

Statement of Patrick Pizzella
Assistant Secretary for Administration and Management and
Chief Information Officer
U.S. Department of Labor
Before the Subcommittee on Energy Policy, Natural Resources and
Regulatory Affairs, Committee on Government Reform and
the Subcommittee on Regulatory Reform and Oversight,
Committee on Small Business
U.S. House of Representatives
January 28, 2004

Good afternoon, Chairman Ose, Chairman Schrock, and Members of the Subcommittees. I am Patrick Pizzella, Assistant Secretary for Administration and Management, and Chief Information Officer for the Department of Labor (DOL). Thank you for inviting me here today to discuss DOL's implementation of the Small Business Paperwork Relief Act (SBPRA) and the FY2003 Regulatory Enforcement Report which was required by the Act. I appreciate this opportunity to discuss DOL's responsibilities under the SBPRA, and our efforts to provide relief and fair treatment to small business owners.

DOL is committed to reducing the burdens that America's small businesses deal with as a result of Federal regulations and paperwork. Both the SBPRA and the Paperwork Reduction Act are important tools for DOL to use to reduce unnecessary paperwork burdens on small businesses. Additionally, expanding the availability of government services and information via the Internet not only reduces the paperwork burden on citizens and businesses, but also offers convenience to small business owners. The Department strives to inform small businesses about the extensive compliance assistance resources provided by our agencies, whether they are found on the Internet or through our local and national offices.

DOL takes seriously our responsibilities under the SBPRA and the Paperwork Reduction Act (PRA) and we believe we are fulfilling the requirements of the Acts. DOL has decreased the paperwork burden reported in our Information Collection Budget in seven out of the eight years under the 1995 PRA, yielding a nearly 40 percent decrease. This decrease includes both program changes and adjustments.

The Information Collection Budget reporting process does not provide for a separate accounting of paperwork burden for small businesses. However, we can state that in general small businesses will benefit as we eliminate or simplify paperwork requirements for businesses of all sizes.

This year, our Information Collection Budget does detail one non-electronic paperwork reduction initiative, which exceeds the 100,000-hour threshold. This was accomplished as part of OSHA's ongoing efforts to revise provisions of its standards.

Now I would like to discuss the Department's FY 2003 Regulatory Enforcement Report. In December 2003, DOL submitted our initial Regulatory Enforcement Report, as

required by the SBPRA. This report presents data on the number of DOL agency enforcement actions in which a civil penalty was assessed, the number of these enforcement actions for which small entities were assessed, the number of enforcement actions in which the civil penalty was reduced or waived, and the total monetary amount of these reductions or waivers.

Within the Department of Labor, the Employee Benefits Security Administration (EBSA), the Employment Standards Administration (ESA), the Mine Safety and Health Administration (MSHA), and the Occupational Safety and Health Administration (OSHA) reported enforcement actions in which civil monetary penalties were assessed.¹

It should be noted that reductions or waivers for small entities are in many cases already factored into the formulas used to compute penalties. In addition, agencies reduce penalties before assessment. For example, Wage and Hour Division field managers make pre-assessment adjustments before assessing penalties against an employer.

EBSA reported 11,882 enforcement actions involving civil penalties, including 5,283 actions against small entities. Reductions or waivers were granted in 99 percent (5,223) of those 5,283 actions, for a total of approximately 3.4 million dollars. For purposes of the report, EBSA defined "small entities" to refer to employee benefit plans with 100 or fewer participants.

Through EBSA's "Delinquent Filer Voluntary Compliance Program" (DFVCP), plan administrators who voluntarily come forward to bring their annual report filings up to date face greatly reduced penalties. Of the 5,223 actions in which penalties were reduced or waived against small entities, 5,204 were reduced penalties paid under this program. As part of this program, the Internal Revenue Service and Pension Benefit Guaranty Corporation have agreed not to impose additional penalties.

EBSA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	11,882	5342	\$9,294,822	(not available)
Small (≤ 100)	5283	5223	\$3,383,539	(not available)

ESA's Wage and Hour Division reported 2,117 enforcement actions, including 1,018 against small entities. Reductions or waivers were granted in 26 percent (268) of the actions against small entities, totaling approximately 650,000 dollars, with final penalties of 2.8 million dollars. For purposes of the report, the Wage and Hour Division defined "small entities" as businesses with 50 or fewer employees. As noted above, Wage and

¹ Several DOL agencies or offices had no information for the report either because they have no authority to assess or impose civil penalties or because they took no such enforcement actions during the time period covered: the Employment and Training Administration; the Employment Standards Administration's Office of Federal Contract Compliance Programs, Office of Labor-Management Standards, and Division of Longshore and Harbor Workers' Compensation Programs; and the Veterans' Employment and Training Service.

Hour makes pre-assessment adjustments of civil penalties; in calculating further reductions and waivers, ESA included only post-assessment adjustments.

ESA/Wage and Hour				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	2117	543	\$1,848,578	\$8,125,959
Small (≤ 50)	1018	268	\$649,756	\$2,809,491

MSHA is required by statute to propose a civil penalty for every violation. MSHA is not authorized to waive civil penalties in any case. However, prior to determining proposed penalties, MSHA considers six statutory criteria, including business size. Thus, business size does affect proposed penalty amounts. In addition, a mine operator may request a review of the business' financial situation after MSHA issues a proposed civil penalty as justification for further reduction of the penalty.

In FY 2003, MSHA proposed penalties in 104,800 enforcement actions, 96 percent of which were for operations with fewer than 500 persons. Forty-five percent of all proposed penalties were for mines employing fewer than 20 persons, MSHA's definition of a small mine, totaling approximately 8 million dollars. MSHA investigated six requests for financial review during FY 03, but did not reduce the penalty in any of the six cases.

MSHA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	104,800	not applicable	not applicable	\$20,343,990
Small (<500)	100,300	not applicable	not applicable	\$19,335,594
Small (<20)	47,150	not applicable	not applicable	\$7,952,307

OSHA proposes penalties after taking into account the statutory factors of: size of the business, the gravity of the violation, the good faith of the employer, and the history of previous violations. In virtually every case where the business meets the criteria for being considered a small business, a reduction is made. The rates of reduction for business size range up to 60 percent, for the smallest businesses.

OSHA's proposed penalties are made final by order of the Occupational Safety and Health Review Commission (OSHRC). The numbers reflect the difference between the final penalty and OSHA's proposed penalty, which already takes into account the reductions provided by statute.

OSHA reported 24,583 enforcement actions with penalties. Of those, 20,780 were at businesses with 250 or fewer employees and 12,366 were at businesses with 25 or fewer employees.

For businesses with 250 or fewer employees, assessments were reduced 71 percent of the time totaling approximately 29 million dollars. For businesses with 25 or fewer employees, assessments were reduced 67 percent of the time, totaling approximately 12 million dollars in reductions, and final penalties of approximately 23 million dollars. I would note that DOL has released an addendum to our Enforcement Report that details the amount of these reductions. These reductions are in addition to those required by the statute for size.

OSHA				
	Actions	Reductions/Waivers	Amount Waived/Reduced	Final Penalties
All	24,583	17,669	\$40,457,500	\$75,085,617
Small (≤ 250)	20,780	14,738	\$28,682,153	\$51,774,351
Small (≤ 25)	12,366	8270	\$12,437,362	\$22,720,979

The Department of Labor is committed to reducing the paperwork burden on American business. In addition, the Department has a very strong program of compliance assistance to help all businesses, especially small businesses, comply with our requirements. When we conduct an investigation, our objective is not to punish companies, but to assure compliance with our laws and to protect America's workers.

That concludes my prepared testimony. I would be happy to answer questions you may have.