Testimony before the United States Congress on behalf of the

Testimony of

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Before the

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Subcommittee on Environment and Hazardous Materials

The EPA's Budget:
Trading Enforcement for Compliance Assistance

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Chairman Wynn and Members of the House Energy and Commerce Committee, Subcommittee on Environment and Hazardous Materials:

On behalf of the half-million small-business owners represented by the National Federation of Independent Business, thank you for the opportunity to come before you to discuss the budgetary priorities of the Environmental Protection Agency. It is a distinct honor to have been invited to represent the views of American businesses before the subcommittee. My testimony this morning is the result of collaboration between NFIB, the National Association of Manufacturers (NAM) and the United States Chamber of Commerce. While there are issues on which our three trade associations may not agree, we all agree that the protection of the environment is a priority for all Americans, and a responsibility each of our members takes very seriously.

Introduction

NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Ninety percent of NFIB members have fewer than 20 employees. While there is no standard definition of small business, the typical NFIB member employs five people and reports gross sales of between $350,000 and $500,000 per year. However, all NFIB members have one thing in common: their businesses are independently owned.

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. Visit the NAM's award-winning Web site at www.nam.org for more information about manufacturing and the economy.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. More than 96% of the U.S. Chamber's members qualify as small businesses.

The members of each organization want to comply with the nation's environmental laws, but invariably they find compliance to be a difficult and burdensome proposition. How burdensome? The Office of Management and Budget's (OMB) annual report on paperwork, the Information Collection Budget (ICB), [1] denotes an increase of the paperwork burden faced by all Americans of 441 ***million*** hours—which, sadly enough, represents an increase overall of only 5.5 percent.[2]

Government regulation, especially the paperwork generated by regulation, continues to be a top concern for small businesses[3]. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB should work to change. The Small Business Administration's Office of Advocacy has regularly examined this issue, issuing reports estimating the regulatory compliance costs for firms with fewer than 20 employees.

Five years ago, that cost averaged $6,975 per employee, per year, but now that figure has been updated. Not only updated, but updated now with a peer review process that lends even greater credence to the research. Unfortunately, for small-business owners, the new data isn't good—the cost of regulation for small businesses has risen by nearly 10 percent, to $7,647 per employee, per year.[4] This is due in no small measure to the continued growth of the regulatory state: according to the Competitive Enterprise Institute's Wayne Crews, the last two years have brought an average of approximately 4,000 new rules each year[5]

This means that for one of NFIB's average members, with five employees, those costs now approach a total of $40,000 annually. For a business operating on a shoestring, such costs can be devastating.

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[1] http://www.whitehouse.gov/omb/inforeg/infocoll.html

[2] ICB at i.

[3] In NFIB's publication, *Problems and Priorities*, paperwork ranked 8th out of 75 major problems faced by small business.

[4] Crain, W. Mark, *The Impact of Regulatory Costs on Small Firms, 2005, http://www.sba.gov/advo/research/rs264.pdf*

[5] 4,101 final rules in 2004, 3,943 final rules in 2005. Crews, Clyde Wayne, *Ten Thousand Commandments, 2006 edition.*

The EPA has proposed to spend just over a half-billion dollars on environmental enforcement this year (their term is "compliance improvement")[6]. This number is dwarfed, however, by the mandates created by EPA. If environmental regulations account for 40% of regulatory costs[7], and regulatory costs were $1.13 trillion[8], then Americans spent more than $400 billion in complying with federal environmental regulations alone.

Being a small-business owner means, more times than not, you are responsible for all aspects of running that business: ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments. That is why government regulations, and the paperwork they generate, should be as simple as possible. The less time our members spend with "government overhead," the more they can spend building and expanding their business, employing more people and giving to America's economy. Simplification and simple compliance assistance tools ought to be a budgetary priority for the EPA.

It is certainly true that EPA is doing a better job at linking agency expenditures to specific environmental improvements, but the agency has a long way to go to achieve the standards set by Congress in the Government Performance and Results Act of 1993. While increased expenditures in an area of EPA's budget may reflect an enhanced priority, they may not reflect a reduction in results or program operations in those without increases.

In the private sector, we have learned that more money does not equal more results, and our members constantly strive to achieve more and better results with less money and fewer resources. EPA's budget does not exist in a vacuum. It represents choices between larger priorities in the federal budget including homeland security, worker safety, and trade promotion. Through that lens we view the EPA budget as one that makes tough choices in an environment of limited resources.

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[6] http://www.epa.gov/ocfo/budget/2008/2008bib.pdf
[7] Crain
[8] *10,000 Commandments*

There are a number of ways one can look at regulatory costs, both through efforts to reform regulation and in looking at ways to streamline the regulatory compliance process itself. Essentially, it's like looking at dealing with the pressure of water flowing through a pipe: one can look at regulating that pressure before the water enters the pipe, or one can find ways to regulate it once it exits the pipe. Ideally, one regulates that flow at both ends. The same holds true with regulatory mandates: one ought to look at improving the regulatory state both before the regulations go through the pipeline and once they exit the pipeline at the end.

For the purposes of today's testimony, however, I want to focus on the end of that pipeline: compliance assistance efforts.

The Effect of Paperwork

In terms of the paperwork burden imposed by regulations themselves, NFIB's own Research Foundation has conducted in-depth studies of the problem being faced by small businesses. The NFIB Research Foundation is a non-profit 501(c)(3) organization, and its research into small business economic trends and issues is highly regarded in the academic community. Their conclusion was that the best thing for small businesses is simplicity—simplicity in instructions, simplicity in requirements, and an overall reduction in the size of the paperwork and the time necessary to complete forms.

The focus of our efforts has been on simplification—small businesses have a hard time dealing with complex paperwork requirements. They need to know precisely what is required of them and would like as short and as clear a form as possible. This sentiment was recently confirmed by the NFIB Research Foundation's recent poll of small businesses on paperwork (discussed in detail below).

The NFIB Research Foundation concluded overall that the cost of paperwork averages roughly $50 per hour. In addition, the following conclusions were reached[9]:

1. The individual(s) completing and maintaining paperwork and records in a small business is dependent on the subject matter of the paperwork and the size of the firm. Owners

[9] NFIB Research Foundation National Small Business Poll, Vol. 3, Issue 5, *Paperwork and Recordkeeping*, 12-03, http://www.nfib.com/PDFs/sbpoll/sbpoll12_2003.pdf

most frequently handle paperwork and record-keeping related to licenses and permits (55 percent of firms), purchases (46 percent), and clients/customers (46 percent). They least frequently deal with financial (27 percent) and tax (12 percent) records. Three of four pay to have someone outside (another firm) handle their tax paperwork. Paid employees customarily do most of the paperwork and record-keeping in about 25 – 30 percent of firms. Employees are much more likely to do so in larger small businesses than in the smallest ones regardless of subject matter (except tax). Unpaid family members do the paperwork in less than 10 percent of cases.

2. The cost of paperwork also varies by subject matter and firm size. The more paperwork and record-keeping that must be sent outside, the more expensive the paperwork and record-keeping. Owners of larger small firms pay higher average prices per hour because they are more likely to send their paperwork to outside professionals and because the value of their time, on average, is higher.

3. The estimated average per hour cost of paperwork and record-keeping for small businesses is $48.72. By subject matter the average per hour cost is: $74.24 for tax-related, $62.16 for financial, $47.96 for licenses and permits, $43.50 for government information requests, $42.95 for customers/clients, $40.75 for personnel, $39.27 for purchases, and $36.20 for maintenance (buildings, machines, or vehicles).

4. The typical small business employs a blend of electronic and paper record-keeping. Less than 10 percent use paper exclusively and a handful use only electronic means. The type of record most frequently completed and maintained on paper is licenses and permits.

5. No single difficulty creates the government paperwork problem. The most frequently cited problem is unclear and/or confusing instructions (29 percent). The second most frequently cited difficulty is the volume of paperwork (24 percent). Duplicate information requests (11 percent) place third, followed by maintenance of records that ordinarily would not be kept (10 percent) and requests for inaccessible or non-existent information (9 percent). Twenty (20) percent could not decide.

While the use of computers by small businesses and small-business owners has certainly helped reduce the burden of regulations, technological throughput solutions (ie, filling out forms online) are only one aspect of the problem. More than filing forms and storing copies, paperwork requirements involve understanding what the government wants and how they want it, gathering the necessary information and organizing it properly, determining what to keep and for how long, etc.

This makes compliance assistance tools such as better how-to-guides, more simple explanations, and step-by-step instructions, all the more important.

According to research by the NFIB Research Foundation, 92 percent of small businesses use computers in some aspect of their business. Eighty-two percent of small businesses have internet access, and of those, 57 percent have high-speed internet access. Half of the businesses that use the internet use it to find out regulatory information, and the smaller of small businesses are more likely to use the internet to educate themselves. They use it for specific searches, and to sift through information.[10]

But taken in the context of the ICB, the costs continue to be startling. If you only look at the average costs our polling found, then at the most macro of economic levels, the cost of the ***increase*** in paperwork alone amounts to nearly $21.5 ***billion*** annually![11] The total cost of paperwork therefore is more than a third of a ***trillion*** dollars (roughly $400 billion).[12]

Some people might argue that the increase in paperwork from the ICB is only 5.5 percent overall. But that only serves to mask the real issue: 441 million hours is an enormous amount of time—time that drags on everyday Americans and $21.5 billion is real money for real small businesses.

While some might quibble that this is only a marginal increase—one cannot deny that the baseline number is a huge one.

The EPA's Compliance Assistance Priorities

The problem is one of perception and prioritization. It is well-established that regulatory agencies get a greater "bang for the buck" when they promote compliance assistance over enforcement. It is more cost-effective than dedicating enormous resources towards investigations and prosecutions, and gets us closer to the goals of more comprehensive environmental compliance. In terms of giving people foreknowledge of their responsibilities, and walking them through how they can fulfill their obligations, it is compliance assistance, and

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[10] NFIB National Small Business Poll Volume 4, Issue 8, "*Telecommunications*," http://www.nfib.com/object/telecomm.html. 2005
[11] $48.72 X 441 million hours equals $21,485,520,000
[12] $48.72 X 8.4 billion hours equals $399,504,000,000

not enforcement, that will get us closer to the ultimate goal of 100 percent compliance with 100 percent of regulations, 100 percent of the time.

Unfortunately, certain activist groups and others who drive public policy are less-interested in promoting compliance assistance than in seeing enforcement budgetary numbers remain high. This has been a perennial problem, not just with EPA, but with other safety and health agencies (such as OSHA) as well. They measure agency success as number of enforcement actions filed, citizens prosecuted, and penalties assessed.

We see it very differently. Success in environmental regulation should be measured not just in the number of enforcement actions initiated or the amount of penalties assessed, but by the overall health of the environment. Results matter, and choosing to direct resources to help more small businesses comply with more environmental laws leads to a healthier environment. It is better for the environment to spend that money on compliance assistance, rather than spending the same amount to bring an enforcement action against one small business. Enforcement is a necessary tool, but it is not the only tool for environmental improvement.

OSHA has taken a very hands-on approach to this, in fact. That agency's relatively-new administrator, Ed Foulke, spends a tremendous amount of his time actively "proselytizing" to small businesses on the gospel of compliance, bringing them into the fold and on board with OSHA's programs. They have built on the foundation of the long-used and very successful "OSHA Consultation" program (OSHCon), which does free evaluations of a business' occupational safety and health programs, and certifies them when they meet OSHA's compliance criteria.

The program has gone a step further, in fact, and a number of insurance carriers now offer reduced workman's compensation insurance rates to businesses that have gone through OSHCon.

This is not meant to denigrate EPA's record of small business assistance. In fact, EPA's small business office has done tremendous work in helping our members and others, providing resources and being an advocate for small business within the agency.

But as we talk about budgetary priorities, EPA could take a greater cue from their colleagues in occupational safety, which are two sides of the same coin.

The movement away from enforcement as a primary tool of compliance improvement is one that will have to be driven by Congress. Continued oversight, encouragement, and budgetary prodding are going to be necessary. The agency ought to be rewarded when they decide to shift money away from "sticks" and direct it towards "blackboards."

Technological Responses: E-Docketing and the Business Gateway

To its credit, the federal government has recognized that technology can provide a number of solutions to the federal regulatory and paperwork burdens. Two separate tracks, very different, and important in their own way, are being pursued: one dealing with increasing participation and making the formulation of rules more streamlined (e-docketing); the other meshing technological tools with the problem of regulatory understanding, compliance, and paperwork burdens (the Business Gateway).

It is unfortunate that the federal government initially got their priorities backwards, focusing first on e-docketing and e-democracy rather than putting more resources towards the Business Gateway. NFIB supports the federal government in attempting to open up the regulatory process to more perspectives—the promise of e-docketing is that it will make it easier for small businesses and individuals to offer their thoughts on proposed rules. By offering a "real world" perspective, career civil servants can make regulations that are smarter and more meaningful. What's more, electronic docketing is an excellent tool for those doing the regulatory decision-making, in that it makes it easier for regulators to break down and analyze comments.

But as discussed earlier, the problem is that too many small businesses are spending too much time doing federal paperwork already, and it is simply too much to ask of them right now to take additional time and resources to comment on a complex regulatory proposal. Sure enough, there are some businesses and individuals that will comment, and the regulatory state can only benefit from their expertise, but the executive branch must reduce burdens elsewhere if they hope to invest a more substantial set of the population in the rulemaking process.

This is why we believe that more resources should have been directed earlier on to the Business Gateway project (once called the "Business Compliance One-Stop" or BCOS). The Business Gateway is a good step in this direction, and a greater emphasis must be placed on the continued development and implementation of this system, and NFIB is heartened that the second generation of this project came on line in October of 2007 (NFIB has been and will continue to be an active participant in the development and implementation of this program).

Everyone involved in regulation: the regulated community, activist stakeholders, members of Congress and their staffs, the federal agencies and their personnel, all must ask the same question—what is it that we want from the regulated community, in the end?

The answer, at least in our estimation, is simple: we want the regulated community (again, our members and the small-business community as a whole) to understand its responsibilities when it comes to regulatory compliance and comply with those regulations that apply to them. What's more, our members want to be in compliance with the law. They want to keep their workers and their communities safe and secure, and the last thing they want is for a government inspector to show up at their offices and fine them for some transgression.

Unfortunately, the regulatory state is so complex (consider in your minds, for a moment, the wide expanse that is the Code of Federal Regulations, and just what a small-business owner would need to do to figure out his responsibilities) that it is next-to-impossible for any small business to be in compliance with all of the regulatory requirements he faces .

But imagine a system in which a small-business owner could enter some simple information about his business: his industrial classification code, a zip-code, number of employees, etc. As discussed above, 92 percent of small businesses have computers, most with internet access (the majority of it high-speed), so the vast majority of businesses could do this if they so chose.

Then the system takes that information and spits out each and every regulation that applies to this business, along with simple compliance information. It would be even better if this system could provide an on-line access for small businesses to submit forms, should they choose to submit them that way (the operative word being "choose" – not mandate).

Yes, this is an ambitious idea. But in an era in which huge databases can be accessed from thousands of miles away in a safe, secure and fast manner, it is not an impossible task. The current iteration of the Business Gateway, Business.gov, is a solid step in the right direction. But it must do more, far more, in terms of offering a simple way for businesses to determine what their regulatory responsibilities are and to make living up to those responsibilities as easy as possible. NFIB looks forward to seeing the next iteration of Business.gov in October, as well as each and every iteration of it, as it moves towards the full-measure of what it ought to be.

What it will take is leadership from Congress: funding, oversight, and the political will to see it happen.

If Congress is serious about reducing paperwork, then it must do something about making the fully-functional, fully-realized Business Gateway a reality. Once that is established, businesses know their responsibilities, and compliance is made as simple as possible, then businesses will not only have the time and resources to devote to helping the government craft smarter regulations, they will have an incentive to be invested in the process.

Not all businesses would do it (not all businesses have computers), so the option to find out about regulations in the traditional manner would still have to be in place. In fact, there are a

number of small businesses that will never be on computers[13] (which is why NFIB continues to advocate for the position that when agencies desire to work with the public via computers, it is a voluntary and not mandatory program). But such a system would be far superior than that which is available to small-business owners today, and a tremendous leap in seeking greater regulatory compliance.

Until then, however, the benefits of technology, whose primary purpose is e-docketing, accrue mostly to those who work in government.

The Intermediate Step

While we believe that the Business Gateway will be a tremendous tool for truly improving compliance and reducing burdens on small businesses, we recognize that there are a number of interim steps that will need to be taken, steps that will also require tremendous leadership on the part of the Congress.

Success of the Business Gateway will hinge on the quality of the information it provides: simple explanations and easy-to-understand-and-follow step-by-step instruction on how to comply. This means a wholesale restructuring of the information that is conveyed to the public: a comprehensive review of all regulations mandated by the agency, the review of all guidance documents, manuals, and other publications the citizenry uses to determine what their obligations are and how to go about them.

Then the agency will have to start building from the ground up: creating plain-language guides to each of their regulatory regimes. Guides that are as short as possible. Guides that are easy to find, take a common-sense approach to compliance, walk small business owners or their employees through the compliance process, and offer them clear suggestions in what they ought to be doing to be in compliance with that particular regulation.

[13] In fact, in recent conversations with NFIB field personnel, I learned that our organization has a number of members who are Amish small-business owners. Clearly, these are small businesses that will never be using computers in their daily work, and any move to make computer communications mandatory (or any other sort of mandatory electronic interaction) would be grossly unfair to them.

There are no two ways about it: this will be a Herculean task. Nevertheless, it must be undertaken. Heretofore, the agency has balked at such reviews, and it's not difficult to understand why. They get no credit for it, simply put. Why put resources into developing easy-to-understand compliance guides when Congress and activist stakeholders are going to ask them why they didn't spend more resources on investigations and prosecutions.

So it is thus incumbent upon Congress to give the EPA the support it will need to do this. What is important is that in the near term, before the Business Gateway is in its final form, the Agency will be developing useful tools that can be utilized by small businesses as soon as they are made available.

Toxics Release Inventory

In addition to budgetary consideration for improved compliance assistance, NFIB would like to offer comments in support of the EPA's recent reforms to the Toxics Release Inventory (TRI) program. NFIB has been actively involved in the efforts to make changes to TRI, had numerous conversations with EPA personnel over the years, submitted comments, participated in stakeholder discussions, and had testified on the issue before Congress numerous times.

We believe that the reforms finalized by the EPA in December of 2006 ought to be allowed to proceed. They represent a compromise position – providing meaningful relief to America's small businesses while maintaining the information presented to the public without compromising that information's integrity.

In fact, contrary to reports in the media and as expressed by some on Capitol Hill, the EPA's regulatory systems worked in the case of TRI reform. The EPA held a number of stakeholder discussions and offered up a number of different proposals for TRI reform. Their proposed rule offered one possibility of how the agency might approach burden reduction. Their final rule took into account the concerns of all stakeholders – they changed their threshold reporting

requirements, coming to a position somewhere between where business stakeholders and environmental activist stakeholders thought that level ought to be.

Perhaps most important, the vast majority of comments submitted regarding the reform proposals centered on what is known as "biennial" or "alternate year" reporting. To be clear, alternate year reporting wasn't actually "on the table"—the EPA had merely floated a "trial balloon" to Congress. But the bulk of commenters offered their negative sentiments towards this aspect of the EPA's proposal.

In the end, the EPA dropped "alternate year" reporting, thus acceding to the wishes of many of their critics on TRI reform.

According to the SBA, 99.1% of all information reported previously via TRI will still be reported. This represents the preponderance of meaningful and useful public information. This information will be provided while at the same time meaningful relief is being given to some of America's smallest businesses.

Conclusion

NFIB appreciates the opportunity to testify on the issue of the EPA's budgetary priorities, and do so on behalf of NAM, and the US Chamber of Commerce, and to represent the greatest cross-section of America's businesses. We believe that the EPA's budget is a good first step, that it offers great improvements in environmental protection while still allowing for the engines of America's economy to keep running smoothly.

We believe that great improvements can be had by shifting the EPA's focus more towards assisting in compliance, however. Enforcement is important, to be certain, and bad actors must be punished. But for the majority of businesses, the 90% of businesses that have fewer than 20 employees, they need to be shown what they need to do to comply.

It is, in the end, patently unfair to create a system in which so many are set up for potentially running afoul of the law, and then reinforce the organs of enforcement without increasing the educational resources which are essential to ensuring compliance. We also recommend that in addition to Congress taking a leadership role in this matter, that they also consider directing that an independent study of EPA's compliance assistance efforts be done. We believe that the Government Accountability Office would be the best entity to conduct such a study.

Furthermore, we believe that EPA must seriously undertake a review of the consistency and quality of data used in making regulatory priority determinations, and in the information the agency disseminates to the public. Faulty data, or data improperly applied, seriously hampers the ability of the agency to properly assess the risks associated with various policy courses of action, and as a result, the agency can mis-prioritize its obligations. Without proper prioritization, public monies can be spent on fruitless endeavors while real threats to public health, safety, and the environment go untreated. The public cannot afford such waste.

Thank you once again for the opportunity to testify on this important issue.

NFIB CORE VALUES

We believe deeply that:

Small business is essential to America.

Free enterprise is essential to the start-up and expansion of small business.

Small business is threatened by government intervention.

An informed, educated, concerned and involved public is the ultimate safeguard.

Members determine the public policy positions of the organization.

Our employees, collectively and individually, determine the success of the NFIB's endeavors, and each person has a valued contribution to make.

Honesty, integrity, and respect for human and spiritual values are important in all aspects of life, and are essential to a sustaining work environment.

NFIB
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