



**TESTIMONY OF
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THE NATIONAL SMALL BUSINESS ASSOCIATION

What is the Bush Administration's Record in Regulatory Reform?

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

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Thank you, Chairman Ose, Ranking Member Tierney, and members of the committee. As president of the National Small Business Association (NSBA), I am pleased to join the distinguished Chairman for his last hearing on this very important issue. Over the last 2 years, NSBA has testified before you 4 times and worked side-by-side with your staff to pursue our common goal of regulatory reform for small business.

NSBA is the nation's oldest nonpartisan small business advocacy group, reaching more than 150,000 small businesses across the country. In May of 2004, we submitted comments on the *Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations issued by the Office of Management and Budget (OMB)*. While keeping our scope broad and urging the need for a strong OMB and even stronger Office of Advocacy to ensure that regulators understand small business's need for regulatory restraint, we focused on two specific issues we have found particularly troubling for our members; Toxic Release Inventory (TRI) and No-Fax Regulation. For purposes of my testimony, I'd like to also address the 800-pound gorilla we like to call the IRS, and the massive regulatory burden imposed through the complex and outdated tax code.

Background

We all know what the numbers say: federally mandated paperwork equates to 8 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 approximately \$6,975, 60 percent higher than 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.

As I mentioned earlier, NSBA has participated in various hearings with this committee as well as with the Small Business Committee. Based on those hearings, there is an apparent lack of accountability and oversight for many of the regulatory actions taken by agencies. The Draft Report by OMB is important and necessary as a means to examine the benefits and costs of various regulations. That being said, NSBA believes that the Draft Report could stand to be more comprehensive and inclusive of small business issues. Of all Federal regulations finalized in 2003, the Draft Report examined less than 2 percent due to standards regarding major vs. non-major rules and transfer rules. Furthermore, independent agency rules were also exempted from the Draft Report. We believe that information regarding cost-benefit analysis on non-major rules as well as those from independent agencies would be helpful in getting a firm grasp on the overall burden imposed on small businesses.

That being said, I acknowledge the difficult job OMB, and especially Dr. Graham as the Administrator of the Office of Information and Regulatory Affairs (OIRA), has ahead of it in working to reduce the regulatory burden. As OMB is an office with limited resources, I can

certainly understand the tenuous position that exists in attempting to take-on broad regulatory reform. But it must be done.

Toxic Release Inventory (TRI) - Environmental Protection Agency (EPA)

A painful thorn in the side of many small manufacturers, TRI has significantly reduced thresholds on reporting for usage of certain chemicals and releases. This is an annual process that is incredibly time consuming, complex and costly. In April of 2003, NSBA member Vic Schantz testified before this committee on the problems he faces in dealing with the TRI.

Mr. Schantz owns and operates a 130-year-old family-owned pipe-organ building business that was started by his great grandfather. Their annual sales volume is \$7.5 million, and they build about 20 custom-designed, hand crafted instruments per year. Due to the nature of his business and his minimal use of lead, he has been affected by the EPA Toxic Substances Reporting Inventory (TRI). This mandated report that was due in June 2003 for the first time caused great headaches for Mr. Schantz. Due to EPA's lowering of the threshold for reporting from 10,000 lbs. of lead used per year in a business to a mere 100 lbs. per year, Mr. Schantz now faces a significantly increased paperwork burden. Through their Web site, which includes 195 pages of instruction on how to complete the two different forms, the EPA estimates that both forms will take approximately 82 hours combined, to complete. Mr. Schantz charges clients \$50.00 per hour for labor costs. That amounts to \$4,100 additional cost to report on lead usage that is just barely over the minimum level. In an environment that is still caustic for small manufacturers, surely the administration doesn't intend to create additional barriers to doing business in the U.S.

The EPA is continuing to examine the issue, and we applaud that, however NSBA believes not enough is being done to help entrepreneurs like Vic Schantz. With 2002 TRI reporting on Form R creating nearly 3.8 million total hours of paperwork burden for industry, it is no wonder OMB has directed EPA to more closely examine methods to improve this rule. As a small business advocate, NSBA is willing to voice our concerns with the EPA's TRI regulations. I do, however want to offer our praise to EPA as they are currently examining ways to reduce the burden caused by TRI to small business. I encourage further discussion on the issue and would support action taken to effectively raise thresholds for small businesses, and allow for simplified reporting as "no significant change" where applicable.

No-Fax Regulation (Telephone Consumer Protection Act of 1991) - Federal Communications Commission (FCC)

The regulations regarding no-fax were published in June of 2003 from the FCC would force any small business or association to maintain a written statement of consent from customers to receive faxes from that business or association. As anyone in business knows, the fax machine is an important tool for communicating. NSBA recommended that the rule be withdrawn or language changed from "written consent" to "previous existing business relationship". The FCC recently released a continuing resolution extending the stay on that rule. As it currently stands, the FCC has extended the date for businesses to have on file written consent in order to fax individuals back to June 30, 2005.

While the OMB has expressed concern over this rule, it is now in the hands of Congress. The House of Representatives has passed H.R. 4600, the "Junk Fax Prevention Act", and the Senate Commerce Committee approved S. 2603, a companion bill, but the Senate has yet to act. I thank you for your action on H.R. 4600 and hope that your counterparts in the Senate will act as well.

Tax Simplification

Though not an integral part of our comments submitted to the OMB earlier in the year, I cannot in good conscience sit here and talk about regulatory reform and paperwork reduction without mentioning the crushing burden imposed by the IRS. Again realizing that my comments are most likely a better fit for another committee, it is so important to note again and again, that the IRS accounts for 80% of the paperwork burden Americans face. As NSBA board member and CPA Paul Hense told this committee earlier this year, the underlying problem with tax paperwork is a painfully complex tax code. While he jokingly applauded that complexity as driving business to his door, he knows first-hand as an accountant, a small business owner and small business advocate that something must be done.

NSBA has historically supported fundamental tax reform. The tax code as it currently exists is unacceptable. Compliance costs are a dead weight loss to the economy. Complexity harms those looking to create businesses and aids those looking to avoid paying their fair share. The code decreases our national competitiveness and exposes us to international tax disputes like the Extraterritorial Income Exclusion Act rewrite recently passed after much debate and contention.

It is understandably difficult for Congress to resist trying to fix small parts of the code in fits and starts. Many organizations like our own have legitimate quarrels with the IRC. However, the continuation of small fixes only further degrades the entire system. Many proposals before Congress provide for fundamental tax reform that would vastly reduce compliance costs for individuals and businesses while collecting government revenues in a more efficient manner than we have today.

A better approach would be the adoption of the Fair Tax. The Fair Tax would repeal the entire IRC and replace it with a single rate national sales tax on the purchase of all new goods and services at the final point of consumption, while providing a rebate to families equal to the cost of essential goods and services. The Fair Tax would collect the same amount of tax revenue as current law while allowing consumers to see the actual cost of government with every purchase. The Fair Tax would do away with complicated tax returns and depreciation tables freeing individuals to spend their time more wisely.

Fundamental tax reform is an important goal for the future. I hope that members of this committee, while focusing on the important task of reducing regulatory burden, keep the ultimate goal of tax reform in mind.

Conclusion

The regulatory climate we find ourselves in today is not easy or welcoming to small businesses. We support strong OMB oversight of the Federal agencies' rule-making process. The work done by Dr. John Graham in the Office of Information and Regulatory Affairs is certainly a good

start, but not enough has been done. Dr. Graham has testified before this committee on a number of occasions, and commented that it is not OIRA's duty to police the agencies' compliance with paperwork and regulatory reduction. While that may or may not be the case, there has got to be somebody within the federal government who can and will ensure that small business is not being exploited by regulators who simply do not understand the results of their actions.

It is NSBA's goal that some of the very helpful laws passed can be realized and fully complied with. The Regulatory Flexibility Act (RFA) directs federal agencies to consider the impact of new regulations on small businesses and analyze alternatives that would minimize impact on small-businesses and make those alternative analyses available for public comment. The first law to address the issue, the RFA was followed by the Small Business Regulatory Enforcement Fairness Act (SBREFA) which gives the Chief Counsel for the Office of Advocacy authority to file amicus briefs on behalf of small business when an agency is non-compliant with the RFA as well as mandating issuing agencies to provide compliance assistance with any proposed rule. Finally, the Small Business Paperwork Relief Act (SBPRA) requires the Office of Management and Budget (OMB) to publish an annual list of compliance assistance resources, mandates each federal agency to establish a single point of contact to act as a liaison for small business, and to work on paperwork reduction.

It is clear to me that Congress has a grasp on the significant problem regulatory and paperwork burden poses for small businesses. You have passed laws, created and strengthened the Office of Advocacy which serves as federal government's primary watch-dog for small businesses, and continue to ask the tough questions. Yet we continue to see regulations promulgated that are not in compliance with the aforementioned statutes and unduly harm small business. Agency compliance is a must.

Representing small businesses across the country, I can tell you that the diligence of this committee in reforming the regulatory climate is not only appreciated, but needed. Small business owners ought to be given the latitude to do what they do best: create jobs. Regulatory burdens that force Vic Schantz to read through 195 pages to understand how to complete a form is not only preventing him from growing his business, it is preventing him from carrying on a 4-generation tradition passed down through his family.

In the Chairman's statement addressing the Administration's Record in Relieving Burden on Small Business, January 28, 2004, Chairman Ose stated that, "As a former owner of various small businesses, I am especially disappointed... Congress wants and America's small businesses deserve results - fewer hours spent on government paperwork and lower compliance costs to increase productivity for job creation." We couldn't agree more.

I'd like to thank you in particular, Chairman Ose for your continued dedication and attention to small business, our members are better off because of the work you and your staff have done. It has been NSBA's pleasure to work with you over the past years and we wish you all the best in your future endeavors.

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