

**Testimony of Jeffrey A. Rosen
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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
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My name is Jeffrey A. Rosen, and I am the General Counsel of the Department of Transportation (DOT). I am pleased to have the opportunity today to testify about the Department's further implementation of the Small Business Paperwork Relief Act of 2002, especially our December 15, 2003 Regulatory Enforcement Report. For DOT, reducing the burden on small businesses is an important goal while we advance our overall mission, and we take our responsibilities very seriously in that regard.

Before I discuss the details of our report, I would like to note that DOT has, by some measures, one of the largest rulemaking responsibilities in the Federal Government. Our operating administrations and the Office of the Secretary have a tremendous responsibility for a broad range of matters that include safety, security, and economic development, among other things. Our Department is quite proud of the excellent safety, security, and environmental record of the industries we regulate, but DOT is also constantly aware of the extraordinary risks faced in industries that annually transport millions of people, tons of hazardous materials, and all forms of industrial and consumer goods. We are also responsible for ensuring that the billions of dollars that we provide in

financial assistance are used in accordance with statutory objectives and mandates. At the same time, we are also aware of the burdens our rules can impose, and in our rulemakings we consider the costs and benefits and determine whether those benefits justify the costs. In addition, we periodically review our existing rules. Among other things, we may examine any problems the regulated entities are having in complying with a particular rule. Based on that review, we may decide to make changes to the rule to address those problems.

DOT's Regulatory Enforcement Report was timely submitted in December 2003. Hopefully, the information it provides is helpful to show DOT's progress. I won't walk through the report itself, but there are three main points that I would like to make regarding our report.

First, to the extent permitted by law, when the violation did not present a significant risk, the Department's existing policy is to waive or reduce civil penalties for small entities that are first-time violators who have acted in good faith and who move quickly to correct the problem. This is in recognition of the fact that small entities have limited resources and those resources are often best spent correcting the violation rather than paying a fine. In addition, many of our operating administrations have developed "ticketing" (a simpler process than normal enforcement actions where the alleged violator is given something similar to a parking ticket that contains a description of the alleged violation, information on how to correct the violation, and sometimes a substantially reduced fine) or "warning letter" programs whereby the small entity receives a ticket or warning for less serious

violations.

Second, throughout the Department, operating administrations use their discretion in deciding whether to take any enforcement action against a small entity. The use of discretion is a concept that could not be readily captured in our report because the statute asks for specific numbers. Nevertheless, while preparing this report, each operating administration wanted to note that there are many instances where it exercised its discretion not to take enforcement action because the entity was small and the gravity of the violation was not substantial. This decision could be made at various levels. For example, an inspector may not file a violation report or a reviewing attorney may decide that initiating an enforcement action is not necessary. The operating administrations make every effort to emphasize that compliance is their goal rather than collecting civil penalties. This is especially true when there has been a good faith effort to comply and the alleged violation does not involve criminal wrongdoing, or a serious threat to health, safety, or the environment. The agencies, however, do not keep records for this type of action, so the numbers do not fully reflect our efforts to achieve the goals of the Small Business Paperwork Relief Act of 2002..

Third, not all of the operating administrations within DOT assess civil penalties. The operating administrations that assess civil penalties are the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the National Highway Traffic Safety Administration (NHTSA) and the Research and Special Programs Administration

(RSPA). In addition, civil penalties are assessed by the Office of Aviation Enforcement and Proceedings within the Office of the Secretary of Transportation (OST).

Further, I would also like to clarify a few other items with respect to the report. First, completed enforcement actions include enforcement actions initiated in prior years, but completed in FY 2003. Second, when reporting the total number of enforcement actions that assessed civil penalties during FY 2003, we counted only those enforcement actions that were initiated in fiscal year 2003. Third, the numbers reported for civil penalties reduced or waived does not include money actually received by the Department, just the amount assessed. Fourth, because each operating administration regulates a specific mode of transportation, the definition of a “small entity” varies with each operating administration. The definition used is the one they use for analytical purposes under the Regulatory Flexibility Act. Finally, the invitation to testify here today requested some additional information from the Department that was not called for in the statute.

Specifically, you asked for the total amount of civil penalties assessed against small entities. In the time available, I was able to obtain some rough estimates from the operating administrations that assess civil penalties. Although estimates, they should give the subcommittees the context they are looking for. Attached to my statement is a chart that outlines the relevant enforcement actions and civil penalty assessments for each operating administration. This information is contained in our Regulatory Enforcement Report for 2003, except for the total amount of civil penalties assessed against small entities.

It can be difficult to derive significant meaning from these numbers without specific information regarding: (1) how often decisions were made not to pursue an enforcement action against a small entity or (2) to reduce the penalty assessed because the violator is a small entity, and (3) the factors in each action that may prevent an operating agency from reducing or waiving a penalty. However, based on the data we have collected regarding the reductions or waivers provided to small entities, we believe the Department is effectively implementing the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and giving appropriate consideration to small entities in our enforcement actions.

The invitation to testify also requested information regarding specific DOT reductions in reporting and recordkeeping requirements. That is another area in which we aim to accomplish the important statutory objectives. We recognize that paperwork requirements can impose a significant burden, especially on small businesses, and we are committed to finding new and innovative ways of reducing this burden. DOT is especially encouraged by new developments and initiatives in the use of technology to reduce reporting and recordkeeping requirements on small businesses, and we are in the process of implementing initiatives that take full advantage of this automation in the future. DOT capitalized on the use of electronic capabilities to reduce the information collection burden in FY2002, as I will discuss later. In FY2003, however, DOT experienced some challenges in reducing reporting and recordkeeping requirements, primarily due to 1) new statutory requirements for information collections related to the safety of the traveling

public; and 2) the lead time required to fully recognize the benefits of the use of automation. I will detail these challenges to reducing the information collection burden on small businesses, and will also highlight the actions the Department has taken and will continue to take in the future to reduce the information collection burden on small businesses.

First, by way of background, DOT executes 34 information collections which impose a burden on small businesses. Burden hours range from 24 hours for one to 160 million hours for another. Although the goal is to reduce this burden on small businesses, many of the Department's information collections are mandated by law and have been deemed necessary to ensure the safety of the traveling public. Additionally, some new rules continue to be necessary that unfortunately cannot avoid increased reporting and recordkeeping requirements. We want to minimize or eliminate these wherever we can, but attempts to reduce these burdens that are underway--while also minimizing safety risks--will require time to implement. Because of these restrictions we have not yet been able to reduce reporting and paperwork requirements, exclusive of electronic filings, in the relatively brief time since enactment of the SBPRA.

My second point regarding reporting and record-keeping, however, relates to some of the significant steps we are taking with electronic technology. While DOT is investing in the use of technology to reduce the paperwork collection burden on small businesses, the integration of technology, and the resulting changes in associated business processes require significant lead time and a more comprehensive societal acceptance and integration of technology. For example, although DOT has introduced technology to

create efficiencies in reporting and recordkeeping, many of DOT's constituents do not yet have the training and/or equipment to take advantage of these solutions; consequently, the solution cannot be universally applied to create the reporting efficiencies envisioned. So we see technology as an increasingly important factor in reducing the burden on small business, but not the sole method by which we seek to accomplish the goals of SBPRA.

Despite the challenges to reducing the burden on small businesses, DOT has instituted several initiatives that have resulted in, or will result in, success in this area. For example, under the Hours of Service Act, the Federal Railroad Administration (FRA) is required to monitor the hours railroad workers operate trains. The monitoring is used to ensure that workers do not work excessive hours and thereby jeopardize rail safety. FRA collects this information from all railroads through its electronic recordkeeping initiative. In FY2002, FRA reduced the hours to collect this information from 4,067,432 to 3,294,736, a decrease of 12 percent. Respondent burdens vary with the number of employees covered under this rulemaking. Larger railroads bear the brunt of the reporting requirements while small railroads, with a limited number of employees, incur a relatively small burden. FRA has actively been working on its electronic recordkeeping initiative with both large and small railroads to further reduce the burden.

One of the most encouraging initiatives that DOT is participating in is a Federal program, the Business Gateway Initiative, which will benefit all small businesses, citizens, and others who conduct business with the Government by providing a one-stop web portal for multiple Government services and reporting requirements. By providing a single

collection point, Business Gateway will ultimately reduce the requirement for small businesses to submit redundant data to multiple agencies.

In FY2004, the Department will continue to analyze reporting and recordkeeping burdens on small businesses, and look for opportunities to reduce this burden while always ensuring that the safety of the traveling public is the foremost consideration. It is anticipated that, as capabilities for the electronic transmission of information, and the availability of technology, expand, small businesses will be able to capitalize on the use of this technology to reduce their time spent in responding to information collection requirements. Again, DOT is committed to reducing the information collection burden on small businesses where possible, and anticipates further progress in FY2004 and beyond.

In conclusion, the Department is proud of its efforts in the regulatory compliance area, especially with respect to small businesses. Our Regulatory Enforcement Report provides Congress with information regarding the implementation of our policies and procedures with respect to reducing or waiving civil penalties assessed against small entities. We know there is always room for improvement, and we look forward to receiving the subcommittees' feedback on our report.

DOT recognizes the importance of small business to our Nation's economy. I can assure you that, as General Counsel of the Department, I will continue to monitor this important initiative and ensure our effective compliance.

Thank you for the opportunity to discuss the Department's Regulatory Enforcement Report for 2003. I would be pleased to answer any questions that you may have.