

Testimony of Harold Igdaloff

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**On Behalf of
The National Small Business Association**



**House Government Reform Subcommittee on Energy Policy, Natural Resources and
Regulatory Affairs**

House Small Business Subcommittee on Regulatory Reform and Oversight

Hearing

**“WHAT IS THE ADMINISTRATION’S RECORD IN RELIEVING
BURDEN ON SMALL BUSINESS”**

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Thank you, Chairman Ose and Chairman Schrock, ranking members Tierny and Gonzalez. I appreciate the opportunity to speak on behalf of the National Small Business Association (NSBA), the nation's oldest nonpartisan small business advocacy group reaching more than 150,000 small businesses across the country. As the president of L.A.-based Sungro Chemicals, Inc. and a long-time board member of NSBA, I would like to applaud your two committees for your ongoing commitment to America's small businesses. Sungro is a formulator of pesticide products, with over 50 products registered with the Environmental Protection Agency (EPA), I would like to talk specifically about the difficulties I've encountered there, as well as discuss in broad-context the concerns of NSBA's members.

The last time I testified before a Congressional body was in 1996 right before you passed the Small Business Regulatory Enforcement Fairness Act (SBREFA). Since that time, you've also passed the Small Business Paperwork Relief Act; both laws that have strived to greatly alleviate the headaches I was dealing with in 1996. However, as you know and have already stated, agency compliance with these laws, specifically the Small Business Paperwork Relief Act, sometimes leaves much to be desired. Before I launch into the specifics, I'd like to remind you: paperwork is a symptom, not the root problem. Government's tendency to over-regulate is the source of all the paperwork. A personal example of this is the fact that due to a simple directive requiring the change of the wording on all pesticide labels from "Precautionary Statements" (acceptable for over 25 years) to "First Aid" we had to revise each of our labels and send each one to the EPA for review and approval, frequently getting contradictory responses from EPA requiring resubmission. After receiving a stamped approved label from the EPA, we then have to fill out an application and send a copy for approval to each state where the products are registered. As I'm sure you can imagine, this is extremely time-consuming.

Overview

You've heard the numbers time and again: federally mandated paperwork equates to eight billion hours with the IRS accounting for 80 percent of that figure. The Small Business Administration reports that the average per-employee cost of all federal regulation for companies with fewer than 20 employees is nearly \$7,000, three times what large companies pay. In many cases, paperwork is a burden imposed after a business enterprise has taken steps to comply with the regulation in question.

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

Most federal officials who develop regulations are largely unaware of the many activities and requirements of their fellow agencies. The Small Business Paperwork Relief Act simply intends to bring small business reality and a sense of regulatory necessity into the thinking of the federal bureaucracy--and eliminate excessive redundancy.

In order to accomplish these goals, the Office of Information and Regulatory Affairs (OIRA) was given the authority and duty of preventing needless and redundant information requests from being imposed on the public. While the agencies are required to demonstrate the necessity of the data request and to publish

it in the Federal Register for public comment, a strong OIRA is necessary to provide an adequate check for these agencies. Both SBREFA and SBPRA were intended to increase small business involvement in formulating new regulations and reduce the overall burden small businesses bear. Even with the 2002 passage of the Small Business Paperwork Relief Act, agencies have continued to increase the amount of paperwork leading to a seven-year upward trend of the paperwork burden. A perfect example of that is the EPA's Toxic Reporting Inventory (TRI).

Though SBREFA has empowered the SBA Office of Advocacy to take a more active role in preventing regulations that would harm small businesses, there are still agencies that proceed with unfair regulations. SBPRA has also outlined three steps agencies were mandated to take to ensure small business concerns were being represented; a single-point of contact, publishing all compliance assistance, and completing annual reports on small business enforcement actions said agency has taken. Yet, as we can all see, many agencies have not fully complied with this rule. I'd like now to turn to specific EPA oversights.

EPA

In addition to the EPA's TRI, which has already been discussed, I'd like to call your attention to another example of voluminous paperwork. The Pesticide Re-registration booklets the Office of Pesticide Programs (OPP) issues for each active pesticide ingredient are lengthy and complicated. A few hours of extrapolation and condensation by the knowledgeable staff would significantly reduce the size of the publications as well as the time and complexity required to conform.

In terms of the EPA's compliance with the Small Business Paperwork Relief Act, I would like to voice a number of concerns.

1. The regulatory and paperwork overload is gradually eliminating participation by small businesses in certain areas of activity. As an example of unnecessary paperwork, we have to report annually, our total sales and production of each pesticide product. In my testimony in 1996 I pointed out the problems associated with an antiquated form used by EPA for reporting this data. A tabular spreadsheet would replace the sixteen page report we have to submit. We are only allowed to put the data for three products (ten items per product) on each page. All the information on this report aside from pounds produced and yet to be produced and sold, is already in the EPA files. In our case over 500 pieces of data have to be hand transcribed to complete this form. Several small businesses have received significant fines for failure to fill out this cumbersome and confusing form.

2. There seems to be little concern for paperwork reduction in the OPP relative to their internal procedures or external communications. As a result of the practices typified by the example above, the OPP has chosen to increase the maintenance fee for each approved product from \$600.00/yr in 1989 to over \$3000.00/yr in 2004, a 500 percent increase in fifteen years. This coupled with the additional fees imposed by each state is essentially removing small businesses from this area of economic activity.

In terms of the EPA's compliance with the Small Business Paperwork Relief Act, I would like to voice a number of concerns. While increased flexibility for small businesses in terms of the EPA Audit Policy and Small Business Compliance Policy may reduce the penalties assessed and formal investigation process, it has the potential of "strong-arming" small businesses into admitting and paying for something they may not agree with. I would also argue that even though EPA has implemented a discount penalty based on the violation, there should be further discounts for small businesses who unknowingly commit

one of those violations. I cannot stress enough to you – as the president and owner of a company that employs 12 people, I do not have resources on-par with those of a large business to ensure compliance with what you see are notebooks-full of paperwork requirements.

The EPA, in their enforcement actions report to Congress for FY 2002 stated that “...due to the complexity of the environmental enforcement process and the variety of settlement options, the data maintained by EPA cannot be classified this neatly...” The EPA has quite eloquently proven my point here. If the EPA cannot even collect their own information because the process is too complex, how can they justify requiring small business owners to comply with their quagmire of rules and regulations?

Overall Agency Compliance

When your committee sent me the sheet listing agency compliance with SBPRA’s statutory obligations, I found it interesting that while small businesses are permitted little leeway in compliance with agency rules and regulations, less than 30 percent of agencies were in full compliance with SBPRA. 80 percent of agencies have established a single point of contact for the paperwork and regulatory questions of small businesses, only 75 percent have published or made available a list of compliance assistance resources for small businesses, and a disappointing 28 percent filed their enforcement reports. I suspect that the compliance rate for small businesses on any number of agency regulations is far above and beyond 28 percent.

In addition to my concerns with the EPA, I want to be sure that I make mention of the enforcement practices of OSHA in FY 2002. Of all enforcement actions on businesses through OSHA, a whopping 84 percent were penalties on businesses with fewer than 250 employees, and of those penalties, 60 percent were against businesses with 25 or fewer employees – overall, 50 percent of all enforcements from OSHA were imposed on small businesses with less than 25 employees.

One important discrepancy among many of the reports is the definition of a small business. The U.S. Small Business Administration has spent countless hours debating the issue of “what is a small business”, and has established certain size standards based upon revenues or employee size under the North American Industry Classification System (NAICS). The overwhelming majority of industries under NAICS have a 500-employee cap to be considered a small business. However, the EPA has chosen to define a small business as 100 or fewer employees. The Department of Labor has a wide variety of definitions for small business; the Employee Benefits Security Administration outlines a small entity as one having 100 or fewer participants in an employee benefit plan, OSHA used a 250-employee guideline, Wage and Hour Division defines it as 50 or fewer employees, Mine Safety and Health Administration says fewer than 20 employees. The measurement being taken by these agencies can be seriously skewed based upon their definition of a small business. I would urge all agencies to use the SBA size guidelines when completing these enforcement reports.

This entire process points to a broad conclusion. Only 28 percent of agencies completed the statutorily mandated enforcement report – even with the Committee’s extended deadline. If the agencies imposing all this paperwork can’t even complete a simple, one-page report defining their enforcements on small business as compared to overall enforcements, it is blatantly obvious to me that there is too much paperwork, too much regulation and by far too much confusion. I urge you to hold these agencies to the same standards to which they hold me.

Potential Solutions

Streamline paperwork: Agencies must seek ways to eliminate duplication of paperwork and coordinate the due-dates. The paperwork requirement for filing mandatory emergency plans is an excellent example. As you know, many agencies require emergency plans, and inevitably, these due dates are all different. This is not uncommon, and it would be a huge relief to simply streamline dates and reduce the number of times one plan must be reported.

Small business assistance: Small business owners are smart, entrepreneurial, creative and quick students. We are not, however, regulation specialists. It is easy for a well-meaning small business to overlook a requirement or a deadline because we don't have dedicated compliance staffs to research the vast federal (not to mention state, city and local) regulatory paperwork quagmire. We are busy creating new jobs and spurring economic growth.

Increase the importance of burden reduction: As a businessman, I know what it means to be short-staffed. I understand that people can only do so much. Additional people within OIRA dedicated to helping agencies understand the importance of reducing the paperwork burden on small businesses would be a good start.

Cost-benefit analysis: This is common-sense business policy. If I want to do something because I think it will be good, the next step I take is to complete a cost-benefit analysis to see if it really would be a good move. Federal agencies should be held to no less a standard, and should be required to submit the estimates of the cost as well as the benefit associated with rules and paperwork for each of their programs.

Enforce agency compliance with SBPRA: When nearly 66 percent of all agencies failed to submit the enforcement reports mandated by the SBPRA, clearly there is something wrong. Just as small businesses are held accountable for our actions, agencies must also, and OIRA must take the steps to help agencies comply as well enforce laws like the SBPRA and SBREFA.

Conclusion

In closing, I would like to commend Chairman Ose and Chairman Schrock for your efforts and dedication to small business through the Paperwork and Regulatory Improvements Act of 2003. H.R. 2432 will statutorily encourage OMB to place an emphasis on reducing the burden for small business. NSBA supports this legislation and looks forward to working with you on it.

Congress and the Administration need to take a bottom-line look at the mountains of reporting small businesses face. Paperwork is paperwork, regardless of whether it's good or bad. When I'm completing the annual production report to EPA, revising labels for pesticide products, and reporting the same basic information and data to the state agencies multiple forms for pesticide activity which duplicates, I'd like to let you know what I'm not doing. I'm not researching ways to provide the most competitive health insurance package to my employees. I'm not creating new pesticides. I'm not looking for ways to make more environmentally-friendly pesticides. I'm not selling additional product. I'm not growing my business. I'm not hiring new employees.

I thank you for your time and welcome any questions you may have for me.