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BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS

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Mr. Chairman, and members of the Committee: Thank you for inviting me here today to discuss S. 1378, the "Small Business Paperwork Reduction Act Amendments of 1999." While the Administration strongly supports the goal of easing the paperwork burden on small businesses, we are concerned that, as now drafted, S. 1378 could produce unintended negative consequences. We acknowledge the need to increase our efforts to reduce the burden imposed on small businesses by Federal reporting and recordkeeping requirements, and would welcome the opportunity to work with you to achieve real progress in this area. Nevertheless, we strongly feel that S. 1378 has flaws and needs to be modified.

Administration Efforts to Address the Burden on Small Businesses

At the direction of the President, the Administration has taken important steps to reduce the paperwork burden on small business:

On April 21, 1995, the President issued a Memorandum to the heads of designated departments and agencies entitled "Regulatory Reform – Waiver of Penalties and Reduction of Reports." In this memorandum, the President directed that, "to the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses" in certain circumstances.

A month later, President Clinton signed into law the Paperwork Reduction Act (PRA) of 1995, praising it as a "remarkable bill." He pointed out that "...we owe a great debt of gratitude to the members of Congress....who exercised the leadership to get this done..." Emphasizing his agreement with the Act, he remarked that it "recognizes that the private sector is the engine of our prosperity, that when we act to protect the environment or the health of our people, we ought to do it without unnecessary paperwork, maddening red tape, or irrational rules." He described the complexity of the paperwork problem: "This Paperwork Reduction Act helps us to conquer a mountain of paperwork that is crushing our people and wasting a lot of time and resources, and which actually accumulated not because anybody wanted to harm the private sector, but because we tend to think of good ideas in serial form without thinking of how the overall impact of them impacts a system that is very dynamic and very sensitive to emerging technologies, but which government does not always respond to in the same way." He then directed the agencies "to further reduce these burdens,...to continue to review their regulations, to eliminate the outdated and streamline the bloated." He added, "As we reform, we need not compromise the quality of

life or the needed oversight from the government. But the truth is, we can actually improve the system by making it less hidebound and by innovating as Americans are innovating."

This has been a continuing theme for the President. On June 12, 1995, he spoke before the White House Conference on Small Business and again emphasized the importance of reducing paperwork and regulatory burdens on small business. As he stated, "We know that small business is the engine that will drive us into the 21st century...you employ most of the people, create more than half of what we produce and sell, and create more of the new jobs, and we need to respond to that."

We take this direction seriously and are continuing our efforts to reduce paperwork burdens on small business. There is much more to be done. Since my confirmation in July, I have made this a priority at OIRA. Last month, OMB issued a Bulletin giving new guidance to agencies on preparing their FY 2000 Information Collection Budget submissions to OMB. The Bulletin calls on agencies to describe in detail their initiatives to reduce the information collection burden on small businesses through changes in regulation. We hope that the agencies will take a hard look at existing burdens and try to identify steps to relieve that burden on small businesses. OMB then will publish a description of these agency initiatives in its FY 2000 Information Collection Budget. This will give us a better picture of where we are and what more we must do to reduce small business burdens. We also want agencies to learn from each other and adopt strategies that have worked elsewhere.

This is a necessary step for OMB, but not enough in itself. Reducing paperwork burdens will require a comprehensive effort, with full participation by the agencies. In that vein, OIRA plans to work closely with the Small Business Administration to launch a new administrative effort to examine how we can develop new approaches that will measurably reduce paperwork burdens. SBA Administrator Aida Alvarez is cooperating fully. She has agreed to detail one of her senior career lawyers to OIRA for one year to spearhead our joint efforts with the agencies to tackle this problem. My good friend, Jere Glover, and I have talked at length on what needs to be done and how to do it. We envision setting up, right now, an interagency working group very much like the task force called for in S. 1378. We are going to get started now to examine what must be done and to develop recommendations. In enthusiastically agreeing to my request for help, both Aida Alvarez and Jere Glover have again demonstrated a strong commitment to working with OMB, other agencies, and the private sector to minimize paperwork burdens on small business. We very much look forward to working closely with you and other Members of Congress in this endeavor.

Concerns with S. 1378

These Administration initiatives provide important background for our discussion today. We acknowledge the problems faced by small business owners in complying with government reporting and recordkeeping requirements. We know we need to work together to address that problem. Our concern is that a number of the provisions in S. 1378 may create unintended new problems that complicate our task and perhaps cause other harm. We need to be particularly careful, despite good intentions, not to adopt legislation that would create such adverse consequences.

Specifically, we are most concerned that the one-time waiver provision in Section 2(b) of S. 1378 would shield small entities that do not act in good faith – those that intentionally or knowingly violate applicable regulations – at the expense of the public good. We note that in testimony prepared for the House of Representatives, and in letters that are being sent to the Committee, a number of agencies responsible for regulatory enforcement have argued that the waiver provision would seriously hamper their ability to ensure safety, protect the environment, detect criminal activity, and carry out a number of other statutory responsibilities. We certainly believe that the supporters of S. 1378 do not intend for it to have these consequences, but we fear that it will have this effect.

The Department of Transportation (DOT) has pointed out that transportation operators in various modes of transportation must now report certain accidents to DOT. This reporting requirement serves important purposes. If a company fails to notify DOT promptly after an accident, information important to any accident investigation may be lost or destroyed. This, in turn, makes it harder for DOT to protect public safety. Companies who delay such reports until being notified by DOT of a violation may compromise public safety, even though it may not be possible to show that they caused "serious harm to the public interest" or "a danger to the public health or safety," the standards proposed in S. 1378. We must be careful not to create a situation in which negligent operators can delay their notification just to cover up their mistakes, all at the expense of the public good.

DOT points out further that its efforts to implement legislation requiring passenger manifests for virtually all airline flights into and out of the United States could be undermined by S. 1378. These manifests make it possible to notify the families of victims if an accident occurs. If a small carrier decided to save money by deliberately ignoring the information collection and recordkeeping requirements, S. 1378 would essentially enable it to undermine the intent of other legislation.

EPA has given us another example of their concerns. Under the Clean Water Act, regulated entities must monitor and report pollution discharges. This can be important to EPA and the states in assessing environmental threats. A recent case in California illustrates this point. There, EPA and California's Central Coast Regional Water Quality Control Board were concerned that a company withheld and misrepresented data relating to the amount of sea life killed by a cooling-water intake system. This made it very hard to assess the extent of any damages the plant's operations were causing to water quality and sea life.

We already have a powerful tool designed to give protection to small business owners who act in good faith. On March 29, 1996, the President signed the "Small Business Regulatory Enforcement Fairness Act" (SBREFA), a statute which passed the Congress with bipartisan support. Section 223 of SBREFA essentially codified the President's April 21, 1995 directive to agencies to provide waivers of first-time regulatory violations for small business owners who act in good faith. It directed the agencies to provide civil penalty waivers to small entities for violations of statutory and regulatory requirements under specified circumstances. These circumstances require that the small entity correct the violation within a reasonable time, that it not be subject to multiple enforcement actions, and that it not have acted willfully or in a way to pose serious health, safety, and environmental threats. This is a sensible approach that we

support fully. It applies directly to the concern about first-time paperwork violators, since paperwork reporting and recordkeeping requirements are almost always based on regulation.

Small business owners understandably do not want to be fined for inadvertent paperwork violations. Most of them make a good faith effort to comply with governmental requirements for recordkeeping and reporting. They believe that if they act in good faith, they should not be punished. They do not believe that those who act in bad faith or who try to abuse the system should get away with it. Indeed, they particularly do not want some competitor to get a cost advantage over them by enjoying immunity for deliberately ignoring known requirements.

If the protection in SBREFA is not sufficient to reach small business owners who act in good faith, without harming the public, it is reasonable to talk about adjusting it. There is no good reason, however, to extend this protection to entities that would deliberately and knowingly seek to avoid legitimate recordkeeping and reporting requirements. We are not aware of any significant problems with the implementation of Section 223. If there are gaps in Section 223 that need correction, we would be willing to work with you to craft an appropriate amendment. But, as it is now drafted, the Administration strongly opposes Section 2(b) in S. 1378.

The Administration is also concerned about the provision in section 2(a) requiring OMB to publish annually a list of all Federal collection requirements applicable to small-business concerns organized by North American Industrial Classification System code. We encourage all agencies to help small business owners understand what is required of them. We are very interested in communicating this information better. As currently drafted, however, the requirement in S. 1378 is not the right solution. It would be hard to implement, resource intensive, and difficult to keep current and complete. We could help small business owners more in this area by using our resources in different ways.

In this regard, I would mention a comment we received recently from the Small Business Administration's Office of Inspector General. Although acknowledging that small businesses would appreciate the convenience of a list that identifies applicable reporting requirements, it expressed concern about the feasibility of publishing such a list. It noted that an annual listing of upcoming information collections would require agencies to predict what collections they would require in the future. In many cases, this is not possible because agencies cannot anticipate all of the problems and situations requiring immediate investigation and data collection. The Office urged that Section 2(a) not be enacted in its current form.

Before closing, you have asked us for our views specifically on section (2)(c) of S. 1378, which would obligate agencies to "make efforts to further reduce the paperwork burden for small-business concerns with fewer than 25 employees." As we understand it, this provision is designed to ensure that agency efforts to reduce paperwork burden aim specifically at businesses with relatively few employees. We appreciate the unique circumstances these businesses face and do not object to this provision.

As I emphasized earlier, we sympathize with the goal of easing the paperwork burden on small businesses and would be willing to work with you to improve the language of S. 1378 to the point where we could support its passage. More generally, we would welcome the opportunity to work with the Committee to develop new approaches for alleviating paperwork burdens. We

understand and share your concerns, and those of small business owners all across the land. This is a difficult problem to solve and we need to work together if we are going to make any real progress.

Thank you, and I would be happy to answer any questions you may have.