impede the detection of criminal activity, or if the violation concerned very delinquent tax collection.

In June 2002, the President signed the "Small Business Paperwork Relief Act of 2002" (P.L. 107-198). This Congressional initiative required OMB to do the following by June 28, 2003: (a) publish the first annual list in the Federal Register and on OMB's website of all compliance assistance resources available to small businesses; (b) have each agency establish one point of contact to act as a liaison between small businesses and the agency regarding paperwork requirements and the control of paperwork; and, (c) report to Congress on the findings of an interagency task force, chaired by OMB.

The task force was charged with: (a) identifying ways to integrate the collection of information across Federal agencies and programs; (b) examining the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system, and with synchronized reporting; and, (c) examining the feasibility and benefits of publishing a list of paperwork applicable to small business. This list would be organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply."

The law also requires three more OMB reports to Congress by December 2003, June 2004, and December 2004. The two December reports relate to enforcement actions in which civil penalties were assessed for paperwork, regulatory or other violations. The first, due December 31, 2003, covers the 1-year period beginning on October 1, 2002. The reports must

include information on: (a) the number of enforcement actions in which a civil penalty is assessed; (b) the number of these actions against a small entity; (c) the number of these actions in toto and for small entities in which the civil penalty was reduced or waived; and (d) the total monetary amount of reductions or waivers in toto and for small entities.

Implementation of P.L. 107-198

On May 9, 2003, OMB published its draft task force report. On May 21st, four Chairmen – House Government Reform Subcommittee Chairman Doug Ose, Senate Governmental Affairs Subcommittee Chairman George Voinovich, House Small Business Committee Chairman Donald Manzullo, and House Small Business Subcommittee Chairman Edward Schrock - submitted a joint comment letter to OMB, citing numerous omissions and problems with its draft report.

On June 27th, OMB published two documents in the Federal Register. The first was a listing of compliance assistance resources and contact information for agency single points of contact (SPOCs). The document included only some of the Federal agencies that impose paperwork on small businesses; for example, the General Services Administration (GSA) was not included. And, the document included no SPOCs for some agencies, or multiple offices to contact for other agencies, like for the Federal Trade Commission (FTC). In total, 33 of the 71 agencies with federally-approved paperwork had not yet identified a SPOC. As of today, 14 agencies still are without a SPOC and OMB has not yet indicated compliance assistance resources for 18 agencies (see attached chart).

OMB's second June 27th document was a notice of availability of its final task force report. This document was also flawed. For example, the final report did not address the feasibility of requiring the agencies to consolidate reporting requirements in order that each small business may submit all information required by the agency to one point of contact at the agency, in a single format or using a single electronic reporting system. And, it recommended against a list organized (1) by NAICS codes, (2) by industrial sector description, or (3) "in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply." Instead, it recommended a new electronic system with the burden on each individual small business "to self-identify applicable criteria that profile their business" and "to self-identify a comprehensive list of applicable requirements."

In the June 2002 enactment of SBPRA, Congress intentionally delayed submission of initial agency enforcement reports until December 31, 2003, to allow agencies sufficient time to adjust their data systems to ensure that they could fully meet the Congressional reporting requirements. The legislative history, embodied in the Senate document entitled "H.R. 327 – Consensus Amendment, Purposes and Summary, Section-by-Section Description, and Legislative History," states, "the Consensus Amendment provides lead time by establishing the first due date on December 31, 2003" (148 CR S4736, May 22, 2002).

Unfortunately, OMB did not provide any guidance to the agencies until October 28, 2003. As a consequence, many agencies had not adjusted their data systems for their December 2003 reports, as Congress expected. In addition, since OIRA's guidance was only addressed to the President's Management Council, 20 agencies (including the Small Business Administration (SBA)) were unaware of this statutory reporting requirement until the Subcommittees, in January 2004, requested a copy from each agency of its enforcement report. As of today, 43 of the 69 applicable agencies (including SBA) have not yet submitted their enforcement reports (see attached table). The hearing will allow the three major regulatory agencies – the Departments of Labor (DOL) and Transportation (DOT) and the Environmental Protection Agency (EPA) – to discuss their enforcement reports.

Witnesses

The invited witnesses for the January 28, 2004 hearing are: Dr. John D. Graham, Administrator, OIRA, OMB; Patrick Pizzella, Assistant Secretary for Administration and Management, DOL; Jeffrey Rosen, General Counsel, DOT; Kimberly Terese Nelson, Assistant Administrator for Environmental Information, EPA; Harold Igdaloff, President, Sungro Chemicals, Inc., California, on behalf of the National Small Business Association; and, Andrew Langer, Manager, Regulatory Policy, National Federation of Independent Business.

Attachment

**STATUS OF AGENCY COMPLIANCE
WITH SBPRA'S STATUTORY OBLIGATIONS: 1/21/04**

Agency	SPOC	Compliance Assistance	Enforcement Report
Agriculture	Y	Y	Y
Commerce	Y	Y	Y
Defense	Y	Y	N
Education	Y	Y	N
Energy	Y	Y	Y
Health & Human Services	N	Y	N
Homeland Security	Y	Y	N
Housing & Urban Development	Y	Y	Y
Interior	Y	Y	Y
Justice	Y	Y	N
Labor	Y	Y	Y
State	Y	Y	Y
Transportation	Y	Y	Y
Treasury	N	Y	N
Veterans Affairs	Y	Y	Y
Independent Exec. Branch Agencies			
USAID	Y	N	unaware
CNS	Y	N	unaware - Y
EOP*	N	N/A	N
EPA	Y	Y	Y
EEOC	Y	Y	Y
Export-Import Bank of the US	Y	Y	unaware
FMCS	Y	N	N
GSA	Y	N	unaware
IMLS*	N	N/A	N
MSPB	Y	N/A	unaware
NARA	Y	Y	Y
NASA	Y	Y	N
NEA	Y	N/A	unaware
NEH	Y	N/A	unaware
NMB	Y	N	N
NSF	Y	N	unaware
NTSB*	N	Y	N
OGE*	Y	N/A	N
OMB*	N	N	N
ONDCP*	N	N/A	N
OPM	Y	N	N
Office of the Special Counsel*	N	N/A	N
OPIC	N	Y	N
Peace Corps	Y	Y	unaware
PBGC	Y	Y	unaware
RRB	Y	N	unaware - Y
SSS	Y	N	unaware
SBA	Y	Y	unaware

Agency	SPOC	Compliance Assistance	Enforcement Report
SSA	Y	Y	Y
Surface Transportation Board	Y	Y	unaware
TVA	Y	Y	N
USITC	Y	N	unaware
USTR	Y	N	N
Independent Regulatory & Banking			
CFTC	Y	Y	Y
CPSC	Y	Y	Y
FCC	Y	Y	Y
FDIC	Y	N/A	Y
FERC	Y	N	unaware
Fed. Housing Finance Board*	N	N	N
FMC	Y	Y	Y
Fed. Reserve Board	Y	Y	Y
FTC	Y	Y	Y
NCUA	Y	N/A	Y
NRC	Y	N	Y
SEC	Y	Y	Y
Small & Miscellaneous Organizations			
Appraisal Subcommittee of FFIEC	Y	N/A	unaware - Y
Comm. Purchase Blind/Hand.	Y	N/A	unaware
Emergency Oil & Gas Guar. Loan*	N/A	N/A	N/A
Emergency Steel Guar. Loan Board*	N	N	N
Federal Acquisition Regulation*	N/A	N/A	N/A
Harry S Truman Scholarship*	N	N/A	N
Interagency Council Homeless*	N	N/A	N
M.K. Udall Foundation for Environment	Y	N	unaware
Nat. Comm. on Libraries & Info	Y	N/A	unaware
Nat. Indian Gaming Comm.	Y	N	N
Nat. Institute for Literacy*	N	N/A	N
TOTAL - 71 AGENCIES	14N	18N	26N, 20 unaware

N/A = Not Applicable

* = 14 agencies not in OMB's SBPRA listing but in OMB's Paperwork Reduction Act inventory

NOTE. 24 agencies did not provide requested copies of all paperwork applicable to small business: USDA, DED, DHS, DOI, DOJ, DOL, DOT, Treasury, DVA, FMCS, GSA, NASA, NMB, NSF, OMB, OPIC, SSS, USITC, USTR, CFTC, Fed. Housing Finance Board, Emergency Steel Guar. Loan Board, & M.K. Udall Foundation for Environment.

Prepared for Congressman Doug Ose