

February 6, 2003

The Honorable John D. Graham, Ph.D.
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Rm. 10235
725 17th Street, NW
Washington, DC 20503

Re: Office of Advocacy's Review of Rules and Guidance Documents Recommended for Reform

Dear Dr. Graham:

On December 19, 2002, your office released its report to Congress entitled, "Stimulating Smarter Regulation." In the report and a subsequent Memorandum for the President's Management Council, you requested assistance from the Office of Advocacy (Advocacy) of the U.S. Small Business Administration (SBA) in reviewing the rules recommended for reform. Specifically, you asked Advocacy to identify those rules that "offer potential to reduce unjustified regulatory burdens on small businesses." This letter responds to that request.

Congress established Advocacy under Pub. L. No. 94-305 to advocate the views of small business before Federal agencies and Congress. Because Advocacy is an independent entity within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA. Among Advocacy's primary statutory mandates is the requirement to measure the direct costs and other effects of government regulation on small businesses, and make legislative and non-legislative proposals for eliminating excessive or unnecessary regulations on small businesses.¹ In addition, the Chief Counsel for Advocacy is required by section 612(a) of the Regulatory Flexibility Act (RFA)² to monitor agency compliance with the RFA. The RFA requires Federal agencies to consider the impacts of their regulatory proposals on small entities, and determine whether there are equally effective alternatives that would reduce the regulatory burden on small entities. On August 13, 2002, President Bush underscored the importance of agency compliance with the RFA and the Office of Advocacy's role in giving a voice to small businesses in the rulemaking process when he signed Executive Order 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking."

While reform of many, if not all, of the regulations and guidance documents identified in OIRA's report could achieve benefits for small businesses, Advocacy has reviewed the rules and guidance documents listed on Tables 13 and 14 of OIRA's report, as well as the rules and guidance documents concerning selected independent agencies. Advocacy identified as high

¹ 15 U.S.C. § 634b(3).

² 5 U.S.C. § 601 et seq.

priorities for small business the subset of rules and guidance documents listed on the attached tables. Advocacy made its determinations based on the comments submitted to OIRA, input received from small businesses in preparing Advocacy's comments on OIRA's draft report,³ and Advocacy's direct involvement in agency rulemaking affecting small businesses.

The Office of Advocacy will contact each agency directly to offer our expertise and assistance in their review of these regulations and guidance documents.⁴ We welcome the opportunity to work with OIRA and our federal regulatory partners in their efforts to modify or rescind regulations and guidance documents affecting small businesses. Please do not hesitate to contact me, or my Director of Interagency Affairs, Suey Howe at 202-205-6533.

Sincerely,

|s\

Thomas M. Sullivan
Chief Counsel for Advocacy

|s\

Suey Howe
Director of Interagency Affairs

Enclosures

³ Advocacy's May 28, 2002 letter to OIRA on its draft report is available in pdf format on Advocacy's website, http://www.sba.gov/advo/laws/comments/omb02_0528.pdf

⁴ Similar letters will be sent to each agency and Advocacy staff will follow up by telephone to participate in the agency's review.

High Priorities for Small Business selected from Table 13: Nominations Referred to Agencies for Evaluations – Regulations		
Agency	Regulation	Ref. Number
HHS/CMS	Medicare and Medicaid Programs; Hospital Conditions of Participation; Patients' Rights (1-hour Restraint Rule)	31
HHS/CMS	Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Unites Under the Physician Fee Schedule for Calendar Year 2002	32
HHS/CMS	Certificates of Medical Necessity	33
Justice	Hemp Food Products (Interpretation and Clarification of Listing Tetrahydrocannabinols in Schedule I)	68
Labor	Computer Professional Exemption under FLSA	78
Labor	FLSA Administrative Exception	80
Labor/OSHA	Lead in Construction	93
Labor/OSHA	Sling Standard	96
State	Flight Simulators	105
DOT	Disadvantaged Business Enterprise	106
DOT/RSPA	Emergency Preparedness	157
DOT/RSPA	Hazardous Materials Training Requirements	158
Treasury/IRS	Flexible Spending Accounts	162
Treasury/IRS	Monthly Versus Semi-Monthly Federal Employment Tax Deposits	166
Treasury/IRS	Partnership Investments in Qualified Small Business Stock	168
EPA	TRI Alternative Reporting Threshold (Form A)	188
EPA	Export Notification Requirements	190
EPA	Storage for Reuse Regulations (PCBs)	192
EPA	TRI: Lowering Reporting Thresholds for PBT Chemicals	210
NARA	Disposition of Federal Records	253
USPS	Commercial Mail Receiving Agencies	267

High Priorities for Small Business selected from Table 14: Nominations Referred to Agencies for Evaluations – Guidance Documents		
Agency	Guidance Documents	Ref. Number
HHS	Discrimination Against Persons with LEP	7
Justice	Guidance on Federal Prison Industries	11
Labor	Coordination of FMLA with other Leave Policies	12
EPA	TRI Reporting Forms and Instructions	26
EPA	TRI Reporting Questions and Answers and other Guidance	27
SBA	Guidance on Credit Unions	48

Rules/Guidance Documents of Independent Agencies		
Agency	Rules/Guidance Documents	Ref. Number
FCC	Telephone Number Portability	217
FCC	Broadband Access to the Internet over Cable	218
FCC	Remedying Interference to Public Safety Communications in the 800 MHz band	234