

January 5, 2005

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, N.W.
Washington, D.C. 20503

Re: Office of Advocacy's Review of 189 Rules and Guidance Documents listed in OMB's *2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities*

Dear Dr. Graham:

Two weeks ago, your office released its final report to Congress entitled, "Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities."¹ In the report, the Office of Management and Budget (OMB) listed 189 regulatory reform nominations relevant to the manufacturing sector from 41 public comments submitted to OMB in response to the draft 2004 report to Congress released in February 2004. In addition, the final report asks the Office of Advocacy to review the 189 reform nominations and identify for agencies those rules that offer "the potential to reduce unjustified regulatory burdens on small manufacturers." This letter responds to that request and serves as notice to the agencies, listed in the attached table, of rules that Advocacy believes are of greatest importance to small businesses.

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 office 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.² On August 13, 2002, President Bush underscored the Office of Advocacy's role in giving a voice to small businesses

¹ OMB's report is available at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html.

² 15 U.S.C. § 634(b)(3).

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in the rulemaking process when he signed Executive Order 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking."³ The Executive Order enhanced Advocacy's ability to affect agency compliance with the Regulatory Flexibility Act (RFA)⁴ and realize small business cost savings as a result.⁵

In addition to the Executive Order, your office and mine have worked well together under parameters set by the President's Small Business Agenda. As you know, part of the President's Small Business Agenda sought to strengthen Advocacy by bolstering its relationship with OMB's Office of Information and Regulatory Affairs (OIRA).⁶ This letter, and your reliance on the Office of Advocacy to prioritize reform nominations on behalf of the small business community, are further evidence of our offices' mutual commitment to instill a regulatory climate where entrepreneurship can flourish.

While reform of many of the regulations and guidance documents identified in OMB's most recent report could achieve benefits for small businesses, Advocacy has reviewed the rules and the guidance documents listed in Table 8 of the final 2004 report and selected 48 of them as high priorities for small business. This subset of high priorities is listed on the attached table. Advocacy made its determinations based on the comments submitted to OMB, input received from small businesses in preparing Advocacy's comments on OMB's draft 2004 report,⁷ and Advocacy's direct involvement in agency rulemakings affecting small businesses.

This letter and the attached table serve as a notice to the agencies of Advocacy's concerns regarding the impact of those rules on small business. A copy of the letter and table will be sent to the head of each of the agency listed in the attached table. Advocacy's Office of Interagency Affairs will reach out to their agency counterparts to offer further assistance in the agencies' internal reviews of the reform nominations.

³ Exec. Order No. 13272, 67 Fed. Reg. 53,461 (August 16, 2002).

⁴ 5 U.S.C. § 601, *et seq.*

⁵ Cost savings realized through the RFA and the Executive Order are documented in an annual report. The most recent annual report can be located at <http://www.sba.gov/advo/laws/flex/03regflx.pdf>.

⁶ President Bush's Small Business Agenda, announced March 19, 2002, can be viewed at <http://www.whitehouse.gov/infocus/smallbusiness/regulatory.html>. A Memorandum of Understanding (MOU) between the Office of Advocacy and OIRA was signed on March 19, 2002, and can be viewed at http://www.sba.gov/advo/laws/law_mou02.pdf.

⁷ Advocacy's May 14, 2004, letter to OIRA on its draft report is available in pdf format on Advocacy's website, http://www.sba.gov/advo/laws/comments/omb04_0514.pdf.

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We welcome the opportunity to work with OMB and our federal regulatory partners in their efforts to modify or rescind burdensome regulations and guidance documents affecting small businesses. Please do not hesitate to contact me, or the Acting Director of Interagency Affairs, Linwood L. Rayford at 202-401-6880.

Sincerely,

/s/ _____

Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____

Linwood L. Rayford
Acting Director of Interagency Affairs

Enclosure

cc: Al Frink, Assistant Secretary for Manufacturing and Services, International Trade Administration, U.S. Department of Commerce
The Honorable Tommy Thompson, Secretary United States Department of Health and Human Services
The Honorable Mark B. McClellan, Administrator Centers for Medicare and Medicaid Services
Lester M. Crawford, Acting Commissioner of the U.S. Food and Drug Administration
The Honorable Elaine Chao, Secretary United States Department of Labor
Jonathan Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health
David Dye, Acting Assistant Secretary of Labor for Mine Safety and Health
The Honorable Michael K. Powell, Commissioner Federal Communications Commission
The Honorable Michael O. Leavitt, Administrator United States Environmental Protection Agency
The Honorable Norman Y. Mineta, United States Secretary of Transportation
Samuel G. Bonasso, United States Department of Transportation, Deputy Administrator Research and Special Programs Administration
Annette M. Sandberg, United States Department of Transportation, Administrator of the Federal Motor Carrier Safety Administration
The Honorable John D. Ashcroft, Attorney General of the United States, United States Department of Justice
Mark W. Everson, Commissioner United States Internal Revenue Service

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The Honorable Ann M. Veneman, Secretary of the United States Department of
Agriculture
Barbara J. Masters, Administrator of the Food Safety and Inspection Service, United
States Department of Agriculture
Hilda Gay Legg, Administrator Rural Utilities Service, United States Department
Of Agriculture

<i>Agency</i>	<i>High Priorities for Small Business Selected by the Office of Advocacy from Table 8: Manufacturing Reform Nominations</i>	<i>Ref. Number(s*)</i>
All	Small Business Liaisons	1
DOT/FMCSA	Hours of Service	14
DOT/RSPA	Hazardous Materials Rules (HM-223)	25
EPA	"Whole Effluent Toxicity" (WET) Methods	27
EPA	Chemical Inventory Update Rule	32
EPA	Hazardous Waste Rules Should Be Amended to Encourage Recycling	42
EPA	Lead Reporting Burdens Under the Toxic Release Inventory Program	43
EPA	Pretreatment Streamlining Rule Under the Clean Water Act	47
EPA	Provide More Flexibility in the Management of Wastewater Treatment Sludge to Encourage Recycling	48
EPA	Regulation of Air Toxics from Area Sources	49, 50
EPA	Reporting and Paperwork Burden in the Toxic Release Inventory Program	52
EPA	Spill Prevention Control and Countermeasures (SPCC) Rule	54-58
EPA	Method of Detection Limit/Minimum Level (MDL/ML) Procedure under the Clean Water Act	86
EPA	Reportable Quantity (RQ) Threshold for Nitrogen Oxide and Dioxide at Combustion Sources	97
EPA	Deferral of Duplicative Federal Permitting	108
EPA	Reporting of Coincidental Manufactured Compounds under the Toxic Release Inventory Program	109
EPA	SARA Title III Reporting Requirements	111
FCC	"Do Not Fax" Rule	121
HHS	Privacy of Individually Identifiable Health Information	124
HHS/CMS	HIPAA	125
HHS/FDA	Use of Term "Fresh" for Baked Goods	127
Justice	Administration of Federal Prison Industries (FPI)--Guidance	133
Labor	FMLA/Intermittent Leave	134
Labor	FMLA/Perfect Attendance Awards	135
Labor	FMLA/Request for Leave	136
Labor	FMLA/Serious Health Condition	137
Labor	FMLA/Health Care Provider Certification	141
Labor	FMLA/Penalty Provisions	142
Labor	FMLA/Substitution of Paid Leave	143
Labor	FMLA/Unable to Perform	144
Labor/MSHA	Diesel PM Exposure	146
Labor/OSHA	Hazard Communication	154
Labor/OSHA	Hexavalent Chromium	157

Labor/OSHA	Sling Standard	159
Labor/OSHA	Threshold Limit Values	161
OMB	Administration of Federal Prison Industries (FPI)--Guidance	171
Treasury/IRS	"Statutory Employees"--Bakery Drivers	176
Treasury/IRS	Communications Distance Sensitivity	177
Treasury/IRS	Election to Expense Certain Depreciable Business Assets	178
Treasury/IRS	"Statutory Employees"--Bakery Drivers	179
Treasury/IRS	Bonus Depreciation	180
Treasury/IRS	Mobile Machinery Exemption	181
USDA/FSIS	Ready to Eat Meat Establishments to Control for Listeria Monocytogenes	188
USDA/RUS	Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (Proposal)	189

* Hyperlinks to the report titled "*Progress in Regulatory Reform: 2001 Report to Congress on the Cost and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*", which can be located at http://www.whitehouse.gov/omb/inforeg/2004_cb_final.pdf. Caution: Use of hyperlink takes you to a voluminous document.